

Title:

Mr

Forename:

Nick

Surname:

Underhill

Representing:

Organisation

Organisation (if applicable):

Pact

Email:

What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

You may publish my response on receipt

Additional comments:

Question 1: 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? :

The latest report on the impact of IP theft across the European Union indicates that the illegal re-use of content rights ? whether deliberate or not ? cost the UK alone £1.2 billion in

revenues in 2008. This meant the direct or indirect loss of 39,000 jobs. Specifically in terms of digital piracy, film lost £219m and television £67m. In both cases, this was predominantly due to losses in DVD sell through, although losses to Video-on-Demand (VoD) and Pay per View revenues were also pronounced in film (1).

DVD and VoD sales are sources of revenue for Pact members, who retain certain rights in these windows under the Terms of Trade agreed between Pact and the PSB broadcasters (BBC, ITV1, Channel 4 and five). In 2008, DVD and video sales accounted for 12% of all income from secondary/ancillary rights exploitation (2). The independent production sector partly uses the resulting revenues to invest in the creation of UK content ? the sector invested up to £190m in UK television programme development and production in 2008, predominantly on the back of leveraging against projected income from rights exploitation(3).

The presence of effective content management systems is therefore a factor for rights holders in any decision as to whether their content should be made available via a certain service or platform, although it is by no means the only factor. Without copy management, the DTT platform could be at a competitive disadvantage compared to rival platforms that would be able to compete for rights and offer effective content management.

We also suggest that in addition to the current statutory duties noted by Ofcom in its consultation paper, the role of rights exploitation in generating funding for UK content is relevant to the proposed requirement on Ofcom in the Digital Economy Bill to have regard to promoting investment in public service media content (4).

(1) Building A Digital Economy: The Importance of Saving Jobs in the EU?s Creative Industries, TERA Consultants for the International Chamber of Commerce, March 2010

(2) Pact Census 2009

(3) Ibid.

(4) Digital Economy Bill, Section 1 (2) (b)

Question 2: 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. The BBC?s proposal will provide an additional layer of security for rights holders. Otherwise, while manufacturers that do not seek to carry the Freeview HD trademark (and therefore avoid content management) may be relatively niche, we agree that the facility to re-use content illegally may increase their market share.

Question 3: Do you agree with the proposed change to Condition 6 in the Multiplex B Licence? :

Yes, based on best available data. Under the BBC proposals, Ofcom?s estimated increase in costs for content management is marginal - less than £1 ? and no more than any other proposal, other than the one requiring no content management. At the same time, the BBC?s proposal is the only one that provides content management for a wider range of content while being fully compatible with the commercial launch of DTT services.

Question 4: Do you agree that Multiplexes C and D should be granted a similar amendment to their Licences as Multiplex B?. :

Yes, based on Ofcom's assertion that the cost to other multiplex operators would be negligible.

Question 5: 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. The most important considerations are in our view that BBC content would remain free at point of use and that additional costs incurred are understood to be negligible.

Question 6: 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, based on best available data.

Question 7: Do stakeholders agree that the BBC's proposed Huffman Code licensing arrangements would have a negligible effect on the market for HD DTT receivers? :

Based on Ofcom's analysis of the costs incurred from introducing the Huffman Code arrangements, yes.

Question 8: 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? . :

Again, based on Ofcom's evidence, yes.

Question 9: 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?:

We refer Ofcom to our answer to question 1, which notes the impact of IP theft and Ofcom's forthcoming duty to promote investment in content under the Digital Economy Bill.