



**BANG MEDIA (LONDON) LTD
AND BANG CHANNELS LTD**

Notice of Revocation of Licences

Statement

Publication date: 25 November 2010

Revocation of Licences

Introduction

- 1.1 Bang Channels Ltd holds three TLCS licences: TLCS-933 (Tease Me), TLCS-1015 (Tease Me 2) and TLCS-1231 (Tease Me 3). Bang Media (London) Ltd holds one DTSPS licence: DTSPS-078 (Tease Me TV) (the four licences referred to collectively as “the licences”, and Bang Channels Ltd and Bang Media (London) Ltd referred to collectively as “the Licensees”). The Licensees are under common control, and have the same directors and compliance team. The three TLCS licences were granted under Part 1 of the Broadcasting Act 1990 (“the 1990 Act”). The DTSPS licence was granted under Part 1 of the Broadcasting Act 1996 (“the 1996 Act”).
- 1.2 On 2 November 2010, Ofcom served a notice on the Licensees, stating that it was minded to revoke the licences on the basis that Ofcom no longer considered that the Licensees were fit and proper persons to hold a licence under the 1990 Act or the 1996 Act due to serious and repeated breaches of the Ofcom Broadcasting Code (“the Broadcasting Code”) and their licence conditions, which demonstrate a disregard for the licensing regime. Ofcom invited the Licensees to make representations on its proposal by 5pm on 24 November 2010 and the Licensees submitted representations on 24 November 2010. In addition, two representatives of the Licensees attended a meeting at Ofcom on 23 November 2010 to explain the Licensees’ position.
- 1.3 For the reasons set out in this statement, Ofcom has decided to revoke the licences with immediate effect. The formal Revocation Notice is at Annex 1 to this statement.

Legislative framework for television broadcasting

Ofcom’s general duties

- 1.4 Under section 3 of the Communications Act 2003 (“the Act”), Ofcom is required to secure the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services. In doing so, Ofcom must have regard to “the vulnerability of children ...”¹. Ofcom must also have regard to “the need to secure that the application in the case of television and radio services of standards... is in the manner that best guarantees an appropriate level of freedom of expression”².

The Broadcasting and BCAP Codes

- 1.5 The standards which are required under section 3 of the Act must be set out in a code pursuant to section 319 of the Act. That provision requires Ofcom to set such standards for the content of television and radio programmes as it considers appropriate to secure the standards objectives set out in that section. Of particular relevance in the present case are the standards objectives that:

¹ section 3(4)(h) of the Act.

² section 3(4)(g) of the Act.

- “persons under the age of eighteen are protected”³; and
 - “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.”⁴
- 1.6 Ofcom, in setting standards to secure those objectives must have regard to:
- “the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description.”⁵
- 1.7 Ofcom has set standards in its Broadcasting Code which must be complied with by all holders of licences under the 1990 Act and the 1996 Act. It is a condition of every licence issued under the 1990 Act or the 1996 Act that “the Licensee shall ensure that the provisions of the Standards Code are observed in the provision of the Licensed Service”⁶. Licensees must therefore comply with the relevant Standards Code which applies to the material broadcast.
- 1.8 Prior to 1 September 2010, the material broadcast by the Licensees was subject to the Broadcasting Code, which includes the following specific provisions:
- Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them.”
 - Rule 1.17: “Material equivalent to the British Board of Film Classification (“BBFC”) R18 rating must not be broadcast at any time.”
 - Rule 1.18: “Adult sex material’ - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access.”
 - Rule 2.1: “Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.”
 - Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of “context” below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

³ section 319(2)(a) of the Act.

⁴ section 319(2)(f) of the Act.

⁵ section 319(4)(a) of the Act.

⁶ Condition 6 of both the TLCS and DTPS licences.

- 1.9 As from 1 September 2010, material broadcast by the Licensees was reclassified as teleshopping subject to the Broadcast Committee of Advertising Practice Code ("BCAP Code") in respect of the standards to be applied. The BCAP Code includes equivalent provisions to those contained in the Broadcasting Code and, in particular:
- Section 4 Principle: "Advertisements must not be harmful or offensive. Advertisements must take account of generally accepted standards to minimise the risk of causing harm or serious or widespread offence. The context in which an advertisement is likely to be broadcast must be taken into account to avoid unsuitable scheduling (see Section 32: Scheduling)."
 - Rule 4.1: "Advertisements must contain nothing that could cause physical, mental, moral or social harm to persons under the age of 18."
 - Rule 4.2: "Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards."
 - Rule 30.3: "Television only – Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only."
 - 30.3.1 Television only – Advertisements must not feature R18-rated material or its equivalent. That does not preclude advertisements for R18-rated material or its equivalent behind mandatory restricted access on adult entertainment channels.
 - 30.3.2 Television only – Advertisements permitted under rules 30.3 and 30.3.1 must not feature material that comes within the recognised character of pornography before 10.00pm or after 5.30am."
 - Rule 32.3: "Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them."
- 1.10 In setting those rules, Ofcom has carefully considered the balance between the need to protect viewers from harmful and offensive material and the need to ensure that broadcasters' freedom of expression is respected.

Licence Condition 11

- 1.11 In addition to the requirement to comply with the Broadcasting Code, Licence Condition 11 of both the TLCS and DTSPS licences requires the Licensees to put in place procedures for the recording of programmes broadcast by it and to provide those recordings to Ofcom forthwith on request.

The Facts

Period prior to issuing the notice of propose licence revocation

- 1.12 Prior to issuing the notice of proposed revocation on 2 November 2010, Ofcom had found a series of serious and repeated breaches of the Broadcasting Code by the Licensees over the previous 19 months. Ofcom had found the Licensees to have committed 48 separate breaches of the Broadcasting Code in respect of material contained in 45 programmes broadcast on Tease Me, Tease Me 2, Tease Me 3 and Tease Me TV (Freeview) in the period between 18 March 2009 and 6 August 2010.

- 1.13 Of the 48 breaches of the Broadcasting Code:
- 1 related to material found to be in breach of Rule 1.17⁷;
 - 15 related to material found to be in breach of Rule 1.3 only;
 - 1 related to material found to be in breach of Rule 1.3 and Rule 2.3;
 - 17 related to material found to be in breach of Rule 1.18⁸, Rule 2.1 and Rule 2.3; and
 - 14 related to material found to be in breach of Rule 2.1 and Rule 2.3.
- 1.14 In addition to these breaches of the Broadcasting Code, the Licensees have failed to provide recordings upon request by Ofcom in respect of five programmes, in breach of Licence Condition 11.
- 1.15 Material broadcast between 20 June 2009 and 25 November 2009 was considered to be serious enough to be considered for the imposition of a financial penalty. This related to 16 breaches of the Broadcasting Code and to the breaches of Licence Condition 11⁹. On 29 July 2010, Ofcom's Broadcasting Sanctions Committee imposed a financial penalty of £157,250 on the Licensees in respect of those breaches. No payment has been received from the Licensees, and Ofcom is pursuing this as a separate matter.

Period since issuing the notice of proposed revocation

- 1.16 Since issuing the notice of proposed revocation on 2 November 2010, Ofcom has found a further nine breaches of the BCAP Code Rules 32.3 and 4.2 in relation to material broadcast by the Licensees between 9 November 2010 and 16 November 2010¹⁰. As detailed in the relevant breach findings, the material found to be in breach of BCAP Code Rules 32.3 and 4.2 was of a very similar nature to the material found to be in breach of Rules 1.3 and 2.3 of the Broadcasting Code which are largely equivalent in nature.
- 1.17 In addition, on 19 November 2010, Ofcom found evidence that the Licensees had broadcast material likely to constitute a serious breach of Rule 30.3 of the BCAP Code, which prohibits the broadcast at any time of material equivalent to BBFC R18 rated material at any time, and the broadcast of pornography other than behind mandatory restricted access on adult entertainment channels and between 10.00pm and 5.30am. In light of this, Ofcom issued a direction to the Licensees to cease providing the Licensed Services (as defined in the Licences) with immediate effect.

⁷ This Rule was previously Rule 1.25, but was subsequently amended to become Rule 1.17.

⁸ This Rule was previously Rule 1.24, but was subsequently amended to become Rule 1.18.

⁹ The Broadcasting Sanctions Committee treated the failure to provide recordings as two separate breaches of Licence Condition 11 for the purpose of sanction.

¹⁰ The published findings can be found at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/breach-26-november-2010/>

Breach Findings

- 1.18 As set out above, the Licensees have successively and continually breached the relevant codes and conditions of their licences over a 19 month period. The vast majority of the 48 breaches of the Broadcasting Code related to only four rules, and these four rules were breached on numerous occasions. The breaches for the broadcast material fundamentally concerned the same issues, notably the transmission of material of a sexual nature which was either too explicit for the time it was broadcast or too explicit for transmission on an unencrypted, free to air service. In particular, the breaches involved variously, the inappropriate adoption of sexual positions; graphic sexual (and at times intrusive) images; and inappropriate sexual behaviour (involving at times more than one presenter).
- 1.19 In this regard, Ofcom published breach findings in respect of programmes broadcast by the Licensees in its Broadcast Bulletin on:
- 6 July 2009;
 - 26 October 2009;
 - 8 February 2010;
 - 22 February 2010;
 - 10 May 2010;
 - 24 May 2010;
 - 2 August 2010;
 - 13 September 2010;
 - 27 September 2010; and
 - 25 October 2010.
- 1.20 Subsequent to the issuing of the notice of proposed revocation and following the application of the BCAP Code to the material broadcast by the Licensees, Ofcom has recorded nine further breaches of the BCAP Code on 23 November 2010.

Compliance Guidance

- 1.21 Ofcom has provided guidance to industry and to the Licensees directly on compliance with the relevant codes on a number of occasions, in particular:
- 23 April 2009 (e-mail guidance to the Licensees);
 - 28 April 2009 (e-mail guidance to the Licensees);
 - 6 July 2009 (Guidance note published in Broadcast Bulletin);
 - 3 August 2009 (Letter of guidance to adult sex chat broadcasters);
 - 6 November 2009 (Letter of guidance to the Licensees);

- 3 December 2009 (meeting with the Licensees);
- 8 January 2010 (letter of Guidance to the Licensees); and
- 21 January 2010 (meeting with the Licensees).

Seriousness

- 1.22 The pattern of similar breaches by the Licensees, in particular the frequency and degree of repetition over such a relatively short period of time is unprecedented. In Ofcom's view, the Licensees' refusal and/or unwillingness to improve their compliance standards in the face of repeated guidance, a series of breach findings and the imposition of a financial penalty, shows a clear disregard for the standards imposed by the Code, the obligations contained in the licences, and the regulatory sanctions regime as a whole.
- 1.23 Indeed, in the sanctions decision of 29 July 2010, Ofcom stated explicitly that the Licensees' contraventions amounted to recklessness indicative of a "wholly inadequate compliance system". It also noted that "some of these contraventions occurred despite Ofcom providing the Licensees with guidance on a number of occasions", and that "such repeated compliance failures will not be tolerated".
- 1.24 The sanctions decision can have left the Licensees in no doubt as to the need to improve its compliance standards to avoid the recurrence of breaches of the Broadcasting Code. However, no attempt appears to have been made by the Licensees to improve their compliance record. Indeed, further breaches of the Broadcasting Code occurred almost immediately after the sanction decision, on 31 July 2010, 3 August 2010 and 6 August 2010.
- 1.25 Ofcom has also recorded breaches of the BCAP Code against the Licensees in respect of material broadcast within the past 14 days indicating that no attempt has subsequently been made to improve the compliance of the Licensees with the relevant broadcasting standards.
- 1.26 Furthermore, on 19 November 2010, Ofcom issued a direction to the Licensees to cease broadcasting, in light of evidence of broadcast material which was considered to be likely to amount to a serious breach of the BCAP Code in relation to the broadcast of pornography and/or BBFC R18-rated material. On 19 and 20 November 2010, the Licensees services were removed from the Sky EPG and from broadcast on the Freeview platform. However, Ofcom has evidence that the Licensees have continued to broadcast material in breach of the direction. Whilst the material is not listed on the Sky EPG, it continues to be broadcast via satellite in the United Kingdom and Ofcom is aware that the Licensees have sought to inform viewers how to access these broadcasts by reconfiguring satellite receivers.

Ofcom's powers to impose penalties for Code and licence breaches

- 1.27 Under section 236 of the Act¹¹, if Ofcom is satisfied that a licence holder has failed to comply with any condition of the licence, and that the contravention can be appropriately remedied by including in the licensed service a correction or a statement of Ofcom's findings, Ofcom can direct the licence holder to include such a correction or a statement of findings. Ofcom can also direct the licensee not to repeat

¹¹ The provisions of the Act mentioned in this section apply to TLCS licences. There are equivalent provisions for DTPS licences contained in section 23 of the Broadcasting Act 1996.

the relevant programme. In Ofcom's view, a correction, statement of findings, or direction not to repeat the programme would not be an appropriate or effective remedy for the types of repeated breaches committed by the Licensees.

- 1.28 Under section 237 of the Act, if Ofcom is satisfied that a licence holder has failed to comply with any condition of the licence or with a direction given by it, Ofcom may serve a notice requiring them to pay a specified financial penalty. As detailed above, Ofcom has already imposed a significant financial sanction of £157,250 on the Licensees.
- 1.29 Under section 3(3)(b) of the 1990 Act and the 1996 Act, Ofcom is required to *“do all that they can to secure that, if they cease to be [satisfied that a licence-holder is a fit and proper person] in the case of any person holding a licence, that person does not remain the holder of the licence.”* Condition 29(3)(c) of the TLCS licences and Condition 29(2)(d) of the DTPS licence explicitly provide for Ofcom to revoke the licences where it ceases to be satisfied that the licensee is a fit and proper person to hold the licence.

Licensees' Representations

- 1.30 As set out above, Ofcom issued a notice of proposed revocation on 2 November 2010, giving the Licensees 21 days (until 24 November 2010) to make representations on the proposed revocation. On 23 November 2010, representatives of the Licensees attended a meeting with Ofcom and made oral representations. On 24 November 2010, the Licensees sent written representations essentially to the same effect.
- 1.31 In their written representations, the Licensees acknowledged “the severity and repeated nature of the breaches” and accepted that there had been a “failure on Bang’s part to follow directions and guidance”. The Licensees informed us that they have removed certain key senior members of staff, who the Licensees say were responsible for the serious and repeated breaches of the relevant codes. They also stated that one of the shareholders is now acting as managing director and has assumed full responsibility for the Licensees’ future compliance with the relevant codes. However, other than suggesting that the managing director would be in communication with Ofcom every two weeks (or as required) regarding compliance with the codes, the representations did not provide any detail of measures that the Licensees has put in place to ensure compliance in the future.
- 1.32 Ofcom also notes that the representations do not explain why the Licensees have continued to broadcast despite Ofcom’s direction to cease broadcasting.
- 1.33 The Licensees’ representations are not sufficient to persuade Ofcom, in light of all the evidence, that it should not revoke the licences on the basis that the Licensees are no longer fit and proper. In particular the representations do not satisfy Ofcom that the Licensees’ compliance is likely to improve in the future. The Licensees have had over 18 months’ notice of the need to improve compliance and have not done so. The Licensees have been given compliance guidance on numerous occasions, have been subject to a large number of breach findings and a substantial financial penalty, and there has been no noticeable improvement in compliance. The Licensees were given three weeks from the issue of the notice of intention to revoke the licences to make representations on this matter, but have failed to provide any detailed proposals for ensuring compliance in the future.

- 1.34 Ofcom does not accept that changes in personnel alone will result in a significant improvement in the Licensees' compliance. The representations of the Licensees fail to indicate which employees have been replaced (apart from the Managing Director) and by whom. Furthermore, the representations do not indicate whether the former managing director, to whom the Licensees attribute much of the blame for the non-compliance, has ceased all involvement with the Licensees¹². All those involved with the Licensees as shareholders or directors must have been aware of the continued failure of compliance by the Licensees in light of Ofcom's published findings, and yet they have failed to take any action until the notice of intention to revoke was issued. It is also not acceptable for the Licensees to evade responsibility for their persistent non-compliance by attaching the blame to individual employees, as ultimate responsibility for ensuring compliance rests with the Licensees themselves.
- 1.35 As regards the Licensees' suggestion that the managing director will be in touch with Ofcom every two weeks, it is not for Ofcom to supervise individual licensees on a week by week basis in order to ensure compliance. The company is responsible for compliance and should have proper compliance processes in place to ensure this.

Revocation

- 1.36 In Ofcom's view, the numerous and repeated breaches of the relevant standards codes and Condition 11 by the Licensees over an extended period of time, despite formal breach findings, the imposition of a statutory sanction, and the provision by Ofcom of various guidance, demonstrated a disregard for their licence obligations, including their obligation to comply with the Code, and for the regulatory regime as a whole. By providing guidance to the industry and to the Licensees, as well as making numerous breach findings and imposing a financial penalty, Ofcom provided ample opportunity for the Licensees to ensure that they were aware that such material was considered unacceptable for broadcast. However, such material continued to be broadcast, and has persisted since sending the Licensees the notice of proposed revocation, resulting in the further nine breach findings relating to material broadcast between 9 November 2010 and 16 November 2010. This pattern of similar breaches by the Licensees, in particular the frequency and degree of repetition over such a short period of time, is unprecedented.
- 1.37 The actions of the Licensees demonstrated that the imposition of financial penalties would have been highly unlikely to result in the Licensees ensuring compliance with the provisions of the Code in the future. The financial penalty of £157,250 which was imposed on the Licensees on 29 July 2010 was immediately followed by three further breaches of the Broadcasting Code and a further nine similar breaches of the BCAP Code have been recorded since the issue of the notice of intention to revoke on 2 November 2010. The penalty has therefore clearly failed to have the required deterrent effect. Indeed, the penalty remains unpaid and Ofcom is pursuing this as a separate matter. In Ofcom's view, imposing further financial penalties under section 237 of the Act would therefore be unlikely to safeguard against further breaches, taking into account the conduct of the Licensees over this period, and would not therefore be an effective remedy.
- 1.38 Indeed, Ofcom has evidence that the Licensees are continuing to breach the direction to cease broadcasting despite the Licensees representations that new compliance systems will be put in place and that those responsible for the lack of compliance in the past have been removed from their positions. The Licensees'

¹² Ofcom notes that the former managing director was listed as a minority shareholder in Bang Media (London) Limited on the company's most recent annual return.

representations did not provide any substantial proposals for improving compliance with the relevant codes in the future. Ofcom cannot therefore be satisfied with any level of certainty in those circumstances that sufficient changes have been made to the structure of the Licensees and their compliance arrangements that further serious repeated breaches of the licensing regime will not occur.

- 1.39 On this basis, Ofcom has ceased to be satisfied that the Licensees are fit and proper persons to hold licences under the 1990 Act or the 1996 Act and has decided to revoke those licences, in accordance with section 3(3)(b) of the 1990 Act and section 3(3)(b) of the 1996 Act.
- 1.40 In reaching this view, Ofcom has been mindful both of its duties to ensure that viewers are protected from harmful and offensive material and of the need to ensure that the freedom of expression of broadcasters is respected. In this case, the actions of the Licensees have gone well beyond what is considered acceptable under the Broadcasting Code or the BCAP Code. In Ofcom's view, for the reasons set out above and in the circumstances it is appropriate, in order to ensure the protection of viewers from harmful and offensive material, to revoke the licences on the basis that the Licensees are no longer fit and proper persons. Repeated breaches of Rule 1.3 (protecting children by appropriate scheduling) and Rule 1.18 (mandatory PIN protection for 'adult-sex' material), and their equivalent BCAP Code Rules 32.3 and 4.2, are of particular concern and are considered to be of a very serious nature by Ofcom, in view of its duties under Section 3(2) of the Act to ensure adequate protection for members of the public from offensive and harmful material. Ofcom takes this responsibility very seriously, in particular where there is a risk of harm to children. The Licensees' representations have provided Ofcom with no degree of certainty that it will be able to meet its responsibility other than by revoking the licences.
- 1.41 The Licensees have not responded to any other regulatory action and Ofcom considers that it must act promptly in accordance with its duties. Ofcom is therefore revoking all the licences held by the Licensees with immediate effect on the basis that they are no longer fit and proper to hold those licences. Should the Licensees continue to provide a relevant regulated television service they will be guilty of a criminal offence under section 13(1) of the 1990 Act.

Annex 1

Notice of Revocation

LICENCE NUMBERS: TLCS-933, TLCS-1015, TLCS-1231 (the "TLCS Licences")
LICENCE NUMBER: DTPS-078 (the "DTPS Licence")
(together the "Licences")

BROADCASTING ACT 1990 (as amended by the Communications Act 2003) (the "1990 Act") and BROADCASTING ACT 1996 (as amended by the Communications Act 2003) (the "1996 Act")

NOTICE OF REVOCATION

Licence number TLCS-933 is a licence to provide a television licensable content service granted on 16 June 2005 under Part 1 of the 1990 Act to Bang Channels Limited.

Licence number TLCS-1015 is a licence to provide a television licensable content service granted on 5 December 2005 under Part 1 of the 1990 Act to Bang Channels Limited.

Licence number TLCS-1231 is a licence to provide a television licensable content service granted on 31 July 2007 under Part 1 of the 1990 Act to Bang Channels Limited.

Licence number DTPS-078 is a licence to provide digital television programme services granted on 28 September 2009 under Part 1 of the 1996 Act to Bang Media (London) Limited.

In accordance with section 3(3)(b) of the 1990 Act, and for the reasons set out in Ofcom's statement of 25 November 2010, Ofcom has ceased to be satisfied that Bang Channels Limited is a fit and proper person to hold a 1990 Act licence.

In accordance with section 3(3)(b) of the 1996 Act, and for the reasons set out in Ofcom's statement of 25 November 2010, Ofcom has ceased to be satisfied that Bang Media (London) Limited is a fit and proper person to hold a 1996 Act licence.

Accordingly:

1. under section 3(3)(b) of the 1990 Act and Condition 29(3)(c) of the TLCS Licences, the TLCS Licences are hereby revoked by Ofcom.
2. under section 3(3)(b) of the 1996 Act and Condition 29(2)(d) of the DTPS Licence, the DTPS Licence is hereby revoked by Ofcom.

The Licences are revoked with immediate effect upon delivery of this notice.

25 November 2010