

Channel 4's response to Ofcom's Review of Sky's Access Control Services Regulation

Overview:

Channel 4 welcomes the opportunity to comment on Ofcom's review of Sky's Access Control Services Regulation. Channel 4 believes that it is appropriate to replace and update the current regulation rather than simply let it fall away.

As Ofcom notes, the original Continuation Notice imposed by Oftel requires Sky to deliver AC Services on fair and reasonable terms and without discrimination or showing undue preference. These are basic and enduring principles which should be maintained especially because, as Ofcom notes, there is little evidence to show that they result in a significant financial burden on Sky.

Conversely, access to these services on a Fair, Reasonable and Non Discriminatory basis is extremely valuable to PSBs as it enables us to deliver enhanced TV services to viewers and to do so on a level playing field.

While Channel 4 supports the principle of reducing unnecessary or burdensome regulation we do not consider the access related condition to fall under either of these headings. Indeed Sky's offer to self-impose similar voluntary constraints demonstrates the need for there to be a regulation in place to ensure FRND access. However we do not consider Sky's commitments to be sufficiently robust to act as an appropriate replacement.

Channel 4 also agrees with Ofcom's analysis of potential alternatives to the delivery of enhanced TV services. It is clear that while many of these options offer attractive routes to content for consumers, they are all inferior to the provision of the same service through the existing set top box which enables a unified and seamless experience to be delivered via their primary screen and at no extra cost to the consumer.

Answers to specific questions raised in the consultation:

Consultation Question 1: Do stakeholders agree with our assessment of demand for and potential alternatives to Sky's AC services?

Yes, Channel 4 agrees that there is clear demand for the delivery of Enhanced TV services and while there are certainly alternative means to deliver this type of content, access to Sky's AC services and the provision of this content directly to the screen, integrating seamlessly with the linear TV channel, remains the most effective and intuitive means of both delivering and accessing these services.

As discussed in our original response, while it is clear that the number of broadcasters who use these services has reduced, it is less clear that their popularity with users has. Access to these services, especially during major sporting events, is an invaluable complement to the main broadcast, providing users with easy and intuitive access to alternate feeds, camera angles or extra information about what they are watching.

Channel 4 believes that the primary reason for the reduction in the number of Broadcasters using the service is the complexity and cost imposed by Sky's bespoke technology and their

use of inefficient broadcast and narrowband technologies to deliver the service. Were this to evolve in line with current technological developments Channel 4 believes that the popularity of the service and development for it would be likely to increase.

Channel 4 agrees that while there are alternatives to providing these services, access to Sky's ACS, and thus delivery via the "Red Button" route, is by far the most effective means of providing the kinds of services and is a delivery mechanic that viewers expect and understand. At the heart of their popularity with viewers is their ease of use. The ability for the viewer to access contextually-relevant information and additional content, in an easy and intuitive way, is extremely valuable and while alternatives to the provision of these services exist none provide the same advantages as direct access through Sky's ACS.

Ofcom mention the use of a second screen (tablet or mobile phone) as one potential alternative to deliver these services. Channel 4 would note that use of a second screen as a supplement to a primary broadcast is an area full of opportunity. Indeed Channel 4 was the first broadcaster to release a second screen app, 4Now, which provides access to programme information, twitter feeds and other contextually relevant information. However a second screen experience is not optimal for all types of enhanced TV content, and its use in certain circumstances can have several major disadvantages, amongst which are removing the viewer from the main screen experience and having to provide the content on a smaller, secondary screen when the viewer may prefer to engage with it on their main screen. It also requires the viewer to purchase, or already own, compatible equipment which is likely to cost several hundred pounds and for the broadcaster to develop applications to work with all of these devices. By contrast all 10m Sky homes have access to Red Button services delivered by use of Sky's ACS with no further purchase, installation or cost.

When compared against a simple push of a red button on a device they already own, which allows them to interact with the content on the best available screen it is clear that the use of a secondary screen is not a suitable alternative for every circumstance. The use of a second screen simply does not offer the same seamless experience as access to the same services through the red button.

Similarly Smart TV applications fail to offer the same seamless experience offered by the Red Button, as users have to navigate away from the content they are watching to access the application and the additional content they are looking for. Sky offers a privileged direct route to the same screen within the same ecosystem as the linear service and is the sole gatekeeper to that route.

Consultation Question 2: What are stakeholders' views of Sky's proposed commitments?

Sky's proposed commitments are not sufficient to provide reassurance to broadcasters that there will continue to be guaranteed access to services which enhance the enjoyment of linear channels. The commitments are narrow in scope, are not FRND and importantly are non-binding.

Sky frame their commitments within the limited paradigm of the specific services they offer today, thereby ruling out access to improved services which may have a greater appeal to broadcasters. These may include the ability to use the Ethernet port to provide services over

IP instead of Satellite and using open standards such as HTML5 to develop these services. If Sky were to offer these kinds of improvements Channel 4 believes it is likely that there would be a resurgence in interest amongst broadcasters to develop for the platform. However Sky's proposed commitments would not cover these new improved services.

We also do not consider that a commitment published on Sky's corporate website is a sufficiently robust backstop to ensure that they are held to their commitments.

Consultation question 3: Does the provision of enhanced TV services via Sky's AC services result in benefits for end-users and competition, efficiency, innovation and investment benefits?

Yes. The provision of enhanced TV services via Sky's AC services results in a multitude of benefits. It ensures end users have access to additional information and extra content via an easy to use, streamlined experience. It ensures that there is a level playing field, enabling Sky's competition to offer an equivalent experience and on an FRND basis. It allows Broadcasters, particularly those with public service remits and obligations, to deliver services to their fullest potential (the ability to offer simultaneous access to a wide range of Paralympic events is a good example of this). And it also enables broadcasters to invest in and develop innovative ways to offer content and services, for instance through short form material or additional linear content.

Lastly, and as discussed above, while developing for a highly bespoke platform such as Sky's is not ideal, it can be more efficient than having to develop the same service for a multitude of platforms and devices, as would be the case if we were to have to deliver the same services via a combination of a second screen or smart TV experience to reach the same volume of homes as Sky's platform.

Consultation question 4: What is your view of the case for replacement access-related conditions?

Channel 4 believes the case for replacement access-related conditions is strong. The core principles of the existing regulation, including providing services on fair and reasonable terms and not unduly discriminating or showing undue preference, are important and should remain. This is especially the case where Ofcom have found limited evidence that having to provide access to AC services has a financial or technological impact on Sky.

In the same way that access to the EPG is regulated, in order to ensure that all channel operators are given the same opportunity to reach viewers on Sky's platform, we see no reason why a distinction should be made for those related services that allow broadcasters to put their "best foot forward" and offer connected and ancillary services which complement the core linear broadcast.

Absent any conditions, we believe it is feasible that Sky would seek to ensure differentiation between its own services (and those third-party services which it offers on a pay basis as a retailer) and those not connected to Sky, for instance by making enhanced TV a subscriber benefit.

While we acknowledge that Sky may be keen to ensure some major services are offered – e.g. the BBC’s Wimbledon multiscreen service – we don’t think it is desirable for Sky to have the ability to make decisions as to which services it wants and which it does not. This is particularly the case when broadcasters may be seeking to achieve public service objectives through the provision of this additional content.

Channel 4 also agrees that it is important that Ofcom keep under continued review the case for conditions relating to other enhanced services such as the direct delivery of other “OTT” services to the STB, including VOD services and standalone video applications. While the immediate priority is to secure continued and future access to direct programme/channel-related content services, it is important that the same FRND principles are applied to future services where appropriate.

Consultation question 5: Do you consider that the proposed conditions would secure effective access to Sky’s AC services to allow the provision of enhanced TV services? Please give your reasons.

We support Ofcom’s proposed conditions as a means of ensuring that the provision of enhanced TV services via the Sky platform can continue on a non-discriminatory basis, irrespective of the technology that Sky introduces to enable such services to develop. These conditions will ensure that all broadcasters can take advantage of sensible industry-wide developments (e.g. HTML5 services and IP-delivered video) and will undoubtedly foster the growth of such services, to the benefit of all end-users on the Sky platform.

Ofcom may also wish to consider the extent to which it is helpful to clarify that ‘ancillary services’ should include the provision of video content not delivered by satellite (e.g. to allow for the provision via IP delivery of short clips or other, programme-related video content).

We would also suggest that Ofcom considers ensuring that charges for the Access Control Services should be on a cost-recovery basis only.

Consultation question 6: In light of Sky’s proposed commitments, do you consider that it is necessary to impose access-related conditions on Sky to secure the continued provision of enhanced TV services? Please give your reasons.

As described above; we do not believe that Sky’s commitments provide the same level of surety as Ofcom’s proposed conditions due to i) the more limited scope thereof and ii) the lack of any regulatory back-stop to ensure their effective implementation.

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