

## SUBMISSION ON THE BCI CODE OF PROGRAMME STANDARDS: LOOKING BACK AND LOOKING AHEAD

The Broadcasting Commission of Ireland<sup>1</sup> (BCI) is under a statutory obligation under sections 19(5) and 16(6) of the Broadcasting Act, 2001 to publish a code of programme standards. In meeting its obligations under the legislation, the BCI engaged in a consultation process with stakeholders, interested parties and members of the general public. On the 28th of October 2005, in response to the first phase consultation document published by the BCI, the Communications Law class from NUI, Galway's LL.M. in Public Law programme submitted a document to the BCI.<sup>2</sup> This document outlined the views of the class regarding a number of questions that were raised within the BCI consultation document.

The class believed that certain questions posed within the document were of greater importance than others. Consequently, the following submission responded to the most pertinent of these questions.<sup>3</sup> This article will contain the text of the document submitted to the BCI and will consider the consultation process and the recently published draft code on programme standards.

As the BCI acknowledged, the consultation process was important in helping to strike a balance between regulation and freedom of expression.<sup>4</sup> The extent to which the BCI achieved this goal with reference to the draft code will be discussed in the final

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<sup>1</sup> The Broadcasting Commission of Ireland is an independent statutory organisation that regulates the commercial broadcasting sector in Ireland. The core activities of the Commission include: licensing, developing codes and rules, monitoring licensed servers, research, providing information and support for learning and development initiatives.

<sup>2</sup> A copy of the first phase consultation document is available at [http://www.bci.ie/documents/code\\_prog\\_standards\\_pubconsult.pdf](http://www.bci.ie/documents/code_prog_standards_pubconsult.pdf).

<sup>3</sup> *Ibid.* These consultation questions are contained within the first phase consultation document.

<sup>4</sup> Phase 1 Consultation Document, "BCI Code of Programme Standards," at page 5.

section. The BCI also stated in their initial consultation document that their aim was not to censor, sanitise or deconstruct through use of the BCI code, but rather to promote responsible broadcasting. Stated another way, the BCI sought to enhance the quality of and access to entertainment, education and information, and also to reduce the chances of offence and harm.<sup>5</sup> Whether or not this aim has been or will be achieved will be discussed in the final section.

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<sup>5</sup> *Ibid.*

# **Submission on the BCI Code of Programme Standards**

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**Question 3**

*Are there types of broadcast sexual content or violence that you believe should receive particular attention in the Code?*

**Taste and Decency:**

It is important that the BCI code on programme standards give a definition as to what constitutes taste and decency. As Shaw notes, the phrases taste and decency “tend(s) to recur frequently in any debate about the moral aspects of television, whirled around indistinguishably like clothes in a washing machine.”<sup>6</sup>

Shaw identifies **taste** as “an ephemeral matter, changing according to changes in fashion.” This seems to be an accurate definition of taste that embraces the reality that tastes alter over time and can vary simultaneously from place to place and from one part of society to another. **Decency**, however, differs from taste and spans “cultures and generations” and includes respect for the dead and extends to cover the protection of minors and regard for the cherished beliefs of others.

**Recommendation:**

Given the transient nature of **taste**, there is an inherent danger that a lack of flexibility in a code on standards in broadcasting (formulated in the light of taste and decency) will impose standards that are out of touch with what is expected from the Irish listener and viewer-ship.

Monitoring of Irish perceptions of taste is important; the BCI should undertake research on taste to ensure that the code does not become archaic and out of touch. Thus, a review process of the code to be undertaken on an ongoing basis every 3 to 5 years should be considered.

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<sup>6</sup> Shaw, C., *Taste, Decency, and Standards in Television*, in Smith, A., (ed.) *Television: An International History* (Oxford, 1995) at p. 217.

## **Irish people's perceptions of taste and decency regarding violent and sexual content:**

No empirical research has been conducted in this jurisdiction that engages with Irish people's perceptions on what constitutes good or bad taste or decent or indecent content in television and radio programmes. Given that Ireland has its own unique culture that distinguishes it from its European counterparts, it is necessary to engage with what concerns the Irish viewers and listeners. A survey commissioned by the Irish Film Censor Office IFCO, researched the concerns of parents of children attending secondary school.<sup>7</sup>

The findings of the research are interesting. It demonstrated that the primary concern of most parents is drug taking, followed by violence and underage drinking of alcohol.

The BCI code should be sensitive to viewers and listeners who may be offended by sexual content or violent content in programming and who wish to avoid viewing or listening to such programming. Best international practice in resolving conflicts in diversity of taste among viewers dictates that broadcasters should alert audiences as to the content of potentially offensive programming. The pre-eminent methods of informing audiences as to potentially offensive content of programming are the use of the watershed hour, viewer advisories and classification systems.

### **Recommendation:**

A uniformed classification system of symbols indicating the content of the programming among Irish broadcasters may be the most effective way to ensure that viewers are not confused by a complex array of symbols or lettering employed by different broadcasters.

The IFCO research indicated that there was some confusion among parents about the definition of parental guidance and 12PG and 15PG film certifications. It is in this regard that the code on programme standards should seek to ensure the harmony and effectiveness of classification systems.

The research also indicated that parents would welcome more information about the content of films and almost half were willing to visit the Irish film censor website. The BCI code should take account of this and make information about the content of television programmes available to parents. This is of paramount importance given that, where older adolescents are concerned, parents perceive the internet and television as potentially more harmful than films, video and DVD.

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<sup>7</sup> See Irish Film Censor's Office, *Parental Usage and Attitudes Survey on Film Classification*, available at [www.ifco.ie](http://www.ifco.ie)

## Violence

As RTÉ notes in its guidelines for programme makers, violence is a frequent occurrence in everyday life and, as such, portrayal of violence on radio and television is bound to occur. Indeed, violence throughout history has been a focal point of mass entertainment. Ancient Romans, for example, enjoyed very violent spectator sports. Similarly, throughout Irish history, public executions attracted large Irish audiences.

There does not appear to be a clear definition of violence within Irish broadcasting legislation. However, the broad classification of violence as detailed within the BCI publication, *“Taste and Decency: A Review of National and International Practice,”* is useful in drafting a code on broadcasting standards. Specifically, accidental violence, aggression and intentional violence and the further division of violence into physical violence and mental violence may be important in clearly defining what constitutes violence within the context of the BCI code on programming standards.

There is a perception among some members of Irish society (as among members of other western societies) that violence broadcast by the media does influence the behaviour of other members of society. However, there is no conclusive research that confirms this commonly articulated argument for the curtailing of violence in the media. The feature of violence will continue to be an important theme in entertaining and informing listeners and viewers. The time at which extremely violent material is broadcast should be an important component of the code, with use of the watershed to limit potential harm or offence to viewers. The context in which violence is portrayed within programming is vital. The portrayal of violence without consequence or moral judgement should be avoided, particularly within programmes that are targeted at minors. It may be of some concern that studies of violence in the media show that half the violence in television programmes, motion pictures and music videos is committed by “good guys,” with the violence being presented as “justifiable, natural and inevitable.”<sup>8</sup>

### **Recommendations:**

It is important that programmes do not glamorise violence or promote the use of violence or incite viewers or listeners to commit violent acts. However, there is diversity in taste in terms of violence; the most successful motion picture blockbusters have contained violence across all of the categories of violence. Accidental violence, which is unintentional, caused by accidents or natural disasters, features heavily in factual and fictional programming, serving as an important component in news and current affairs

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<sup>8</sup> See Media Awareness Network, *Violence in Media Entertainment*, available at [www.http://www.media-awareness.ca/english/issues/violence/violence\\_entertainment.cfm](http://www.media-awareness.ca/english/issues/violence/violence_entertainment.cfm) Prof. Guy Paquette and Prof. Jacques de Guise of Laval University studied six major Canadian television networks over a seven-year period, examining films, situation comedies, dramatic series, and children's programming (excluding cartoons). Over this seven-year period it was found that incidents of physical violence increased by 378 per cent.

programming and entertainment. Similarly aggressive violence involving intended destruction of inanimate objects and intentional violence between individuals and groups of individuals forms an important component of the Hollywood film and is contained within many film genres.

Most important in terms of avoiding offence to viewers are their expectations in terms of the content of programmes. If viewer advisories, programme classification and proper use of the watershed are employed by broadcasters, avoidance of viewer offence at programmes with violent content can be avoided, while simultaneously meeting the tastes of other viewers.

### **Sexual Violence**

There can be little debate that sexual violence, i.e., rape or sexual assault, is an extremely sensitive issue. Sexual violence is a feature of real life and, as such, it is important that the broadcast media are permitted to engage with the issue, whether the treatment of the issue manifests in a factual or fictional manner. While there is no data available on the level of broadcast of sexual violence in Ireland, the Canadian Parent Television Council states that the incidents of sexual violence and sadism doubled between 1989 and 1999, while the number of graphic depictions increased more than five fold. Given the perception of an augmentation in the depiction of sexual violence, it is necessary that it is included within the BCI code on programme standards.

#### **Recommendation:**

Programmes that feature sexual violence should not, under any set of circumstances, aim to justify or glamorize such sexual violence. A distinction should be firmly drawn between a sexual act and an act of sexual assault. A similar approach to that of the Broadcasting Authority of Hong Kong should be adopted by the BCI in requiring that all non-consenting sexual relations should not be presented as desirable and rape should be portrayed as an act of violence, not as a sexual act.

### **Sexual Content**

The extent to which sexual explicitness is permitted to be shown by television broadcasters is much more restricted in this jurisdiction than in continental European nations. The turmoil over sex on television reflects a great deal of uncertainty about sexual conduct in the late 20<sup>th</sup> century.<sup>9</sup>

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<sup>9</sup> See generally Shaw, C., *Deciding What We Watch: Taste, Decency, and Media Ethics in the UK and the USA* (Oxford University Press, 1999)

There is diversity among viewers, some of whom wish to view material of a sexual nature. Changing attitudes among Irish people about sexual activity are palpable over the last number of years. There has been a growing demand for adult hard core pornography in Ireland, reflecting the changing tastes of some members of Irish society. This demand is reflected by the growth of an indigenous Irish pornography industry. An example of the growing Irish adult entertainment industry emerges from the establishment of pornography production companies, such as “lepreporn,” which are now producing large catalogues of film shot in Ireland.

As Shaw observes, part of the concern created by sexual activity on screen stems from the embarrassment that such scenes cause within the family “...where the conventions of different generations may be thrown together.”<sup>10</sup> However, this type of justification for restricting the broadcast of sexual content is misguided. It is misguided because it fails to recognise that adults, for whom such material is intended, have choices. They have the options to turn to a different channel or to leave the television room or the opportunity to overcome their discomfiture.

**Recommendation:**

The BCI code should be mindful of the desire of some Irish viewers to watch programming containing sexual content. Programming of a sexual nature should be broadcast after the 9:00 PM watershed so as to protect minors from viewing such material. The IFCO research of parents with teenagers attending secondary school is interesting in gauging parental concern with sexual content. The research found that sexual activity and sexual dialogue was the cause of less concern today and most parents comfortably distinguished between nudity and sexual content. The BCI should be aware of this attitudinal reality in drafting the code. It is important that the BCI notes that strong language features very far down parents’ priorities of concern.

**Case Study**

There are limits to the extent to which concerns over taste and decency can impinge upon freedom of expression in broadcasting. This is aptly illustrated by the furore that resulted from the BBC broadcasting the West End musical, “Gerry Springer: The Opera,” earlier this year. 7,940 complaints were received by Ofcom prior to the broadcast of the stage show in January, while 8,860 complaints were received after the broadcast.

Ofcom stated that a large number of people were deeply offended by the transmission, but stated that it was “an important work and commentary” on modern television. The content of the programme depicted biblical figures, including Jesus and

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<sup>10</sup> Supra fn 1 at p.229.

Satan as guests on Springer's combative talk show. It featured strong language, violent behaviour and revelations of an extreme or shocking nature.

In one component of the show, Eve placed her hand under the loincloth of the Jesus character and there was also suggestion that Jesus was gay. Violent content manifested in a re-enactment of the crucifixion of Jesus. In addition, offence was caused through use of over 8,000 swear words throughout the duration of the show.

Ofcom, in balancing protection from harmful or offensive material with freedom of speech, stated that "freedom of expression is particularly important in the context of artistic works, beliefs, philosophy and argument."

The complaints made about the Gerry Springer musical were flawed in many respects. The reasoning behind the BBC board of governors' decision not to uphold the complaints is important. They felt that the complaints were not justified given the use of appropriate scheduling well after the watershed, clear warnings and use of other programming prior to the broadcast to contextualise the piece.<sup>11</sup>

Approximately 55,000 complaints about the scheduling of "Gerry Springer: The Opera" were received by the BBC prior to transmission, with approximately 8,000 complaints received after transmission. The decision of the BBC to broadcast the stage show became the focus of an internet campaign with thousands of the complaints being made by US Christian groups.

Of the 8,860 complaints received by Ofcom, 4,264 were from the Christian broadcaster and publication premier media group. The fact that a large volume of the complaints were made prior to the transmission of the show by people the majority of whom did not have an opportunity to see the West End show is important in highlighting religious sensibilities and the desire of some religious groups to control the content viewed by others. However, the fact that the majority of the complaints were made by persons outside the jurisdiction of the broadcast, who had no means of accessing BBC 2, is important. It is important because the BBC rightly disregarded the views of religious lobby groups outside its jurisdiction who have divergent expectations of taste and decency.

**Recommendation:**

It is clear from this scenario that a more liberal view of taste and decency is being espoused by the broadcasting regulator and public service broadcaster in the United Kingdom. The country of origin principle dictates that the BCI should be pragmatic so as not to adopt programming standards that might place too restrictive benchmarks on taste and decency on Irish broadcasters.

<sup>11</sup> See BBC News, *BBC Rejects Springer Complaints*, 30<sup>th</sup> March, 2005, available at [www.http://news.bbc.co.uk/2/hi/entertainment/4393533.stm](http://news.bbc.co.uk/2/hi/entertainment/4393533.stm). See also [www.bbc.co.uk/complaints](http://www.bbc.co.uk/complaints)

## Question Four

*Which, if any, of the following areas do you consider appropriate to include in the Commission's Code of Programming Standards? Please provide a rationale for your response explaining why you consider this an important heading to include:*

### (i) Coarse Language:

*What is coarse language?*

The fundamental complexity here lies in the establishment of an adequate definition of what exactly constitutes coarse language. This complexity is reflected lucidly in the traditional reluctance of broadcasting bodies to compose any kind of concrete delineation. The Broadcasting Standards Commission in the United Kingdom defined the term "bad language" in the late 1990's as "including swear words as well as the use of terms derived from religious origins."<sup>12</sup> This definition, while still acceptable today, has been greatly expanded. The precise meaning of words, terms and phrases is under constant metamorphosis in terms of time, place, tone and context. It is difficult to compose a code to deal with an issue that is so ambiguous and indeterminate. The only real certainty is that the code must allow a substantial degree of flexibility in its application to accommodate an area under constant evolution.

### *The Code*

Coarse language is a reality, an inherent part of everyday life. Despite its prevalence, there is a need to include it within the code, for the protection of children, and to a lesser extent, our elderly. Saying this, we must also keep in mind that children and young adults are nowadays much more astute than we give them credit for, having largely cultured and worldly views and opinions as to what constitutes coarse language in a particular set of circumstances. Studies have shown that young adults are not so much preoccupied with swear words and religious words used in derogatory fashion as they are with sexual, racist and homophobic terms.<sup>13</sup> It is possible to attempt to divide coarse language into a number of broad but distinct categories: a) swear words, b) sexual words/phrases, c) terms aimed at minority groups (homosexuals, ethnic groups, women, disabled etc) and d) religious terms/phrases. It is also possible to rank words/phrases in order of offensiveness by carrying out opinion polls. However, it is questionable how helpful this would be given the constant evolution in the area and it is doubtful that any such list would prove even relatively durable. The drafting of such a list would perhaps be helpful in the short term and could thereafter be subject to continual review. The

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<sup>12</sup> Broadcasting Standards Commission (1998), *Bad Language – What are the Limits*, a report by A. Milwood Hargrave at p. 17, available at [http://www.ofcom.org.uk/static/archive/bsc/pdfs/research/Bad\\_lang.pdf](http://www.ofcom.org.uk/static/archive/bsc/pdfs/research/Bad_lang.pdf)

<sup>13</sup> See BBC Northern Ireland, *Summary Note of Accountability Breakfast BBCNI's Coverage of Taste and Decency*, 30<sup>th</sup> January, 2004, available at [www.http://www.bbc.co.uk/northernireland/bbcandyou/accountable/taste.shtml](http://www.bbc.co.uk/northernireland/bbcandyou/accountable/taste.shtml)

Broadcasting Standards Commission in the United Kingdom carried out research on this area in 2000 and drew up a list ranking certain words in order of offence caused.<sup>14</sup>

Despite the worldliness of modern day children, there should be no use of coarse language pre-watershed, unless it is justified by reference to the context of the programme, and even then its use should be minimal. Use of the most offensive or harmful words (again, this is where a list would come in useful) should never be broadcast pre-watershed regardless of context. Indeed, use of the most offensive language *after* the watershed must also be editorially justified. The most extreme coarse language is probably most commonly utilised in feature films, and to a lesser extent, in dramas and docudramas. In this instance, clear warnings (visual and verbal) should be given prior to commencement of programme and after breaks, prior to recommencement. The degree of offence which coarse language can cause to a viewer can undoubtedly be diluted or mitigated if it is expected given the nature of the programme. This is often the case with the above categories of programme, particularly feature films. In fact, the use of coarse language in programming in which it is expected may eradicate the offensiveness element completely.

Exposure to coarse language is a certainty given the realities of modern society, but this is not to say that we should allow ourselves, and particularly our children and young adults, to be subjected to its superfluous use. The need to protect children, particularly very young children, is universally accepted. Despite its widespread use in our schools, on the streets and even in our homes, the use of such language in the media sphere should never be unwarranted, inappropriate or unjustifiably callous.

### **Recommendations**

The development of a scale of offensiveness through a process of public surveys or opinion polls would be beneficial with regard to this area. As aforementioned, any such scale is not intended to be a permanent fixture, but subject to continual review, say every three to five years. Despite its ambiguity, it is possible to establish some degree of clarity, at least in the short term, as to what the audience considers to be slightly offensive, relatively offensive, most offensive and so on. Our duty to protect children from harm and offence requires that there should be no use of coarse language prior to the watershed, unless justified editorially or contextually, and even then its use should be absolutely minimal. The use of the most offensive language should never be broadcast pre-watershed. The use of extremely coarse language after the watershed should be preceded by appropriate warnings of a verbal and/or visual nature and also be subjected to editorially justification. The meaning of “coarse language” is under constant metamorphosis and, as such, necessitates the adoption and application of broad, flexible principles.

### **(ii) Children’s Programming**

<sup>14</sup> Broadcasting Commission of Ireland, *Taste and Decency – A Review of National and International Practice* (BCI, 2005), available at [http://www.bci.ie/documents/taste\\_and\\_decency.pdf](http://www.bci.ie/documents/taste_and_decency.pdf)

Protection of children is of paramount consideration. Society has a duty to protect children from harm or abuse. First, looking at this area within the context of the European Union, it is immediately clear that the protection of minors is a primary concern. Both the Television without Frontiers Directive (Article 22) and the European Convention on Transfrontier Television (Article 7) state that material must not be broadcast which would impair the “physical,” “moral” or “mental” development of children. Children are undoubtedly classed a vulnerable group within society by virtue of their age and, consequently, their innocence and, as such, require a specific protection. When we talk of protecting children in this context, we are essentially referring to shielding them from that which they are too young to properly comprehend. Children are those under 18 years; however, herein lies the difficulty. It is impossible to label all those under 18 years children and to lump all into one category. This fact has been widely acknowledged, but it should be recognised more clearly that the differing ages require differing levels of protection. Perhaps “over 15s” should not be included in the children’s category for the purposes of the code.<sup>15</sup> Modern day children are unarguably much more perceptive and discerning than they are given credit for. It is also undeniable that what they might hear and see in the media is easily and freely accessible on their streets and in their schools.

#### *The Watershed – A Cut-Off Point for Children*

The agreed watershed of 9:00 PM is undisputedly the most significant non-legal development with regard to children’s programming and it is pivotal that its importance is observed, not solely by the media, but, arguably more importantly, by parents. It is essentially the unwritten rule. The only complexity of the watershed is that it relates only to television; there is no similar scenario in relation to radio broadcasts. Should there be? While respecting the fact that the running of a successful and purposeful radio station necessitates the transmission of a wide spectrum of disparate materials to satisfy all tastes, it is also a fact that some of these materials may not be suitable for young audiences. For example, many of the “phone-in” sessions discuss topics of a particularly adult nature and are often broadcast quite early in the day when a large proportion of children could potentially be listening. Is it realistic, or even practical, to have a watershed for radio? Probably not. Nonetheless, radio broadcasters should take account of the times that young audiences are likely to be listening. It is important that there be a smooth and gradual transition from pre-watershed material to post-watershed material. If a programme is broadcast pre-watershed that could potentially distress or disturb a young audience, it must be editorially justified and be preceded by clear verbal and/or visual warnings. This statement, of course, presupposes that the child’s viewing is actually being supervised! On reaching a certain level of capacity, children require education in and awareness of the darker aspects of life – drug abuse, sexual abuse, crime, etc. Our aim is not to shield the young to such an extent that they are oblivious, but to produce responsible adults by exposure to such realities when they are of an age capable of understanding. In fact, the reality is that today’s society is predominantly libertarian in

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<sup>15</sup> See Office of Communications (Ofcom) Broadcasting Code (2005), *Section 1- Protecting the Under Eighteens*, available at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/ofcom-broadcasting-code.pdf>

outlook and is one in which pretty much “anything goes.” Hence, it is a society in which it is increasingly difficult to protect the innocence of our young. There is an ever-increasing number of television sets in bedrooms and the likelihood is that bedroom viewing is relatively, if not exclusively, unsupervised. The greater the exposure is, the greater the potential impact.

The main areas of contention with regard to children’s programming revolve around a number of key areas: violence (physical, verbal, sexual, violence against animals), imitative behaviour, coarse language, sex and drug abuse. Graphic depictions of violence, sex, use of coarse language and exhibitions of drug abuse should not be shown pre-watershed. Indeed, depictions of such a nature, not explicitly graphic, must be editorially or contextually warranted if appearing pre-watershed.<sup>16</sup> It is widely acknowledged that cartoons, for instance, contain much violence. Is this taking things too far? Perhaps, but the point is this: any depiction of violence, particularly that which is easily mimicked, whether it be animated, fictional or real life, should be kept to an absolute minimum pre-watershed and should be justified by context and/or editorially. Coverage of sexual materials must be editorially justified if it appears pre-watershed, and even then, it must be minimal and never explicit. Of particular relevance are “soaps.” These are broadcast pre-watershed and, more often than not, contain scenes of a violent and sexual nature, with the portrayal of drugs becoming more common throughout. These “soaps” are then repeated even earlier the following day when even a larger proportion of younger children may be viewing.

On their reaching a certain age of understanding, the media has a very significant role to play in the education of our young adults in the areas of drug abuse, sex, sexual abuse, domestic violence, racism, etc. We should really start moving in the same direction as the USA and adopt media literacy (see Appendix) as a strategy in combating social problems – we have long recognized the power and influence of the media, surely we should be utilising it to its full potential?

### **Recommendations:**

It is unrealistic that the term “children” refers to all those under 18 years old; rather it is argued that there should be a graduated approach to protection. Older children require a less stringent form of protection than younger children. It is suggested here that distinct categories be established, for example, preschool children could constitute one such category, “over 15s” another, etc. Differing levels of what is essentially the same protection would apply to each. For instance, while a factual and hard-hitting documentary on drug abuse may prove disturbing for the average 7 year old, who is arguably too young to grasp the topic adequately, it may prove an enlightening and educational experience for the 15 year old young adult. The watershed serves as the fundamental guiding principle at present. Graphic depictions of distressing materials, the list of which is extensive, should not be portrayed prior to the watershed. The question of whether there exists a need for a watershed for radio has been asked and could be considered under the code. It is also suggested that specific attention be given to the

<sup>16</sup> Supra fn.9

“soaps,” all of which are presently broadcast pre-watershed and are somewhat overlooked in terms of their potential impact on young audiences. More important to this whole area than any number of regulations, rules or codes is parental responsibility. Parents must exercise control over the viewing and, indeed, the listening habits of their children if any degree of success is to be achieved.

### **(iii) Portrayal of Persons or Groups in Society**

It is possible to argue that there are a significant number of groups within Irish society who should be included within the BCI code on programme standards. Such groups could include ethnic minorities, religious groups, members of the travelling community, elderly people, young people and people with disabilities.

#### **Ethic and Religious Minorities**

It is clear from domestic criminal law that incitement to racial hatred is prohibited, and programme makers who would incite racial hatred through the medium of broadcasting would be subject to the rigours of the Irish criminal justice system. Nevertheless, given the increasing multicultural nature of Irish society and the scope for misrepresentation or stereotyping of ethnic or religious minorities, it may be necessary to include such groups within the code in order to regulate the way in which they are portrayed. However, in regulating how such groups are portrayed within the media, it is necessary to be mindful of issues such as freedom of speech.

An interesting debate has emerged within the last year in the UK with reference to proposed legislation to introduce an offence of “incitement to religious hatred.” The legislation is aimed at preventing hatred being incited against people on the basis of their religious or lack of religious beliefs. However, there is much concern that this legislation will impinge upon the ability of the media to criticise or comment on issues relating to religious groups, particularly the British Muslim community. Similar concerns must be articulated in terms of regulation that the BCI adopts on the portrayal of religious or ethnic minority groups in this jurisdiction.

It is important to note that, under the Public Order Act 1986 in the United Kingdom, it is an offence to incite racial hatred. In Ireland, under the Incitement to Hatred Act 1989, it is an offence to publish, distribute or broadcast any threatening, abusive or insulting material that is intended or is likely to incite hatred. The Irish law on incitement goes further than UK law in covering incitement to hatred on a number of grounds, including religion.

However, this legislation has not given rise to concerns about the ability of the media to comment on religious or ethnic minority groups. This lack of concern can be explained by the fact that demographic changes in Ireland have only been experienced in the last decade. Given the creation of an increasingly multicultural and multiethnic

Ireland, issues of how minority groups are portrayed in the media will become ever more important.

**Recommendation:**

The vague meaning of terms like “incitement” and “hatred” mean that there is uncertainty as to what will fall within the scope of the legislation. Vague standards governing the portrayal of ethnic or religious groups should not prevent programme makers – factual or fictional – from engaging in responsible analysis or critique of issues relating to such groups.

**Representation of Women in the Media**

Another interesting debate that has emerged in North America relates to how women and girls are portrayed within the media. There is some concern with negative stereotyping of women in film and television roles and the objectification and eroticisation of females. (e.g., Common stereotypes include femme fatale, supermom, sex kitten or ruthless corporate climber.) There has been much commentary by feminist analysts and others on the role of the media in constructing and reinforcing stereotypical representations and portrayals of women and femininity. Some research indicates that the media can and does empower women, while other research indicates that the media limits the role of women within society.

Concerns with how broadcasters portray women suggest that the BCI code on programming standards should consider inclusion of a provision on how women are portrayed to Irish viewers and listeners.

**Recommendation:**

There are a large number of groups that could be included within the BCI code. Stereotyping of people from various groups in the media is undoubtedly an international issue that has received greater scrutiny over the past number of decades. Given the changing dynamics of Irish society, a general provision placing an obligation on broadcasters to resist the propagation of stereotypes in their programming is perhaps the best approach as it catches all groups of people. Therefore, the BCI and the BCC can respond in the future to concerns and complaints articulated by groups who find their portrayal in the media objectionable, even though they are not explicitly protected by the code.

**(iv) Portrayal of Drugs, Alcohol and Solvent Abuse:**

There is a balance to be struck between the reality of the modern world and the protection of minors. The media undoubtedly has a role to play in educating society at large, and especially our young, on the dangers of drug abuse – a problem which is

becoming increasingly prevalent. On the other hand, we need to be seen to condemn potentially harmful, dangerous or illegal behaviour.

The use of illegal drugs, the abuse of illegal and legal drugs (alcohol), solvent abuse and use of tobacco should not be featured prior to the watershed in programmes directed principally at children without apparent editorial justification.<sup>17</sup> Such behaviours should certainly not be conveyed as desirable or promoted or glamorised. The harmful effects of such behaviour must be evidenced, particularly in programming which attracts very young and impressionable audiences. There should be no descriptive or detailed depictions of the administration of such drugs. Pre-watershed representations should be educational in nature. As already considered, the link between the media and imitative behaviour is a topic continually under debate. There is no doubt that the media exerts influence; it is the effect of this influence that is in question. Again, responsible broadcasting is the key. Drugs and drug abuse are a reality and their portrayal cannot, and should not, be avoided. The viewing of or listening to media broadcasts accounts for a considerable proportion of our everyday schedule and it, therefore, stands to reason that it should play a central role in our education.

### **Recommendations**

The use of illegal drugs, the abuse of drugs (legal and illegal) and solvents should not be broadcast before the watershed of 9:00 PM, particularly in programmes aimed at children, without clear editorial justification. Descriptions of the administration of such drugs should be confined to after the watershed. Particular concern surrounds the link between portrayal of drugs in the media and imitative behaviour, while this link has been by no means proven definitively, the use of drugs, solvent and tobacco should never be portrayed as being exciting, glamorous or prestigious. Broadcasts with drugs or drug abuse as a theme should display the harmful, damaging and addictive effects of such behaviours. The media have a central role to play in educating society, especially children and adolescents, in the dangers of drugs and drug abuse. The potential of the media to have a hand in this education process is undisputed. In fact, broadcasts dealing with this area should be of an educational and informative nature prior to 9:00 PM.

### **(v) News and Current Affairs:**

The role of the news is to present the “facts” and the “events” occurring nationally, internationally and globally. The very nature of the news is such that it is impossible to avoid the broadcast of disturbing and distressing images and materials. Responsibility is the cornerstone in the broadcast of the news. The facts must be relayed to the audience with quite a considerable degree of responsibility and accountability. This duty of responsibility is made even more onerous when one considers the immediacy of the news today – often transmitted as it happens. The news, by virtue of its very purpose, should never be the subject of censorship. News is an invaluable public service and, as such, should be treated with due reverence. News should be accurate and impartial, or

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<sup>17</sup> See BBC Editorial Guidelines on Alcohol, Smoking, Solvent & Drug Abuse & Illegal Drugs, available at <http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/harm/alcoholsmokings.shtml>

more precisely, it should be presented with due accuracy and due impartiality and should exclude the expression of views and opinions.<sup>18</sup>

As mentioned, the news cannot avoid the dissemination of stories and images which may cause offence, shock or dismay – such is the reality of the world today – and such is the public’s right to be informed. The realities of war and conflict should be portrayed as they exist and the effects of violence (including sexual violence) should not be diluted – news should in no circumstances be “dumbed down.”<sup>19</sup> The need to protect the vulnerable in society, particularly children and young adults, from the harsher realities of the world is a theme which runs throughout this whole area of standards in taste and decency. It is acceptable to postpone the more brutal and graphic elements of a particular story to after the watershed. Graphic depictions of violence before the watershed should be preceded by a clear verbal or visual warning and be editorially justified. Specific concern surrounds the area of sexual violence. The reporting of such material must be handled extremely sensitively, with extra care and attention. The aim is to inform and create awareness, not to be overly explicit. We must also be mindful not to portray any person or group of persons in an unfavourable light by virtue of their age, gender, race, nationality, etc. It is of particular importance that any new stories concerning specific groups in society are presented with due accuracy and impartiality in order to avoid unwarranted and unjustified repercussions or reflections on this group as a whole. These types of stories highlight the significance of the absence of comment and opinion from the news and that objectivity remains the cornerstone of responsible reporting.

The observance of the watershed is perhaps not always feasible, one of the principal problems being that, with news being broadcast and shared on a global scale, there are obviously numerous non-national channels transmitting into Ireland. These channels are not subject to Irish legislation and codes and, therefore, are not subject to the watershed. There is also an imitation issue surrounding the news, in that it is widely espoused that specifics of particular stories and materials (relating to easily imitable dangerous behaviour) should not be divulged, at least pre-watershed. Examples include methods of suicide and forms of torture. Indeed, the manifestation of such material after the watershed must be justified by context and editorially.

The fact that the transmission of disturbing material cannot be avoided does not mean that it should be overplayed, dramatised or glamorised (e.g., in the case of reconstructions). Any distress or shock caused must be necessary to portray the “truth” of the story, its true context. It is a common perception that the more the audience is shocked, the more it will take to shock them. We must balance truth with the danger of desensitization.

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<sup>18</sup> *Supra* fn. 10. See *Section 5- Due Impartiality, Due Accuracy and Undue Prominence of Views and Opinions*, available at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/ofcom-broadcasting-code.pdf>

<sup>19</sup> *Supra* fn. 8

The same criteria may, by and large, be applied to current affairs programming. Current affairs programmes should have an informative and educational impact upon society. They should create a deeper awareness, a greater understanding, stimulate the mind and ignite debate. Such programming should be impartial, balanced and objective. The concept of balance is critical as balance gives this type of programming its credibility.

### **Recommendations**

Both news and current affairs are of incalculable worth to their audience. Censorship or sanitisation is not an option if we are to maintain this immeasurable worth. Objectivity, accuracy, impartiality and responsibility are paramount with regard to this area. The need to protect children runs throughout and, as such, news and current affairs have a role to play. The more graphic and descriptive depictions of violence (physical, verbal, sexual, etc.), drug abuse (particularly the administration of drugs) and suicide should be confined to after the watershed. The instantaneous and immediate nature of the news is such that this may not always be possible. Therefore, any such depictions, if they must be shown prior to the watershed, should be preceded by clear verbal and or visual warning. There is no room for glamorisation.

### **(vi) Imitative Behaviour**

Concentration within this area seems to centre on media and its possible links with violent behaviour. The fundamental question here is can a causal relationship between violence on television and aggressive behaviour in the viewer be identified? It is a question, which despite the numerous studies undertaken in the area, remains unanswered, at least in any definitive or conclusive way. The notion that screen violence can lead to copycat behaviour is undoubtedly a topic hotly debated, not solely within the media sphere, but also within the sociological and psychological sectors. As always, there are two sides to the arguments. One can either believe that (a) violence is begotten of violence or (b) that the viewing of violence cannot possibly incite the viewer to violence, rather it is some other external or, more commonly, internal influence. The spotlight here focuses most intensely on children, their vulnerability and propensity to be influenced and, some would say, their susceptibility to corruption. Other behaviours considered imitable include coarse language, drug abuse and, to a lesser extent, sexual conduct and suicide.

It is debatable whether this area should be included in the code to any great degree as any actual and concrete link between imitative behaviour and the media has yet to be uncovered. Firstly, we must state the obvious: that *dangerous* and *easily imitable* material should not be broadcast pre-watershed. Lower down the scale of gravity, but worth considering nonetheless, are depictions of dangerous sporting activities, particularly those with the potential to be easily emulated. Such material shown prior to the watershed should be editorially justified and/or preceded by warnings. There is really little else than can be done at present with regard to the media and this particular area, at least little that could be justified.

An item which should be attracting much more of the limelight than it is presently, although admittedly not an area for consideration under this particular code, is the genre of video games. These “games” often encompass gratuitous and excessive amounts of violence, sex and drugs, perhaps to a greater extent than the adult programming on screens or airwaves. It is not significant that the extent of this violence is controlled by the player. The procedure for rating these games needs to be scrutinised and subjected to a relatively stringent level of control.

### **Recommendations**

The question as to whether there is a relationship between imitative behaviour and the media is a question that, as yet, remains unanswered. Numerous studies have provided no conclusive link between the two. The primary preoccupation with regards this area appears to be in relation to children and violence. It is difficult to include such an indeterminate area in the code to any great extent. It is difficult to prescribe for that which has not yet been clarified or even proven. The only suggestion with regard to this area at present is that behaviours that are dangerous and easily emulated should not be broadcast pre-watershed unless there is clear editorial justification and should be preceded by warnings. Future studies and research may produce concrete links between the media and imitative behaviour and the BCI will then be in a position to stipulate further.

### **Question Five**

#### **Recommendation:**

Paedophilia is an issue that has entered the Irish public consciousness over the last number of decades. Some concerns arise regarding programming and advertising for nappies and other similar products which very often contain presentation of toddlers in a state of undress. Given tangible problems with some members of Irish society accessing child pornography via internet and by other means, this content may offend taste and decency if it stimulates paedophiles and thus may need to be addressed by the code on programme standards.

A detailed code of standards on broadcasting, encompassing a large number of areas is likely to impinge upon the effectiveness of such a code. An approach rooted on the laying of a foundation of core minimum standards of taste and decency in broadcasting, such as the Canadian model, seems to be best practice in terms of effectiveness.

#### **Recommendation:**

Until 1960, under section 17 of the Wireless Telegraphy Act, the Minister for Posts and Telegraphs was bestowed with vast powers in terms of regulating the content of programming that was broadcast in this jurisdiction. However, importantly in this jurisdiction, no official censor was established in the sense of a body charged with the

task of monitoring programmes in advance of broadcast.<sup>20</sup> As such, it is important that the code on programme standards does not adopt an overly paternal approach. The code should lay down minimum standards to be adhered to by broadcasters and the BCI and the BCC should be reactive to complaints made by viewers in line with obligations conferred on them by section 19 of the Broadcasting Act 2001.

## Question Six

***Does the time at which a programme is broadcast influence whether the material on that programme could be seen as offensive or harmful and, if so, are there particular times of day (day parts) during which you believe additional precautions should apply? If so, what are these times and please outline why you believe additional precautions should apply?***

## Introduction

There are three broad issues that need to be addressed in responding to this question. These are:

- (a) Whether the time at which a programme is broadcast should influence whether the material shown could be seen as offensive or harmful?
- (b) If so, are there particular times of the day during which you believe additional precautions should apply?
- (c) What these times are and an outline why additional precautions should apply?

## Section (a)

The time at which a programme is broadcast must be borne in mind, as regards the content of the programme. However, there are a number of factors that must be considered. The Broadcasting Commission of Ireland, in its Guidelines on Broadcasting, sets out that there is a “watershed” time of 9:00 PM. In the United Kingdom, the BBC describes the role of the watershed on television as being “to guard against programming that might entice children and grab their attention in an unhealthy way - feature films and drama in particular.”<sup>21</sup> Before 9:00 PM, materials of an adult nature may not be shown, for example themes of a violent or sexual nature. This is the current position in no less than seven countries surveyed by the BCI.<sup>22</sup> Their conclusion was that there is an implied informal contract between broadcasters and parents, where the former did not show inappropriate material before 9:00 PM, and the latter assumed greater responsibility for what their children viewed thereafter. However, the material shown should not change abruptly when the watershed hour is reached. A gradual progression should occur as

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<sup>20</sup> See generally Tottenham, “A Review of Irish Censorship Legislation: Is a Prior Restraint Preferable to Prosecution?” (2003) 21(18) *Irish Law Times* 282.

<sup>21</sup> See BBC Editorial Guidelines on Television and the Watershed, available at <http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/harm/televisionthewa.shtml>

<sup>22</sup> *Supra* fn. 9 at p. 21

children finish their viewing.<sup>23</sup> An advantage of maintaining this position would be that if the watershed were moved to a later hour, there would be an inevitable impingement on adult viewing hours as material up to this point would be more geared towards a younger audience.

At a European level, there is a no consensus as regards a uniform watershed time. For example, in Poland, the current watershed time is 11:00 PM, in Spain, the time is 10:00 PM, and Luxembourg has no watershed at all. But European legislation mandates that safeguards are put in place. For example, The Television without Frontiers Directive 1989 (and in its revised format), safeguards and guarantees the protection of minors under Article 22. It requires member states to take measures to ensure that broadcasters in their jurisdiction do not broadcast any programme which could seriously impair the physical, moral and mental development of minors. In cases where programmes are likely to be harmful, but not to a serious extent, measures must be taken to ensure that minors will not see or hear them.<sup>24</sup>

### **Recommendations**

Essentially, this is a question of getting the correct balance and, having regard to the moral and social climates of individual states. In the case of Ireland, the current position of 9:00 PM marks an appropriate time of transition from programmes geared towards a younger or family audience to themes of a more adult nature.

We would endorse the retention of the current format, subject to a number of safeguards already alluded to. These include that broadcasters demonstrate responsibility by not using 9:00 PM as a time after which they can pull out all the stops and show programmes of an extremely violent nature, for example. Instead, a gradual transition is essential because they must not assume that children are automatically withdrawn from viewing television. The other factor in this debate relates to the responsibilities, as well as the viewing preferences of parents. They should ensure that their children do not view material that may be gravely harmful to their moral development. Moreover, the 9:00 PM watershed ensures that there is a fair amount of broadcasting time directed towards the adult audience.

### **Sections (b) and (c)**

As outlined in section (a), *supra*, the most important time of the day that additional precautions are required is when the watershed time of 9:00 PM is reached. This is the time that marks the transition from programmes geared towards a family or younger audience to programmes of a more adult nature. However, before the watershed time, there may be programmes that deal with themes such as violence or coarse

<sup>23</sup> *Ibid.*

<sup>24</sup> See Article 22 of Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, available at [http://ec.europa.eu/comm/avpolicy/reg/tvwf/index\\_en.htm](http://ec.europa.eu/comm/avpolicy/reg/tvwf/index_en.htm)

language. For example, soap operas which are broadcast usually between the hours of 7:00 PM and 9:00 PM typically deal with issues like suicide, sexuality and violence. Furthermore, these programmes are often repeated during daytime hours. The regulation of the content of such programmes is crucial and a system of acoustic and visual warnings is of the utmost importance. The Canadian approach to programme content is indicative of what broadcasters should strive for in their broadcasting, i.e., their programming should be of high quality and reflect “the moral and ethical standards of contemporary Canadian society.”<sup>25</sup>

The classification of programmes and the use of symbols are also significant in providing parents and viewers advanced warning of the content of such programmes. This is very much in keeping with EC legislation, such as Article 22 of the Television without Frontiers Directive 1997. The Classification system has at its core the notion of protection. The current system of classification used by RTE to categorize their programmes appears on screen at the start of the particular broadcast to warn viewers of the potential of the programme to offend. This system has five different classifications ranging from General Audience (GA) to Parental Supervision (PS) to Mature Audience (MA) at its most restrictive.<sup>26</sup> Regarding films, recent research by the Irish Film Censor’s Office has found that the present classification system of films is generally satisfactory. The classification is seen as a major source of information about film content, especially for parents in deciding what to allow their children to view. The ratings include General, PG, 12PG, 15PG and 18.<sup>27</sup>

## **Other Jurisdictions**

By way of evaluating the current position in Ireland, it is necessary to look at other jurisdictions. In Australia, a dual approach is applied in the classification of programmes. Their system outlines the classifications to be applied, as well as being equally specific towards the time zones to which they apply.<sup>28</sup> This must take into account the changing nature of child – viewing patterns, e.g., at weekends and during holidays. The problems with this system are that there are too many time zones and variations. For example, the Parental Guidance classification specifies different times for school days, school holidays and weekends. The employment of time schedules, as well as classifications, seems too numerous and too specific. It would be a very drastic move to employ such a system, as well as make monitoring of children extremely burdensome for parents.<sup>29</sup> Many countries, such as France, tend to favour classification by age, as opposed to classification by group suitability, e.g., Parental Guidance and Mature Audience programmes, as applied by RTE.

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<sup>25</sup> See Canadian Broadcast Standards Council Code of Ethics, *available at* <http://www.cbcs.ca/english/codes/cabethics/ethics.htm>

<sup>26</sup> See RTE, *On Screen Classification*, *available at* <http://www.rte.ie/tv/onscreenclassification.html>

<sup>27</sup> See generally the Irish Film Censor’s Office website, *available at* <http://www.ifco.ie>

<sup>28</sup> See Australian Broadcasting Corporation, *ABC Code of Practice* (2003), *available at* <http://abc.net.au/corp/pubs/codeprac04.htm>

<sup>29</sup> *Supra* fn. 9 at p. 35

## **Recommendations**

The Irish approach is quite satisfactory in its current format, in that it takes account of the degree of maturity of the child, which parents can decide. Other approaches, such as the one applied in France, are less subjective to individual cases and too general. They fail to take into account that some children develop and mature faster than others. Therefore, for example, what is suitable for one 16 year old may not be suitable for another 16 year old. While there are similarities between all systems of classification, none of the approaches are considered risk free. Moreover, there is a general expectation among broadcasters that children will not be viewing beyond certain hours. This is reflected in the fact that certain television channels, such as Nickelodeon, go into intermission, i.e., stop broadcasting in the evening time. This demonstrates their anticipation of having a limited audience in those hours.

However, an examination of the "warnings" currently in use shows them to be inconsistent and the rationale for prefacing some programmes and not others is obscure. Phrases such as "hard hitting" or "disturbing" lack definition and seem contrived to convey very little of the true nature of what follows. A better system of warning should be put in place in order to advise viewers of the suitability of content. Greater attention must be paid to this area and greater consultation is necessary between broadcasters and interest groups like parents to reach consensus and clarification as to when warnings are required.

## **Question Seven**

### ***Are there any differences between radio and television in this regard?***

In analysing whether or not there are any differences between radio and television concerning the time of broadcast, the first point to note is that there is no watershed on radio. The British Broadcasting Commission has stated that radio does not operate a watershed because the main listening period to radio is during the day, rather than - as with television - in the evening. It would therefore be impractical to have a watershed during the day.<sup>30</sup>

The power to influence or offend is different between television and radio. Television involves the visual, as well as the audio, whereas radio is purely audio media. Television is a dominant and penetrating medium and its output has a huge influence on people's lives. It is, therefore, essential that its output is regulated. The focus on radio is to make programming more general in nature, steering away from the potential to cause

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<sup>30</sup> See BBC Editorial Guidelines on Radio and Online, *available at* <http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/harm/radioandonline.shtml>

harm or offence.<sup>31</sup> The content of radio programmes, especially live phone-in shows, has the potential to shape public opinion on important issues of public interest. Precautions must be taken to ensure that coarse language or themes of an adult nature are not discussed at times like breakfast, when children may be listening.<sup>32</sup> Radio is a much more accessible medium than television, and many people listen to it at work or in shops for example.<sup>33</sup> Moreover, music with offensive lyrics may influence young people, and should be omitted from such music or played at times of the day when children are least likely to hear them.

A degree of care must be taken by broadcasters not to offend, while at the same time ensuring freedom of expression. The Broadcasting Standards Regulation in the UK voiced the concern at some radio presenters being opinionated and often treating their programming time as a *carte blanche* to air their own subjective views. It was felt that regulation of such programmes is necessary, in order to ensure diversity of opinions.<sup>34</sup> Yet one must bear in mind the stance of radio service providers such as BBC, which has stated its position regarding radio broadcasting as being one where they endeavour “to provide programmes of adult interest at the times most convenient for the general audience without imposing unnecessary restrictions on writers and artists.”<sup>35</sup> Responsibility and balance is required in radio broadcasting. However, one must remember that, in Ireland, the Broadcasting Complaints Commission is empowered to investigate complaints against broadcasters for abusive language or for causing offence on both television and radio. Individuals can take a case where they feel that they have been offended. Therefore, if presenters and those appearing on broadcasts apply reasonable care and responsibility in what they say, there is no need to introduce a watershed to radio, especially as it is not a visual medium, unlike its television counterpart.

#### **Recommendations**

Audience expectations regarding radio are different to television. With radio programming, the focus has tended to be on those times when children are particularly likely to be listening, e.g., during the “school run” or breakfast shows. Because of these existing audience expectations, it would be appropriate to maintain the same framework in place for radio.

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<sup>31</sup> British Broadcasting Standards Commission and Independent Television Commission, *Broadcasting Standards Regulation*, (2003), at p. 13, available at [http://www.ofcom.org.uk/static/archive/itc/research/bsc\\_bsr.pdf](http://www.ofcom.org.uk/static/archive/itc/research/bsc_bsr.pdf)

<sup>32</sup> *Supra* fn.10. See *Section 1 – Protecting the Under Eighteens*, available at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/ofcom-broadcasting-code.pdf>

<sup>33</sup> *Supra* fn. 26 at p.14

<sup>34</sup> *Ibid* at p.47

<sup>35</sup> *Supra* fn. 25

## Question Eight

***Does time of broadcast become a less important consideration for channels that are subscription only or encrypted?***

***Please provide a rationale for your views.***

### **Introduction**

In relation to the issue of time of broadcast becoming a less important consideration for channels that are subscription only or encrypted, it is submitted that indeed it does become a less important consideration, but only when suitable protections are in place governing these services.

Time of broadcast is a major influence on how a viewer or listener views programme material, but the importance of time of broadcast may be lessened if the channel is encrypted or subscription based. Regardless of which mode of access is chosen by the viewer or listener (i.e., by subscription, encrypted, PIN protected or free to air) the essential question is whether there is adequate protection in place to protect young and vulnerable people from inappropriate and harmful content and services in line with the European Convention on Transfrontier Television<sup>36</sup> and the Television without Frontiers Directive.<sup>37</sup> Thus, although time of broadcast becomes a less important consideration for subscription and encrypted channels, we consider it essential that encrypted or subscription based channels provide adequate protection against harmful and offensive material being accessed by users other than the subscriber himself or young and vulnerable persons.

### **The Watershed and the Difference between Free-to-air Broadcasts and Subscription and Encrypted Broadcasts**

The main consideration in time of broadcast is that of the watershed. Here in Ireland, the RTE programme makers' guidelines set out that programme makers need to take into consideration that all of RTE's output across radio, television and the internet is free-to-air and that none of RTE's services are encrypted or accessed by payment. Essentially, this means that everyone is capable of accessing RTE's programmes. Thus, the watershed in such a free to air service must be strictly adhered to. However, adherence to the watershed becomes less important if the viewer has chosen to pay for the channel or if the channel is encrypted and only available to adult members of the household. Subscription based and encrypted channels are generally viewed on a

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<sup>36</sup> See Article 7 and Article 11 of the Council of Europe European Convention on Transfrontier Television (Strasbourg, 1989), available at <http://conventions.coe.int/Treaty/EN/treaties/Html/132.htm>

<sup>37</sup> See Article 2, Article 22 and Article 16 of Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, available at [http://ec.europa.eu/comm/avpolicy/reg/tvwf/index\\_en.htm](http://ec.europa.eu/comm/avpolicy/reg/tvwf/index_en.htm)

different footing to free-to-air channels, as with subscription channels there is a presumption of interest on the part of the person who subscribes and broadcasts that are encrypted restrict access so that services can only be received by those who specifically request them. Consequently, free-to-air broadcasts and subscription and encrypted services should be differentiated between as regards time of broadcast.

According to Millwood Hargrave in the document “Factors affecting the assessment of content,”<sup>38</sup> the key difference between free-to-air and a subscription channel for participants “was that these were paid for channels and thus, those who bought into them were doing so ‘voluntarily.’ Viewers could simply stop buying if the content of a service displeased them.” For those who subscribe or encrypt non-terrestrial channels, there is a greater expectation of strong language and images, including material which on free-to-air channels would be regarded as harmful and offensive. Those with satellite television were “less likely to say there is too much violence, bad language or sex on television,” so therefore there is a greater expectation and acceptance of this material on such channels. Watershed concepts should be more tightly associated with free-to-air broadcasts and the concept of watersheds should be dispensed with when it comes to specialist channels where the materials are more predictable, provided there is adequate protection for young and vulnerable groups from harmful and offensive material.

### **Protection from Harmful and Offensive Material**

The watershed should, therefore, be abolished for subscription channels. The whole point of the watershed is to protect children from casual viewing of offensive and harmful content on free-to-air broadcast television. This is unnecessary when the subscriber is aware of what she is subscribing to. Subscription and encrypted channels should be allowed to broadcast adult material twenty four hours a day, provided there is adequate protection in place preventing persons other than the subscriber and other adult viewers from viewing this material. It is an essential element of our argument that adequate restrictions be put in place to ensure that only those persons eligible to watch adult material have access to it and this point cannot be stressed strongly enough. This abolition of the watershed should only be permitted on subscription services if access by children can be suitably restricted by technical and other means. The use of PIN number protection for access should be mandatory for all households with subscription and encrypted channels. Encryption, age verification on subscription (i.e., by payment with a debit or credit card), viewing cards perhaps sold via personal visits to shops and PIN security provide the necessary level of protection for children. Subscription should be restricted by imposing a regulatory requirement that subscriptions require use of a debit or credit card. If implemented properly, the above requirements will provide a very substantial level of protection to children. Other additional measures of protection could be put in place, such as mandatory changes to PIN numbers on subscription and/or at regular intervals thereafter on adult services, subscriptions only being granted to adults who appear in person, enforcing a requirement for separate viewing cards for adult services and restricting services in such a way that content could not be recorded. These

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<sup>38</sup> This is available at [www.bci.ie](http://www.bci.ie)

methods provide more than adequate protection for children from harmful and offensive material. This light touch approach to regulating adult viewing is necessary, as in a situation such as this, adults who are regulated will simply choose to select the content they want from other sources which are not regulated, such as broadband internet and European providers. This may result in an increase in the number of homes receiving European services which, in many cases, are regulated with a more lenient attitude to sex and other matters than in Ireland and will involve more sexually explicit content on television than is often acceptable here. Also, these services will not have protectionist measures, such as those mentioned above, to prevent and restrict access by young and vulnerable groups.

### **Ofcom's Broadcasting Code<sup>39</sup>**

In developing the new Code of Programme Standards in relation to time of broadcast, it is necessary to look at other jurisdictions and how they have approached the issue of time of broadcast on subscription and encrypted channels. We have concentrated our research on Ofcom's approach to subscription and encrypted channels in England. Ofcom provides that

#### **Rule 1.21**

BBFC (British Board of Film Classification) 18 rated films or their equivalent must not be broadcast before 2100 on any service except pay per view services, and even then they may be unsuitable for broadcast at that time.

#### **Rule 1.22**

Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time provided

\*there is a protection system pre 2200 and post 0530, that seeks satisfactorily to restrict access solely to those authorised to view when material other than BBFC U-rated or PG-rated or their equivalents is shown; and

\*those security systems which are in place to protect children are clearly explained to all subscribers

#### **Rule 1.23**

Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided

\* There is a protection system pre 2100 and post 0530 that seeks satisfactorily to restrict access solely to those authorised to view when material other than BBFC U-rated or PG-rated or their equivalents is shown;

\* Information is provided about programme content that will assist adults to assess its suitability for children;

\* Those security systems which are in place to protect children are clearly explained to all subscribers.

#### **Rule 1.24**

Premium subscription services and pay per view/night services may broadcast 'adult-sex' material between 2200 and 0530 provided that in addition to other protections mentioned above:

\*there is a mandatory PIN protection encryption system, or other equivalent protection, that seeks satisfactorily to restrict access solely to those authorised to view; and

\* There are measures in place that ensure that the subscriber is an adult.

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<sup>39</sup> See generally Office of Communications (Ofcom) website, available at <http://www.ofcom.org.uk/>

**Rule 1.4**

On premium subscription film services which are not protected as set out in **Rule 1.22**, the watershed is at 2200. There is no watershed on premium subscription film services or pay per view services which are protected as set out in **Rule 1.22** and **1.23** respectively

We believe that the above rules set out by Ofcom are unnecessary and excessive, but are a helpful reference for the BCI in drawing up its Code of Programme Standards. The existence of a watershed for subscription and encrypted is an unnecessary requirement in our opinion.

**United Kingdom Code on Standards of the Broadcasting Standards Commission**

The relevant provisions of this code in relation to time of broadcast are the following:

*15.* Cable and licensed satellite services operate with the standard 2100 Watershed for all channels, except for specially encrypted services with restricted availability to children. These have two watersheds: one at 2000 and the second at 2200, when material of a more adult nature can be shown. Other cable and licensed satellite services are expected to follow similar standards to the terrestrial channels. The programmes and the versions of the films they broadcast should be suitable for the time of day

*16.* Pay per view give subscribers greater choice over what they choose to watch. Given their stricter access system, the Watershed does not apply in the same way. The expectation is, however, that the films or programmes shown will conform to the same wider principles set out in this Code.

These provisions are more in line with our thinking, but the restrictions placed on encrypted cable and licensed services are still unjustified and unwarranted given the protections that can be put in place to protect young and vulnerable groups from harmful and offensive material. Provided there are adequate security mechanisms in place, there is no need for watersheds on subscription and encrypted channels.

**Conclusion**

The existence of a watershed is an unnecessary requirement in this day and age in which there are sufficient mechanisms available (encryption, subscription, PIN number protection, etc.) to ensure that adults who do not wish to view this material do not and that children cannot access this material. Therefore, we submit that time of broadcast becomes a less important issue on subscription and encrypted channels, provided there are adequate security and protection mechanisms in place.

**Recommendation**

Based on the above information, we recommend that subscription and encrypted channels be differentiated between as regards time of broadcast and that there be no watershed requirement for such subscription based and encrypted channels.

## Question Nine

***In considering whether programme material is offensive, should consideration be given to the type of programme in which it featured?***

“Offensive” can, in its simplest form, be defined as something “very rude or insulting and likely to upset people.”<sup>40</sup> The BCI is required under *The Broadcasting Act 2001* to develop a code of standards in respect of the taste and decency of programming material. S. 19(a) specifies that the code should address the issues of violence and sexual conduct in programming material. It does not restrict the BCI from other matters, such as coarse language. For this reason, potential offensive material will be construed here to include these three areas as they are the three principal areas included in the codes of other jurisdictions.

In relation to whether programme material is offensive, consideration should be given to the type of programme in which it is featured. However, the approach taken should not be overly stringent to avoid the stifling of new ideas and initiatives. Other important factors need to be considered to avoid compromising the interests of the public.

There are many types of programme. In a document published by the ITC on Audio Description Standards, different programme categories are referred to and it represents Ofcom’s current policy.<sup>41</sup> It differentiates between feature films, musicals, soap operas, nature documentaries, current affairs documentaries, sports and live events, children’s programmes, comedy and sexually explicit or violent programmes. Other programme types would include dramas and news, but these types do not necessarily form a closed list.

Rules for every possible type of programme would be impossible and unwanted. A common sense approach is necessary, with special consideration in respect of children, and children’s programming. Interference with free speech and freedom of information on the grounds of mere offensiveness or moral disapproval is difficult to justify<sup>42</sup>. Offences against taste and decency are different,<sup>43</sup> the latter being more serious. However, both may be justified by the nature of the subject matter and the quality of its treatment by the programme makers along with the programme type.

While there are many areas of concern, the three principal concerns relate to violence, sexual conduct and coarse language. Other areas, like racism, are adequately regulated by legislation, i.e., the Prohibition of Incitement to Hatred Act 1989 (s.3). In

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<sup>40</sup> See *Longman Dictionary of Contemporary English* (Fifth Impression, 2003)

<sup>41</sup> The Independent Television Commission was replaced by Ofcom in December 2003.

<sup>42</sup> See generally Gibbons, T., *Regulating the Media* (2<sup>nd</sup> edn., London: Sweet & Maxwell, 1998)

<sup>43</sup> See generally Shaw, C., *Taste, Decency, and Standards in Television*, in Smith, A., (ed.) *Television: An International History* (Oxford, 1995)

Ireland, there are general criminal law sanctions, general statutory restrictions and specific media-oriented restrictions imposed in the interests of public order.<sup>44</sup>

## Violence

In relation to violence, which can take many forms, again a common-sense approach is advisable. There may be a distinction drawn between “actual” violence and fictional violence. “Real life” violence could be that portrayed on the news, in documentaries or on programmes that reconstruct crimes. As Shaw points out, there are arguments that no television service should seek to conceal the reality of the world from its audiences and that the health of society depends on the supply of accurate information about events which may influence its future. It is submitted that on factual programmes, rules regarding “real” violence should be relaxed. “Real” violence should not be covered up merely to shelter the audiences. A prior warning would suffice, provided the “watershed” is adhered to and that it actually represents reality. The RTE Programme Makers’ Guidelines state that violence should never be gratuitously shown or be for entertainment purposes in news reports and this view has much to commend it.

Fictional violence can also take many forms and, under this heading, programme type can also be quite significant, more so before the watershed. In this respect it is interesting to acknowledge the Ofcom Broadcasting Code and, in particular, its principle to ensure that people under eighteen are protected. A similar provision would be advisable under the BCI code.

Rule 1.3 states that children should be protected by appropriate scheduling from material that is unsuitable. Appropriate scheduling should be judged according to the nature of the content, the start and finishing time of the programme and importantly in this context, the nature of the particular programme. Other factors are also to be considered. Rule 1.11 states that violence<sup>45</sup> must be appropriately limited in programmes broadcasted before the watershed or when children are particularly likely to be listening and must also be justified by the context. The watershed appears to be of extreme importance. However, the type of programme featured before the watershed is likewise important as it may justify the inclusion of some form of violence.

It is universally accepted, and correctly so, that violence of a strong nature should not be broadcasted on children’s programmes. There has been acknowledgement of violence on children’s programmes (i.e., *Tom and Jerry* and *Tiny Toons*, etc.), but, as stated by the Review of National and International Practice on Taste and Decency by the BCI, “mind/comedy/fantasy violence is permitted” and this is a sensible approach.

Violence is, unfortunately, an aspect of life and can legitimately be the subject matter of dramas. Action thrillers are also well established in the modern era. In the context of such programme types, violence should be more acceptable and the inclusion of a prior warning is sufficient, provided it is after 9:00 PM. It is always easy to object to

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<sup>44</sup> See generally McGonagle, M., *Media Law* (2<sup>nd</sup> Edn, Dublin. Thomson Roundhall, 2003)

<sup>45</sup> This includes its after-effects and descriptions of violence, whether verbal or physical.

violence for the sake of children and vulnerable people, but in this regard, parents need to take greater responsibility, especially after the watershed and vulnerable people need not watch the programme, as they would be aware, courtesy of the prior warning of its contents and could therefore choose to avoid watching it. At any rate, extreme violence is prohibited by legislation.<sup>46</sup>

## **Sexual Conduct**

The issue of sexual conduct has always been a main topic of discussion and, again, hardcore pornography on mainstream television is prohibited by legislation.<sup>47</sup> Under this heading, programme type is again an important consideration when deciding whether material is offensive or not. For obvious reasons, such conduct could not be shown on children's programmes, soap operas or daytime comedies as they would clearly go against viewers' and listeners' expectations and could have clear adverse effects. However, it is clearly feasible that a documentary on naturism could justify its inclusion of nudity.

For mainstream television, depictions of sexual behaviour or nudity should be clearly justifiable when included in programmes seen by children or young people. Such programmes should not be taken to mean specific programme types mostly watched by children, but rather should be taken to mean programmes before the watershed. The type of programme may then be an important factor in justifying the inclusion of such depictions.

As correctly stated in the RTE guidelines, many adults accept explicit sexual activity on television when their children have gone to bed, but find it embarrassing if children are still watching. Clearly, consideration of the watershed must be taken into account and the presentation department, in their announcements before programming, should warn the audiences of the upcoming sexual content. The guidelines also state that in news and current affairs or documentaries where sexual activity is the subject matter of a report it should be presented in a non-sensationalist manner. They also state that some reports would not be suitable for a 6:00 PM transmission, but could be shown at 11:00 PM. This could be acceptable as rights of freedom of information would not be curtailed in a significant way, although 11:00 PM might be seen as too late for many people. Perhaps an earlier time after nine would be more suitable.

The guidelines of the Australian Broadcasting Corporation (ABC) could certainly be taken into consideration. They state that provided it is handled with integrity, "any of the following treatments of sex and sexuality may be appropriate and necessary to a program."

- ◆ it can be discussed and reported in the context of news, information or documentary programs;
- ◆ it can be referred to in drama, comedy, lyrics or fictional programs; and

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<sup>46</sup> See Supra fn.31, Article 7 and Supra fn. 32, Article 22.

<sup>47</sup> Ibid.

- ♦ it can be depicted, implicitly or explicitly.<sup>48</sup>

While protection of children should be a principal priority, Gibbons<sup>49</sup> states that evidence to support the anxieties of television damaging members of the audience (particularly in relation to violence and sexual conduct) is equivocal and does not satisfy the liberal condition that harmful effects must be demonstrated before censorship can be justified. This is an interesting point to note and raises further issues in relation to offence and harm.

### **Coarse Language**

The use of coarse language is a subject of deep concern to many people and is one of the most frequent causes of complaint from viewers and listeners. Distress is most likely caused when strong language takes one by surprise or is contrary to the expectations of the audience or is felt to be gratuitous.<sup>50</sup> In this respect, programme type should be a determining factor of offensiveness of content. The desire to shield children from hearing strong language stretches across the media. While scheduling is the clearest means, viewers also use the type of programme as part of the mix to help them make viewing decisions.

In a survey conducted by the Broadcasting Standards Commission in 1998,<sup>51</sup> people were asked whether swearing and offensive language in films should be edited. 65% said they would rather have the film transmitted in its entirety later in the evening. Research shows consistently that people are more likely to accept or approve of programme content if they can see that it is editorially justified or if they can appreciate the intention behind it. In the survey article, *Delete Expletives?*,<sup>52</sup> a list of swear-words was examined for their severity and the reaction of the participants was gauged. While language is not static and can be interpreted differently, certain words are clearly offensive from the outset. In this survey, while younger people were not as concerned as others about many of the words tested, they were particularly likely to consider terms of racial abuse as “very severe.” While there are generational differences, there seems to be some words on which there is general agreement. Such empirical research would be a welcome development in Ireland.

Programme type and the watershed are two important factors in relation to language. Rule 1.14 of the Ofcom Broadcasting Code states that the most offensive language must not be broadcast before the watershed or when children are likely to be listening. Rule 1.15 states that offensive language must not be used in programmes made for younger children except in the most exceptional circumstances. Rule 1.16 states that

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<sup>48</sup> Supra fn. 23

<sup>49</sup> Supra fn. 37

<sup>50</sup> See generally RTE website, available at [www.rte.ie](http://www.rte.ie)

<sup>51</sup> Millwood-Hargrave, A., (ed.) *Delete Expletives?* (Advertising Standards Authority, BBC, Broadcasting Standards Commission and the Independent Television Commission, 2000), available at <http://www.asa.org.uk/>

<sup>52</sup> Ibid. at p. 28.

offensive language must not be broadcast before the watershed, or when children are likely to be listening, unless it is justified by the context.

Use of coarse language should be permissible, so long as it is not gratuitous and provided it can be justified in the context of, for example, news and current affairs, documentary, dramas and comedies with due consideration given to the target audience and time of broadcast. So while programme type is again necessary in legitimising or de-legitimising offensive language, it is not the sole factor. The time of broadcast could be seen as more important. Post-watershed programmes should always have a prior warning, irrespective of the type of programme involved.

## **Conclusions**

As long as there is television, there will be offence taken, regardless of codes and policies implemented. Therefore, such programming by broadcasters, especially in relation to “free to air” audiences, must cater for the majority. However, the “majority” changes with each programme type. Accordingly, programme type is an important factor for consideration. It is fair to state that after the watershed, the majority of viewers and listeners are adults.

### **Recommendation**

The type of programme may be an important factor when considering whether material is offensive if the programme is broadcast before the watershed. Where the programme is broadcast after 9:00 PM, the programme type should no longer be a central factor for de-legitimising content, as this is normally viewed as the time when programmes relate to more adult viewers. In this respect, the issues of prior warnings and “helplines” after programmes take on more importance and it is then that parents must cooperate and assume more responsibility for their children’s viewing. Freedom of expression should not be easily curtailed (save, in respect of the general laws protecting public order and children).

This submission takes account of the need for the protection of children. The period immediately after 9:00 PM should be seen as a graduation period with acknowledgement of potential children viewers, but the role of parents is also necessary in protecting children. Exclusion of offensive material after the watershed will have to be within reason and clearly justified, and it would be unsatisfactory if programme type was the sole justification. Potentially offensive material after the watershed should not be omitted merely because it arises in a programme in which it may not be expected. Otherwise, there is a danger of the imposition of a juvenile standard of television on the adult population which is highly undesirable.

A development worthy of praise is the on screen “classifications”<sup>53</sup> at the start of programmes on RTE One and Two which helps people make informed choices to view or not to view. The BCC also caters for complaints quite adequately (this can be seen by the recent sanctioning of the “Lucozade” advertisement on the back of complaints by members of the public).

This submission takes into account the responsibilities of the BCI under national legislation and the overarching European legislation and is not intended to conflict with any of the responsibilities of the BCI. It also keeps in line with the BCI objectives to promote responsible broadcasting and to acknowledge the diversity of tastes and interests.

## **Question Ten**

***In determining whether programme material is offensive, should the type of channel/service on which it appeared/was aired be taken into consideration?***

### **Introduction / Viewer Expectations**

The issue of whether programming causes offence is directly related to the expectations of the viewer. The channel/service type should be a factor taken into consideration when determining whether programming is offensive or harmful. Viewers build up and have expectations of channels that differ from channel to channel. What is acceptable on Channel X may be unacceptable on Channel Y, even if shown at the same time of the day and on services that are equally accessible. Viewers will expect different levels of coarse language, sexual and violent content from different channels and will adapt their viewing habits accordingly. A broadcaster must similarly be aware of what the public expects of it and should not deviate from these expectations drastically. It should be pointed out at this stage that the issue of accessibility to a channel will be more relevant in the discussion of question eleven. Most of the discussion in this section relates to free-to-air channels.

#### **Recommendation**

Viewers’ expectations should be taken into account when determining whether programming offends against good taste and decency.

**How channel/service type is treated in Ireland at present: Is channel type taken into consideration when determining if material offends against good taste and decency?**

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<sup>53</sup> See generally [www.rte.ie](http://www.rte.ie) Classifications were introduced in November 2001. There are 5 classes: General Audience (GA), Children (Ch), Young Adult (YA), Parental Supervision (PA) and Mature Audience (MA).

Under the current law, the Broadcasting Complaints Commission entertains complaints about taste and decency. There are already in place some restrictions regarding taste and decency. Section 9(1)(d) of the Radio and Television Act 1988 requires that broadcasters licensed under the Act must ensure that they do not broadcast anything that might reasonably be regarded as offending against good taste and decency.<sup>54</sup>

### *Broadcasting Complaints Commission*

The Broadcasting Complaints Commission takes into account the nature of the TV channel when it decides whether a broadcaster has offended against good taste and decency. The details of complaints made to the BCC and the judgments made are available on the BCC's website.<sup>55</sup> A survey of some of the decisions revealed that the nature of a television or radio service is taken into consideration in taste and decency cases. Complaint 95/05 referred to the programme "Will and Grace" aired at 6:00 PM on TV3 and was rejected by the BCC. The complainant, Mr. Gorry, stated that the programme was filled with sexual reference and innuendo and not suitable for the viewing audience at that time, when a lot of children would be watching television. The BCC held that the humour was tacit in nature, mainly based on innuendo and the interactions between the main characters.

Also, given the target audience of the broadcaster, the Commission was of the view that such broadcast items would be within acceptable standards for the regular audience of TV3 at that time and, therefore, unlikely to cause widespread offence.

In a similar complaint (62/05) made regarding the same programme, TV3 responded by saying that "the show, in common with TV3's entire schedule, is not aimed at children."

Another complaint made against TV3 (ref 75/05), regarding a promotion for "Law & Order SVU," was rejected. The BCC held that the content of the trailer was not overtly violent or explicit. They also said:

given the target audience of the broadcaster, the Commission was of the view that such broadcast items would be within the acceptable standards for the regular audience of TV3 at the time and, therefore, unlikely to cause widespread offence.

The promotion was held not to contravene section 24(2)(b) of the Broadcasting Act 2001.

### *Radio Telefís Éireann*

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<sup>54</sup> *Supra* fn. 39.

<sup>55</sup> See generally Broadcasting Complaints Commission website, available at <http://www.bcc.ie/>

In RTE's Programme Makers' Guidelines, it is clear that RTE takes its role as public service broadcaster seriously. The network understands the public trust and wishes to maintain this trust by not offending unnecessarily listeners and viewers. When deciding whether programming on RTE offends against taste and decency, the role of RTE as a public service broadcaster should be taken into account. Again, this relates to the expectations of the audience and, in our estimation, the public expects higher standards of programming from RTE than it does from TV3.

## United Kingdom

In the United Kingdom, the newly established communications regulator, the Office of Communications (Ofcom) has recently published a new code on programming standards. The Ofcom Broadcasting Code contains provisions on protecting minors, harm and offence, sponsorship, privacy, etc. Pursuant to section 1, which deals with the protection of those under eighteen, the meaning of appropriate scheduling must be judged according to, *inter alia*, “the nature of the channel or station.”<sup>56</sup> In section 2, which deals with harm and offence, it is stated that “in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by its context.”<sup>57</sup>

The code then defines what is meant by “context” and it is said to include the service on which the material is broadcast, as well as the likely composition of the audience and their expectations. This latter part does not solely relate to the type of channel on which a programme is broadcast, as other factors such as the time of the broadcast will be important. However, the channel on which a programme is broadcast does have an impact on the likely composition of the audience and their expectations. The Ofcom Broadcasting Code is similar in this regard to the code it replaced which was drawn up by the Independent Television Commission (ITC). In this programme code, which related solely to commercial television broadcasting, it was stated that decisions on programme content will depend on, *inter alia*, the nature of the channel and the audience it attracts.<sup>58</sup> A survey of some of the ITC’s decisions shows that the channel on which the programme was aired influenced the decision. In their *Programme Complaints and Interventions Report* (February/March 1998), the ITC entertained a complaint regarding “The Mark Thomas Comedy Product” broadcast on Channel 4 at 11:00 PM. In this series, the comedian Mark Thomas looked at issues of public concern. In the second part of this programme, he discussed the subject of abortion. The ITC received five complaints about the use of coarse language when discussing such a serious issue. The Commission took Channel 4’s special remit to provide original and innovative programming into account, among other things, and decided that the programme was not in breach of the programme code. In a complaint made against the series “Queer as Folk,” the Commission again

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<sup>56</sup> *Supra* fn. 10

<sup>57</sup> *Ibid.* Section 2.3

<sup>58</sup> *Ibid.* Section 1.2

made reference to the special remit of Channel 4<sup>59</sup> saying that “the series fulfilled the Channel’s remit to appeal to tastes and interests not catered for by ITV.”

In a study produced by Andrea Millwood-Hargrave, entitled *Delete Expletives*,<sup>60</sup> it was discovered that viewers consider the use of coarse language more acceptable on Channel 4 than on BBC and ITV. The report confirmed that the channel of broadcast played a role in the expectation of participants. The following table represents a summary of the findings of the study.

.....  
**Are there any channels on which swearing and offensive language is more acceptable?**

<b>Channel</b>	<b>Total %</b>
<b>BBC1</b>	<b>4*</b>
<b>BBC2</b>	<b>9</b>
<b>ITV</b>	<b>10</b>
<b>Channel 4</b>	<b>42</b>
<b>Channel 5</b>	<b>42</b>
<b>Cable/satellite</b>	<b>48</b>
<b>Don’t know</b>	<b>24</b>

**Base: All who expect swearing and offensive language on certain channels.**  
.....

The following is an extract from the study;

‘At the top of the pyramid was BBC1 – this was expected to be the most responsible of the channels as it is paid for by the licence fee and, therefore, ‘owned’ by all. It was expected to set an example for other channels to follow.

[P]articipants expected ITV to have fewer restraints placed upon it than BBC1, but its place as a mainstream channel meant that it was expected to avoid controversy. Therefore, a relatively small proportion of respondents (10%) said it was more acceptable that ITV programmes contain swearing and offensive.

Channel 4 was recognised as being a minority interest channel, with a broader audience than BBC2. It had reputation among participants for offering controversial and challenging material, which led to an expectation of higher levels of ‘strong’ language than might be found on the three channels mentioned above.

Channel 5 was described by participants as offering ‘tabloid TV’ and the high volume of perceived adult content and film led to an expectation that it would contain significant amounts of ‘strong’ language.’

However, as this study mentions, this does not mean that the participants approved of the use of coarse language on these channels. But the public must be

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<sup>59</sup> Communications Act, 2003, available at <http://www.opsi.gov.uk/acts> Channel 4 is required by the Communications Act 2003 to (i) demonstrate innovation, experimentation and creativity (ii) appeal to the tastes and interests of a culturally diverse society (iii) include programmes of an educational nature and (iv) exhibit a distinctive character.

<sup>60</sup> Supra fn. 46.

considered as being partially responsible for what they view on television. If they expect and find acceptable the use of bad language on Channel X, but do not approve of it, then the onus should be on them to adjust their viewing habits so as to avoid this channel. While the above study only deals with coarse language, it can reasonably be expected that viewers have expectations about the sexual and violent content on different channels.

### **Recommendation**

The nature of the channel/service on which material is broadcast is a factor that should be taken into account when deciding if material offends against good taste and decency. This is because the public expects different standards from different channels.

### **Conclusion**

It is clear from the above that channel type is one part of the overall expectations of viewers. Viewers expect certain content on different channels and are thus enabled to adjust their viewing accordingly. Of course, this is not to say that channel type is the only consideration by which taste and decency should be judged. Sexual or violent content or coarse language is not acceptable on any channel at certain times of the day, regardless of whether the audience expects it or not. But channel type is an important consideration and, as such, should be incorporated into the Code of Programme Standards.

### **Question Eleven**

***Should a differentiation be made between free-to-air and subscription channels?  
Please provide a rationale as to why.***

#### **Introduction**

There is a difference between free-to-air and subscription channels that relates to their accessibility. The essential and obvious difference is that free-to-air channels are available to all with a television set, whereas subscription channels are only available to those who have chosen them. This, of course, has an impact on the expectations of the audience as one can reasonably assume that if someone has chosen to buy a channel, she is aware to some extent of the nature of that channel.

#### **Difference between free-to-air and subscription services**

In Australia, there is a separate code for subscription television and another for free-to-air services. In the Preamble to the Code of Practice: Subscription Television,<sup>61</sup> it was noted that the major distinctive feature of subscription television “is the direct contractual relationship between the service provider and the subscriber. This voluntary

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<sup>61</sup> See generally Australian Broadcasting Authority (now the Australian Communications and Media Authority) website, available at <http://www.aba.gov.au/> or <http://www.acma.gov.au/>

relationship between the provider of a retail service and a subscriber to that service provides subscribers with freedom of choice along with the capability and responsibility to select programmes they wish to receive. In this sense, subscription TV is in the nature of an invited guest, brought into the home in the full and prior knowledge of the guest's character.” The codes are designed to recognise the fundamental differences between free-to-air and subscription services.

Viewers' expectations play a huge part in why free-to-air and subscription services should be regulated differently. In *Delete Expletives*,<sup>62</sup> it was shown that out of all services (free-to-air and subscription), participants found coarse language most acceptable when broadcast on cable/satellite services. The key difference was that these were paid-for channels and, thus, those who bought into them were doing so “voluntarily.” Viewers could stop subscribing to the services if the content displeased them.

### **Subscription Services as a Consultation Medium**

On a theoretical level, there are very fundamental differences between free-to-air and subscription channels that warrant different degrees of regulation. On a general level, McQuail<sup>63</sup> notes that there is a basic distinction between three main media types with corresponding regulatory models.<sup>64</sup> The print media involves the least degree of regulation and can be regarded as “consultation” media. Film and recorded music belong to this category also. The initiative in their use is taken by the reader/viewer/listener who is thus an active and voluntary partner in their use. The second model is that of common-carrier media which includes mail, email, fax, telephone etc. The third and most regulated form of media is broadcasting. The allocation of transmission space led to tight regulation. However, as scarcity has diminished due to satellite and, more significantly, digital technology, the control of broadcasting is justified by a belief that broadcasting has, by far, the greatest impact on society. A justification for less stringent regulation of subscription channels can be extrapolated from this. Subscription television can be seen as having much in common with the first type of media, i.e., consultation media. The subscriber takes the initiative in the use of subscription channels, so he must be regarded as being a voluntary and responsible partner.

Chapter 1 of the European Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services<sup>65</sup> identifies those aspects of the development of new audiovisual and information services that are relevant for the protection of minors and of human dignity and analyses the categories of content that may give rise to problems. It is recognised that new television services, such as pay-per-view, provide greater individual choice. They are evolving away from the mass media model, where the viewer's choice is between watching a programme or not, toward a

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<sup>62</sup> Supra fn. 55 at pp. 33-34.

<sup>63</sup> See generally McQuail, D., *Media Accountability and Freedom of Publication* (Oxford, 2003).

<sup>64</sup> Ibid. at pp. 108-110.

<sup>65</sup> Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services COM (96) 483, available at <http://europa.eu/>

model that is closer to publishing, i.e., where the viewer selects his or her programme from a wider choice.

### **Recommendation**

The fundamental differences between free-to-air and subscription services must be recognised by the code. They should be taken into consideration when determining whether material offends against good taste and decency.

### **Freedom of Expression**

Thomas Gibbons,<sup>66</sup> writing on the reform of the regulation of communication, says that even if it is accepted that some content controls are desirable to reflect audience expectations, that it would only be justified where programming is broadcast “to a universal, undifferentiated, free-to-air audience.” He continues:

But where members of the audience are allowed to choose which segments of programming they wish to receive, the arguments for imposing a second level of basic restrictions are much weakened. Where programming is not free-to-air but is by subscription, there appears to be no good reason for using any standard other than the general law to control content.<sup>67</sup>

It must always be kept in mind that the competing interest of freedom of expression is constantly pushing against governmental regulation of the media. The public interest issue may provide a legitimate rationale for heavy regulation of free-to-air channels. However, freedom of expression interests become more relevant and important as the amount of control exercised by viewers in what they watch increases. To regulate subscription/pay-per-view services identically or similarly to free-to-air services in relation to taste and decency is unjustifiable as it represents a major infringement on the freedom of expression and is tantamount to censorship.

In the recitals to the Television without Frontiers Directive, it was recognised that there is a much broader principle at stake in television broadcasting than just the freedom to provide goods and services, namely the freedom of expression. Consequently, freedom in relation to broadcasting under the directive must be in accordance with article 10(1) of the European Convention on Human Rights and subject only to the limits set by article 10(2) of the Convention and Article 56(1) of the treaty.

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<sup>66</sup> See generally Gibbons, T., “Reforming the Regulation of Communications,” (2001-02) 6 *Yearbook of Copyright and Media Law* 185.

<sup>67</sup> *Ibid.* at 190.

### **Recommendation**

More weight should be given to freedom of expression issues when dealing with subscription/pay-per-view services.

## **Access by Children**

While endorsing Gibbons' general assertion which ties in with the notion of subscription television being a consultation medium, it is submitted that issues of access by children may provide a rationale for regulating subscription and pay-per-view television. The Ofcom Code addresses this issue in detail and this may provide some guidance for the Irish code.

**1.22** Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of the day provided:

- There is a protection system ... pre 2000 and post 0530, that seeks satisfactorily to restrict access solely to those authorised to view when material other than BBFC U-rated or PG-rated... is shown; and
- Those security systems which are in place to protect children are clearly explained to all subscribers.

**1.23** Pay per view services may broadcast up to 18-rated films... at any time of the day provided [*inter alia*]

- There is a protection system pre 2100 and post 0530
- Information is provided about programme content that will assist adults to assess its suitability for children.

**1.24** Premium subscription services and pay per view/night services may broadcast 'adult-sex' material between 2200 and 0530 provided that in addition to other protections mentioned above:

- There is a mandatory PIN protected encryption system...
- There are measures in place that ensure that the subscriber is an adult.

This approach ensures that subscribers are not overly restricted from watching what they want, but also provides adequate safeguards protecting children from viewing inappropriate programmes. It is important here to strike a balance between freedom of expression and the protection of minors. It is submitted that the Irish code should be similar to the Ofcom code in relation to subscription/pay-per-view and premium subscription services. While there are few domestic subscription services at present, it would be wise for the code to anticipate a growth in this area.

### **Recommendation**

In the provision of services, subscription service providers must take all reasonable steps to protect people under eighteen. Subscription service providers should ensure that their services are adequately protected so as to prevent under-eighteens from viewing inappropriate material. Subscription service providers must also ensure that information is provided about programme content that will assist adults to assess its suitability for children.

## **European Law**

Article 22 of the Television without Frontiers Directive provides for the protection of minors and public order. Member states are required not to allow broadcasters under their jurisdiction to broadcast any material that is likely to seriously impair the physical, mental or moral development of minors.

The Directive states that programmes which might seriously impair the development of minors are prohibited. Those which might simply be harmful to minors must, where they are not encrypted, be preceded by an acoustic warning or made clearly identifiable throughout their duration by means of a visual symbol.

The directive recognises the fundamental distinction between free-to-air and subscription services by requiring non-encrypted services to include a warning prior to a programme that may be harmful to minors. Once programming that is unsuitable for children is properly protected, there is no requirement to include a warning.

## **Conclusion**

In conclusion, it is submitted that the Code of Programming Standards should take into account the fundamental differences that exist between free-to-air and subscription/pay per view services. Subscription television is a consultation medium, one that is like an invited guest in the home. Of course, there are legitimate reasons for regulating this medium insofar as regulation protects children. Where there are adequate protections in place, like those outlined in the Ofcom code, then the content of programmes on subscription and pay-per-view services should only be subject to the general law.

### **Recommendation**

Where adequate protections are in place protecting the under-eighteens, then ordinarily the content of subscription/pay-per-view services should only be subject to the general law.

## **Question Fourteen**

***Should the likely composition and size of the audience be considered in assessing whether material is offensive?***

***Please provide a rationale for your views.***

Yes, the likely composition and size of the audience should be considered in assessing whether material is offensive.

Media scholar Ien Ang<sup>68</sup> observed that our common understanding of an audience is of a group of people who gather in a particular place at a particular time to experience some event together. In the context of broadcasting, the audience are the people who gather to view a particular television programme or broadcast, in other words, the viewers. In assessing whether programme content is offensive or not, regard must be had to the fact that no two viewers are alike – what might be acceptable to one is not acceptable to all. This will depend on a number of factors, such as the age, gender, race, religion, etc. of the members of the audience. Therefore, given the potential for diversity within the audience, its size and composition is a factor which should be considered in assessing whether or not programme material is offensive.

### **The Importance of Audience Demographics**

Demographics are very useful in helping to determine the size of a TV audience.<sup>69</sup> Demographics are simply the characteristics of people. Examples of demographics include age, gender, race, religion, marital status, education level, profession and income. Age and gender are the two principal demographic characteristics that TV audience research uses. They can tell us a lot about TV viewing. For instance, older people have more time to view than younger people. Women watch more television than men do. They can also tell us about viewers' preferences. For example, women tend to like drama, film and culture more than men; whereas men are more likely to view science, nature and war documentaries and sport. Older people prefer news/talk and nostalgic music; young people like comedy, science, film documentaries and reality TV shows.

Age and gender also play a significant role in determining what a person views as acceptable, offensive or unacceptable.<sup>70</sup> It is generally believed that women and older people are more likely to say there is “too much” violence, swearing and offensive language and sex on TV. Referring to bad language, younger people were less concerned about it than older groups. They were, however, found to be most sensitive to racial abuse. In relation to images of sexual activity on TV, older people exhibited more concern than younger people. Gender is also significant here with men far less likely to say there is too much sex on television than women. Gender must also be taken into account when watching violence on TV. Whereas women tend to speculate on the motives for violence, men show little curiosity about motivation and an inclination to be dismissive of some violent acts.

We concur that audience demographics are an important tool in determining whether programme content is offensive or not. Furthermore, we must have regard to the fact that the composition of the audience changes as the day goes on. For example, the majority of children's TV programmes are broadcast in the morning or late afternoon, i.e., the period before and after school. At that time of the day, most adults are at work so the audience composition would consist of primarily children. Therefore, it would not be

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<sup>68</sup> See generally [www.streamingmedia.com/article](http://www.streamingmedia.com/article).

<sup>69</sup> See generally [www.tracmedia.com/Demographics](http://www.tracmedia.com/Demographics).

<sup>70</sup> Supra fn. 10.

appropriate to broadcast any material with an adult content around that time as it would most likely be considered unacceptable or offensive. It is thus submitted that the demographics of the audience is something that the broadcaster should bear in mind in relation to programme scheduling. The BCI should consider the likely size and composition of the audience when setting standards.

### **The use of ratings**

When assessing the size and composition of the audience, the use of ratings may also be employed. Ratings are a central component of the television industry, and almost a household word. They are important in television because they indicate the size of an audience for specific programs. The word “ratings,” however, is actually rather confusing because it has both a specific and a general meaning. Specifically, a rating is the percentage of all the people (or households) in a particular location tuned to a particular program. In a general sense, the term is used to describe a process (also referred to as “audience measurement”) that endeavours to determine the number and types of viewers watching TV.

### **Approach taken in the UK**

When preparing a code of programme standards it is generally useful to look at other jurisdictions that have already developed such a code. In the UK, the single broadcasting regulator, Ofcom, has developed a code dealing specifically with programme standards. The Ofcom Broadcasting Code lists a number of factors that have been taken into account when setting standards. One of these factors is “the likely size and composition of the potential audience” and “the likely expectations of the audience.” Section 1 of the code (Protecting the Under-Eighteens) provides an example of how this works. It states that “[C]hildren must also be protected by appropriate scheduling from material that is unsuitable for them.”<sup>71</sup> Then it expands on this statement by stating that “[A]ppropriate scheduling should be judged according to the likely number and age range of children in the audience, taking into account school time, weekends and holidays.”<sup>72</sup>

The BBC has also come up with a list of editorial guidelines which must be taken into account in assessing whether material is offensive or not. Section 8, entitled Harm and Offence, names audiences’ expectations as one of the factors to be considered in determining whether content is harmful or offensive. It states “[W]e should judge the suitability of content for our audiences, including children, in relation to the expectations of the likely audience at a particular time on a particular day. In doing so we should ask ourselves the following questions: what is the likely composition of the audience, including the likely number and age range of children in the audience taking into account school time, weekends and holidays?.....what is the likely ‘pull through audience’ i.e.

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<sup>71</sup> Supra fn. 10, Section 1.3

<sup>72</sup> Ibid.

what is the nature of the preceding content and what kind of audience is it likely to attract?”<sup>73</sup>

## **Conclusion**

It is apparent, therefore, that similar codes in other jurisdictions emphasise the importance of audience size and composition as a factor to be considered in determining whether programme content is offensive. By having regard to the size and composition of the audience at a particular time on a particular day, the broadcaster is able to judge what the audience may or may not find acceptable and schedule its programmes accordingly. Furthermore, we have been made aware of the importance of audience demographics in determining the suitability of material. We advise that the BCI should have regard to the Ofcom Broadcasting Code as a model for future codes and, when setting out its code of programme standards, we propose that they should likewise take account of audience size and composition.

## **Recommendation**

On the basis of the information set out above, all broadcasters should be mindful of the audience size and composition when programme scheduling. By taking account of the likely size and composition of the audience at a particular time, the broadcaster is able to assess what is acceptable or unacceptable to that audience and can schedule its programmes accordingly, thereby reducing the risk of broadcasting offensive material.

## **Appendix**

Having expressed particular interest in a number of the questions posed by the Broadcasting Commission of Ireland in this consultation process and having each undertaken our own individual research, it is apparent that, collectively, we embrace the application of minimal restriction to the media sphere. In place of the continual drafting and revision of codes, regulations and legislation, we put forward to concept of media literacy for the BCI's consideration.

The concept of media literacy originated in the United States, where deregulation of mass media is the predominant approach. It essentially involves teaching the viewing/listening audience how to “read” television and mass media. The argument at present appears to be that the establishment of codes and prescription of certain standards in areas like “taste” and “decency” are necessary in order to protect the audience, particularly children, from unwarranted, unnecessary offence and harm. The view seems to be that, within society, there are certain groups, which, by virtue of their age/nationality/gender, etc., are considered “vulnerable” and hence require a specific protection. The idea behind media literacy is this: teach the audience the skills of analysis and critical thinking in order that they are in a position to decipher the messages

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<sup>73</sup> See BBC Editorial Guidelines on Harm & Offence – Audience Expectations, *available at* <http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/harm/audiencexpecti.shtml>

they receive from the media in an informed and educated manner, and hence have less reliance, and indeed, less need for rules and regulations. Effectively, media could become the solution, or at least part of the solution, to the problems it has created.

Media literacy is a science based approach to prevention.<sup>74</sup> There is a desperate and undeniable need to inform and educate society, especially children and adolescents, on the darker, disturbing aspects of life. We must attempt to furnish the necessary skills to enable perceptive, analytical and enlightened judgments and evaluations on the messages received: on the dangers of drugs (illegal drugs, alcohol, tobacco, etc.), unprotected sex and its implications, sexual abuse, racism, domestic violence, eating disorders, etc. The aim is, after all, to produce and foster future responsible adults. For the masses, media is a source of pleasure, therefore, to openly condemn it or subject certain aspects of it to regulation or restriction inevitably makes it more appealing. Rather than draw up codes, rules and regulations and preoccupy ourselves with the concepts of vulnerability and protection, rather than concentrate solely on prescribing what is or is not harmful or offensive, what should or should not be broadcast, surely we would be better off focusing our energies into making the study of media and media literacy part of the national curriculum.

### **Recommendations**

The idea of educating society, children and adults alike, in the methods and innermost workings of the mass media would present a fresh and invigorating challenge. The Broadcasting Commission of Ireland should take the first small steps towards media literacy, for example, by initiating pilot schemes in a number of primary and secondary levels schools throughout the country. Obviously, children of different ages will have differing capacities of comprehension and this will necessitate a graduated approach in its implementation. Long term aspirations could see the incorporation of media literacy into the national curriculum.

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<sup>74</sup> See generally <http://medialiteracy.net/>

## *Conclusions*

The Broadcasting Commission of Ireland launched the draft code of programme standards on the 5<sup>th</sup> of September 2006. This marks the third and final stage in the consultation process on the new Code of Programme Standards.

Speaking at the launch, the BCI Chairperson, Conor J. Maguire, stated that the Commission was cognisant of the reality that “...standards in contemporary Irish society will develop and change over time’ and as such the Commission will continue to engage in research in this area with the view to illuminating and updating of ‘community standards.’”<sup>75</sup> This point had been stressed in the submission to the BCI as being of paramount importance if the code was to be workable and if Irish programme makers were to be able to produce work that was relevant to Irish audiences.

### **Taste and Decency and Harm and Offence:**

The publication of the final code on taste and decency will result in the Commission’s fulfillment of its statutory obligations under sections 19(5) and 16(6) of the Broadcasting Act, 2001 to publish a draft code. These statutory instruments that make provision for the code on programme standards articulated that the code should examine taste and decency. In the United Kingdom, there has been a shift away from the standard of “taste and decency” to “harm and offence.”<sup>76</sup> The Communications Law class submission drew quite heavily on the OFCOM Broadcasting Code as a standard that the BCI ought to follow in the development of its code, especially the sections regarding protection of minors and harm and offence. Although the Communications Law class submission did not engage in a debate over the merits of taste and decency as opposed to

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<sup>75</sup> “BCI Launches Draft Code of Programme Standards,” 5 September 2006, available at [http://www.bci.ie/news\\_information/press99.html](http://www.bci.ie/news_information/press99.html)).

harm and offence, the Commission, to its credit, did incorporate the language of harm and offence into consultation documents and the draft code.

### **The Draft Code: A Solid and Workable Framework of Programme Standards?**

The draft code on taste and decency is, for the most part, a solid and workable guide for programme makers in the Republic of Ireland.<sup>77</sup> The BCI resisted the temptation to adopt an overly regulatory and prescriptive code that would have been cumbersome in application and restrictive on programme creators. Contained within the draft code are the principles that have guided the development of the code, namely: general community standard; audience information and guidance; due care; and protection for children and assessment. These content principles serve as a useful alternative to detailed and clumsy reams of regulation. Accordingly, the text of the code itself is quite brief, amounting to only four pages in total.

### **An Appraisal of the Consultation Process:**

The consultation was a very meaningful process. The two public consultations that preceded the launch of the draft code resulted in 216 submissions to the BCI.<sup>78</sup> This number is quite small when considering the television programming audience in Ireland. However, the BCI ensured the gauging of the attitudes of a representative sample of Irish society to programme standards. The BCI commissioned Lansdowne Market Research to conduct a nationwide attitudinal survey to inform the development of a code on taste and decency.<sup>79</sup>

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<sup>76</sup> Section Two, OFCOM Broadcasting Code, available at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.

<sup>77</sup> “Draft Code of Programme Standards,” (Broadcasting Commission of Ireland), available at [http://www.bci.ie/documents/draft\\_code\\_ps\\_eng.pdf](http://www.bci.ie/documents/draft_code_ps_eng.pdf).

<sup>78</sup> *Ibid.*

<sup>79</sup> “Towards Development of a Code on Taste and Decency,” (Lansdowne Market Research: Presentation to the Broadcasting Commission of Ireland, October 2005), available at [http://www.bci.ie/documents/attitudinal\\_survey.pdf](http://www.bci.ie/documents/attitudinal_survey.pdf).

The research explored what offends taste and decency on television and radio and provided a ranking of concerns within each topic. The research also identified and ranked in importance the contextual factors that influence the perception of offence. The class submission has identified that this type of research needed to be carried out if the BCI was to produce a code in congruence with the current attitudes and tastes of Irish society.

Section 4 of the draft code explains the work of the BCI and the processes employed in developing the code. This explained to interested parties, who had not been involved in the consultative process in phase 1 or 2 and the public at large, how the BCI developed the draft BCI Code of Programme Standards and why the draft approach was adopted. From a transparency point of view, this is quite important and assists in promoting confidence in the code and consultation process.

The BCI will ultimately conclude the process of developing a code on taste and decency with a final consultation document that will be widely circulated to key groups and interested parties, including all those who have previously made submissions on the development of the Code.