



Ofcom call for evidence: Listed events; implementing the Media Act 2024

This note provides Sky's response to Ofcom's call for evidence in relation to a number of issues related to listed events regulation in the UK.

Listed events legislation is a significant intervention in businesses' freedom to contract in relation to valuable property rights. It has the potential to diminish the amount of income sporting bodies can receive for their rights and therefore the amount which can be invested in sport.

In the UK the regime is founded on a requirement that rights to valuable sports events are licenced on a non-exclusive basis, unless either (a) express permission for exclusive licensing is granted by Ofcom, or (b) the rights are licensed in a way that conforms to one of the new automatic authorisations set out in the Media Act 2024.

In general Sky considers that the regime in the UK works well, striking a balance between enabling UK audiences to watch important sports events for free, while enabling sports bodies to monetise their rights effectively, to the benefit of their sports. For this reason we believe that Ofcom should take a cautious approach to potential changes to the way in which the regime currently operates.

Definition of "live coverage"

Section 104 of the Broadcasting Act requires Ofcom to, in effect, provide a definition of "live coverage" of listed events. The first question in the call for evidence is whether Ofcom's current approach to this matter as set out in the Code on Listed Events¹ should be amended, and if so how?

We do not believe that the core of the concept of what constitutes "live coverage" is challenging. We consider that it means enabling people to view an event as if they were present at it – when it is actually taking place. This is closely linked to the fundamental reason for listing events, which is that they *"should contain an element which serves to unite the nation, a shared point on the national calendar"*. A situation in which different audiences are watching an event at different times, particularly some time after it has actually happened, would no longer be unifying or *"a shared point on the national calendar"*.

Ofcom's current approach to defining live coverage, set out in its current code is pragmatic, recognising that no single definition is possible, and setting out a number of factors that are taken into account in order to provide flexibility. Sky considers that this broad approach remains appropriate. It has stood the test of time, having been in place for many years without it raising any significant difficulties for rights owners or licensees. Changing this approach risks unintended adverse consequences.

Ofcom has asked about a number of specific matters, as follows:

¹ Code on Sports and Other Listed and Designated Events (https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-codes/other-codes/ofcom_code_on_sport.pdf?v=331621)

When should an event be considered to begin and end? For example, should it include opening and/or ceremonies? We do not consider that it is necessary for Ofcom to issue guidance on a matter as detailed as this. This is an issue that is fully capable of being determined effectively by commercial arrangements between rights owners and those providing coverage of listed events.

Should 'live coverage' be considered to include punditry? Listed events regulation relates to the rights licensed by rights owners to broadcasters and other distributors of audiovisual coverage. Punditry added by broadcasters does not form part of the rights licensed by rights owners and therefore should not be considered to comprise part of live coverage of listed events. Moreover, commentary on events often goes on for some time after the end of the event. Defining such commentary as comprising part of the event would, therefore risk interfering with secondary rights, such as highlights, which are typically only able to be shown some time after the end of live coverage.

How should the definition be adapted to reflect new functionalities? We consider that it is legitimate to adapt the current list of factors to take into account new functionalities – in particular 'watch from the start' functionality and curated feeds. In doing so, however, Ofcom should have regard to the underlying purpose of listed events legislation: the greater the use of individualised and not genuinely live viewing of events, the less compatible this is with that underlying purpose.

For example, in relation to 'watch from the start' functionality, it might be reasonable to accept this as live coverage if viewing begins within a reasonably short period after the start of an event. A viewer that begins watching an event long after it has started – perhaps almost towards its end – is plainly no longer watching 'live coverage' of that event.

Adequate alternative coverage for Group B events

The Media Act creates a new basis on which live coverage of Group B events can be authorised. This authorisation therefore enables the provider of a non-qualifying service to provide exclusive live coverage of a Group B event, provided that adequate alternative forms of coverage are also available (and vice versa).

The current Ofcom Code already sets out an approach to the definition of 'adequate provision' of secondary coverage of Group B events, which includes detailed specification of matters such as the minimum acceptable duration of highlights of the event and the maximum delay between the end of the event and highlights being broadcast. Sky considers that this broad approach remains appropriate. As with the definition of 'live coverage', it has stood the test of time, having been in place for many years without it raising any significant difficulties for rights owners or licensees. Changing this approach risks unintended adverse consequences.

Ofcom has also asked specifically about types of services that may be used to broadcast secondary coverage of Group B events. Currently, the Code requires that such coverage is via a linear television channel. Given the development of audio visual sector to encompass streamed services, widely used by UK viewers, there is plainly no need to retain this requirement.