

## Annex 4a

### Sky's proposed amendments to Ofcom's draft conditions

Sky proposes the following amendments to Ofcom's draft conditions. Annex 4b sets out Sky's commentary on these proposed amendments.

## SCHEDULE

### Access-related conditions

#### Part 1: Definitions and interpretation

1. In this Schedule:

**"Act"** means the Communications Act 2003;

**"Access Control Services"** means Application Signing Services, Authentication Services or any other service which SSSL may provide for equivalent purposes;

**"Ancillary Service"** means:

- a) ~~a service authorised by section 48(4) of the Broadcasting Act 1990;~~
- b) ~~a service authorised by section 204(6) or section 204(7) of the Act;~~
- c) ~~a relevant ancillary service within the meaning of section 232(6) of the Act;~~
- d) ~~any other service which is ancillary to a programme included within a television broadcasting service and directly related to its contents;~~

**"Application Signing Services"** means services which:

- a) enable the provision by a Third Party Broadcaster of Specified Programme Services selected by means of an interactive application available via an on-screen symbol ~~or listing in an interactive menu displayed on a Broadcast Service~~; or
- b) enable the provision by a Third Party Broadcaster of Commercial Watermarking in connection with the provision of Broadcast Services Specified Programme Services to a Subscriber; or
- c) enable the provision by a Third Party Retailer of Pay TV Customer Services to end users;

**"Authentication Services"** means such services as are necessary for Sky to provide to ~~which~~ enable the operation by a Third Party of a return path for the transmission of communications between ~~at that~~ Third Party Broadcaster or Third Party Retailer and end-users in connection with an interactive application in respect of which Application Signing Services have been provided by SSSL;

- a) ~~the provision of Specified Programme Services to end-users; or~~
- b) ~~the provision of Pay TV Subscriber Services to end-users;~~

**“Broadcast Service”** means a Television Broadcasting Service or Television Licensable Content Service;

**“Commercial Watermarking”** means the ~~provision-display~~ of an on-screen symbol to verify that the end-user is in receipt of the commercial variant of a Channel; verify the authorisation of a Subscriber to receive a relevant Specified Programme Service;

**“Pay TV ~~Subscriber Customer~~ Services”** means:

- a) the provision of information in relation to the use of and payment for pay TV Broadcast Services~~a subscription for Specified Programme Services;~~
- b) services which allow an end-user to subscribe to or make payment for Broadcast Services~~Specified Programme Services;~~

**“Reference Offer”** means the terms and conditions (including charges) on which SSSL is willing to enter into an agreement with a Third Party Broadcaster or Third Party Retailer for the provision of Access Control Services;

**“Relevant Device”** means an end-user terminal system, consisting of a set top box or equivalent device integrated into a TV set, that is capable of decoding digital satellite transmissions and which is capable of providing functionality for ~~SSSLs~~ Access Control Services;

**“Specified Programme Services”** means any of the following services, where such services are broadcast from a satellite and are ancillary to a programme included within a Broadcast Service and directly related to its contents:

- a) a service that does not seek to operate as an electronic programme guide or similar navigation mechanism but which enables end-users to access and select alternative television ~~b~~roadcasting ~~s~~Services broadcast (whether by the person providing the service or by another) from a satellite;
- b) a service that enables end-users to access and select alternative audio soundtracks;
- c) a service that enables end-users to access and select digital text services;
- d) a service that enables viewers to access and play games;
- e) a service that enables viewers to access and use betting services;
- f) a service that enables end-users to vote; and
- g) a service that enables viewers to select sub-titles in their language of choice, a television licensable content service broadcast (whether by the person providing the service or by another) from a satellite;
- e) ~~an Ancillary Service;~~

"SSSL" means Sky Subscriber Services Limited (company number 02340150), any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;

"Subscriber" means an end-user who is party to a contract for the ~~provision~~ receipt of ~~Specified Programme~~ pay TV Broadcast Services; and

**"Television Broadcasting Service"** means a service within the meaning section 362 of the Act broadcast (whether by the person providing the service or by another) from a satellite;

**"Television Licensable Content Service"** means a service broadcast (whether by the person providing the service or by another) from a satellite that is to be made available for reception by members of the public and consists of television programmes;

**"Third Party Broadcaster"** means a broadcaster ~~or a retailer~~ of Broadcast Specified Programme Services;

**"Third Party Retailer"** means a retailer of Broadcast Services.

2. For the purpose of interpreting the conditions set out in Part 2 of this Schedule:

- a) words or expressions shall have the meaning ascribed to them in this Part 1 and otherwise any word or expression shall have the same meaning as it has in the Act;
- b) the Interpretation Act 1978 shall apply as if each of the conditions were an Act of Parliament; and
- c) headings and titles shall be disregarded.

3. The following exceptions and limitations apply to SSSL's obligations under these conditions:

- a) SSSL is not obliged to do anything which is not practicable on technical or commercial grounds or on the grounds it could not reasonably be expected to do that thing.
- b) SSSL shall not be held to have failed to comply with an obligation imposed upon it by or under these conditions if and to the extent that SSSL is prevented from complying with that obligation by any physical, topographical or other natural obstacle, by the malfunction or failure of any apparatus or equipment owing to circumstances beyond the control of SSSL, by the act of any national authority, local authority or international organisation or as the result of fire, flood, explosion, accident, emergency, riot or war.
- c) Nothing in these conditions shall require SSSL to do anything which would prejudice the security of SSSL's Access Control Services business or any apparatus comprised in it so that its ability to combat piracy is materially compromised.

## Part 2: The Conditions

### Condition 1 – Requirement to provide Access Control Services on reasonable request

1.1 SSSL must provide to a Third Party Broadcaster such of the Access Control Services as that Third Party Broadcaster reasonably requests in writing for the purpose of, or in connection with:

- (a) enabling end-users to have access to Specified Programme Services on Relevant Devices; or

~~(b) enabling such Third Party Broadcaster to provide Commercial Watermarking in the connection with the provision of Broadcast Services on Relevant Devices.;~~

~~1.1.2~~ SSSL must provide to a Third Party Retailer such of the Access Control Services as that Third Party Retailer reasonably requests in writing for the purpose of, or in connection with, enabling end-users to have access to Pay TV Customer Services on Relevant Devices.

~~1.2.1.3~~ ~~The provision of~~In providing Access Control Services ~~by SSSL~~ in accordance with this condition, ~~SSSL~~ must also ~~include take such steps as are within SSSL's reasonable power to provide (or procure that a third party provides)~~ such associated facilities as may be reasonably necessary for the provision of the Access Control Services.

~~1.3.1.4~~ The provision of the Access Control Services under this condition must take place as soon as reasonably practicable after receiving the request from a Third Party Broadcaster or Third Party Retailer.

~~1.4~~ ~~SSSL must comply with any direction OFCOM may make from time to time under this condition.~~

## Condition 2 – Requirement to provide Access Control Services on fair and reasonable terms

2.1 In fulfilment of its obligations under condition 1, SSSL must provide ~~the~~ Access Control Services to a Third Party Broadcaster or Third Party Retailer on terms and conditions (including charges) which:

a) are fair and reasonable; and

b) do not involve, or tend to give rise to any undue discrimination against any person or description of person; ~~and~~

~~c) are on such terms, conditions and charges as OFCOM may from time to time direct.~~

2.2 In this condition SSSL may be deemed to have shown undue discrimination if without objective justification it unfairly favours to a material extent an activity carried on by it in relation to the provision of Access Control Services so as to place one or more Third Party Broadcasters or Third Party Retailers ies competing with SSSL at a significant competitive disadvantage in relation to activities carried on by SSSL.

~~2.3~~ ~~[SSSL must comply with any direction OFCOM may make from time to time under this condition.~~

## Condition 3 – Publication of charges, terms and conditions

3.1 Except in so far as OFCOM may otherwise consent in writing, SSSL must publish a Reference Offer in relation to the provision of Access Control Services and act in the manner set out below.

3.2 SSSL must ensure that a Reference Offer in relation to the provision of the Access Control Services includes at least the following:

a) a brief description of the Access Control Services to be provided;

b) relevant charges, ~~terms of payment and billing procedures;~~

~~c) details of maintenance and quality standards;~~

~~cd)~~ the standard terms and conditions for the provision of the Access Control Services.

~~3.3 — To the extent that SSSL provides to itself Access Control Services in a manner that differs from that detailed in a Reference Offer in relation to the provision of the Access Control Services to any Third Party, SSSL must ensure that it publishes a Reference Offer in relation to the Access Control Services that it provides to itself which includes, where relevant, at least those matters detailed in condition 3.2 a)–d).~~

3.34 SSSL must, within ~~one~~two months of the date that this condition enters into force, publish a Reference Offer in relation to the Access Control Services that it is providing as at the date that this condition enters into force.

3.45 SSSL must update and publish the Reference Offer in relation to any changes ~~amendments or in relation to any further to the~~ Access Control Services to be provided or to the relevant charges or to the standard terms and conditions for the provision of Access Control Services, provided after the date that this condition enters into force.

3.56 Publication referred to above must be effected by SSSL placing a copy of the Reference Offer on any relevant publicly accessible website operated or controlled by SSSL.

3.67 SSSL must send to OFCOM written notice of any amendment to the terms of the Reference Offer in relation to the provision of Access Control Services on or before the day on which any such amendment comes into effect.

3.8 SSSL must ensure that a notice required by condition 3.7 includes:

- a) a description of the Access Control Services in question;
- b) a reference to the location in ~~the~~ SSSL's current Reference Offer of the terms and conditions associated with the provision of those Access Control Services;
- c) the date on which or the period for which any amendments to charges, terms and conditions will take effect; and
- d) the current and proposed new charges, terms and conditions (as applicable).

3.79 SSSL shall provide to OFCOM on request copies of any agreements entered into with Third Parties in relation to the provision of Access Control Services. SSSL shall provide the information requested by OFCOM under this condition 3.97 within 28 days of receiving such a request in writing.

~~3.10 SSSL must make such modifications to the Reference Offer as OFCOM may direct from time to time.~~

~~3.11 — SSSL must comply with any direction OFCOM may make from time to time under this condition.~~

#### **Condition 4 – Provision of accounting information to OFCOM**

4.1 SSSL shall provide to OFCOM on request accounting information relating to the provision by SSSL of Access Control Services.

4.2 The information that OFCOM may request under condition 4.1 includes, in particular, financial information on the costs (including capital costs), revenues, assets employed in and liabilities attributable to (including attribution methodologies) the provision of Access Control Services to itself and Third Parties.

4.3 SSSL shall provide the information requested by OFCOM under condition 4.1 in a form specified within 28 days of receiving such a request in writing.