



S4C Response to Ofcom's Review of Sky's Access Control Services Regulation

Introduction

S4C welcomes the opportunity to respond to Ofcom's Review of Sky's Access Control Services Regulation, published on 23 July 2014. S4C is the only Welsh language television channel in the world and alongside the BBC, ITV, Channel 4 and Five, it is one of the five public service broadcasters in the UK with a duty to fulfil programme and service requirements, set out, in the case of S4C, in statute and where relevant, by agreement with Ofcom. The S4C Authority has a duty to ensure that the S4C service provides a broad range of high-quality and diverse programming, providing information, education and entertainment, available wholly or mainly by members of the public in Wales.

As a public service broadcaster serving the whole of Wales, S4C's service aims to fully reflect the life of the nation and its communities. Viewers expect S4C to provide a comprehensive public service, offering the full range of programme genres, including news and current affairs, documentaries, drama, entertainment, sport, education and children's programmes.

Ofcom is referred to S4C's response to Ofcom's Review of Sky's Access Control Services Regulation issued in 2013 for more details of S4C's usage of Sky's access control services.

Responses to the consultation questions

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

Yes, although our response is confined to our assessment of S4C's own demands. S4C's current and anticipated future demands for Sky's AC services, and the lack of satisfactory alternatives at present, have already been set out in our response to Ofcom's consultation in 2013.

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

The wording of Sky's proposed commitments are generally acceptable to S4C. However, we do have the following concerns:

- (i) A fundamental concern of ours is the lack of enforceability of the commitments. The consultation document notes (at 7.139) that Sky has stated that it would be 'unlikely' to breach its voluntary commitments. There would be a risk that, at some point in the future, the reputational damage to Sky from breaching its voluntary commitments might be outweighed by other commercial or policy considerations.
- (ii) Whilst the financial certainty offered by the cap on fees of £100,000 p.a. would be welcomed, there is no clarity on how the fees within that cap would be calculated nor any comfort that they would be on FRND terms.

- (iii) The consultation document already identifies the possibility of Sky changing their standard terms and conditions in the future. This would certainly be of concern to S4C, in the absence of the ability to refer any disputes to Ofcom for resolution, as it can be extremely difficult to negotiate any changes to terms and conditions which are presented as being standard.

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. From S4C's perspective, the benefits to end-users are a high priority. In particular:

- (i) In 2013, 78% of S4C's programmes were subtitled in English, with over 6 hours per week of original content also being subtitled in Welsh. As well as providing support for deaf and hard of hearing viewers, subtitles also enable non-Welsh speakers and Welsh learners to enjoy S4C's programmes. The red button service is used by S4C to simplify the way viewers can access Welsh or English language subtitles on the Sky platform through the use of an application which allows users to select the appropriate language in vision on screen. This is a far simpler process for viewers than making a selection via the Services menu on a Sky box.
- (ii) S4C also uses the red button on the Sky platform to provide a choice of soundtrack, between Welsh or English language commentaries, on some sports matches and other major events in Wales. As a minority language channel, this facility is very important for S4C, in order to be able to serve as wide an audience as possible. The sports coverage includes live football matches involving Welsh teams, including the Welsh Premier League, which may not otherwise be covered by another broadcaster, and the English soundtrack makes it accessible to a wide audience in Wales. The major events include the National Urdd Eisteddfod, which is the main arts and cultural festival for children and young people in Wales. The English soundtrack therefore helps to contribute to cultural diversity and media plurality in Wales and the rest of the UK.

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

We agree with Ofcom's case for replacement access-related conditions. Having a guarantee of the continued availability of AC services on the Sky platform on FRND terms is of key importance for S4C and its particular audience, which includes Welsh speakers of varying degrees of fluency and non-Welsh speakers who wish to enjoy content reflecting Wales and its communities.

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.*

Yes – the wording of the proposed conditions, underpinned by Ofcom's enforcement powers, would secure this.



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.*

Our concerns about Sky's proposed commitments are detailed in our response to Question 2 above. Whilst the certainty offered by a cap on fees is welcome, the uncertainty arising from the lack of enforceability of Sky's commitments and any future changes to their terms and conditions remain a concern. We would be open to exploring whether a solution can be found which could enable us to accept Sky's commitments whilst addressing our concerns. For example, would it be possible for a broadcaster to enter into a long-term contract with Sky containing these commitments, prior to the current conditions in the Continuation Notice being lifted? If there were to be an objective need for Sky to change its standard terms and conditions in the future, could a contractual dispute resolution clause be incorporated, giving Ofcom the right to make a determination should the parties fail to agree on revised terms?

Unless an alternative solution of this nature can be found, we believe it is necessary to impose access-related conditions on Sky to secure the continued provision of enhanced TV services, as having an enforceable guarantee of continued enhanced TV services is an overriding requirement for the S4C service and the needs of its audience.

S4C
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