

1. INTRODUCTION

1.1 About Warner Bros. Discovery

Warner Bros. Discovery Sports (“WBDS”) is the business that represents the company's dedicated portfolio of sports brands, channels and platforms in the U.K and across Europe. In the U.K., teams that serve the UK and others across the continent are based in the Warner Bros. Discovery International Headquarters in Chiswick.

WBDS produces content for 24/7 programming and content across all platforms where consumers are spending time including free-to-air TV, pay-TV, streaming, online and social. Our consumer brands in sport include sports programming and content on discovery+ and Eurosport. Our coverage spans events such as the tennis Grand Slams, cycling Grand Tours, World Athletics Championships, more than 600 cycling broadcasts per year and winter sports World Championship and World Cup events.

In September 2022, with BT Group, Warner Bros. Discovery established TNT Sports, a new joint venture in the UK & Ireland, that combines BT Sport and Eurosport U.K. Warner Bros. Discovery Sports is responsible for the operational delivery and running of the Joint Venture on behalf of its shareholders, Warner Bros. Discovery and the BT Group.

As a business active in the sports broadcasting sector, we welcome the opportunity to respond to Ofcom’s call for evidence. Given the complex interface between the Listed Events regime, the rights of sports rightsholders, investments made by sports broadcasters and the evolving audiovisual landscape, we would also welcome the opportunity to discuss with you in person the subject matter of this Call for Evidence.

1.2 The virtuous circle of sports broadcasting

Sport, at all levels, plays a fundamental role in British society. Broadcast of sports plays a valuable role in underpinning interest and investment in sport. The UK media/sport landscape has benefitted from a viable mixed economy between pay and free TV, which works in the interests of viewers, broadcasters, rightsholders, and sponsors. Notably, the influx of revenues from pay-TV has funded the transformation of football stadia in England, which are now unrecognisable from their state before the launch of pay-TV in the UK in the early 1990s, as well as increased investment in grassroots and lower-league sport.

As Ampere reported for Ofcom: “the recent history of the UK sports rights market is one of a thriving industry characterised by intense competition from multiple players, providing audiences with plenty of choice for their sports consumption, across subscription platforms and on free-to-air channels or services”.

We would agree with this analysis and, while it is indisputable that the listed events regulatory regime is long-standing, we would suggest that it has worked well in balancing the competing interests at stake: ensuring viewer access, free at the point of delivery, to sports events of genuinely national interest, but without hampering the interests of sports rightsholders or the development of a vibrant and competitive pay-TV sector which is very much in the UK’s economic interest. Exact comparisons are difficult but most analysis suggests that Premier League broadcast revenues from pay and free broadcast partners continue to far outstrip those of competing leagues in Germany, Spain or Italy, further encouraging many of the game’s global star players to move to the Premier League.

This mixed ecology of pay and free has also worked well with regard to the Olympic Games. The final report of the IOC Beijing 2022 Coordination Commission shows that Beijing 2022 engaged more people than any other previous Olympic Winter Games: “the most digitally engaged Olympic Winter Games in history, with 3.2 billion engagements with Olympic social media handles”. The report also highlights the record 2.01 billion viewers on Media Rights-Holders’ linear and digital platforms, who experienced more hours of broadcast coverage than any previous Olympic Winter Games, including record coverage through digital platforms.”

The publication of a report by the IOC Paris 2024 Coordination Commission is of course a matter for the IOC, but we understand that it may be published later this year. We discuss our experience of the recent Summer Olympic Games Paris 2024 later in this submission.

We would also note that the normal working of the commercial market serves to make events widely available (beyond Listed Events) for the benefit of consumers even where no regulation applies. Examples would be Amazon Prime sublicensing to C4 the 2021 women’s final of the US Open tennis (won by Emma Raducanu) or Sky sharing with C4 the rights to the 2022 ICC Men’s T20 World Cup Final. In each example, UK competitors or teams had performed better than expected, generating increased interest beyond the more niche audience that could be expected for non-UK participants. To quote a current example, WBD has agreed to sublicense the Welsh rugby matches in the Autumn Nations Series to S4C. Given that none of these events has ever been considered for listing, it seems reasonable to conclude that this was done without any regulatory intervention. In other words, the market, as currently regulated, is working well and responds quickly to unfolding sporting events.

2. OVERALL PERSPECTIVE ON THE OFCOM CONSULTATION AND PROCESS

Prior to answering the specific questions, we wish to make a few observations in general about the call for evidence in general and our suggestions for how Ofcom might best approach the implementation consistent with the intention of the draftspersons of the Media Act and in line with our own constructive dialogue with DCMS about many of the issues raised in the consultation.

- 2.1 WBDS welcomes the swift movement by Ofcom to implement the revised regime in an evidence-based manner. As one of the commercial enterprises which has partnered with PSBs in order to successfully offer Listed Events, particularly the Olympic Games, we believe we have considerable value to contribute to this process.
- 2.2 WBDS wishes to emphasise that the statutory Listed Event regime represents the backdrop to the co-exploitation of Olympic rights between WBDS and the BBC (an arrangement that has been in place for the last 2 games cycles¹).
- 2.3 We would reinforce the point made in the Media Act Explanatory Note (cited in section 3.16 of the Call for Evidence) that “*the aim* [of the new provisions re “adequate live coverage” of multi-sports events] *is to ensure that partnership arrangements between qualifying and non-qualifying broadcasters may continue as they do now, acknowledging that the regime now covers a wider range of services*”. We believe that this is best achieved by Ofcom setting the minimum statutory level and not imposing further thresholds which are likely to become

¹ For the 2018 (Winter) and 2020 (summer – which took place in 2021) games, BBC sub-licensed certain rights to WBDS, while for 2022 (Winter) and Paris 2024 games, WBDS sub-licensed certain rights to the BBC. For the next two cycles (2026 to 2032), WBDS has been awarded rights by the IOC alongside the EBU (through which the BBC will retain free-to-air rights). For ease of reference we refer throughout this submission to WBDS even where arrangements were made originally with a predecessor entity such as Discovery.

frozen in time and not to reflect the fast-moving sports market or undermine the purpose of this specific provision, particularly given that the diverse nature of listed sports events may mean a differing interpretation of “adequacy” for each event (particularly multi-event competitions like the Olympics). As such, drafting meaningful guidelines ex ante to anticipate all possible scenarios would be impossible and impractical.

- 2.4 The interest of all participants in the sports rights market is for it to be crystal clear which arrangements are pre-authorized without the need to consult Ofcom. If Ofcom sets thresholds which are more complex and layered than “two concurrent linear streams”, this will likely undermine such clarity and make it harder for both buyers and sellers of rights. In particular, PSBs and non-qualifying licensees are likely to strike commercial deals that move much more rapidly with changing market conditions, so as to give access via new emerging platforms in a manner that any detailed rules are likely to inhibit (see paragraph 3.6 below for more detailed examples).
- 2.5 We note that the first Summer Olympic Games to which the new rules will apply are in 2036, when the TV markets are likely to be very different than today (even the Director General of the BBC suggests that the BBC might be “all digital” by then). The rules which have just been adopted make sense in the context of current markets and market dynamics, but will likely need wholesale revision by then; if BBC iPlayer and a non-PSB free service (say, YouTube) are the main potential means of consumption of Listed Events and, at that point in time, both widely available, free at the point of use and delivered to substantially the same devices and UIs, why should one and not the other receive favourable treatment.
- 2.6 We note that there is no current plan by the Government to revise the events which constitute the list (and we await an indication from the new Government as to whether or not it wishes to open the question of “digital” rights to Listed Events²), but in the light of the above, we consider it important that Ofcom keeps the Code under periodic review to ensure it continues to reflect the evolving media market.

3. ANSWERS TO SPECIFIC CONSULTATION QUESTIONS

Question 1: What matters should Ofcom take into account in defining “live” coverage?”

We’d particularly welcome views on:

- The existing approach treating coverage shown while the event is in progress as “live”.
- Where live coverage of an event begins and ends; and
- How the definition may need to reflect new functionalities, e.g. ‘watch from the start’.

- 3.1 We consider it important that Ofcom takes a disciplined approach to what is meant by “live” coverage. We endorse the concepts articulated at paragraph 1.12 of the existing Code which states “*Ofcom takes the view that the interests of viewers lie in allowing them to participate in the event as it happens, as far as possible. This suggests that live television coverage of*

² For the purposes of this submission we assume “digital rights” will not be addressed further in any guidance by OFCOM relating to adequate live coverage.

most sports events, including those taking place in different time zones, should be defined as coverage which is simultaneous with the event (i.e. as the event is happening).” Nothing in the way in which the market has evolved requires a re-visiting of this principle.

- 3.2 As regards Group A events, the rules attach primarily to (continuous) live coverage. It would not be appropriate for Ofcom to pre-judge any future decision of the Government as regards other types of rights (clips and highlights), where a specific decision was made not to bring these within the scope of the current revisions. Indeed, to do so would likely be ultra vires. As Lord Parkinson said at Report stage in the House of Lords³ *“Adding digital rights would be a much bigger change, bringing more complexity, and it is not one that we have time to consider now. As I have said previously, moving too quickly to add digital rights without taking the appropriate time to work through the details and consequences, particularly without consulting the industry, would create a real risk to the finely balanced regime overall...”*
- 3.3 In most cases, for a single-sport event, the event would typically be considered to start and end at the points where the rights owner mandates that coverage starts and finishes. This might vary from sport to sport but will typically commence when the participants run out onto the field of play and end a set period after the “final whistle” (after taking account any “extra time” or similar). Where an event is a final, the end of the event may be considered to happen after the relevant presentations, at least where these take place on field promptly following the conclusion of the event. Things like a warm-up or post-match interviews would not typically be regarded as part of an event.
- 3.4 For multi-sport events such as the Olympics, the same general principle applies. In the case of the Olympics, the host broadcast is controlled by the IOC and they deliver pictures from the point at which they determine each individual event within the overall event to start and cease delivering such pictures at the point when the event finishes (typically where the winning athlete(s) leaves the arena post-event). There may be outliers (for example, coverage of late finishers of the Marathon may continue long after the main coverage has finished).
- 3.5 In practice, the BBC and WBDS both have access to the feeds which the IOC makes available and each chooses when to start and finish coverage of each particular event. WBDS does not impose any restrictions on which events the BBC may broadcast, which is entirely down to their own editorial decision-making.
- 3.6 As regards “watch from start”, many sports rights contracts draw a clear distinction between “deferred” transmissions, which commence after the event has started but before its conclusion and “delayed” transmissions, which commence after the event (or that day’s proceedings) have concluded⁴. We do not think that either of the above constitute “live coverage” but fall within the ambit of the digital rights referenced in paragraph 3.1. However, it is true that deferred transmissions are often treated in the same way as live, so long as the consumer starts watching before the event in question has finished.
- 3.7 **Question 2: What factors should Ofcom take into account in defining adequate live coverage?**

³ 23 May 2024, Hansard column 1234

⁴ The specific expressions are not terms of art and different agreements refer to them in different ways.

We'd particularly welcome views and evidence on:

- The ways in which audiences engage with coverage of multi-sport events and how this has changed over time, and
- The considerations that underpin arrangements where both PSBs and providers of non-qualifying services acquire live rights (including from rightsholders).

- 3.8 In defining adequate live coverage, the most important factor is that all parties involved (PSBs, service providers such as WBDS and rightsholders) need certainty, so that the Ofcom automatic consent can truly be automatic and not impose risk in the processes that are run when rights are being tendered. This means that Ofcom definitions of “adequate live” need to be objectively measurable and capable of clear yes/no determinations.
- 3.9 In the case of the Olympics, our strong preference would be that “adequate live” coverage be defined consistent with how WBDS and the BBC have previously shared rights (and how those rights are contracted to be shared for the next two Olympic cycles). This would mean that adequate live coverage should consist of two live streams offered on PSB linear services (whether broadcast or digital only). Such live streams should be free to carry coverage throughout the period in which the event takes place on the relevant day (i.e. from start of the first event to conclusion of the final event of the day), with the PSB being in editorial control of selecting which events to show within each stream, as is the case today. We should note also that the scheduling of the Olympic games as a whole is largely designed so that those events that are expected to be the most popular and most watched (at a broad international level) will not clash with one another, so the cap of two simultaneous streams is unlikely to deprive UK PSB audiences of the ability to see the events they wish (and when those clashes do occur, we have seen the BBC time-shift what it sees as the less popular event for later viewing).
- 3.10 Note that contracts have already been signed covering Olympic Games until 2032, so any new regime will only apply to subsequent Games. However, as the Media Act provisions are based on the existing IOC arrangements, we do not consider that any prejudice is suffered by the BBC (or other PSBs) as a result.
- 3.11 Based on prior rights cycles, we might expect the IOC to start seeking to market the rights relating to 2034-2040 as early as 2028. Any arrangement between PSBs and non-qualifying services around the licensing of Olympics media rights at that time may well anticipate what the parties consider an appropriate division of rights in respect of the market that is then anticipated to exist in 2034/36, so is likely to inform future revisions of the Code (and underlying legislation) in the same way that recent IOC/BBC/WBDS arrangements have influenced the Media Act 2024 revisions and the present consultation.
- 3.12 The considerations which each party is bringing to these negotiations is best spoken to by each of the participants, but we have sought to set out below our ideas of what those considerations are in order to help Ofcom. What is notable (as evidenced below in respect of the most recent Paris 2024 games) is that these arrangements have been considered to be successful by all parties. It is noteworthy that Ofcom has used the Olympics as the case study in the current Call for Evidence (in the box below paragraph 3.17):

- 3.12.1 For the IOC, it has allowed them to obtain revenue from both the BBC/EBU and WBDS, maximising their return while ensuring a high-level of public exposure for the games (as, regardless of national rules, they mandate a minimum of 200 hours of coverage of the Olympic Summer Games and at least 100 hours of the Olympic Winter Games on free TV everywhere in Europe). As the IOC said after its most recent rights award *"As the IOC redistributes 90% of the revenues it generates, this long-term agreement also provides critical financial stability to the wider sporting movement and ultimately supports the athletes themselves."*
- 3.12.2 For WBDS, it has enabled us to retain our commitment to be the streaming home of "every moment" of the Games and to cater for the hard-core sports fans. For a service provider such as WBDS, one of the key considerations in bidding for an event such as the Olympics is that we must have exclusive rights to at least some content. Without this, we would certainly not invest to the extent we do today and might not bid at all. We recognise that many casual sports fans will be satisfied with the extensive coverage available (in the UK and elsewhere) on PSB services, but we believe (and our experience has borne this out) that smaller cohorts of serious sports fans will be willing to pay for access to every moment of the Olympics. Such super-serving of a small audience is not an appropriate thing for a financially prudent PSB to do, but it is something that those fans are willing to pay for, to receive coverage over and above that available via the PSB. We would also note that the cost involved is small - £3.99 per month for a sport service which gave coverage of the entirety of the Olympics (every moment) as well as a range of non-sports content. Customers can also cancel their contract after one month should they so wish. This fee is materially less than the monthly cost of the BBC licence fee, which we recognise must serve the public at large and not just sports fans.
- 3.12.3 for the BBC, it enables them to provide extensive coverage without the costs that would be associated with acquiring further rights. As noted above, the BBC is free to cover whichever sports they wish within the games and, so far as WBDS is concerned, their editorial freedom is absolute (subject only to the cap of two concurrent channels).
- 3.13 It is notable that after the most recent Olympic games, the BBC hailed how successful and comprehensive their coverage has been. Their press release⁵ states

"BBC Sport's coverage of the Paris 2024 Olympic Games was streamed a record-breaking 218 million times online, more than doubling the Tokyo Olympic Games total of 104m, with 12.2m people signed in to BBC iPlayer accounts to watch coverage.

In addition to the extensive live coverage available on BBC iPlayer and the BBC Sport website, BBC One enjoyed consistently high viewing figures throughout the duration of the competition with a Total TV reach (15 mins or more) of 36.1m watching Paris 2024 on BBC TV, 59% of the UK population and a peak of over 6m on 14 separate days.

⁵ [Paris 2024 Olympic Games break BBC Sport record with 218 million streams](#)

With the BBC showing every Team GB medal moment live during an electrifying two weeks, the coverage brought the nation together and to the edge of their seats in their millions.

- 3.14 At the same time, we also regarded the event as a great success. Our press release⁶ highlights, across Europe:

7 billion minutes streamed as Max supercharges streaming engagement

Sunday 4th August saw a Warner Bros. Discovery record in Europe of 600 million minutes streamed in a single day

Record number of new paid streaming subscribers over the Games period; 77% more than Tokyo 2020

Saturday 27th was Warner Bros. Discovery's biggest ever single day for new paid streaming subscribers in Europe

- 3.15 Importantly for Ofcom, the evidence⁷ is that viewers were happy with the coverage offered both by the BBC and by WBDS: 78% of BBC viewers were satisfied with their viewing experience, similar to Eurosport viewers (80%), with only 3.6% registering as very unsatisfied with the Olympic coverage. Users of websites (82% of BBC, 81%_Eurosport) and streaming services (80% iPlayer, 85% discovery +) also recorded high levels of satisfaction.
- 3.16 Overall, 68% of BBC viewers/71% WBD viewers agreed that “the Paris 2024 Olympics lived up to my expectations”.
- 3.17 We would note that, according to BARB data, despite the much broader offer available via Discovery’s services, 96% of linear viewer hours of Olympic Games coverage was via BBC linear services. Also, despite the unlimited coverage of every moment of the games on Discovery+, the (more familiar) BBC iPlayer remained the most popular VOD service for viewers (with 71% of VOD hours of Olympic coverage being consumed on BBC services).
- 3.18 In addition, our own data indicate that event appeal in the UK is largely aligned with those events where Team GB secured medals, with athletics, cycling, swimming and gymnastics being the sports with the greatest reach on WBDS’s services. The relatively low performance of a popular sport such as football – in which the UK did not participate – emphasises this point. In this context, we note that the BBC covered every Team GB medal (and separate clips of those remain available on the iPlayer). The ability of the BBC to deliver this level of coverage is helped by the IOC long-standing policy of minimising clashes between medal events so as to maximise the broadest coverage.

⁶ <https://media.wbdsports.com/post/record-olympics-streaming-and-tv-audiences-for-warner-bros-disco>

⁷ Source: Publicis on behalf of WBD | August 2024 | UK Nat Rep: Olympics Reach Survey (12-14 August) and post-Olympics survey (12-16 August):)

- 3.19 We would submit that this provides evidence that the BBC’s two concurrent streams provide sufficient coverage both to meet the objectives of the new legislation and to do so to consumers’ satisfaction (see para 3.13 above). (It is also important to distinguish consumer views on editorial decision making around content (including coverage in the build up to and after specific events, with coverage of actual live events).)
- 3.20 Further, in terms of assessing whether two concurrent streams are adequate, analysis of BARB data from Paris 2024 shows that most of the audiences were for BBC1 (or the “first” channel from time to time) with relatively small reach for the secondary channel showing the parallel coverage. From the ratings summary in Broadcast the main ratings all appear to be on BBC1 (except where there were pauses e.g. for the news, when the audiences moved to BBC2).
- 3.21 In sections 3.20 and 3.21 of the Call for Evidence, Ofcom invites suggestions of other requirements which might need to be satisfied in order to constitute “adequate live coverage”. As already indicated in paragraph 3.8, we would emphasise that the most important aspect of this definition is that it needs to be clear when the test is satisfied and, for this reason, we would not wish Ofcom to impose incremental requirements without strong evidence that they are both necessary and also capable of a clear yes/no determination as to whether the requirements have been satisfied.
- 3.22 As we have made clear above, the current Olympics partnership (which forms the model for the new rules) does not contain such constraints. The BBC is free to select whatever it wishes to cover (live or not) across two simultaneous channels. The imposition of further constraints is likely to upset the status quo and result in a funding gap, which the BBC (and other PSBs) may be unwilling or unable to close. We are not aware of any issues having arisen of the type you describe and would discourage any pre-emptive action. In the event that issues arise in the future, it is of course open to Ofcom to keep the Code under periodic review (and, as noted above, we consider that this is inevitable in the light of market evolution).
- 3.23 To the extent that, contrary to our suggestions above, Ofcom proposes to include any such provisions, we consider it important that the detailed proposals (and their justification) are subject to the further consultation which Ofcom will undertake in 2025 as regards the new Code.

Question 3: What factors should Ofcom take into account in defining adequate alternative coverage for Group B events?

We’d particularly welcome views and evidence on:

- The minimum duration and maximum delay provisions.
 - The requirement for live radio commentary for Group B events; and
 - The ways in which audiences engage with highlights and radio coverage for Group B events and how this has changed over time.
- 3.24 WBDS has not previously held rights to Group B events other than the Wimbledon Championship, where we hold rights to daily highlights show as well as to live coverage of

the finals (Ofcom will be aware that automatic consent to the BBC's exclusive live coverage was granted in April 2024).

- 3.25 We consider that the thresholds for adequate coverage set out in the existing Code and detailed in section 3.25 of the Call for Evidence remain appropriate in terms of setting the thresholds for Group B events, for minimum duration and maximum delay. We agree that, in the current media market, it is not appropriate to insist that highlights be on broadcast TV, so long as they are available on a streaming-only service of the PSB/non-qualifying service (as applicable), so the rules should be applied on a technology-neutral basis. Consistent with our approach in paragraph 3.1 above, we do not consider that it would be appropriate at this stage to either replace or supplement those tests with forms of digital-only coverage.
- 3.26 In particular, we do not understand why digital-only coverage on a PSB service (e.g. BBC Sport) should have privileged treatment as compared to similar services offered (without payment) by a non-PSB or even the rights holder itself. For example, during recent cricket Test Matches (Group B), Sky holds live rights, the BBC holds highlights and radio rights, while clips and highlights are also available directly from the England & Wales Cricket Board (without charge). WBDS does not consider that, in this context, the ECB service is any less of a contribution to ensuring wide availability of the rights than requiring that clips be available via a BBC service.
- 3.27 As regards radio, we similarly consider that a radio-like service should remain a requirement for automatic renewal, but would encourage Ofcom to adopt a technology-neutral approach, so that a free-to-air audio stream on any widely available platform should be sufficient, not necessarily something available on DAB or FM.

Question 4: What matters should Ofcom consider when revising the listed events Code?

We'd particularly welcome views on:

- Ofcom's approach and process for giving and revoking consent.
- Ofcom's approach and process for giving and revoking consent to televise an event designated by an EEA State or other CTT State.
- Ofcom's approach to enforcing compliance with restrictions on showing live coverage of a listed event without authorisation; and
- Any additional comments on revising the Code

- 3.28 As noted in section 4.3 of the Call for Evidence, Ofcom anticipates that consent will be sought much less frequently in future. This is to be welcomed, as any lack of certainty in the market is associated with additional costs and commercial risk. In this context, we have no particular proposals that parts of the Code be extensively re-written.
- 3.29 In relation to the processes set out in paragraphs 1.29 to 1.31 of the Code, we believe that it would be helpful for these to include the following additional provisions:
- 3.29.1 an email address should be specified for submission of such requests (to be monitored by the relevant Ofcom teams).
- 3.29.2 Ofcom should commit to a timely response to any non-automatic requests for consent. This should include an indicative timetable set out in the Code for approvals, so long as those approvals are submitted at least 3 months ahead of the

relevant event. Our proposal would be that requests will be dealt with within 10 business days of submission.

3.29.3 In the unlikely event of Ofcom being minded refusing consent to a particular request, the applicant should be entitled to an outline of the preliminary reasoning for the same and the right to make representations in response, prior to a final decision being made.

3.30 We support Ofcom's proposal for inclusion of some (hopefully simple) guidance as to how the regime works. We see no reason for the Code to be otherwise expanded to deal with further matters.