

## **BBC Worldwide Response to the Ofcom Consultation on Content Management on the Freeview HD Platform**

BBC Worldwide Limited (BBCW) is the BBC's main commercial subsidiary, responsible for delivering value to the licence-fee payers, who fund the BBC, in the form of programme investment, cash dividends and long-term asset growth. We do this by creating, acquiring, developing and exploiting media content and media brands around the world, focusing particularly on creating value from BBC content by exploiting all routes to our markets and consumers. In 2009 BBCW was awarded the Queen's Award for Enterprise, recognising the company's substantial growth in overseas earnings over the previous three years.

Over the last three years BBCW has provided the BBC with dividends of over £200 million and direct programme investment of over £260 million, while also developing its own capacity to deliver sustainable returns to the BBC in the future. It creates value equivalent to nearly £9 for each licence fee.<sup>1</sup> The upfront investment in BBC programming as a result of the sale of programme rights enables BBC programmes to be made which would otherwise not have been. Landmark examples include *Planet Earth*, *Cranford*, and *Doctor Who*. BBCW also makes significant returns to the wider UK creative economy, with more than £1bn invested in the UK's creative sector over the past five years.<sup>2</sup>

2 entertain was created in September 2004 as a joint venture between BBCW and Woolworths, but BBCW has now acquired the 40% stake held by the administrators of Woolworths. 2 entertain is a home entertainment business focussing on the publishing and distribution of audio visual (television, film and specially commissioned) and music content in the UK and all over the world. The largest operating division in the group is 2 entertain Video (including the BBC DVD label). Turnover for the group for the 12 months to end January 2010 was £209M and the group has consistently delivered in excess of £40M annual profit since its inception. In 2008, 2 entertain won the Queen's Award for Enterprise in the International Trade category, because of its success in exporting British produced content on DVD.

### **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?**

We refer to the BBC's submissions to Ofcom, and in particular regarding the importance of the secondary usage markets (ie including sales of Blu-ray disks and the right to sell in other markets, including different windows, and territories) to continued investment in HD programme production, and regarding the rights-holder concerns in relation to the prospect of unrestricted copying with no copy protection.

2 entertain has been an early adopter and champion of the Blu-ray format and high definition TV production for the last three and a half years. They have invested substantial sums into BBC HD projects, and that investment is a significant factor in ensuring that the programmes are made in HD. Examples of this investment are:

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<sup>1</sup> 2007/2008 figures

<sup>2</sup> BBCW Annual review 2008/2009

1. Planet Earth, which is the seventh best-selling Blu-ray title of all time, beating many motion pictures and series from the major US broadcasters<sup>3</sup>. The investment made by 2 entertain was in six figures, and was contingent on having an HD release.
2. Sales of the new landmark Natural History series Life on Blu-ray are approximately 30% of the overall DVD sales, and 2 entertain are seeing a steady increase in the Blu-ray sales on Natural History titles.
3. Doctor Who - Series 5 of the new Doctor Who is being produced in HD, the first time a complete series has been produced in HD and following on from the initial success of Specials in HD. 2 entertain's investment into series 5, by which it acquires the standard and HD DVD rights, is approximately 7% of the total production budget, without which the BBC would have had difficulty finding the budget to make this series in HD.
4. Gavin & Stacey - This is a programme produced for the BBC by independent production company Baby Cow, into which BBCW and 2e also invest. In SD, Gavin & Stacey has been one of 2 entertain's strongest-selling DVD titles. 2 entertain will also release all three series on Blu-ray, demonstrating 2 entertain's commitment to making independent produced programming available to fans in the Blu-ray format.
5. Top Gear – 2 entertain have recently made a specific additional investment into this programme to secure HD materials for the first time.

As the price points and volumes on SD DVD begin to tail off, Blu-ray will play a major part in sustaining 2 entertain's margins, profit stream and investment into the BBC over the next 5 years. Without this revenue, the BBC will find it more difficult to produce programmes in HD. Copy protection of HD content to safeguard the Blu-ray market is therefore vital to this investment.

Similarly, as standard DVD starts to tail off it is expected that delivery via DTO and streaming, including of HD content, is likely to increase. This is a developing area of exploitation, likely to be severely affected by any ability to copy freely from the broadcast.

It has been argued that there is no copy protection for SD transmissions, and that despite this a secondary market exists for SD DVDs and programme sales to other markets. In this regard, we refer to the IPSOS research of 2007, which found that estimated losses to the TV and film industry in the UK (excluding losses of advertising revenue) due to piracy were:

Lost Retail (DVD sales): £258 million  
 Lost Rental (DVD Rental): £58 million  
 Lost Download: £53 million  
 Lost Streaming: £22 million

Whilst the market still exists, therefore, there are significant losses due to widespread unauthorised copying of audiovisual content. This is likely to be an even greater risk for HD, where the higher quality makes this content particularly attractive but the production investment requires a higher retail price point. The commercial impact of unauthorised copying on the UK creative industries cannot be ignored, particularly at a time when the Digital Britain Report stressed the value of these same industries to "UK PLC", the importance of protecting them, and the need for consumer education on understanding copyright.

Further, the absence of copy protection and the ease with which material can be copied is a major factor in the public confusion over copyright. In the IPSOS research, 48% of those asked erroneously believed that once films and TV shows had been broadcast on TV they are free to copy. Allowing high value content to be copied freely, without any level of

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<sup>3</sup> Figures as at January 2010.

technical control, sends the message that it is permissible to do so when this is not what the law currently permits.

The “Managed Copy” level of protection has some similarity to the “managed copy” provisions under the AACS scheme for Blu-ray, which will become mandatory in 2010. Under the scheme it is for the content owner to decide how many copies will be allowed and the format of those copies, the minimum copy number being one.

It is also important to note that other HD broadcast platforms, such as Sky and Virgin Media, do apply content management to HD content. The development of a standard approach within the market helps to educate consumers on the value of copyright.

**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?**

Based on the options available, as identified in the Consultation document, we agree that the proposed multiplex licence amendment is the most appropriate means for securing an effective content management system on HD DTT.

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

Yes.

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

Yes, based on the information in the Consultation document this would appear to be necessary.

**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?**

We agree with the BBC’s proposed approach.

**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?**

No comment.

**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?**

No comment.

**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?**

Under the BBC’s proposal broadcasters can allocate one of three content management states to individual HD programmes, ie Unrestricted Copy, Multiple Copy and Managed Copy. It is also proposed to adopt the DTLA rules which, in summary:

- Restrict the use of the most restrictive, Managed Copy, state to HD content that has only been previously available on a paid-for basis or which is having its first free-to – air showing in the UK and is available outside the UK on a paid-for basis; and
- Allows Multiple and Unrestricted Copy states to be applied to any HD content.

With regard to the application of the Managed Copy state, for the reasons set out at Q1 above it is important that this also be applied in such a way as to protect a significant investment made under co-funding arrangements for home-produced high value content, where that investment is expected to thereby generate increased income from secondary sales of Blu-ray disks, broadcasts on pay-TV services in the UK and elsewhere in the world and from developing DTO and streaming services. Protecting such revenue streams will help to ensure continued investment in HD content and the availability of this content to UK consumers on the Freeview platform. Limiting the Managed Copy state just to content which is already available outside the UK on a paid for basis will not adequately do this.

**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?**

See comments at Q8 above.

**BBC Worldwide Limited**

**1 April 2010**