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INTRODUCTION

THE AIM OF THE INDEPENDENT PRODUCER HANDBOOK

This Independent Producer Handbook aims to give helpful and practical guidance to all of Channel 4's and Five's programme-makers and editorial staff on the Ofcom Broadcasting Code rules and the main areas of law that apply to the making and broadcast of programmes on Channel 4 and Five.

It is the responsibility of every executive producer and producer making a programme for Channel 4 or Five to ensure that every member of the production team has read and is familiar with the relevant sections of the Handbook (including best practice guidelines) and follows the rules and procedures it contains.

The Handbook contains:

- Channel 4's and Five's own internal compliance procedures;
- A summary of the most important Ofcom Code rules;
- A more detailed explanation and commentary on the Code rules;
- A summary of the main areas of media law;
- Best practice check-lists for specific programme areas:
- Programme-makers' FAQs and answers for each area of the Code and media law, together with some practical examples;
- Channel 4's and Five's own best practice guidelines and protocols for certain areas of programme-making and broadcasting.

We are the UK's only public service commercial broadcasters that commission all our original programming from independent production companies.

Our aim is for this Handbook to be a genuinely useful tool for programme-

makers at every level. We hope that by creating a 'one-stop shop' for best practice and compliance, the Handbook will lead to greater clarity and consistency of approach in the industry. We hope that you will both welcome and benefit from this.

The compliance process works most effectively as a shared responsibility between the broadcasters' editorial teams and the programme-makers, with appropriate and timely advice from a programme lawyer in the legal and compliance department. Effective compliance means being able to broadcast the most creatively challenging programmes and defend them successfully before the courts, to Ofcom after broadcast, and in the press where necessary. It is essential that programme-makers work closely with their editorial colleagues at Channel 4 and Five and with their respective legal and compliance departments. Judgements are often difficult and subjective but the earlier potential problems and issues are addressed, the more likely it is that the creative ambitions for your programme can be achieved.

Channel 4 and Five are responsible broadcasters and we want our programme-makers to follow best practice at all times. In our experience, sound practical knowledge of both the Ofcom Broadcasting Code and the law equips programme-makers to identify and address problems and understand the need to seek advice. This in turn enables the most challenging programmes to be both made and broadcast and to be successfully defended after transmission. We are committed to freedom of expression – our own, that of our programme-makers and that of our audiences to receive creative and bold material within the parameters of the Ofcom Broadcasting Code and the law.

Viewer trust is of paramount importance to Channel 4 and Five and this issue must be given the highest priority by our programme-makers to ensure that our audiences can be confident that our programmes are true, accurate and fair and that they are never misled by them.

WHAT IS OFCOM?

Ofcom (the Office of Communications) regulates the content of all television and radio programmes in the UK, including programmes on the BBC and all digital channels, as well as Channel 4, Five and ITV. Ofcom operates the Ofcom Broadcasting Code ("the Code") which contains rules and principles covering standards in programmes, sponsorship and fairness and privacy. Ofcom replaced the old regulators, the Independent Television Commission (ITC), the Broadcasting Standards Commission (BSC) and the Radio Authority. The Ofcom Broadcasting Code replaced the old ITC and BSC codes.

Channel 4 and Five, like all commercial broadcasters, are licensed by Ofcom to broadcast, subject to compliance with its codes. Ofcom can only take action after broadcast. The broadcaster is ultimately responsible, along with its programme-makers, with the involvement of both editorial staff and lawyers experienced in compliance, to ensure that a programme complies with the Code and can be robustly defended after broadcast to Ofcom in terms of content, scheduling and labelling.

Failure to comply is likely to result in details of the Code breach being published by Ofcom and, in the case of serious or persistent breaches, it can impose sanctions. Ofcom has the power to issue a direction to broadcast a summary of its adjudication to air; impose a fine (which could be

substantial) or (but not in the case of Channel 4 itself) even shorten or remove a channel's licence to broadcast. The imposition of a sanction and the adverse press that creates damages the reputation of both the broadcaster and the programme-makers.

WHAT IS PHONEPAYPLUS?

PhonepayPlus, formerly known as ICSTIS (Independent Committee for the Supervision of Standards of Telephone Information Services), is the statutory organisation which regulates the provision of premium rate telephone services, including those used in television and radio programmes. PhonepayPlus publishes a Code of Practice which must be complied with. It too can impose fines on service providers for breaches of its Code. In addition, it is a provision of the Ofcom Code that broadcasters and their producers comply with the PhonepayPlus Code.

WHAT IS THE ASA AND BCAP?

The Advertising Standards Authority ("ASA") regulates television advertising with Ofcom acting as the ultimate regulatory body. The Broadcast Committee of Advertising Practice ("BCAP") is the industry body responsible for the UK's advertising Codes. The regulation of advertising is not dealt with in this Handbook.

WHAT CONTENT HAS TO COMPLY WITH THE OFCOM BROADCASTING CODE?

All broadcast output is regulated i.e. programmes (whether commissioned or acquired), trailers for programmes, advertisements, continuity announcements, and any text service e.g. 4-Tel. In addition, Channel 4 and Five expect any new media

output (e.g. online and interactive services etc.) to adhere to the same standards of good practice as our programmes.

The Code applies to all radio services and programmes and so any programme-maker or editor working on a radio programme should read 'listener' for 'viewer'.

In the Code itself, Ofcom acknowledges the importance of freedom of expression – both freedom for the broadcaster to be creative and for audience choice - but points out that with those rights come duties and responsibilities. In particular, those responsibilities include the need to ensure people make informed viewing choices and that appropriate protections, especially for younger viewers, are in place.

The Code has 10 sections:

- 1) Protecting the under 18s;
- 2) Harm and offence;
- 3) Crime;
- 4) Religion;
- 5) Due impartiality and due accuracy and undue prominence of views and opinions;
- 6) Elections and referendums;
- 7) Fairness;
- 8) Privacy;
- 9) Sponsorship; and
- 10) Commercial references and other matters.

Each section contains a number of "Principles" and "Rules" with the Fairness and Privacy sections containing a set of "practices to be followed".

The Code does not try to address each and every situation that might arise in the making and broadcasting of television and radio programmes but, rather, sets out principles and rules in order to help broadcasters (with programme-makers) make the necessary judgments themselves. In addition, from time-to-time, Ofcom

publishes and regularly updates guidance on areas of the Code on its website at www.ofcom.org.uk. This Handbook incorporates that guidance at the time of publication where appropriate.

HOW TO USE THE HANDBOOK

The following two chapters (chapters 2 and 3 respectively) set out Channel 4's and Five's own compliance procedures which they have developed respectively to help ensure best practice and compliance with the Code. All producers should read through these chapters, so they are aware of their crucial role in the compliance process.

Chapter 4 reflects the basic structure of the Code, although in some cases more than one section of the Code has been combined into one sub-chapter e.g. Protection of Under 18s and Harm and Offence are dealt with in a single sub-chapter: 4A. Within this chapter, each sub-chapter contains a summary of the Code's rules and, where appropriate, some commentary and further explanation.

Chapter 5 contains a summary of the main areas of media law that affect the making and broadcasting of programmes. It is hoped that this chapter will enable producers and editorial staff to identify areas of the law that might be associated with and affect the programmes they are working on, to enable them to seek timely legal advice.

Chapter 6 contains checklists for specific types and areas of programming which aim to pull together guidance on legal, regulatory and any other issues that may arise. Producers and editorial staff may find it helpful to refer to these checklists first, in order to summarise and clarify what the major issues are likely to be in connection with the particular genre and type of programme they are working on. The checklists direct producers to the

various parts of the Handbook that deal with the relevant issues in more detail.

The Appendices contain a number of helpful and relevant best practice guidelines and protocols referred to in other parts of the Handbook.

Every effort has been made to ensure this Handbook is accurate at the time of publication and updates will be made available on Channel 4's and Five's respective websites. The Handbook is intended as a helpful reference tool and aid to responsible programme-making. It is not intended to replace the need to refer and discuss matters with the commissioning editor for your programme and take appropriate advice from Channel 4's and Five's legal and compliance departments.

