



Satellite & Cable  
Broadcasters' Group

## **GAMBLING COMMISSION CONSULTATION PRIZE COMPETITIONS AND FREE DRAWS**

**Submission by the Satellite and Cable Broadcasters' Group**

**31 October 2006**

The SCBG is the trade association for independent satellite and cable programme providers. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

SCBG channels provide consumers with programmes and services across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. They make and show programmes for children and young people, and for ethnic minorities in their own languages. Together they have a combined audience share approaching 20% of all UK television viewing.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment, without privileged access to scarce Government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and do not benefit from public funding.

Satellite and cable broadcasting has been the fastest growing sector in the UK television industry, now employing over 6,000 people in the UK with revenues of nearly £5 billion.

## Introduction

The Satellite and Cable Broadcasters' Group (SCBG) welcome the opportunity to submit its comments to the Gambling Commission consultation on prize competitions and free draws. As distributors of general entertainment, niche channels and social programming, we all benefit from promoting our services through competitions and free prize draws. We also believe that competitions, free prize draws and games enhance the interactive experience of our viewers as well as acting as an essential facility for broadcasters to obtain important data about our viewers that in turn can be used to improve our services to them.

We therefore welcome any attempt to remove regulatory uncertainties in this field. We strongly believe that, as is reflected in the Gambling Act 2005 (hereafter "the Act"), there is a distinction to be made between lotteries and the kinds of enhanced services we provide through competitions and prize draws. Maintaining this distinction is essential to maintaining the quality and variety of the services we as broadcasters provide to the viewer. We believe that any additional regulatory and/or financial burden placed on broadcasters over and above the current requirements would be disproportionate and affect our ability to provide enhanced and quality viewing experiences to our audiences.

## The Commission's Questions Answered

- 1. Do consultees think that the Commission has in any way mis-stated the requirements in the 2005 Gambling Act.**

In general terms we endorse the Commission's understanding of the Act subject to the specific qualifications that we have set out in answer to the Commission's questions below.

- 2. Do consultees agree with the Commission's view that there will be an onus on prize competition organisers to take steps to satisfy themselves that their proposals will meet the statutory test relating to the need for the skill element to eliminate a "significant proportion" and to be able to produce evidence that they have done so?**

We believe that the guidance proposed by the Commission takes a stricter evidence based approach than is necessarily envisaged by the legislation. The Act, subsection 14(5) and the Explanatory Notes to the Act, correctly identifies a reasonableness test to the skill element required in distinguishing a lottery from a prize competition based in each case on the particular context and facts. Any attempt to apply a prescribed set of evidence that must be collected and verifiable in advance of a competition in order to satisfy the reasonableness test ignores the fact that in setting a skill base for a competition, broadcasters are required to consider a number of complex factors including without limit its target audience (which may vary greatly in

terms of demographic), access to resources, cultural variations etc. The Act, by applying a subjective test is allowing for circumstances where a competition organiser may be required to exercise its judgement over strict statistical analysis. Guidance that requires quantitative research to be carried out in advance of every competition would place an unreasonable burden of proof on broadcasters that cannot always be fulfilled to an objective standard in addition to substantial financial and administrative burdens. Given that the test is clearly stated within the Act and the Act itself already has clear Explanatory Notes attached to it, we as broadcasters do not see the need for further guidance in this area. It is our view that further interpretation of this subsection of the Act is correctly left to the authority of the courts.

**3. Do consultees have any views on whether any more definitive guidance could be produced on what amounts to a “significant proportion”**

We believe that the Commission is correct in its statement that “only the courts can authoritatively interpret the law” with regard to the interpretation of the term “significant”. Competition organisers will be required to exercise their reasonable skill and judgement in applying this test based on the specifics of each case. We do not therefore believe that it would be helpful to attempt to set prescribed guidelines as it would not, in our view, be possible to do so in a manner that would enable such guidelines to fairly apply in all circumstances.

**4. In respect of free draws, do consultees agree with the way that the Gambling Commission interprets the definition of “payment to enter” in the 2005 Act?**

We welcome the attempt by the Commission to clarify the meaning of what is to be treated as amounting to “payment to enter” where there is only one entry route. As broadcasters we consider that operating prize draws that utilise a premium rate number or would require a charge to be made to an account (e.g. as is the case with red button technology) should not automatically be considered to be a “payment to enter” under the Act. Interactive prize draws using these entry mechanisms are not usually designed to generate profit for broadcasters but are typically set up so as to cover the additional costs of offering the interactivity. It is therefore the view of broadcasters that any guidance by the Commission should adopt a broad interpretation of the Act and should not attempt to distinguish what amounts to “payment to enter” by reference to the term premium rate. This is particularly important as a premium rate can be as low as 10p/min under current Icstis rules. It is the view of broadcasters that it would be more useful to provide an indicative de minimis cost as was suggested by the Bud Committee prior to the finalisation of the Gambling Act. Bud indicated this should be in the region of twice the cost of a first class stamp. We feel that the price of a postage stamp is perhaps no longer a relevant unit of measure for this type of phone or interactive service and it would be more accurate to set the level by allowing each broadcaster to have responsibility for setting its de minimus cost of entry

based on its reasonable costs in running such a competition. Such method of entry should not amount to a “payment to enter”.

We also wish to raise a concern in relation to the Commission’s attempt to clarify the use of mobile phones in responding to prize draws. We do not believe that an entrant’s choice to use a mobile phone (and thus incur an additional charge by the mobile phone operator for making the call) should have any effect on the calculation of whether the call is considered to be at the “normal” rate as required by the Act to be classified as a “free entry”. Provided that the cost of calling the telephone number provided for entry via a landline falls within the de minimus amount as suggested in paragraph 1 above, additional standard charges for mobile use should not be considered. Section 14(5)(1) already makes clear that telephone calls at a normal rate are considered a free entry mechanism.

**5. Do consultees agree that a reasonable indication of whether a (non post) “free entry route” is as convenient and as well publicised as the paid route, is that a substantial proportion of entrants make use of that route?**

We accept the Commission’s position that in determining whether the second route of entry is free or constitutes a “payment to enter”, the same test as applied to single route entry prize draws is appropriate. We would therefore reiterate the points we make in our answer to question 4. We do not however believe that it is correct that an assessment of whether a “free entry” route is as convenient and well publicised as the paid route should be based on the proportion of entrants that use that route. It is the belief of broadcasters that a paid entry route and a “free entry” route may be equally available to an entrant but the entrant chooses to adopt the paid route as it is quicker or in the particular circumstances their preference. For example an entrant may be given the option of calling a premium number or going on line. Both methods can be assumed to be equally available and convenient to the entrant in their living room but the majority of entrants may still choose to follow the paid route. It is not within the control of the broadcaster to direct a certain percentage of entrants to the non-paid route in order to avoid falling foul of the guidelines. It is therefore our view that as long as the “free entry” route is displayed with equal prominence (something that can be established as a point of fact) and the method of “free entry” is clearly not less convenient (e.g. if the prize draw is happening in real time and speed of response is a factor then clearly an internet entry may be less convenient) then the draw should be accepted as being within the scope of Schedule 2, Section 14(8).

**6. Do consultees agree with the Commission’s view that the “provision of data” does not amount to payment?**

We welcome the Commission’s view that the “provision of data” in exchange for entry into a draw would not amount to “transferring money’s worth” and would endorse the Commission’s proposed guidance on this point.

**7. Do consultees content with the Commission's view on the way product promotions will be able to operate under the 2005 Gambling Act?**

No comment.

**Conclusion**

Satellite and cable channels have to date not experienced problems in running prize competitions and free draws and we hope to be able to continue our practices on the current basis in the future. However, clarity is always welcome, and we value any opportunity to constructively engage further with the Commission with regards to its potential guidelines in respect of this Act. In particular we would appreciate an opportunity to review and discuss a draft of the proposed guidelines prior to the Commission's formal publication of the same. We would also extend an open invitation to the Commission to meet and discuss any of the points raised in our submission should the Commission require further information or clarification of our position.

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