B B C   **BBC DIRECTION GROUP**   BDG(09) 66

Title:	**A pan-BBC Approach to Combating Piracy**
Action:	**FOR DECISION**
Meeting:	**8 July 2009**

Purpose:

The BBC's current approach to combating piracy has evolved over time and has placed emphasis on four key elements: (i) the importance of providing compelling legal services underpinned by a simple rights clearance framework; (ii) copyright education; (iii) enforcement activities; and (iv) use of content protection.

However, the rapid evolution from a linear to an on-demand world, changes in technologies and an increase in audience appetite for content to be available 'any time, any place and anywhere' has placed the issue of piracy firmly at the forefront of public policy, as highlighted by the inclusion of piracy and related issues in the Digital Britain report.

These factors suggests that now is a good time to take stock of the BBC's approach to piracy across the organisation to ensure that (i) the BBC has a co-ordinated strategy in place suitable to meet its future needs; and (ii) the BBC works together with other partners to make PSB a cornerstone of original content production.

Recommendations:

This paper recommends that the BBC Direction Group (BDG) **endorses** the principles underpinning our overall approach to piracy and that the BBC should continue to lobby for:

- Reform to the rights clearance framework and introduction of extended collective licensing.
- A targeted and proportionate approach to enforcement of anti-piracy legislative solutions.

We also ask BDG to **consider** our more detailed recommendations:

- Establish a coherent lobbying activity which supports the BBC's positioning in Europe, digital Britain and the general marketplace

  [SECTION 4.3]

- The BBC's approach to copy protection and encryption should assume, as a starting point, that content will be available on a free-to-view basis, and that ERTG should be tasked with managing exemptions to this principle.

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	Date	Board or Committee
Onward approval path:	n/a	n/a

APPROVAL PATH TO DATE

Board or Cttee	Date	Summary of feedback on paper and resulting amendments
Vision Group Board	1 July 2009	The Board approved the paper for submission to BDG.

1. Introduction

Piracy has always been an issue for the content creating industries. The audio-visual sector currently loses about £531m in the UK each year from the direct impact of cannibalisation of revenues due to copyright theft[1] and piracy is increasingly becoming a problem for broadcasters. The latest available IPSOS piracy survey suggests losses to the TV industry due to piracy in 2007 were in the region of:

- Retail (DVD Sales): £57 m (£61 m in 2006)
- Rental (DVD Rental): £3m (£7 m in 2006)
- Streaming Video Content: £22 m (£8m in 2006)

These figures highlight the changing nature of the threat from piracy to the BBC, which used to be in the form of physical piracy, but increasingly involves: (i) illegal downloading of whole programmes and series; (ii) streaming whole channels on the internet; (iii) services offering overseas users fake IP addresses in order to circumvent the geoIP restrictions on the iPlayer; and (iv) slingbox type services, where someone based in the UK slings the signal to an overseas user's PC.

2. The BBC's approach to piracy

The BBC's approach to piracy has, in the past, been informed by two key principles:

- **Universal access** – the BBC's objective is to ensure that its content is available on as many platforms as possible in order to deliver our public purposes and to maximise the public value.
- **Commercial exploitation** – the BBC has an interest in protecting content for commercial/rights reasons to ensure we can create/acquire the content we need and obtain maximum value from it.

These principles suggest that providing attractive, legitimate, easy-to-use content is the most effective means of combating piracy. But provision of compelling legal content needs to be underpinned by a robust stance on the related issues of rights clearance, copyright education, legislative enforcement and copy protection.

2.1 Rights clearance

The BBC's stance on copyright policy has, in the past, been influenced by our position as a creator, holder and exploiter of rights. As a result, our approach to government proposals has been conservative and we have lobbied against changes to the status quo.

But this approach is proving unsustainable as negotiations for the BBC to establish iPlayer demonstrate – these took five years to complete and involved some 70 new agreements. The BBC has, therefore, increasingly taken a more radical approach, suggesting that the current copyright regime and copyright management practices no longer meet the demand of new technological developments and consumers' expectations of being able to access broadcasters services where and when they want to.

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[1] Great expectations: A report on the economic opportunities for the film sector by Oxford Economics

2.2 Copyright awareness and education

The BBC has a statutory duty to promote media literacy (of which copyright awareness is a small part (according to the Ofcom definition). It is also consistent with our sixth public purpose – to deliver to the public the benefit of emerging communications, technologies and services.

To date, our main activity has focused on small scale provision of online learning materials e.g. *Webwise*, a series of online guides developed by the BBC, includes a unit on Digital Rights Management. More recently, we have covered copyright awareness in a number of television programmes – such as *Film 2009* and the *One Show*. But on the whole, there has been no central focus or scale to our activity.

2.3 Enforcement of anti-piracy legislation

The principle of universal access has been critical in informing our approach to enforcement. This has two aspects to it: our approach to pursuing those who infringe copyright legislation when using BBC content; and our more general position on government's legislative proposals targeted towards combating piracy.

The BBC has in the past taken action against specific infringers. But the focus of our activity has been against operators of unauthorised websites, rather than individual licence fee payers. We also allow a degree of grace to fan websites – as set out in our Online Services Guidelines.

BBC responses to government consultations have stressed that enforcement needs to be targeted and proportionate, suggesting that action should only be taken against consumers where there is a real degree of certainty that the correct offender has been identified, or the negative impact of legitimate material being blocked will be very damaging.

2.4 Content protection

Universal access has underpinned our approach to content protection, most notably illustrated by the 2003 decision to broadcast our services unencrypted on satellite platforms. BBC policy also reflects the need to protect agreed commercial and contractual terms. So we have applied technical content protection in order to prevent stream-ripping (i.e. saving internet streams to a PC hard-drive), prevent re-uploading of downloads and to ensure UK-only access. More recently, minimising market impact has been a concern and technical content protection has been introduced to effect BBC Trust approved windows of availability (e.g. content is available on iPlayer for seven days). (See Table A1.1 in Annex 1).

3. Key issues and recommendations going forwards

The Digital Britain report has raised the profile of piracy, which is now firmly embedded within mainstream public policy. In coming months we will be required to respond to a whole range of policy proposals on copyright, legislation to reduce unlawful peer-to-peer file sharing, and funding content in the digital age.

The BBC has very publicly stated its interest in leading the debate in this area, as highlighted by the BBC's recent piracy conference hosted by the Director-General which brought together content creators and rights holders across the creative sector.

More generally, the rapid development and convergence of digital technology is creating further distribution platforms, new business models and additional prospects for digitising and making content more widely available. These opportunities raise a number of important questions which we need to answer if we are to have a clear view of the BBC's future position in respect of its content.

The remainder of this paper sets out the background internal and public policy context, highlighting the key issues for consideration; and proposes some solutions.

3.1 Rights clearance

The government will continue to consult on solutions to the problems of rights clearance, in the context of the Intellectual Property Office consultation *Copyright the future*. We will also need to respond to ongoing consultations at the European level e.g. the EBU White Paper on Copyright, initiated by the BBC, makes comprehensive reform proposals for submission to the European Commission.

Going forwards, the key issue will be to ensure that the future copyright framework assists the BBC in making content available across multiple platforms.

We recommend that the BBC should continue to lobby for reform of the current copyright regime to include extended collective licensing[2] to achieve a framework that is up to date, simple to use, easy to understand and applicable over multiple platforms and territories.

This will be critical in facilitating the provision of attractive legal content and will be important going forwards in implementing our Archive Strategy. The Digital Britain report opens up the opportunity for discussion of these reforms.

3.2 Copyright awareness and education

The Digital Britain report emphasised the importance of copyright awareness, but contained no concrete proposals for taking this forward. The BBC is participating in the Digital Britain Media Literacy Working Group's development of a national media literacy plan and the umbrella industry group Television Against Piracy (which we support) is also committed to doing more in this area.

Looking ahead, the BBC will need to decide whether it should take a more proactive stance in promoting copyright awareness and, if so, we will need to identify and develop specific measures.

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[2] This was a key point in the BBC response to the interim Digital Britain response and the final report included a commitment to explore further. This is a major step forward, although it will require legislation to entitle collecting societies to license rights for specified purposes on behalf of rights holders who are not represented by that society.

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3.3 Enforcement of anti-piracy legislation

The government is currently consulting on legislative proposals to reduce the incidence of unlawful peer-to-peer file sharing.

A key question going forward is: How should we position ourselves in the context of the Digital Britain debate relating to enforcement of existing and proposed legislation?

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[3] The Industry Trust for IP Awareness was set up in 2004 to help promote copyright education. It is financed by more than thirty member companies, ranging from film studios to retailers who work together to spread the word about the positive role copyright plays.

The key Digital Britain recommendations on enforcement focus on ISPs and therefore they are of not direct relevance to the BBC. However, the proposals could encourage ISPs to argue in favour of some form of distribution charges to cover the costs of complying with this legislation. This would clearly be undesirable.

We therefore recommend that our existing approach based on a targeted and proportionate approach remains relevant as it is rooted in the principle of promoting rather than prohibiting audience access to our content.

3.4 Content protection

As BBC content is delivered on more platforms, the issue of whether and how we protect our content has become more complex. Specifically, there are three key live issues which need resolving now:

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- **Freesat content protection** – the BBC intends to launch an iPlayer service that streams directly to Freesat set top boxes. Specifications for this service need to be provided to set top box manufacturers to allow them to create the boxes for a public beta launch in Q2/early Q3 2009.

(See Table A1.2 in Annex 2 for a more detailed description of the relative ease or difficulty with which on-demand streams can be copied for retention at present, and whether use of encryption content protection measures is technically feasible on each platform).

The key issue is what principles should the BBC adhere to in the future when deciding technical content protection standards?

We recommend that the BBC's approach should continue to be based on the principle of universal access and that our starting point should assume that content will be available on a free-to-view basis.

However, the approach will need to recognise that in some cases some form of protection will be required to:
- Preserve the value of BBC content in response to specific piracy threats.
- Ensure that we can licence content from programme suppliers.

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Assuming that these principles are the right ones, there are the additional practical questions of: What will be the exemption process and how should this be managed?
Who should be responsible for deciding if a platform or programme should be encrypted?

We recommend that the Rights Board should be tasked with developing the framework for the exemption process (based on e.g. giving technical effect to BBC policy; acceptable business need; on an agreed partnership basis, for example, as a legitimate anti-piracy measure). The External Relations and Technology Group (chaired by General Counsel and Head of Rights and Business Affairs) should consider whether a pan-BBC group (e.g. a sub-group of ERTG including representatives from content divisions and FM&T) should be given responsibility for managing the exemption process.

4. Conclusions

This paper recommends that BDG **endorses** the principles underpinning our overall approach to piracy and that the BBC should continue to lobby for:

- Reform to the rights clearance framework and introduction of extended collective licensing.
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Annex A1: BBC content protection

Table A1:1 Current content protection measures by platform

	BBC Services	Content protection	
		Territory	**Use**
SD broadcast • Terrestrial • Cable • IPTV • Satellite	Linear TV	□Transmitter locations □Cable network □Geo-IP – risk of proxies □Satellite footprint	None of our content on SD has been encrypted since 2003.
HD broadcast • Terrestrial (proposed) • Satellite • Cable	Linear HDTV	□Transmitter locations □Satellite footprint □Cable network	[Section 43]
On Demand (open platforms)	iPlayer	Geo-IP database [Section 43]	Microsoft and Adobe AIR DRM used to protect downloads and time-out content after 7/30/7 window. Complicated picture for streaming depending on device – see next page
On Demand (closed platforms)	iPlayer (Virgin, Tiscali, BT Vision, Wii)	Geo-IP used for Wii version (risks as above). Otherwise limited by cable network.	Complicated picture depending on device – see next page.

Annex A1: BBC content protection contd.

Table A1:2 Scope for content protection for on-demand streams by platform

Table A1:2 summarises the relative ease or difficulty with which on-demand streams can be copied for retention on each distribution platform at present, and whether the use of encryption content protection measures it technically feasible on each platform.

Key:

	Low level of concern/easy to encrypt streams
	Moderate level of concern/encryption difficult but achievable.
	Increasing concern/encryption achievable but may exclude some users.
	High level of concern/encryption impossible on this device.

Platform	Concern about capturing streams at present	Could the platform support encryption?
PC streaming	"Point and click" tools available online to capture. [SECTION 43]	Can play encrypted streams, but this may shut out users on some low-end computers.
Playstation 3	Uses PC streams, but no benefit to hackers of going after console version instead.	Likely to be able to play encrypted streams.
Freesat	[SECTION 43]	
Canvas/Freeview	Not yet launched. Encryption method TBC.	Ability to encrypt required by other content partners, so likely to be included.
Integrated television sets	Not yet launched, but will not be encrypted.	
iPhone	[SECTION 43]	
Nokia phones	Very small pictures, low risk that people would want to capture.	

	[SECTION 43]		
Nintendo Wii			
Virgin Media	Closed network. V+ Boxes refuse to record on-demand programmes		As current
Tiscali/BT Vision	Closed network that authenticates boxes and encrypts programmes		As current

Annex 2: TAP/Industry Trust for IP Awareness proposal for raising copyright awareness

This Annex describes details of the Industry Trust for IP awareness. It is taken from submission to the umbrella group Television Against Piracy, which comprises BBC, other PSBs and Sky.

The Industry Trust's approach since 2007 has been to try and make copyright theft difficult to reconcile in consumers' heads. Replacing rational arguments with emotional triggers makes the argument more difficult to rebut. Embracing the industry's key assets – entertainment – helps to bring the core audience of 16-34 year old, C2DE males, with us.

The Industry Trust has created a three-pronged, fully integrated behaviour change campaign which would aim to:
1. Cause a pause and attach a social stigma to copyright theft
2. Populate the space created with positive pro-copyright messages
3. Create ongoing reminders of the threats to copyright infringers, along with signposts to the legal alternatives

A core strand of activity is "Respect for Creativity and Copyright" where the objective is to:
1. *Generate appreciation for the protective role of copyright theft / IP*
2. *Increase understanding of skills required for the creation of content*
3. *Raise awareness of industry contribution to culture and economy*
4. *Generate support for British film and TV industry*
5. *Raise awareness of the impact of copyright theft*

The Great British Creativity Campaign

In 2009 the Industry Trust is launching a new communications platform: the "Great British Creativity Campaign". Designed to generate national pride in film and TV, the campaign will celebrate Britain's world-class film and television industry which produces content that is enjoyed globally, from the BBC to the thriving independent film scene.

"Great British Creativity" will recognise the industry's valuable contributions to culture and Britain's national and local economies, for example, through job creation. In the midst of an economic downturn, the campaign will reinforce the importance of protecting "Britain's Best Export".

"Great British Creativity" will build on the simple message of the Industry Trust's new cinema trailer campaign, "You Make the Movies", which launched in April this year to "thank" the public for their role in funding films. It will continue to celebrate the public's indirect role in film and TV production, but also recognises the direct contribution of the 150,000+ British film and TV workers and explores how copyright helps to protect them. It will promote the diverse skills and talent required to produce content in the UK and the economic and cultural contribution of the audio-visual sector. The campaign will be positive in tone and engaging in its execution.

Key Campaign Highlights:

Launch partner (The Sun tbc):   4 – 6 week campaign on and off line with editorial support
                                                for Great British Creativity.

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Microsite:

Central hub celebrating British Film and TV and providing a platform for TV and film workers to tell their story – supported with significant digital media spend

Regional radio promotions:

Partnering with the Big City radio network to target key cities around the UK with promotions which seek to tell local stories about creativity and the benefit to the local culture and economy.

Real time TV/film:

Real time digital feeds from those working in TV and film e.g. producers/directors working on set and delivered via Twitter.

Timeline:

Campaign launch mid/late August 09

Below is a list of suggestions for how broadcasters might support this activity (in line with BBC's editorial guidelines) which could benefit from feedback from broadcasters. (Only examples of possible initiatives relevant to the BBC are shown, but full proposal includes similar initiatives for other PSBs).

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