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BBC Trust Unit, Room 211
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11 September 2009

Complaint about DTT High Definition Licence

Dear Sir/Madam,

We wish to register a complaint about the BBC/Ofcom consultation of Sept 3rd 2009, "Enquiry to Ofcom from BBC Free to View Ltd concerning its DTT High Definition Licence."

Through this Enquiry, the BBC is seeking to introduce encryption to its license-fee-supported free to air programming, in violation of the longstanding public service requirement for the BBC to broadcast its programmes in the clear. Though the BBC describes this as a "High Definition License" on a seemingly obscure side-channel to the programming, the fact is that this is a form of whole-programme encryption through the back door. This will have a deleterious effect on the public interest, as it will raise costs, distort competition, exclude free/open-source technology, and generate a mountain of e-waste in the form of obsolete equipment that would otherwise still be useful for years to come.

Moreover, the conduct of the BBC in arriving at this Enquiry is reprehensible and displays a lack of respect for the public interest and Britain's technical community. First, there is the fact that the free software community has yet again been excluded from a BBC consultation. Apparently the many people building innovative systems and using free software are not "stakeholders" in the eye of the BBC but inconveniences. Similarly improper activity was acted upon by the BBC trust with the BBC iPlayer service, which like this one sought to improperly exclude market players and control who may provide systems to access BBC content. The new Ofcom letter was originally sent to "stakeholders", yet no free software group we know of has received a copy on paper or by email.

Given the failure to consult such stakeholders and the remarkably short consultation duration (under two weeks) the entire process is out of order and improper. The general public are stakeholders because the BBC Trust regulatory framework requires that the BBC considers "consumer welfare" which this proposal will clearly harm by reducing innovation and excluding some of the most innovative computer based players in the market. The BBC in failing to consult properly has failed its duties and the Ofcom letter cannot be considered a proper consultation vehicle. The BBC letter states they have been working on this matter since



"March 2009" but they have neglected to make the matter public until now. If the urgency of the matter portrayed in the letter were real the BBC would have applied much earlier.

We are concerned that the consultation appears to be a response to pressure on the BBC by certain content providers and manufacturers -- the same group that the BBC fended off when they dropped cryptography from their satellite feed. The BBC is barred from engaging in most market distorting activities yet appears to be acting as a proxy for third parties in requesting market distortion and exclusion occurs. The BBC letter clearly states that

"The DTLA required that the BBC and other broadcasters to take steps"

The letter is also very misleading. It talks about compression, but the fundamental purpose of providing compression tables to limited parties appears to be encryption. The information necessary to implement the encryption schemes, and the licences for it are not available to all developers and for the encryption which the BBC sees as required are not granted to free software implementations. The BBC action itself bars developers unnecessarily from accessing BBC HD services and distorts the market - at the specific behest of the DTLA. This seems highly improper activity by the BBC. As the BBC itself states

"an encryption or 'scrambling' approach to Freeview HD content management would compromise fundamental PSB free-to-air principles"

We agree entirely with that assessment. However it is clear that the so-called "compression" algorithm and tables, linked to a restrictive licensing agreement is exactly that - an encryption scheme. It is a matter for the DTLA and commercial broadcasters to create a market for encrypted content and suitable players using their own money, not for the BBC to be used as a license-funded proxy for unnecessary distortion of markets and to limit innovative and open free to air use of the BBC HD multiplex as a pawn in this game.

Such action would also permit the BBC to dictate who may provide equipment which accesses the channels it broadcasts - a further clear violation of the free to air principle and an improper interference with the market by the BBC. The fact the letter is phrased in this manner raises serious questions about the intent of the BBC to consult on this issue in a proper fashion. No competitive impact statement accompanies the letter as published by Ofcom. Furthermore nothing in the letter prevents the BBC from later changing the rules by which it licenses the tables.

The BBC is required by the BBC trust to consider "public value". No public value test accompanies the Ofcom letter. It is difficult to see how the public value of removing many innovative uses of free to air services, and making many software based free to air receivers - particularly personal computer based ones - effectively obsolescent for receiving new content outweighs the BBC example of only being able to broadcast the world cup in SD not HD. Does the exclusion of vast numbers of innovative users and developers, or the violation of the key free-to-air principle really not outweigh providing a slightly sharper picture to a few live sports events ?

The BBC proposal further threatens disabled access to services. No commercial "off the shelf" decoder box can be tailored to end user disabilities. They do not support facilities such as



showing subtitles a word at a time for dyslexics, flash/strobe removal for those at risk nor other innovative customised responses to disability - which is often a very individualised problem.

Finally, the proposal precludes the creation of a "Freeview"-style box that receives the HD signal, downsamples it to an SD picture, and provides it to existing SD boxes, because the DTLA license agreement prohibits making an in-the-clear digital output available. This means that households that have invested substantial capital in retrofitting their analogue and digital sets with Freeview receivers as part of the DTV transition will find themselves having to bin all their equipment and replace it with new systems that comply with the DTLA license requirements. This creates three substantial problems:

1. It is a violation of the implicit promise the BBC made to the public during the DTV transition, that an investment in Freeview receivers were future-proofed -- this is especially grave if the public is to be asked to participate in an HD transition on the heels of this betrayal;
2. It will generate a mountain of ewaste, by rendering otherwise useful and functional equipment useless because it fails to adhere to the license requirements of a copy-restriction cartel made up of foreign media- and technology-firms. This means that households will not only have to buy new equipment to get HD signals on the primary receiver, they'll also have to discard all secondary receivers (such as those in bedrooms or garages);
3. It will set up a trade barrier between the UK and the rest of the EU, because portable HD sets and HD cards for laptops purchased abroad will not work in the UK market.

In making the request the BBC has failed as follows

- Market distorting effects by excluding free software and using the BBC to grant to arbitrarily control over who may produce boxes that decode public HD services to a foreign cartel of rightsholders and manufacturers
- Harming innovation in the free to air market
- No public value test - the removal of innovation versus sharper images on a few live programs which will be available on pay TV in that form anyway
- Staging the consultation using misleading terminology and implications

We thus request that the BBC trust enforces the duties of the BBC in this matter and

- Suspends or invalidates the "consultation"
- Requires the BBC consults openly with the public at large on this matter
- Publishes proper competitive impact and public value assessments before being permitted to scramble, encrypt or otherwise "compress" content to "protect" it.

After that has been done and if the BBC can show a technical value to the compression algorithm and tables used it should be required to licence them and all necessary information

to use them beyond that in unrestricted public ally obtainable publications to all parties. Or to publish them on it's web site so that they cannot be used as a tool for market distortion.

Yours faithfully

Jim Killock
Executive Director