

THE COMMUNICATIONS BILL

Briefing from the Satellite & Cable Broadcasters' Group : January 2003

Clause 299 : Code for Electronic Programme Guides
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Amendment 255 - relating to the prominence of Public Service Broadcasters on EPG displays.

- 1) The SCBG supports the move in this amendment to limit the definition of Public Broadcast Service to which prominence should be applied to BBC 1 & BBC 2, particularly when taken in conjunction with the Must Carry rules proposed in clause 60. This position is in line with previously established government policy and the current Electronic Programme Guide Code.
- 2) Viewership, and the ability to attract viewers, is crucial to the development of new programme services in the digital domain and is a key business metric for commercially developed channels.
- 3) One of the key drivers for viewership is channel position on the EPG. Since the launch of Digital TV in 1998 non " front page" channels have had to fight hard to preserve their viewership in the lower genres of the EPG. A huge tranche of public service channels at the front of the EPG will serve to make this position even worse
- 4) The definition in the Bill includes all BBC channels both present and future, niche or mainstream. This will serve to distort the multi-channel market and stifle development of new channels in the commercial digital space by favouring those from license fee funds which have no commercial imperative in their justification.
- 5) Such a distortion of the market will stifle innovation in the country which justly claims to be the world leader in Digital TV and will also limit choice and diversity to the viewer.

Clause 322 : Retention and Production of Recordings

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Historically there has always been a duty on television broadcasters to retain a copy of their programming in a specified form to enable review at a later date in the context of viewer complaints.

In the digital world where programming in addition to the linear broadcast often has many other elements (for example interactivity), it would be practically and economically virtually impossible, to obtain a recording in sound and vision of every possible combination of viewer experience as is arguably required under the present STS licence.

This obligation needs to be updated so that the obligation is not to retain a recording of a particular programme including all the possible non-linear elements in sound and vision, but an obligation to retain a recording of the linear programme in sound and vision and retain records (in whatever form appropriate) of all the other non-linear elements to enable the broadcaster to reproduce any element of the viewer experience on demand.

Clause 322(2) : Retention and Production of Recordings – period of retention

The second issue is in respect of the period of time for which such elements shall be retained by the broadcaster under Clause 322(2). There is no reason why there should be any difference between the period for which television broadcasts are retained and the period for which radio broadcasts are retained.

Historically, the time for keeping records of television broadcasts was increased from 60 days to 90 days to satisfy the BSC who argued that their smaller staff meant that they could not deal with complaints as quickly as the ITC.

As this will not be the case with a single regulator, this historical anomaly should be removed and the timeframe for retaining a programme included in a television programme service should be the same as for radio broadcasts i.e. 42 days.

Clause 323 : Conditions securing compliance with international obligations

Satellite and cable broadcasters differ in a number of fundamental ways from traditional public service broadcasters (PSBs). PSBs enjoy access to scarce spectrum - allowing universal or near-universal coverage - that brings with it the benefit of significant advertising revenues or public subsidy through the licence fee.

In comparison satellite and cable broadcasters do not receive any government support or concessions and acquire viewers entirely through their own marketing efforts. Typically, they command tiny audience shares, and are targeted at niche interests.

Successive UK governments have acknowledged these differences in their approach to regulation, which has enabled the UK satellite and cable broadcasting sector to be the most dynamic in Europe, serving global as well as domestic audiences.

All broadcasters are subject to the EU *Television without Frontiers* Directive which requires them '*where practicable*' and '*by appropriate means*' to broadcast a majority proportion of European produced works. Moreover this proportion should be '*achieved progressively, on the basis of suitable criteria*'. Satellite and cable broadcasters are constantly endeavouring to increase the proportion of EU (and UK) originated material they broadcast, but must continue to be allowed to aim to meet the targets progressively over time on the basis of the "where practicable" clause.

It is essential that OFCOM continues to implement this in the same pragmatic and supportive way as does the Department for Culture, Media and Sport currently.

Clause 325 : Promotion of equal opportunities and training

There exists within UK legislation a comprehensive set of regulations dealing with equal opportunities which must, under law, be met by any and every employer in the UK. It is unclear why the Communications sector should be additionally obliged to adhere to primary legislation in this area, nor indeed why a Bill which is “de minimis” in approach should seek to duplicate that which already exists in Common Law.

Existing requirements include:

- Employment Act, 2002
- Maternity and Parental Leave Amendment, 2002
- Statutory Paternity Pay & Adoption Pay; Paternity and Adoption Leave, 2002
- Sex Discrimination Act, Updated 2002
- Race Relations Act, 1976 (Amended 2000)
- Disability Discrimination Act, 1995
- Fixed-Term Employee Regulations, 2002
- Flexible Working Regulations, 2002
- Part-time Workers Regulations, 2000
- Working Time Regulations, 1998 (Amended 2002)

The SCBG calls upon Government to remove these duplicative Clauses from the Bill, which add an unnecessary layer of legislation and potentially place the Communications Sector in double jeopardy.

Similarly, the SCBG questions the requirement to lay training related legislation on the face of the Bill. It is of course a basic need of our businesses that we are able to draw upon a skilled workforce who jointly command a wide range of talents, from the highly technical to the highly creative. These needs fluctuate in terms of the volume and focus of training required according to the business needs, which is an internal and business driven assessment unique to each company. We are concerned that primary legislation in this area would add an unrealistic and

unnecessary burden in an area where we already perform to a high standard.

The SCBG calls upon Government to remove these Clauses from the Bill.