

**Ofcom: Broadcasting Code Review****Response by the Wellcome Trust**

September 2009

**Introduction**

1. The Wellcome Trust is the largest charity in the UK. It funds innovative biomedical research, in the UK and internationally, spending over £600 million each year to support the brightest scientists with the best ideas. The Wellcome Trust supports public debate about biomedical research and its impact on health and wellbeing.
2. As part of its public engagement activities the Trust has introduced funding mechanisms for the development of programmes that engage the audience with issues around biomedical science<sup>1</sup>. The Trust's broadcast strategy focuses on working with mass media to encourage increased quality, quantity and visibility of biomedical content in programming of all genres<sup>2</sup>. We suggest that this programming is in the public interest since our research shows that the overwhelming majority of the public regard television as their most significant source of information about science<sup>3</sup>.
3. The Trust has contributed funding towards seven programmes on Channel 4 and Five over the last four years, including *The Great Sperm Race*<sup>4</sup> and *Revealed: Ghosts of the Mary Rose*<sup>5</sup>. Funding strategies for individual programmes have ranged between £30,000 awards and £200,000 co-productions.
4. Over the last two years the Trust has also contributed towards BBC programming, with funding over the same range. This included a £200,000 commission to develop the Tree of Life<sup>6</sup> that was featured in *Charles Darwin and the Tree of Life*. However, it has not possible to directly fund BBC programming, for example the Trust had to grant the BBC a licence to enable them to use a version of the Tree of Life in this programme. In other cases the Trust has contributed funding towards research and script costs that, while essential for programme development, are not deemed direct production costs.
5. The Wellcome Trust is pleased to respond to the Ofcom Broadcasting Code Review. Given the Trust's interests as a not-for-profit funder of broadcasting, this response focuses on the new rules for Public Information Programming for television and radio that would govern programmes funded by the Trust.

<sup>1</sup><http://www.wellcome.ac.uk/Achievements-and-Impact/Initiatives/Public-engagement/Broadcast-media-strategy/WTX039063.htm>

<sup>2</sup><http://www.wellcome.ac.uk/Achievements-and-Impact/Initiatives/Public-engagement/Broadcast-media-strategy/index.htm>

<sup>3</sup>[http://www.wellcome.ac.uk/stellent/groups/corporatesite/@msh\\_peda/documents/web\\_document/wtd003419.pdf](http://www.wellcome.ac.uk/stellent/groups/corporatesite/@msh_peda/documents/web_document/wtd003419.pdf)

<sup>4</sup><http://www.wellcome.ac.uk/Achievements-and-Impact/Initiatives/Public-engagement/Broadcast-media-strategy/WTX055247.htm>

<sup>5</sup><http://www.wellcome.ac.uk/News/2008/News/WTX050089.htm>

<sup>6</sup><http://www.wellcometreeoflife.org/>

6. In our response we have referred to the Public Information Programming rule numbers for television (9.26-9.33), but our responses apply equally to the equivalent rules for radio (10.40-10.47). Specific comments on the draft rules are addressed in the questions below.

**Question 12 a) Would you consider it appropriate for Ofcom to introduce rules that would allow Public Information Programming?**

7. Under the existing code it has been possible for the Trust to contribute to the funding of programming on Channel 4 and Five. However, we welcome the formalisation and clarification of this type of programming, in order to improve transparency.
8. Due to the nature of the BBC and its governance arrangement it has not been possible for the Trust to contribute directly to funding of programmes on the BBC, highlighting the inconsistency between regulation of different public service broadcasters. We note that these new Ofcom rules on Public Information Programming do not apply to BBC services funded by the licence fee. It is not clear whether similar rules will be adopted into the BBC Agreement to facilitate contribution by organisations such as the Trust and it may be necessary for the Trust to engage in dialogue with BBC about this issue.
9. It is not clear from the current draft rules whether they would apply to both co-production and acquisition programming. We would like see the draft rules clarified to ensure that they cover both of these types of programming.

**Question 12 b) If Ofcom were to introduce rules in relation to Public Information Programming:**

**ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on viewers, the television industry and other parties?**

10. We appreciate the opportunity for not-for-profit organisations to contribute to programming. However, it is important to ensure that this does not result in a reduction in programme quality. We are concerned that programming “seek[ing] to educate or inform the audience on matters in the public interest” may result in programmes that, while informative, are dry and inaccessible. This may serve to reduce the size of the audiences watching this type of programme and therefore not be in the overall public interest. We are keen to avoid a situation where Public Information Programming becomes a ‘public service ghetto’, where such programmes are shown outside the main schedule, for example late at night or on specialist channels. Broadcasters maintaining editorial control (Rule 9.28) should help to prevent this and maintain programme quality.
11. We agree with point 6.38 that if not-for-profit organisations are funding Public Information Programming there is a risk that broadcasters will divert their own funding away from this type of programming. This would restrict the range of programming to not-for-profit funders’ interests. Combined with the issues raised in paragraph 10 this could lead to a reduction in programming quality. In order to prevent this we suggest that there should be an additional clause in Rule 9.28 and 10.42 to ensure that broadcasters are responsible for the overall quality and balance of scheduling, for example:  
“Broadcasters are responsible for maintaining a full range of high quality public interest programming across the schedule.”
12. In many cases the full costs of productions are likely to be shared by a number of funders. Some of the non-commercial not-for-profit organisations will be charities, which have stricter rules on trading than other organisations. This may make it more difficult for other funders to work jointly with charities. It is possible that this may restrict the cooperation of charitable and non-charitable organisations in funded programming, limiting the scope of Public Information Programming.

**i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest?**

**iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection?**

*“9.28 The funder of Public Information Programming must not influence the content and/or scheduling of the programming in such a way as to impair the responsibility and editorial independence of the broadcaster”*

13. Rule 9.28 makes suitable provision for the broadcaster to maintain responsibility and editorial independence of the broadcaster. This should be sufficient to prevent the showing of undesirable programmes through regulation by other sections of the Code. However, with a view to preserving quality broadcasters should also maintain responsibility for overall scheduling and this could be reflected by an additional clause in Rule 9.28 (see paragraph 11).

**iv. Do you consider that additional or alternative safeguards to those included in the draft potential rules are necessary?**

*“9.29 Public Information Programming must not cover matters relating to political, industrial or public controversy. Similarly, Public Information Programming must not seek to influence the policies or decisions of local, regional or national governments, whether in the UK or elsewhere”*

14. The limits of Rule 9.29 are loosely defined and we note that further guidance would be supplied on the appropriateness of subject matter and with cross reference to other relevant sections of the code. This guidance is necessary to improve clarity around Rule 9.29 and without these additional details it is difficult to come to a conclusion about whether this rule is sufficient.

15. The current lack of clarity in what would constitute “political, industrial or public controversy” raises two concerns for the Trust. Firstly, if a strict interpretation is taken, it may prevent the Trust and other interested parties funding programmes on ethical issues, such as research using stem cells, which would be in the public interest. Secondly, if a loose interpretation is taken, there appears to a risk that unsuitable programmes could be screened that are able to serve as propaganda for an organisation’s message.

**v. Specifically should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming?**

*“9.26 Public Information Programming is programming which has as its purpose a public interest benefit. Public Information Programming may not be funded with a view to promoting the name, trademark, image, activities or products of the funder. It may be funded **only** by a non-commercial not-for-profit entity”*

16. Not-for-profit organisations are very diverse and this makes it difficult to define “non-commercial, not-for-profit entities”. This means that it may not be practical for Ofcom to impose a strict definition as it would be costly and impractical to enforce.

17. We suggest that the final clause of 9.26 requires clarification. In our experience not-for-profit organisations are likely to be minority funders of programmes and it is not realistic to expect these organisations to fully fund a production. Co-production is therefore often essential and the final clause of Rule 9.26 should be redrafted to make it clear that not-for-profit organisations are able to collaborate with similar organisations and production companies to fund these productions.

18. If the final clause of Rule 9.26 is intended to exclude the collaboration of not-for-profit organisations with production companies we would be most concerned that this type of programming will not be feasible or advisable. In this case we would urge that the rule is reconsidered.

**vi. Do you consider it would be appropriate for Ofcom to review these rules two years after their introduction?**

19. We consider that a review after two years would be suitable, particularly with a view to ensuring that there has not been a detrimental effect on the quality and scheduling of all public service programming funded by both this and other routes.

**Additional Comments:**

**Rule 9.26 “Public Interest Benefit”**

*“9.26 Public Information Programming is programming which has as its purpose a public interest benefit. Public Information Programming may not be funded with a view to promoting the name, trademark, image, activities or products of the funder. It may be funded **only** by a non-commercial not-for-profit entity”*

20. We note that Public Information Programming should be “...restricted solely to seeking to educate or inform the audience on **matters in the public interest**”. However, “public interest” and “public interest benefit” are not clearly defined by the new rules. We would draw attention to the debate following the introduction of the terminology “for the public benefit” to define charities and the complexities surrounding the definition of this terminology. By analogy, we suggest that loose terminology such as “matters in the public interest” and “public interest benefit” may be difficult for not-for-profit organisations to interpret and for Ofcom to adjudicate on. We appreciate that this flexibility will allow the rule to evolve. However, it may be beneficial to have further guidance on what constitutes “matters in the public interest” and “public interest benefit” to enable not-for-profit organisations to contribute to broadcasting as fully as possible.
21. The preamble to the rules states that “Public Information Programming must be restricted **solely** to seeking to educate or inform the audience on matters in the public interest”, although this is not explicit in Rule 9.26. We are concerned that this rule will mean that Public Information Programming will force these types of programmes to become a separate genre from ‘entertainment’. We suggest that Public Information Programming should strive to be as interesting and entertaining as any other programming and that Ofcom guidelines should seek to encourage this. The Trust’s vision is that biomedical science should be integrated in programmes of different genres, rather than restricted to documentaries, in order to reach a wide audience. We are therefore keen to avoid a situation where the Trust is prevented from funding innovative programming where science is incorporated into dramas and programmes of other genres.

**Rule 9.30 Funder Credits**

*“9.30 Public Information Programming must be identified as such by reference to the name and/or logo of the funder in credits at the start and end of the programming, and also at the start and end of any commercial break. There must be no other information and/or message in such credits”*

22. Rule 9.30 would be a significant change to the way that the Trust works with broadcasters. The Trust fully supports transparency in the credits of programming but is most concerned that applying a system designed for commercial sponsorship will be both unworkable and threaten the contribution that not-for-profit organisations could make to broadcasting. Our concern is that in practice the system may dictate a minimum amount that not-for-profit organisations must contribute in order to receive these credits. This would make smaller contributions from not-for-profit organisations unviable, such as £30,000 awards that the Trust has made, and risks leaving smaller not-for-profit organisations unable to contribute. Not-for-profit programme funding is often more complex than commercial sponsorship because of the relatively small amounts of money contributed and in-kind contributions. An alternative system should be explored that acknowledges this complexity and ensures that the credits are proportionate to the contribution.