

## ITV plc response to Ofcom consultation on content management on the HD Freeview platform<sup>1</sup>

*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. In ITV's view it is critical that Ofcom grants consent to the BBC's proposal for the implementation of copy management on the HD DTT platform as quickly as possible and that such consent would be in the broad interests of citizens and consumers. The background to ITV's thinking in this area is as follows.

The rapid roll out of DTT in the UK has ushered in an era of unrivalled choice for consumers and citizens, bringing digital television within the reach of practically everyone in the UK for under £20. As well as broadening choice, DTT has also provided a serious spur to innovation on pay-TV platforms, particularly that operated by Sky. However, as DSO nears and as technological innovation in the delivery of television content develops increasingly quickly, DTT has to innovate in order both to stay relevant for consumers and to continue to provide a competitive spur to competing television platforms.

In the next few years there are two key areas where DTT will look to innovate – the provision of HD content free to air to the whole UK and (via project Canvas) the provision of a true on demand experience. These two innovations are critically important to ensure that the platform remains competitive and that the broadest number of people can take advantage of the delivery of the widest range of content for free wherever they live in the UK. In addition, the continued health of the DTT platform is also very important for the continued health of the commercial PSB operators who derive a disproportionate amount of their revenue from the platform, and who are the key commercial investors in the UK-originated content that is valued by viewers.

There is now overwhelming evidence (some of which is cited by Ofcom in its consultation document) that the majority of consumers expect the main UK television platforms, including DTT, to offer HD content. The critical significance of HD for DTT is reflected in the increasingly steep take up of HD on Sky in the past year (to over 2m subscribers). In this context, it is instructive that Sky is now offering Sky HD boxes to consumers for free (presumably in anticipation of a credible subscription-free HD DTT service appearing this year) something that would not have happened without the prospect of a credible HD service on DTT.

It is also noteworthy that Virgin has just begun to offer its new high definition box – V HD – for a one off charge of £49 plus installation and no subscription fee to new and existing customers on the M+TV tier or above. It is clear that the prospect of the arrival of the Freeview HD offer is having an effect on the HD offers of the main pay-TV platforms in the interests of consumers. As Morgan Stanley noted in a recent note on Virgin and HD:

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<sup>1</sup> Ofcom, *Content management on the HD Freeview platform*, Consultation published 22 January 2010.

*“BSkyB’s ability to sustain a separate HD charge has thus become very important in a group context. The market is thus sensitive to any perceived threat to the sustainability of this charge. With Virgin now offering its (albeit limited) group of HD channels for free and with new HD ready services like Canvas on the way (with a growing number of “free” HD channels from the likes of the BBC, C4 and ITV) there will be further doubts over how easy Sky will find it to grow its base HD paying customers. The company’s attitude is clear. It has no intention of dropping the HD charge and is looking to stimulate growth further through dropping the upfront charge for the HD box from £49 to zero.”<sup>2</sup>*

Freesat is also establishing itself as a credible HD platform – with 80% of Freesat’s sales to date being for HD boxes.

In terms of demand for consumer equipment, the seemingly inexorable rise in television screen sizes also increases the need for HD on all platforms, including DTT. Over recent years, the average size of the main television set has risen each year, with Sharp predicting an average screen size of 60 inches by 2015. At present, with 42 and 50 inch screens becoming the standard for main television sets, the resolution of SD is insufficient at average viewing distances – meaning that, unless DTT has a compelling HD offer, the platform is likely to suffer as screen sizes become larger and larger.

At the same time, according to research by Gfk, SD televisions have become practically obsolete in the last year. SD sets represented 7.3% of the flat TV market in January 2009, falling to a mere 0.6% by the start of 2010. This has been driven by the fall in relative prices which have converged markedly in the last year. With set replacement cycles contracting, this is driving the penetration of HD sets in homes – Screen Digest estimates that in 2009 67% of households had an HD-ready TV, with that forecast to rise to 85% in 2010 and up to 96% in 2014.

With these considerations in mind, ITV plc has been a pioneer in seeking to bring HD to DTT as quickly as possible and we are already providing an HD service on the platform – having signed an agreement with the BBC that unlocked the whole scheme last year. However, it is important to be realistic about the challenge that HD faces on DTT:

- HD will launch on DTT well behind other platforms, particularly Sky’s satellite platform, which already have a large installed HD base.
- There will be capacity limitations on DTT which will make it hard to provide a significant number of HD services for a considerable period given the existing installed base of SD receivers (in contrast to the rapid growth in services available on other platforms), making it more challenging to persuade consumers to buy into HD on the platform.
- HD on Freeview will only be available in 50% of the UK at launch and will only then roll out nationwide with DSO. Again, therefore, the Freeview offer will have to work hard against nationwide propositions from Sky which are available immediately.

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<sup>2</sup> Morgan Stanley Morning Briefing, 17 March 2010

- HD on DTT is very expensive for broadcasters and will require a substantial sunk investment over a number of years before the investment will begin to justify itself (and even then the investment is largely a defensive one).

Against this backdrop it is vital to understand that Freeview HD is not bound to succeed – but it is undoubtedly in the interests of consumers, PSBs and the future health and competitive strength of the television ecology in the UK that it should. In this context, it is very clear to ITV that DTT must not be put in a position where it cannot broadcast a material amount of key HD content because rights holders are not persuaded that there are robust systems for copy protection on the platform – and as a result these rights holders do not provide consent to broadcast their content in HD on DTT.

[X]

Given all of the other disadvantages that face HD on DTT it would be nothing short of disastrous for us to have to blank out a key source of native HD content (either at launch or in the future) or to have to provide that content in up converted SD on DTT when it was available (as it will be) in native HD on the competing satellite and cable platforms. The potential damage of such an outcome to the reputation of the DTT platform and the risk to the investment that the commercial PSBs are making in HD on DTT would be very significant and would seriously risk the creation of a downward spiral of low demand, low box production, higher prices etc rather than the opposite virtuous circle that all the PSBs are trying to create through the offer of attractive services backed by a very significant marketing initiative that will begin at Easter.

It is important to be clear here that ITV is not suggesting that there is a special allowance for copy protection on DTT, just for an equivalence with competing television platforms which already enjoy other advantages over DTT in relation to HD. This equivalence would allow us to overcome the legitimate requirement of rights holders for a degree of copy protection as they would expect (and indeed already receive) on all other HD platforms in the UK.

Not only would a credible system of HD copy protection on DTT ensure that the platform was able to offer the HD content to enable it to compete with the other key UK television platforms, it would also ensure that the PSBs themselves do not find that their own efforts at exploiting their content online are undermined. It is very clear that at least part of the future revenue streams for all of the PSBs will come from on-demand exploitation of the original UK content they produce. Given the acute pressure on advertising revenues such new sources of income are likely to be vital to the ability of the commercial PSBs to continue to invest in original UK content in future. In this context, an unfettered right for consumers to produce multiple blu-ray copies or to make multiple digital copies and/or offer content online will seriously risk undermining the economics which supports the production of the content in the first place – such an outcome would be to the overall long term detriment of citizens and consumers.

*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 – we believe that the BBC's proposed solution is both effective and proportionate. In this context we share the BBC's concerns:

- (a) as described in para 4.24 in the consultation document that without the copy protection solution that there is a risk that HD rights are not offered for use on DTT (or are offered on materially worse terms or at far greater risk for the broadcaster than for other platforms) particularly once the market for HD compatible boxes develops.
- (b) as described in para 4.17 of the consultation document that there is a risk of the roll out of receivers without copy protection assuming its own momentum in the event that there is no effective mandation of copy protection from the outset, with serious consequences in terms of the availability of HD content on the platform. We agree with the suggestion in para 4.28 that there is a very serious risk that the aggregate impact of short term purchasing decisions by consumers could have a seriously negative impact on long term consumer choice in terms of the availability of HD content on DTT and therefore on the attractiveness of DTT and potentially also on levels of investment in original UK content.

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

Yes – though we believe that the BBC ought to be obliged to consult the providers of HD services on DTT prior to seeking Ofcom's approval in writing.

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

Yes.

*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?*

Yes – we believe that the BBC's proposals are appropriate and safeguard citizens' and consumers' legitimate use of HD content. We believe that it is critical that broadcasters have the ability to apply the level of content management needed to secure HD content from rights holders.

However, we also recognise the understandable concern that the broadcasters should only apply the minimum level of content management needed to secure content from rights holders. However, because of the vital importance of the DTT platform for the commercial PSBs and because it is the most lucrative platform for each of us, we all have an incentive to make sure it is attractive as possible. Accordingly, each broadcaster has an incentive to minimise the extent of copy

protection as much as possible so as to offer at least one point of differentiation from other competing platforms where copy protection is usually very strict. Similar considerations apply for the BBC albeit against the backdrop of public service rather than commercial metrics.

In addition, in this context we believe that the BBC proposes to go a considerable way further than the operators of any other competing platform in seeking to protect and explain the approach to copy management on DTT. In this context, ITV is happy to participate in the actions set out in paras 5.9.1 and 5.9.3 in the consultation document. In relation to the obligation in paragraph 5.9.2 to establish an appeals process, whilst ITV is happy to respond to legitimate feedback from its viewers, we are concerned about the potential administrative burden that such an obligation might create. We do not have the resources to run formal appeals processes in relation to a service that will, in any event, make cash losses for a significant period. We therefore believe that it is disproportionate and discriminates against DTT as a platform to oblige each HD broadcaster on the platform to adopt such a formal process and that this would put the platform at a disadvantage to other platforms (and the HD channels carried on those platforms) which do not offer such an appeal process, particularly given that there is already a route for complaints on such matters which would apply in all other circumstances. If Ofcom considers that a formal appeals process is necessary, it may be more proportionate to place the obligation on the BBC as the operator of Multiplex B, rather than on each of the HD broadcasters on the platform – however, it is vital to ensure that any such obligation does not create disadvantages for the DTT platform.

Moreover, we note that the BBC's content management proposals would not unduly constrain viewers' ability to record and copy HD content. Even the highest level of copy protection (Managed Copy (copy one generation)) would allow a viewer to make one HD blu-ray copy and a copy once onto other devices connected to a home network. We expect that, for the majority of viewers this would be a perfectly acceptable level of flexibility in terms of copying material, and therefore the proposals will enable an almost seamless experience for viewers. Moreover, where rights agreements permit, some content could be broadcast under "Free access with Encryption" – which would allow multiple copies to be made from the PVR, but which would prevent further copies being made of those copies – thereby allowing even greater flexibility for the viewer. In addition, ITV does not intend to apply the highest level of copy protection in all cases – rather, we will apply the minimum levels of protection that are appropriate to the content in question, and in line with the agreements reached with rightsholders.

Overall, therefore, the proposed level of access to copy material should be acceptable for viewers and therefore should enable new HD and home networking equipment to come into the market place to the benefit of viewers. In contrast, viewer detriment would arise in a situation in which some form of copy protection is not guaranteed – as, in these circumstances, a proliferation of blanked-out HD material would have an adverse effect on the release of new equipment into the market place, as well as on the DTT platform as a whole.

*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 – we agree that the BBC's proposed approach is both proportionate to tackle the potential threats to the interests of citizens and consumers that we have set out above and that it will be non-discriminatory, thereby having a negligible effect on the market for receivers.

*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?*

Yes – though it is important (as noted in para 5.15 of the consultation document) that we have the flexibility to apply the minimum necessary level of content management required to secure HD content from rights holders. In this context clearly the level of content management will depend on the particular circumstances and content involved for each broadcaster contract by contract. As we outlined in response to question 1 above, we have a clear incentive (as do the other major broadcasters) to ensure that the DTT platform is as attractive and differentiated as possible from competing platforms and accordingly we would look to ensure that we are no more restrictive than we absolutely need to be in applying copy protection.

*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.