

## **Channel 4's response to Ofcom's consultation on Content management on the HD Freeview platform**

### **Introduction**

Channel 4 welcomes the opportunity to respond to Ofcom's consultation on content management on the HD Freeview platform. Channel 4 was granted capacity on the BBC's HD multiplex by Ofcom in 2008. Channel 4 launched its core public service channel in HD on the Freeview platform on 30<sup>th</sup> March 2010. At that point we joined services already provided by the BBC and ITV.

Channel 4 is strongly in favour of the BBC's proposals to restrict the availability of EPG data for the purposes of ensuring that appropriate, limited content management technology is available in HD DTT receivers for HD services on the Freeview platform.

Under the BBC's proposal broadcasters will be able to allocate one of three content management states to HD programmes:

1. **Unrestricted copy:** the content is unencrypted and an unrestricted number of copies of the HD content can be made onto any digital device. There are no restrictions on internet distribution.
2. **Multiple copy:** the content is encrypted and unrestricted copies of the HD content can be made onto digital devices that are compatible with the copy management technologies used in the HD receiver. Internet distribution is not permitted.
3. **Managed copy:** the content is encrypted and only one copy of the HD content can be made onto an external consumer device. The copies are flagged 'copy no more'. Internet distribution is not permitted.

In all of the three content management states the BBC proposes that:

1. HDCP is applied to the HD display output on receivers;
2. No restrictions are placed on the amount of time and the number of times permitted copies of HD content can be viewed;
3. No restrictions are placed on recordings of HD programmes onto DVRs integrated with HD receivers;
4. No content management restrictions are placed on down converted SD versions of the HD content.

We believe that the introduction of proportionate content management is the only way that Channel 4 will be able to secure a wide range of content for use on our HD service for the benefit of free to view consumers in the UK. We believe that a failure to include the limited content management suggested would have a severe impact on the ability of broadcasters in general to secure content for transmission on Freeview HD. For example, it will not be possible to acquire in HD some high profile overseas series and film content without some form of content management. This is a particular issue for Channel 4 as, unlike the other broadcasters already reserved HD capacity on DTT (the BBC and ITV), Channel 4 is a publisher-broadcaster that commissions or acquires all of its programme content. Effective copy protection is

critical for us because our suppliers will expect us to ensure their copyright is safeguarded.

In a scenario where there is no content management it is highly likely that Channel 4 will need to blank out or up convert SD versions of certain content on Freeview HD, to the clear detriment of consumers. This content will still be provided in HD on competing platforms (and in SD on Freeview). The resulting need to run dual HD services with the masked content on Freeview and the native HD content available to the other platforms will also impose additional financial costs on Channel 4. This eventuality may also cause some disruption to the new Freeview HD service as we would need to retrospectively install technology for blanking content because it does not currently exist in our transmission chain.

We also note that the use of content management on other platforms has not adversely affected consumers. For example, the content management applied by Sky and Virgin has not restricted consumer choice: both Sky and Virgin have, and will continue to have, more extensive HD services than those envisaged currently for Freeview. Sky recently announced that it will cease deploying standard definition satellite receivers, replacing its standard Sky Digiboxes and Sky+ units with Sky+ HD receivers, and reported that more than 2 million households now receive Sky's high definition service. In our view, the content management proposed by the BBC for Freeview is more flexible for broadcasters and consumers than that already in place for HD services on the Sky platform and Virgin Media's service, and provides content management similar to that already in use on Freesat.

The BBC's content management proposals have been widely discussed with other broadcasters and rights holders and relate only to HD versions of content; there are no proposed restrictions on SD copies of that content. In that sense we think these proposals are proportionate and limited and that it is legitimate for rights holders to seek to protect the very high quality versions of their content which will, hopefully, be available on Freeview HD.

The remainder of our submission covers the specific questions posed by Ofcom in the consultation document.

***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, we agree that copy management will broaden the range of HD content that will be available on DTT and help secure its long term viability. Channel 4 is a shareholder in Freeview and a broadcaster on the Freeview platform. In both capacities we believe that the availability of a high quality, free to air, terrestrial platform is a significant benefit to citizens and consumers in the UK. In order to future proof Freeview and secure its long term health we believe the introduction of HD services is vital. Failure to launch and sustain HD services will leave Freeview looking technologically old fashioned and will hamper its ability to compete for consumers.

Central to the launch of those services is the application of copy management technology. While several of the competing platforms curtail the ability of consumers to transfer or record HD content, the proposals for Freeview are more nuanced and will allow some copying and the transfer of some HD content, to the benefit of consumers. The restrictions proposed are, in our view, proportionate and

consistent with the need to secure a range of content for the Freeview platform balanced alongside the desires of consumers for access to content. This particularly applies to film and acquired series which might not otherwise be available due to legitimate concerns around piracy of the copyright holders.

Channel 4 would be happy to disclose, confidentially, to Ofcom specific content which may be at risk in the future if adequate content management is not introduced and also those titles which are currently sensitive. These details are commercially confidential and so have not been included as part of our submission.

***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. Channel 4 believes that the proposed multiplex licence amendment is an appropriate means of allowing effective content management on HD DTT. Further this proposal has the backing of broadcasters, rights holders/distributors and manufacturers. It has been included in the DTG D book and first generation Freeview HD receivers incorporate the relevant technology.

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

Yes, Channel 4 is strongly supportive of the change to Condition 6 of the Multiplex B Licence.

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

Yes, because the cross carriage of EPG data is a licence requirement for the DTT multiplex operators. Therefore, if the BBC is permitted to carry compressed data on Multiplex B it is critical that Multiplexes C and D are also permitted to carry this compressed data and that their licences are amended in the same way as that for Multiplex B.

***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?***

Channel 4 agrees with the BBC's approach for implementing content management. Without this form of content management Channel 4 is sure that broadcasters will be unable to secure certain types of programming to broadcast in HD on Freeview. We agree that the minimum level of content management consistent with actually securing rights should be applied in order to safeguard citizens' and consumers' legitimate use of that content.

As previously stated, our programme providers will expect some form of content management on the platform before they will allow us access to native HD versions of material. This means that a significant proportion of the HD content which Channel 4 will broadcast is likely to be subject to "managed copy" signalling. The requirement to signal the "managed copy" state for this content arises directly from the wishes of rights holders and has already been agreed in many rights agreements which Channel 4 has negotiated to permit the use of native HD content on DTT. We

do not expect the position of rights holders to change in future and it is therefore highly likely that application of "managed copy" signalling will be a requirement in many future rights agreements. Channel 4, therefore expects to signal more content as "managed copy" to meet the expectations of our content providers than other broadcasters might.

We also caution that even if Ofcom accept the BBC's proposals this will still not guarantee consumers' access to **all** potential HD content on Freeview. Channel 4 believes the proposals may still not meet the specific requirements of some rights holders (again we are happy to discuss specific content concerns direct with Ofcom). As a result, there could still be some limitations on what content is available to consumers, compared to other platforms even if these proposals are accepted. In our view, it is important that Ofcom and the BBC are clear with consumers and consumer bodies about this risk. Nevertheless we support the current proposals as, in our view, they represent a good balance between the interests of consumers and copyright holders.

The BBC proposes to make a number of commitments aimed at safeguarding consumers, including an undertaking to respect usage protections under copyright law, a commitment to create a user friendly consumer guide and a good practice framework for content management. Broadly speaking, Channel 4 supports these commitments.

In addition the BBC proposes that each broadcaster should set up an appeals process that consumers could use to appeal a broadcaster's use of content management. Channel 4 is concerned that this proposed appeal system could see us caught in a position where content becomes more difficult for us to acquire. In our view there is a risk that some consumers appeal **any** use of content management, even though its use may have been permitted by Ofcom. Given that Channel 4 has a reputation for showing innovative acquired and overseas material we believe that it is inevitable that we will have to use content management more frequently than other PSBs on Freeview. For this reason we are not in favour of an HD specific appeals process as it would be onerous for us to operate and because the most restrictive content management state on Freeview will still allow at least one copy of material to be made and will not limit the number of SD copies a consumer could make.

***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, Channel 4 agrees that the BBC's proposed choice of content management technologies will only have a negligible impact on the cost of HD DTT receivers. As noted in the consultation, the chosen technologies are industry standard. In addition, the price points for the first generation of consumer HD equipment are now known. These receivers incorporate the BBC's proposed technologies and are still retailing for around £100 for a basic set top box.

***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, since the BBC is proposing to licence the Huffman Code look-up tables on a fair, reasonable and non-discriminatory basis and make them royalty free, then we cannot see why there should be any substantive effect on the market for receivers, and most manufacturers are in agreement about supporting this.

***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?***

Channel 4 is happy with the content management states included in the BBC proposal. The critical issue for Channel 4 is to ensure that rights holders and distributors are satisfied with the content management states and their permitted use for different categories of HD content as it is they who will impose conditions on the licensing of content to Channel 4. It is therefore important that the Digital Transmission Licensing Administrator (DTLA) agrees that these content management states and their permitted use for different categories of HD content are appropriate. We are working with the BBC, as the multiplex operator, to secure the agreement of the DTLA for a variation of the permitted use for different categories of HD content. As noted above because all of Channel 4's content is either acquired or commissioned we expect that a significant proportion of our content will be flagged in a "managed copy" state in HD reflecting the wishes of copyright holders.

***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?***

Channel 4 believes that it is important that Ofcom and the BBC communicate to consumers and consumer groups that without some form of content management there will be restrictions on the sort of content which will be available on Freeview HD. This is not a case of broadcasters seeking to artificially limit what consumers can do with content; rather there is a need to balance the legitimate expectations of both consumers and copyright owners. The proposed content management is no more onerous or difficult than that which already exists on competing HD delivery platforms in the UK. If these proposals are not accepted it is certain that some content will be restricted on the Freeview HD platform.

We also believe that it is imperative that Ofcom and the BBC seek to ensure that consumers and consumer groups understand that the proposed content management applies only to HD copies of material and not to SD versions—there is no question of imposing additional content management on existing SD services.

The availability of HD services on Freeview is, in our view, a significant benefit to UK citizens and consumers. That benefit is maximised by ensuring the widest possible range of content is available on Freeview HD, which in turn requires the range of content management proposed by the BBC in its submission to Ofcom.

**31<sup>st</sup> March 2010**