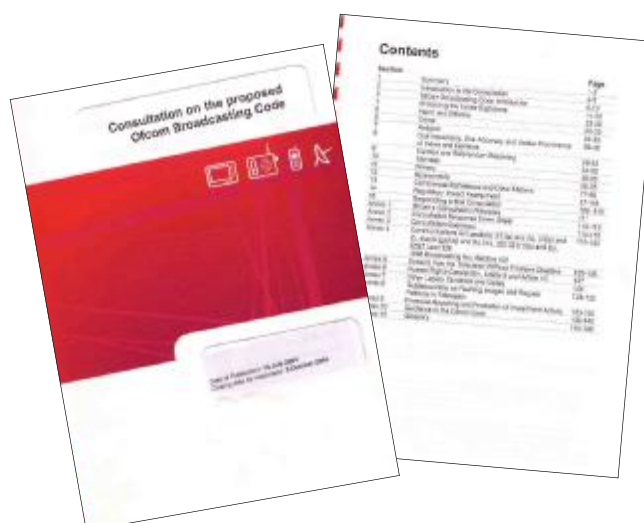


## **FREEDOM AND BROADCASTING: A SUBMISSION BY THE LIBERTARIAN ALLIANCE TO OFCOM ON ITS PROPOSED NEW BROADCASTING CODE**

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# SUBMISSION OF OPINION FROM THE LIBERTARIAN ALLIANCE AND THE LIBERTARIAN INTERNATIONAL TO THE CONSULTATION ON OFCOM'S PROPOSED BROADCASTING CODE

Presented by Dr Chris R. Tame and Dr Sean Gabb  
on Behalf of The Libertarian Alliance and The Libertarian International  
4th October 2004

## PREFACE

OFCOM (The Office of Communications) was set up in 2003 to replace previously separate governmental regulatory bodies concerned with broadcasting. It describes itself as “the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services ... OFCOM exists to further the interests of citizen-consumers as the communications industries enter the digital age.” (<http://www.ofcom.org.uk>)

Earlier this year the Libertarian Alliance was one of many organisations and concerned parties sent OFCOM's document *Consultation on the Proposed OFCOM Broadcasting Code*, and invited to participate in the consultation process regarding its proposed new Code for Broadcasting (designed to replace the previous separate codes administered by its predecessors, such as the Broadcasting Standards Commission, the Independent Television Commission and the Radio Authority. The rationale of such consultations are described by OFCOM in the following terms: “[d]ecisions must be based on evidence and they need to take account of the views of those who have an interest in the outcome. Consultation plays an important part in achieving this. It allows those who could be affected by or concerned about a particular issue to give us their views before we decide on a course of action. Consultation is an essential part of regulatory accountability – the means by which those people and organisations affected by our decisions can judge what we do and why we do it.” (<http://www.ofcom.org.uk/consultations/>)

The following is the text of the opinion submitted by the Libertarian Alliance and the Libertarian International to OFCOM. In due course (although not at the moment of this publication) the text will also be included with all other submissions to OFCOM on their own website. The text was also released to the media by the Libertarian Alliance, together with a news release (<http://www.libertarian.co.uk/news/nr027.htm>), in the second week of October 2004.



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## I: INTRODUCTION: ABOUT THE LIBERTARIAN ALLIANCE

1. The Libertarian Alliance is a non-party political pro-free market and pro-civil liberties pressure group and think tank established in 1968. Our international Academic Advisory Council is listed on the letterhead of the letter accompanying the printed version of this Submission. The Libertarian Alliance has over 700 pamphlets and monographs in print, publishes a quarterly journal, *Free Life*, organises regular meetings, seminars and conferences (including an annual international conference), and runs an internet discussion forum (*The Libertarian Alliance Forum*) and a regular ezine (*Free Life Commentary*). It regularly submits evidence to governmental and parliamentary inquiries, and its spokesmen appear frequently on the media (with approximately 2,000 appearances to our credit on both radio and television, nationally and internationally). The Libertarian Alliance is the UK representative of The Libertarian International, and is also affiliated to LIBERTY (The National Council for Civil Liberties), The International Society for Individual Liberty, and The Sexual Freedom Coalition.

2. The political position of the Libertarian Alliance is one of radical libertarianism, that is, the most consistent and systematic form of Classical Liberalism and Radicalism—the tradition of such thinkers as John Locke, John Stuart Mill, the Levellers, Tom Paine and, more recently, Ayn Rand, Friedrich Hayek, Ludwig von Mises and Murray Rothbard, amongst many others. Libertarianism supports freedom in all its aspects—economic, religious, sexual, social and cultural. Libertarianism is opposed to *all* forms of illiberalism, authoritarianism, statism and collectivism—whether conservative authoritarianism, socialism and communism, Nazism, fascism and racial collectivism—and to censorship of any form of expression.

## II: LIBERTARIAN ALLIANCE AND LIBERTARIAN INTERNATIONAL SUBMISSION REGARDING OFCOM'S PROPOSED BROADCASTING CODE

Our comments regarding OFCOM's Consultation document will be of a relatively brief and general nature, for reasons we will explain below, rather than a response to a number of the specific questions you raise for respondents.

### (i) Freedom of Expression

You state [2(1)] that "Freedom of expression is an essential human right" p. 4). We emphatically agree.

### (ii) Regulation

Unfortunately, you immediately proceed to proclaim [2(3)] that "regulation" of that "freedom" can and should be "prescribed by law", which is apparently "necessary in a democratic society" (p. 4). You thus further outline [2(7)] in the proposed Code a system of regulation designed "to protect viewers and listeners ... foster plurality, promote cultural diversity, promote informed citizens and support innovation, creativity and investment" (p. 4). Elsewhere in the document [3] you speak of OFCOM's duty to ensure that broadcasters "comply with the law, respect the truth and respect human dignity" (p. 7), to regulate in regard to material that might cause "harm and offence" (p. 7), and [4] to protect children from "potential or actual distress" (p. 11). In section 5, on "Harm and Offence", you further outline the duty of OFCOM to ensure that "generally accepted standards" in relation to various sexual and moral issues are maintained.

### (iii) Freedom of Expression Versus Regulation

It should thus be clear why we are unable to answer your specific questions regarding, for example, "the right balance between giving broadcasters creative and editorial freedom while protecting listeners and viewers" (p. 19) or "What technical and other protections can broadcasters and platform operators put in place to protect children" (p. 22), amongst many others.

As for "generally accepted standards", these are nothing more than the opinions of some people, whether wholly right, partially right, or wholly wrong. The idea that they should be imposed upon those who disagree with them, and given privileged protection against generally unaccepted standards is clearly utterly at variance with the ideal and practice of free expression.

The idea that "freedom of expression" can be "regulated" and still remain freedom of expression is thus an absurdity. Any form of regulation is a restriction of freedom of expression and is thus morally and politically unacceptable. There is no "right balance" between freedom of expression and "protection". There is only freedom of expression, which is either absolute and unconstrained, or there is regulated expression and censorship.

In a free society the purpose of the law is to protect individuals from coercive invasion of, or interference with, their per-

sons and property, and no more. Thus, individuals have no right to be "protected" from (alleged) "harm and offence", and, indeed, any attempt to do so can only be utterly subjective and self-contradictory. Thus, Christians or Moslems should not be "protected" from "offence" or "harm" (other, of course, than violent assault) from either each other, or from other religions, or from atheists and rationalists. Any such alleged "right" or attempt to do so would be to silence and censor all. Similarly, in relation to socialists versus capitalists, environmentalists versus scientific rationalists, "paranormal"/superstition mongers versus rationalists, racists versus non-racists, gays versus anti-gays, feminists versus anti-feminists, and so on; all have a right to free expression, no matter how irrational or rational, silly or sensible, moral or immoral, attractive or ugly their views might be. None have a right not to be "offended" or "harmed". Indeed, the progress of humanity is totally dependent upon some belief systems being "offended" and "harmed" (i.e., ridiculed or defeated in debate) by their (in fact) rational critics.

Broadcasting should be totally free. It is up to broadcasters to decide what they want to broadcast, and for to viewers to be free to listen or watch, or not to do so. "Diversity" will probably, indeed, almost certainly, result from the free choices of broadcasters and audiences, and certainly does not need to be "promoted" by any state appointed body. However, if "diversity" does not result, then so be it. The State has no right to impose "diversity" upon others.

### (iv) "Cultural Diversity"

In reality, of course, when the term "cultural diversity" is employed at the present time it usually means the imposition of a very specific and rather un-diverse ideological viewpoint known as "political correctness", an evil axis of anti-liberal, anti-white racist, anti-Western, anti-Enlightenment and collectivist values and coercive social engineering. With the decline of old style Marxism and Socialism this form of illiberal doctrine has gained a growing and hegemonic role throughout much of academia, charities and civil organisations, churches, social and welfare services, most political parties, and government and the civil service. As an ideology it promotes the power and privileges of a hegemonic class, especially "knowledge-workers" and the intelligentsia. It stigmatises and demonises any dissenting opinion, seeks to censor and silence it, and manipulates information in order to balkanise society into alleged "victim" groups who provide tribalistic bases for the exercise of political power—and the extraction of economic profit—by that class.

### (v) "Protecting Children"

The issue of "protecting children" is one perennially raised by reactionary conservatives, socialist and statist authoritarians and health fascists. No restriction of free expression in any form of media can be morally justified by this specious ploy. In so far as children should be "protected" from allegedly harmful expressions that is the sole concern of parents, who will certainly have diverse and incommensurable views as to what that protection should be, and, indeed, regarding what children should be protected from.

### (vi) “Due Impartiality”

Moreover, the proposed OFCOM Codes’ alleged commitment to regulate in favour of “due impartiality, due accuracy and undue prominence of views and opinion” is mere camouflage of the reality of broadcasting in this country. That reality has been, and clearly will continue to be under the proposed Code, not one of free expression, but the dissemination of a small range of permitted and permissible views within the boundaries deemed acceptable by Establishment. In actuality “unpopular” ideas (or, to be more accurate, ideas unpopular with the hegemonic class) and their spokesmen are largely kept off the broadcast media, ignored, or, when mentioned, vilified, ridiculed, or mischaracterized. Although occasional “dancing bear” appearances might be allowed on minor programmes, serious media access is routinely denied to dissident viewpoints. For example, the propaganda and junk science of the health fascists is repeated endlessly, and critics given barely a token voice. The anti-life and anti-human values, and the scientific lies and distortions, of the “Environmentalist” movement are now an unquestioned and unquestionable secular religion and reported and portrayed as both the *ne plus ultra* of morality and as scientific fact. In sociological terms they represent a socially constructed body of falsehood and legitimization ideology, and a hegemonic discourse. The golden circle of commentators, presenters, critics, writers, journalists and programme makers that dominate the British broadcast media is closed and tediously predictable.

### (vii) The European Convention on Human Rights

We note that the OFCOM consultation document both reprints [Annex 6, p. 127], and is clearly influenced by, Article 10 of the European Convention on Human Rights (full text at: <http://www.hri.org/docs/ECHR50.html>). That Article reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Now clearly, this formulation of “rights” is risible and quite blatantly Orwellian in character. Clause 1 declares the alleged existence of the right of free expression, whilst clause 2 asserts that the state may abolish that right whenever it sees fit! Indeed, every clause of the Convention is of this sort. Unlike the many revolutionary declarations of rights created during the liberal revolutions of previous centuries the European Convention on Human Rights is *not* a Convention on Human Rights, but a Convention on the *State Destruction of Hu-*

*man Rights.*

The ideology of the Human Rights Convention is basically that of the OFCOM consultation document itself. Whilst older forms of statism and authoritarianism such as Fabian Socialism, Marxism, National Socialism, Fascism or High Toryism generally were quite frank in their rejection of such “bourgeois” and liberal values as free expression, modern, “politically correct”, statism is more insidious. It dresses up censorship in the touchy-feely language of “offence” and sensitivity, of “harm”, of choice, vulnerability and children, in references to diversity, balance, and human dignity. It adopts part of the language of liberalism in order to destroy liberalism and liberty. But words cannot actually conceal reality. The choice now is the choice that has always confronted humanity: freedom or slavery, individual liberty or the state, freedom of expression or regulation and censorship.

### III: CONCLUSION

Just as there is no OFPUB (Office of Publications), regulating the publication and contents of books, so there should be no OFCOM (Office of Communications). All broadcasting should be free of any form of regulation or control and censorship by the State.

The Libertarian Alliance and the Libertarian International thus urge the abandonment of the proposed Code and the immediate closure of OFCOM. In their place a totally unregulated, that is, a really free market in broadcasting should be allowed to come into existence.



### BIOGRAPHICAL NOTES

**Dr Chris R. Tame** is the founder and Director of the Libertarian Alliance. He has appeared on television and radio frequently (having made over 1,000 appearances) and is a prolific writer and lecturer on many topics in sociology, economics, philosophy and the history of ideas. He is author of *The Bibliography of Freedom*; *The Euro-Sceptical Directory*; and the forthcoming *Freedom, Healthcare and Welfare Policy*. His articles have appeared in such journals as *The Jewish Journal of Sociology*; *Economic Affairs*; *Science and Public Policy*; *Il Politico*; *South African Freedom Review*; *The Journal of Social, Political and Economic Studies*; *Wertfrei*; *The Journal of Libertarian Studies*; *The Free Nation*; and *The Freethinker*, and in such books as *The Politics of Crime Control*; *J. M. Robertson (1856-1933): Liberal, Rationalist, and Scholar*; *The Case for Private Enterprise*; and *The ‘New Right’ Enlightenment*, amongst others.

**Dr Sean Gabb** is the Director of Communications of the Libertarian Alliance and edits both its journal *Free Life* and its ezine *Free Life Commentary*. A university lecturer in law and sociology he is the author of such books as *Dispatches from a Dying Country: Reflections on Modern England*; *Truancy in English Secondary Schools* (HMSO); *Cultural Revolution, Culture War: The Real Battle for Britain*; and *War and the National Interest: Arguments for a British Foreign Policy*, and is a contributor to the forthcoming volume *Home Schooling: An International Reader*.