

Response of Channel 5 Broadcasting Ltd (Five) to the Ofcom consultation on content management on the HD Freeview platform

Five welcomes the opportunity to respond to this Ofcom consultation. We believe Ofcom is correct in identifying the aims of its consultation as being “to ensure that citizens and consumers have access to the widest possible range of HD television content on DTT, whilst not unduly restricting their use of this content and the range of receiver equipment available in the market”¹, and in light of this we agree with Ofcom’s preliminary conclusion that the BBC’s proposed content management regime for Freeview HD should be approved.

Five strongly supports the presence of High Definition (HD) services on the Freeview platform, and have argued consistently for them to be developed. For example, three years ago we stated “The case for HD is about the future ability of the DTT platform to upgrade and for DTT viewers to have access to the same quality of service as viewers to other platforms”².

Five regrets that we were not in a position to take up the fourth Freeview HD channel slot this year. However, we hope to provide the fifth service on the Freeview HD platform in 2012. In the meantime we have gone ahead with plans to launch Five HD on the Sky platform, as the first stride in developing our HD proposition.

We believe the BBC, in its capacity as holder of the Multiplex B licence, has developed a content management regime that will ensure the presence of a wide range of HD programmes on Freeview through safeguarding the legitimate interests of rights holders while providing the greatest possible consumer freedom compatible with that.

Consultation Questions

Q1: Do you agree that copy management would broaden the range of HD content available on DTT and help secure its long term viability as a platform?

Yes. A considerable proportion of the content on the Freeview HD channels has been acquired from external suppliers. The owners of this content (in particular the Hollywood studios) have a legitimate interest in HD variations being protected and

¹ Condoc, paragraph 1.3

² *Response of Channel 5 Broadcasting Ltd (Five) to Ofcom’s consultation on the Digital Dividend Review*, March 2007, page 1

unlimited copying being prevented. The alternative to allowing a copy management regime would be for Freeview HD services not to carry certain content because they could not reach agreement with rights holders.

This is an issue of particular importance for Five. Among the programmes that will be most compelling to watch on Five HD are acquired material, such as popular US dramas and movies. If we were not able to show such programmes in HD, it would severely diminish the attractiveness of the Five HD service. From our knowledge of this issue and our long experience of dealing with the studios, we would anticipate that they would be highly reluctant to agree to HD content being broadcast on Freeview without appropriate content management systems in place.

While this is not an immediate issue for us (Sky's content management system is not subject to Ofcom regulation), it will be of crucial importance at the time we seek to launch our HD service on Freeview.

It is not just acquired programming that is affected. We anticipate that sport rights holders will also want appropriate content management systems in place and, as UK production moves towards adopting HD as the norm, production companies and co-production partners will be concerned about the robustness of HD copy management in the UK in order to protect their ability to exploit content in other markets.

Five believes it is important for the Freeview platform to remain competitive. Launching HD variants of the most popular channels is essential to that goal. If some of the most compelling content on those services was not available on Freeview, it would shortchange viewers and undermine the health of the platform.

Q2: Do you agree that the BBC's proposed multiplex licence amendment represents the most appropriate means for securing an effective content management system on HD DTT?

Yes. Of the six options considered by Ofcom, options 1 and 2 would not deliver a sufficiently robust content management regime acceptable to rights holders; while options 4, 5 and 6 would be unnecessarily intrusive when there is an acceptable and effective alternative available.

Q3: Do you agree with the proposed change to Condition 6 in the Multiplex B Licence?

Five is happy with this wording.

Q4: Do you agree that Multiplexes C and D should be granted a similar amendment to their Licences as Multiplex B?

Yes. It is important for the efficient operation of the Freeview platform that common data is carried by all multiplexes, so the Multiplex C and D Licences should be amended in a similar way to Multiplex B's.

Q5: Do you agree that the BBC's proposed approach for implementing content management would safeguard citizens and consumers legitimate use of HD content, and if not, what additional guarantees would be appropriate?

Five believes the BBC's proposed content management regime is proportionate and appropriate. For most content where there are rights considerations (the multiple copy state), viewers will still be able to make single HD copies, to view on a number of devices and to make unlimited Standard Definition (SD) copies. In broad terms, the only activities consumers will not be able to perform are to upload the content to the Internet in HD form and to make multiple HD copies. We believe this approach strikes a fair balance between protecting the interest of rights owners and of viewers.

Although Five HD will not be on Freeview in the near future, if we were invited we would be happy to participate in the proposed discussions on developing a consumer facing website and on devising and implementing a good practice framework.

Q6: Do you agree that the BBC's proposed choice of content management technologies will have only a negligible impact on the cost of HD DTT receivers and their interoperability with other HD consumer equipment?

Yes

Q7: Do stakeholders agree that the BBC's proposed Huffman Code licensing arrangements would have a negligible effect on the market for HD DTT receivers?

Yes. As the Huffman look-up tables would be made available on an equitable basis to all legitimate manufacturers of DTT receivers, there would be no real effect on the receiver market.

Q8: Do the BBC's proposed content management states and their permitted use for different categories of HD content meet the requirements of other HD broadcasters on DTT?

Five believes the three content management states have been well-thought-through by the BBC and we would be happy to adopt them when Five HD launches on Freeview. The BBC system makes a clear distinction between HD content which needs to be fully protected because it is still being made available on a premium basis; non-premium HD content in which rights holders have a legitimate interest in restricting further dissemination; and HD content which can be made freely available, subject to standard copyright considerations. We believe most of our acquired content and some of our commissioned content would be placed in the managed copy category, but we would clearly need to make judgements on a programme by programme basis. We accept that only the minimum necessary level of content management should be applied in each instance.

Q9: Are there any issues that you consider Ofcom should take into account in assessing the BBC's proposal, that have not been addressed by this consultation?

No. Five believes Ofcom has made a fair and balanced analysis, and the BBC proposal satisfies the considerations it has identified.

Channel 5 Broadcasting Ltd

April 2010