[GB] BBC breaches Ofcom's Code about reducing the risk to viewers susceptible to photosensitive epilepsy from flashing lights

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Julian Wilkins
Wordley Partnership

The BBC programme The Voice UK: the Live Final (a singing talent competition) breached Ofcom's Rule 2.12 of its Code of Conduct for failing to take sufficient measures to avoid flashing lights during one performance, and as a consequence the broadcaster did not comply with Ofcom's technical guidance to avoid photosensitive epilepsy (PSE). Such flashing lights can trigger seizures in persons susceptible to PSE.

Rule 2.12 states that "Television broadcasters must take precautions to maintain low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given adequate verbal and also, if appropriate, text warning at the start of the programme or programme item".

In the case of The Voice, there was a sole complaint to Ofcom and it concerned the lighting during the performance of one of the finalists, Emmanuel Nwamadi, wherein there was one sequence of flashing lights of over 1.5 seconds in duration, and then another period of flashing lasting over 3.5 seconds during which the flashing dominated the screen with about 20 flashes. Ofcom's technical guidance on PSE states that a sequence containing flashing at a rate of more than 3 flashes per second, which exceed specific intensity thresholds, may be potentially harmful.

The Voice is made for the BBC by an independent production company, Wall to Wall, and during the dress rehearsal the production team ran PSE Guidance tests which showed the lighting was non-compliant. The lighting director was informed and remedial action was taken but did not correct the problem. The production team assumed the problem had been corrected. According to the BBC's own procedures, if the PSE test is failed then the matter has to be referred to the broadcaster's Commissioning Editor, but this did not occur on this occasion.

As a consequence of this incident, the BBC has reminded Wall to Wall of its responsibility in this area and further the broadcaster has implemented new

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procedures to avoid recurrence. Wall to Wall did not make separate representations to Ofcom, but did express its regret for non-compliance on this one occasion.

Fulfilling its statutory duty under the Communications Act 2003 to set standards for broadcast content including that "generally accepted standards are applied to the content 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", Ofcom had to consider whether there was a breach of Rule 2.12 of the Code.

The purpose of Rule 2.12 is to minimise the risk to viewers with a susceptibility to epilepsy, and the PSE Guidelines were developed with medical expert contributions providing the technical standard expected of broadcasters. Ofcom found that The Voice had shown flashing lights for over five seconds in total thus exceeding the maximum limits set by the PSE Guidelines. As a consequence this posed a significant risk to viewers or those in the audience of the show who have a susceptibility to PSE.

Ofcom considered that as the issue had been identified at the dress rehearsal, the BBC had sufficient time and opportunity to correct or minimise the problem before the live broadcast. As such, Ofcom did not go on to consider whether the inclusion of the flashing light was editorially justified or whether adequate warning of flashing had been provided. Ofcom determined there had been a breach of Rule 2.12 of the Code.

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http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb287/Issue_287.pdf

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