



Ofcom Guidance

Protecting the Under-Eighteens: Observing the watershed on television and music videos

Introduction

Ofcom is providing this guidance note to assist television broadcasters in their compliance with rules relating to pre-watershed content in Section One of the Broadcasting Code (“the Code”), in particular in relation to:

- material broadcast before and soon after **the watershed**; and
- **music videos** broadcast before the watershed.

Please note that Ofcom deals with every case according to the individual circumstances and issues.

This guidance note should be read in conjunction with the existing guidance for Section One of the Code, in particular Rule 1.3, which can be found at:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

Why provide guidance?

Ofcom has a statutory duty to ensure that under-eighteens are protected. This is one of the most fundamental aspects of the Code and for Ofcom’s regulation of standards in broadcasting.

In recent months Ofcom has investigated some high profile cases involving material that was unsuitable for children or close to the limits of acceptability before the watershed. As a result, and in light of other recent work¹ in this area, Ofcom has been considering carefully a number of issues relating to compliance with the watershed.

Since Ofcom was set up in 2003, we have regularly undertaken research among parents about the level of concerns related to the type of content that their children watch on television². We have also measured parents’ views about the time of the watershed and whose responsibility it is to protect children³. This research has shown consistently that parents continue to understand and value the concept of the watershed on television to protect children. Ofcom considers this underlines the continuing importance of the watershed, especially taking account of the growth in recent years of other means of accessing audiovisual material.

Ofcom carried out new research in July 2011 to establish whether parents and teenagers (aged 12-17) had concerns about the watershed and music videos. The detailed results are at: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/ofcom-for-parents/prewatershed-tv-programming.pdf> .

¹ In 2010 the Government asked Reg Bailey, Chief Executive of the Mothers' Union, to review the pressures on children to grow up too quickly. The Bailey Review was published in June 2011 (<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/CM%208078>). It included research indicating that 41 per cent of 1,025 parents and carers questioned had seen content on television before the watershed which they considered unsuitable for children because of sexual content. The review also highlighted music videos as an area of particular parental concern.

² <http://stakeholders.ofcom.org.uk/market-data-research/market-data/media-literacy-audit-reports/>

³ <http://stakeholders.ofcom.org.uk/broadcasting/reviews-investigations/public-service-broadcasting/annrep/psb11/>

What did parents say?

This research was based on a sample of 1,054⁴ parents and primary carers. The key findings from the research were that, of this sample group:

- a third (33 per cent) of all parents surveyed expressed some level of concern regarding what their children had seen on TV before 9pm in the previous 12 months;
- among all parents surveyed, the concerns most frequently mentioned were violence (20 per cent), sexually explicit content (17 per cent) and offensive language (17 per cent);
- the types of programmes that caused most concern to all parents surveyed were soaps (14 per cent) and film (14 per cent), followed by reality programmes (12 per cent) and music videos (11 per cent); and
- regarding music videos, of all the parents surveyed, the main concerns were: sexually explicit content (6 per cent) and overtly sexual performances (6 per cent), followed by offensive language (5 per cent), nakedness/naked body parts (5 per cent) and generally unsuitable content of a sexual nature (4 per cent).

What did teenagers say?

The research amongst 768 teenagers aged 12-17 showed that:

- just under a quarter (23 per cent) said they had seen something on TV before the watershed in the previous 12 months that had made them uncomfortable or they had found offensive;
- the top five concerns measured as a percentage of all teens questioned were: sexually explicit content (7 per cent), offensive language (4 per cent), violence (4 per cent), nakedness/naked body parts (2 per cent), news (1 per cent) and animals being killed/mistreated (1 per cent); and
- the genres of programme causing most concern measured as a percentage of all teens surveyed were: film (7 per cent), followed by soaps (6 per cent) and reality TV (5 per cent). Music videos came fifth (4 per cent) after dramas (4 per cent). This was followed by documentaries (3 per cent) and news (2 per cent).

This guidance note is informed by the findings of this Ofcom research. It also highlights decisions already published in the Ofcom Broadcast Bulletin⁵ showing how Ofcom has applied the watershed rules in Section One of the Code. Broadcasters may find these cases helpful when considering how best to interpret particular Code rules.

With reference to music videos, we also set out Ofcom's responses to various queries posed to us by licensees in the past that we think might be of general interest. The intention is to anticipate some of the more common or fundamental questions that might arise when ensuring that the broadcast of music videos complies with the Code.

⁴ The parental data were weighted to ensure they are representative of the GB population. The weighted base is 1,175 parents/carers.

⁵ <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/?a=0>

Later in 2011 and in early 2012, Ofcom will be conducting a review of all Code guidance and the guidance contained in this note will then be incorporated into the next issue of the overall guidance accompanying Section One.

Observing the watershed

Ofcom has a statutory duty to ensure that under-eighteens are protected.

The rules in Section One of the Code serve to ensure appropriate protection for under-eighteens from broadcast content that is unsuitable for them.

A fundamental requirement underpinning these rules is the application of the watershed, which applies to television only. The watershed starts at 21:00 and material unsuitable for children should not, in general, be shown before 21:00 or after 05:30. The watershed is a concept well understood by parents and carers as the time which signals the move towards adult content on television. Yet, Ofcom's 2011 research indicated that 33 per cent of the parents/carers surveyed expressed some level of concern regarding what their children had seen on TV before 9pm in the previous 12 months.

Rules 1.1 to 1.7 of the Code set out the general rules relating to the scheduling and content of material broadcast before and immediately after the watershed. Rule 1.4 underlines the overall obligation on all television broadcasters: "Television broadcasters must observe the watershed."

The principal rule that broadcasters should consider however when complying all pre-watershed material is:

Rule 1.3:

"Children must...be protected by appropriate scheduling from material that is unsuitable for them"

Appropriate scheduling is judged according to all the relevant factors. These include such points as: the nature of the content; the likely number and age range of children in the audience; and the nature of the channel and the particular programme. (See the meaning of "appropriate scheduling" set out in Section One of the Code).

Ofcom expects broadcasters to pay particular attention to the types of content detailed below with regard to appropriate scheduling. These types of content are highlighted because they have been the focus of recent complaints to Ofcom and/or have raised some particular concerns amongst the parents and carers surveyed in Ofcom's 2011 research:

- family viewing programmes;
- trailers;
- soaps; and
- post-watershed content edited for a pre-watershed audience.

Family viewing programmes

Broadcasters should take particular care when broadcasting pre-watershed programmes broadly identified as "family shows" – whether live or pre-recorded. While Ofcom

acknowledges these programmes are not made for children, they nevertheless tend to attract a significant child audience and therefore broadcasters should ensure that the content is suitable for family viewing *throughout the duration* of the programme. Particular caution should be applied should the programme continue past the watershed as the family audience is still likely to remain viewing the programme (see Rule 1.6).

In the entertainment and talent genres, particular areas of concern include the sexualised clothing and dance routines of performers and/or guest artistes. (See also guidance on clothing, dancing and sexual images in the Guidance Note on Music Videos – see below).

Careful consideration should also be given to any repeats of the content during the daytime when it is likely children will be watching, some unaccompanied by a parent or other adult.

Ofcom's previous decisions on these issues include:

The X Factor Final, ITV1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf>

Trailers

Programme trailers are not signposted in advance to viewers so they come across them unawares. Broadcasters should therefore ensure trailers for post-watershed content scheduled pre-watershed include only content that is appropriate for a pre-watershed audience.

Broadcasters should consider whether ex-kids restricted trailers⁶ should also be restricted around more general daytime programming, such as sports coverage or family viewing entertainment programmes, which may also attract a significant child audience.

Broadcasters should also consider whether the content of a trailer is suitable to be shown pre-watershed if it includes the same images that may warrant a pre-programme warning to viewers before the programme is shown post-watershed.

Ofcom's previous decisions on these issues include:

Candy Bar Girls, Channel 5:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

Stylista trailer, Channel Five:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb133/issue133.pdf>

Soaps

Ofcom's 2011 research showed that the type of pre-watershed programme that caused most concern to parents was soaps (14 per cent of all parents surveyed mentioned soaps as a genre of concern). While soaps are not aimed at young people, they are scheduled pre-watershed and often attract a significant child audience. Broadcasters should therefore ensure that material that may be unsuitable for children is appropriately scheduled for the

⁶ A scheduling restriction intended to keep the material away from children's programmes. Children's programmes for scheduling purposes also include those programmes which have a high index of children viewers.

time of broadcast - including any subsequent repeats during the daytime when children may view without a parent or other adult. Ofcom's research underlines that parents' pre-watershed concerns focus on violence, sexual content, or offensive language in pre-watershed television programmes. Broadcasters of pre-watershed soaps should therefore take account of these concerns when considering whether content is suitable for broadcast before, and/or immediately after, the watershed.

Another area of concern is where less regular viewers of soaps come across a controversial storyline and do not appreciate the overall context. While we acknowledge that soap storylines usually develop over several episodes, broadcasters should nevertheless ensure that each episode is appropriately scheduled (for example by providing information to viewers in advance of transmission) and not rely solely upon the long running nature of the storyline or established characters to provide context.

Ofcom's previous decisions on these issues include:

Emmerdale, ITV1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb133/issue133.pdf>

Coronation Street, ITV1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb80/issue80.pdf>

EastEnders, BBC1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb103/bb103.pdf>

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb112/issue112.pdf>

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb128/issue128.pdf>

See also Rule 1.11 on violence, Rule 1.16 on offensive language and Rule 1.20 on representations of sex and discussions on or the portrayal of sexual behaviour, and relevant guidance on Section One of the Broadcasting Code.

Post-watershed content edited for pre-watershed transmission

Broadcasters should take particular care if they wish to show before the watershed content originally produced for a post-watershed audience. In principle, material which has been previously shown after the watershed can be broadcast during the day and comply with the Code, provided all necessary edits have been made or other necessary measures taken to ensure it is appropriate for a daytime audience, which may include children. Some programmes or content, however, even if rigorously edited or carefully scheduled, may not be suitable for broadcast pre-watershed because of their adult themes or repeated offensive language (even if 'bleeped').

Offensive language: masking offensive language is one way in which broadcasters may edit post-watershed material to make it suitable for broadcast pre-watershed. If the use of the masked offensive language in a programme is frequent, such that the programme requires multiple instances of bleeping, there can be a cumulative effect on viewers similar to that of the offence caused by repeated broadcast of the unedited offensive language. In programmes where there is frequent use of offensive, broadcasters may need either to edit the programmes more rigorously for pre-watershed transmission to take account of this

cumulative effect, or consider whether the programme is in fact appropriate for pre-watershed broadcast at all.

Violence: broadcasters editing post-watershed drama material including violent scenes for pre-watershed transmission should ensure that such scenes are appropriately limited. Particular attention should be paid to scheduling of material in slots when children may reasonably be expected to have returned from school. It should be noted that, as indicated by Ofcom's research (see above) violent scenes are of principal concern to parents.

+1 services: broadcasters may restrict some content to the hours when children can reasonably be expected to be at school. However, attention should also be paid to services where the same content is broadcast an hour later to ensure that the later transmission of the content is suitable for an audience that may include children. Broadcasters may consider, where necessary, scheduling material on the main service an hour earlier to ensure the broadcast of the content on the +1 service concludes before children may reasonably be expected to have returned from school.

Editorial themes: broadcasters should take care to ensure that adult themes of a more sexualised nature are suitable for broadcast pre-watershed.

Ofcom's previous decisions on these issues include:

Ice Road Truckers, History Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb190/obb190.pdf>

Taggart, ITV1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb118/issue118.pdf>

Midsomer Murders, ITV1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb93/issue93.pdf>

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb105/bb105.pdf>

Rule 1.6: Transition to more adult material

Broadcasters should take particular care to ensure that material scheduled to start before, but continue past, 21:00 or 05:30 does not abruptly become unsuitable.

Content that commences after the watershed should observe a smooth transition to more adult content. It should not commence with the strongest material.

Ofcom's previous decisions on these issues include:

Hell's Kitchen USA, ITV2

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb186/obb186.pdf>

Amores Perros, TCM

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb102/issue102.pdf>

Music videos

Ofcom acknowledges the importance attached to freedom of expression in the broadcasting environment. Music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. However, while music videos must have room for innovation and creativity, Ofcom has statutory duties with regard to all programmes, including music videos (whatever the genre), to:

- ensure that under-eighteens are protected; and
- enforce generally accepted standards so as to provide adequate protection for members of the public from the inclusion of offensive and/or harmful material.

We are aware of the issues faced by broadcasters in this area, including the desire and commercial need to broadcast new music videos as soon as possible after their release, and the challenge of managing the expectations of music labels and other stakeholders. However these pressures must always be secondary to the duty of broadcasters to observe the Code.

We have highlighted the following issues as potentially problematic for broadcasters either because they have been the subject of decisions under the Code, or enquiries from broadcasters.

Appropriate scheduling and context

Ofcom recognises that the majority of music channels are not aimed at children, particularly young children.

Ofcom notes that viewers make a distinction between channels which appeal to a wide-ranging audience, including children, and those aimed at a smaller, niche audience such as specialist music channels which are unlikely to appeal to young children. Although broadcasters of these niche channels still carry a responsibility towards a potential child audience, viewers should also be able to expect a range of services.

Rule 1.3 requires broadcasters to ensure that children are protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling means taking into account as relevant:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start time and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

In applying this rule Ofcom has regard both to the *likely* number of children in the audience (i.e. what the broadcaster should reasonably have foreseen before broadcasting a particular programme) and any available details of the *actual* number of children in the audience for a particular programme. Ofcom will take account of these figures together with the nature of the content (including the degree of offence it is likely to cause) and likely audience

expectations. The nature of the channel is a particularly important factor in determining the audience's likely expectations.

Ofcom recognises that music videos in the Urban and R&B genres in particular are well known for including mild sexual content and innuendo, and there will be a certain level of audience expectation for this type of content. However, having taken into account factors such as the strength of the images, the genre of music and the time of broadcast (looking particularly at whether the video was broadcast at a time when children were likely to be watching), broadcasters must consider whether potential audiences (including both adults and children) would expect to see such content.

Ofcom will also take into account whether the broadcaster has edited the material to make it suitable for a child audience (for example "suitable anytime" or "pre 9pm").

Ofcom will also consider potential issues under Section Two of the Code. The principle behind Section Two is not to protect children but to provide "adequate protection for members of the public" from harmful and/or offensive content. Rule 2.3 requires broadcasters to ensure that potentially offensive material is justified by context. Ofcom will consider each case on its merits. In particular we will have regard to the relevant contextual factors such as: the time of broadcast; the likely size and composition of the potential audience; the service on which the material was broadcast; and the likely audience expectation. A factor that is of particular importance is the editorial justification for showing content that may be potentially problematic.

Sexual images

Ofcom's 2011 research found that regarding music videos, of all the parents surveyed, 6 per cent expressed some concerns about sexually explicit content, 6 per cent expressed concerns about overtly sexual performances, 5 per cent about nakedness/naked body parts, and 4 per cent about generally unsuitable content of a sexual nature. Ofcom understands that music videos will rarely contain sexually explicit images. However the cumulative effect of certain images or combination of images can result in material of a sexualised nature in music videos which is unsuitable for child viewers and could cause offence. Intrusive and/or prolonged shots of body parts are likely to increase the overall sexual impact.

The most relevant Code rules here are: Rule 1.3 (appropriate scheduling); 1.20 (representations of sexual intercourse); and 1.21 (nudity). The Code does not prohibit the broadcast of sexualised images, such as the portrayal of sexual behaviour or images of partially clothed men and women. However, any images of this nature broadcast before the watershed in music videos must be editorially justified and appropriately limited: broadcasters should take care to avoid any explicit images of sexual behaviour, or images that inappropriately convey a sexualised theme.

Ofcom's previous decisions on these issues include:

50 Cent, Greatest Hits TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb190/obb190.pdf>

Duran Duran, Sky Arts 1:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

Ofcom has been asked whether the Code restricts images of sexual bondage, dominance and sadomasochism in music videos before the watershed. The Code does not prohibit such

images before the watershed. However we advise broadcasters to take into account the nature and length of shots used and the overriding theme of the music video. Before the watershed broadcasters should take care to avoid any explicit images of sexual bondage, dominance and sadomasochism in music videos, or any inappropriate cumulative effect resulting from the repetition of these types of images that are unsuitable for children and likely to cause concern to parents.

Ofcom's previous decisions on these issues include:

Rihanna "S&M", WTF TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb181/obb181.pdf>

Clothing

Ofcom's approach to the clothing featured in music videos will have regard in particular to how sexualised the clothing is and how the images are presented. For example, Ofcom has been asked whether a music video can contain images of singers and dancers in their underwear or bikinis. Ofcom does not prohibit the broadcast of such images, although we would take into account whether this clothing was presented in a sexualised way. For example, there is an obvious difference of context between images of a female singer shown in underwear while getting dressed or wearing a bikini on a beach, and the singer wearing similarly skimpy clothing while dancing provocatively or adopting a sexual position.

Ofcom has also been asked in the past if a music video shown before the watershed can contain images of singers and/or dancers wearing clothing of a sexual fetish, bondage or sadomasochistic nature. The Code does not prohibit the broadcast of images of this type of clothing and Ofcom recognises that fetish outfits can be and are presently used in music videos. However, great care should be taken as to how these images are presented before the watershed. Broadcasters should consider whether this kind of clothing, combined with sexual behaviour, results in a strong fetish or sexualised theme that may be understood by children or cause concern to parents (see *Rihanna "S&M", WTF TV* above).

It is important to note that in pre-watershed content, Ofcom would not expect to see singers and dancers wearing clothing that does not adequately cover their bodies (in particular their breasts, genital area and buttocks). As above, broadcasters should consider the length of shots used and the overriding theme of the music video.

Lyrics

The Code contains clear rules about offensive language broadcast before the watershed (Rules 1.14 to 1.16), and in complying material of this nature we suggest broadcasters refer to Ofcom's 2010 research 'Audience attitudes towards offensive language on television and radio'⁷. Rule 1.3 is also relevant to sexual lyrics broadcast in music videos, and such material must be appropriately scheduled.

Before the watershed broadcasters should avoid broadcasting lyrics in music videos that clearly focus on sex or convey a clearly sexualised theme. While Ofcom recognises that music videos in particular genres, such as Urban and R&B, are well known for including mild sexual innuendo, broadcasters should take into account the potential offence caused by the combination of particular lyrics and sexualised images. Lyrics may not appear to be of a highly sexualised nature when broadcast in audio alone, such as on the radio, but by

⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/sextv.pdf>

broadcasting these with sexualised images the combination may result in the video conveying a highly sexualised theme. For example, the lyric “*You want some more baby? I love the way you do it cos you do it so crazy*”⁸ does not contain an explicit sexual reference, is ambiguous in its meaning, and is unlikely to be understood by children as specifically referring to sex. However, when combined with clear, sexualised images (for example, women in sexual positions) the strength of the material is raised in terms of its potential to cause offence and concern to parents.

For information, by the end of 2011, Ofcom intends to publish guidance for radio broadcasters on offensive language in music tracks, and it has published a number of recent decisions in this area:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

Dancing

Images of provocative or sexualised dancing should be appropriately limited before the watershed. With regards to editorial justification, Ofcom will take into account factors such as a tradition or culture associated with particular dancing. However in these circumstances the editorial justification should be sufficient to account for the images shown.

As reflected in Ofcom’s Flo Rida decision⁹, R&B music videos in particular are known for including mild sexual content and innuendo. However in that particular case the cumulative effect of the repeated close-up images of the female dancers’ buttocks, together with provocative dancing and actions in the video, resulted in the video’s imagery conveying a highly sexualised theme. These images were mainly shown while the dancers were wearing bikinis on the beach, rather than traditional carnival dress. This increased the sexualised nature of the imagery and undermined the editorial justification presented by the relevant broadcasters in support of the inclusion of these images (i.e. thong bikinis and Carnival attire are synonymous with Brazilian Carnival).

Broadcasters are reminded that intrusive and/or prolonged shots of body parts are likely to increase the overall sexual impact of a music video.

Violence and dangerous behaviour

Sections One and Two of the Code set out clear rules relating to violence, dangerous behaviour and suicide (Rules 1.11 to 1.13¹⁰ and Rules 2.4 and 2.5¹¹). As in all programmes broadcast before the watershed, any violence included in music videos pre-watershed should be appropriately limited and justified by the context. Therefore, any violent images included in videos should be carefully presented so that they are not explicit, gratuitous or easily imitable.

Rule 2.4 requires that content must not: firstly, taking into account the context, condone or otherwise glamorise violent, dangerous or seriously antisocial behaviour; and secondly, be likely to encourage others to copy such behaviour. This might include violence involving guns, gangs or against women.

⁸ Lyric from “Turn around (5,4,3,2,1)” by Flo Rida (released October 2010); and see related Ofcom decision in following footnote.

⁹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf>
(Published 20 April 2011)

¹⁰ <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section1.pdf>

¹¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section2.pdf>

Ofcom has previously received queries about whether music videos can contain images of suicide, such as a gun to the head or someone hanging themselves. Ofcom does not prohibit such themes and images from being broadcast in programming before the watershed. In order to comply with the Code however in the context of a brief music video they would have to be very carefully limited and presented. Rule 1.13 states: "Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful must not be broadcast before the watershed...unless there is editorial justification". Therefore great care should be taken to limit images of dangerous behaviour so that information or details are not presented which could lead to imitation by children.