

"Working for quality
and diversity in
British broadcasting"



PO Box 401, Gravesend, Kent DA12 9FY
Telephone: 01474 352835 Fax: 01474 351112

Founded in 1983 by Jocelyn Hay CBE

E-mail: info@vlv.org.uk
Web: www.vlv.org.uk

15 September 2009

Andrew Dumbreck Esq.,
Ofcom,
Third floor,
Riverside House,
2a Southwark Bridge Road,
London SE1 9HA

Andrew.Dumbreck@ofcom.org.uk

Dear Mr. Dumbreck,

Enquiry from BBC Free to View Ltd concerning its DTT high definition multiplex licence

VLV has read with great care your consultation letter of 3 September to Stakeholders in the UK DTT industry, which concerns the proposed modification to the BBC Licence to allow the possibility of encrypting PSB content on the DTT platform. We have also read the letter from Alix Pryde, the Controller of BBC Distribution, which prompted the consultation, and in addition we have taken note of a subsequent clarification from Andrew Scadding of the BBC, dated 11 September 2009.

VLV is opposed to Ofcom's proposed modification to the BBC's licence for six main reasons. In brief, the BBC's proposal would

- (a) Introduce copy control capability into public service broadcasts, by requiring UK viewers to purchase HDTV receiving equipment which would deny them their traditional rights to make off-air recordings of television broadcasts for time-shifting purposes.
- (b) Undermine the rights of UK citizens - which are currently guaranteed by s. 70 of the Copyright Designs and Patents Act 1988, as amended by ss. 4, 5 and 19 of the Copyright and Related Rights Regulations 2003 - to make off-air recordings of television programmes, which the BBC has acquired from third parties.
- (c) Undermine the rights of any designated body - as guaranteed by s. 74 of the Copyright Designs and Patents Act, as amended - to provide people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies of programmes which are subtitled or otherwise modified,. For this reason, the BBC's proposal, and Ofcom's proposed solution, may also be in breach of disability legislation.
- (d) Prevent a designated television archive from making of a recording of the broadcast for archival purposes, as guaranteed by s. 75 of the Copyright Designs and Patents Act.
- (e) Prevent any UK citizen from dealing fairly with such a broadcast, as guaranteed by ss. 29 and 30 of the Copyright Designs and Patents Act, 1988.
- (f) Prevent any use of the broadcast, either for educational purposes, or by libraries and archives, as allowed by ss. 32-36 and ss. 37-44 respectively, of the Copyright Designs and Patents Act.

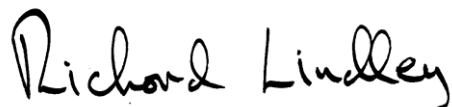
In addition, VLV is concerned that Ofcom's proposed amendment to Condition 6 of the BBC's current HDTV broadcasting licence, fails to fulfil Ofcom's principal regulatory duty. This is defined by s. 3 of the Communications Act 2003, as being to further the interests of citizens in relation to communication matters. Moreover, since intellectual property rights are monopoly rights, Ofcom's proposed amendment to Condition 6 does nothing to further the interests of consumers by promoting competition in the relevant markets.

It is VLV's considered view that if Ofcom is to further the interests of UK citizens when it considers the BBC's proposal, it will need to institute a far more extensive and rigorous analysis of the rights of television licence payers and others, before it automatically allows the introduction of copy control mechanisms into British television broadcasting, solely to protect the intellectual property rights of third party providers of HDTV programmes broadcast by the BBC. While VLV has no wish to encourage illegal copying of HDTV programmes, we are not convinced that this is the best manner in which to balance the rights of viewers to make fair use of broadcast programmes, against the legitimate exploitation by producers of third party programmes of the intellectual; property rights in those programmes.

Our view of the need for Ofcom to take a more citizen-oriented stance in this matter has been strengthened by the recent announcement by Sir Michael Lyons, the Chairman of the BBC Trust, that he had asked the BBC Executive Board to institute a review of the Corporation's future activities. It could well be, therefore, that the BBC Trust may also choose to review its current plans to purchase HDTV programmes from third parties.

VLV would be grateful to receive a considered response from the Ofcom on this complex issue.

Yours sincerely,



Richard Lindley
Chairman of VLV

Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. VLV represents the interests of listeners and viewers as citizens and consumers across the full range of broadcasting issues. VLV is concerned with the structures, regulation, funding and institutions that underpin the British Broadcasting system.