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Ofcom
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Complaint about DTT High Definition Licence

Dear Sir,

We would like to raise an objection to the BBC/Ofcom consultation of Sept 3rd 2009, "Enquiry to Ofcom from BBC Free to View Ltd concerning its DTT High Definition Licence".

The fundamental purpose of providing "compression" tables to limited parties is clearly to enact a form of encryption through the back door- a point made clear by the World Cup HD example given in the consultation. The consultation is misleading in the terminology used. Such action would permit the BBC to dictate who may provide equipment which accesses the channels it broadcasts - a clear violation of the free to air principle and an improper interference with the market by the BBC. No competitive impact statement accompanies the letter as published by Ofcom.

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?

As the BBC itself in the consultation accepts, encryption of 'free view' services would be controversial and problematic. "an encryption or 'scrambling' approach to Freeview HD content management would compromise fundamental PSB free-to-air principles"

It is our opinion that the so called "compression" is itself encryption by the back door and should be considered as an application to encrypt the BBC HD multiplex system stream, rendering the multiplex effectively unplayable by non BBC sanctioned players. Such action



requires a full public consultation not a two week smoke-filled-room consultation with some hand-picked stakeholders. We find it telling that many stakeholders, such as providers of open source software media players have not been consulted or received copies of the document by paper or email. The current licensing terms for the "D Book" encryption schemes for HD exclude many players from the market. In the case of commercial encrypted content this is a private matter for business. In the case of the BBC, deliberately excluding and unnecessarily excluding the BBC HD channel from open source software is not in the public interest and as the BBC rightly observes compromises fundamental PSB free-to-air principles. We further note that nothing in the letter states that the BBC will not further amend or change the restrictions on access to the tables (and thus the BBC HD multiplex) in future. The BBC is thus seeking absolute power to control who may access its HD services.

The BBC proposal also 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 which depends upon open standards and free customisable software solutions.

In order to protect both the "libre" and "from fee" senses of the "free" in free to air, Ofcom should either perform a full public consultation, demanding a proper "public value" assessment, or require that any "compression" algorithm, tables and sufficient information to implement it is made publicly available without restriction or fee to all. Requiring the BBC place the full specifications on their web site could do this. Such action would help prevent the misuse of compression algorithms and tables as a backdoor encryption scheme, and preserve the public value in the free to air system.

It is also our view that the BBC request represents a breach of its charter as a market distorting activity, and we will be raising these matters with the BBC trust.

Yours faithfully

Jim Killock
Executive Director