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## **Broadcasting into multiple territories**

Guidance regarding the licensing position of television licensable content services broadcasting into multiple territories

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**STATEMENT**

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# 1. Overview

## **This document concerns, in particular:**

- Feeds where the programmes, including the advertisements on each feed are identical or almost identical and only the language of the feeds is different;
- Feeds where the editorial content of each feed is identical or almost identical, but the advertisements are different, or the same advertisements are scheduled differently; and
- Feeds where the editorial content of each feed is different, regardless of whether or not there are differences in the advertising or language.

- 1.1 It is important that television services are appropriately licensed. Service providers must make sure they hold the correct licences. Providing a service without a licence is a criminal offence.
- 1.2 This document is designed to help television licensable content service (“TLCS”) providers comply with their obligations under the relevant broadcasting legislation. It is about whether licensees who hold, or intend to hold, broadcasting licences need separate licences for different feeds (versions) of a service, for example, feeds broadcast in different territories.
- 1.3 In determining whether different feeds of a service need separate licences, Ofcom will apply the relevant statutory provisions on a case by case basis, taking into account all relevant circumstances. This guidance indicates the approach Ofcom is likely to take. However, it does not seek to set out an exhaustive list of the services that may be provided under a single TLCS licence or those which require separate licences.

## 2. Statutory definition

2.1 Television Licensable Content Services are defined in section 232 of the Communications Act 2003 (“the 2003 Act”). They are services broadcast to the public by satellite, on a radio multiplex or any other means involving the use of an electronic communications network. They consist of, or have as their main purpose the provision of, “television programmes” or “electronic programme guides,” or both. This guidance is about services involving “television programmes”, though similar principles are likely to apply to a TLCS consisting of EPGs.

2.2 The definitions of “programmes” and “television programmes” are important in this context. They are in section 405(1) of the 2003 Act, which says:

*““programme” includes an advertisement and, in relation to a service, anything included in that service; .....*

*.... “television programme” means any programme (with or without sounds) which—*

*(a) is produced wholly or partly to be seen on television; and*

*(b) consists of moving or still images or of legible text or of a combination of those things; ....”*

One particularly important aspect of these definitions is that the programmes broadcast as part of a TLCS include any advertisements.

2.3 Also important is that TLCS licences are granted in respect of a particular licensable *service* rather than in relation to a particular *service provider*. Section 235(4) of the 2003 Act states:

*“The provision of more than one television licensable content service shall require a separate licence under Part 1 of the 1990 Act to be granted and held in respect of each service.”*

2.4 This means a service provider providing three separate services, for example, will need three separate licences. There is no limit to the number of TLCS licences which can be held by one person.

## 3. General application

- 3.1 In Ofcom’s view, the effect of these statutory provisions is as follows:
- a) First, that any service that can properly be regarded as a separate TLCS service needs a separate TLCS licence. Service providers are responsible in the first instance for identifying where their services are separate and for providing sufficient information to Ofcom to enable us to decide if one or more licences are required.
  - b) Second, an important factor in identifying whether a service is a separate TLCS service are the television programmes – the editorial content and the advertisements – and the schedule of those programmes, that make up the service.
- 3.2 In Ofcom’s view, generally speaking, for more than one feed (version) of a service to be a single TLCS requiring only one licence, the public<sup>1</sup> must be able to view the same television programmes – editorial content and advertisements – at the same time on both.<sup>2</sup> In other words, the feeds must have the same programme schedule.<sup>3</sup>
- 3.3 Providers of services which consist of:
- a) Different television programmes; or
  - b) The same television programmes shown at different times; or
  - c) The same television programmes at the same time for only part of a day,<sup>4</sup> normally need a separate TLCS licence for each (though see below about “+1” services and ordinary time zone differences). In other words, feeds which do not have the same programme schedules will normally be separate services needing separate licences.
- 3.4 We set out below some non-exhaustive examples of what Ofcom considers this means.

### Illustrative only examples

#### Services requiring a single TLCS licence

- 3.5 The above means, as we indicate, that where the feeds of a service consist of identical television programmes – editorial content and advertisements – broadcast at the same time,<sup>5</sup> there is only a single service. The provider will need a single TLCS licence for it.
- 3.6 Ofcom will normally regard time-shifted services, like “+1” services, where the only difference between the feeds is that the same schedule (identical programmes, including

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<sup>1</sup> in the same territory, where the feeds go to the same place, and in different territories where the feeds go to different places.

<sup>2</sup> Rather than just for part of the time (as would be the case, for example, where there are two feeds of a ‘service,’ one of which is only broadcast for part of the time of the other).

<sup>3</sup> Though, by virtue of section 235(5) of the 2003 Act, a “red-button”-type service available via a TLCS, making different programmes available at certain times, would not require a separate TLCS licence

<sup>4</sup> For example, where there are two feeds of a ‘service,’ one of which is only broadcast for part of the time of the other.

<sup>5</sup> Or with the ordinary time zone difference(s) between different territories.

advertisements) are broadcast one hour or so after the previous broadcast, as falling within this rule.<sup>6</sup> In our view, this is the same service being repeated, and there is no separate service requiring its own TLCS licence.

- 3.7 Ofcom's view is that the same generally applies where the relevant television programmes – again, the editorial content and the advertisements, and their scheduling – are almost identical, rather than absolutely the same, between feeds. This might be, for example, where there are very occasional regional variations of the same programme, which contain local content in different regions. The provider will again usually need a single TLCS licence for the service.
- 3.8 A service provider who wishes to broadcast such (slightly) different content should bring the matter to Ofcom's attention at the time it applies for a licence, where the differences are planned at that time, or, if only planned later, in good time before any broadcast. Ofcom will then consider whether separate TLCS licences are required or whether a single licence suffices. If the latter, Ofcom is likely to amend the licence to record the differences between the feeds and, if necessary, impose relevant requirements, such as to keep recordings of both feeds.
- 3.9 The same position is also likely to apply where such identical or almost identical feeds are broadcast in different languages, as long as the content and time of broadcast is the same.<sup>7</sup> Feeds that differ *only* in the language in which they are broadcast (e.g. dubbed/sub-titled services) are likely to remain the same single service and need only one licence.

### Separate services needing separate licences

- 3.10 Conversely, feeds of different editorial content (with the same or different advertisements, and whether in the same or different languages) are likely to be treated as separate services needing separate TLCS licences.
- 3.11 The same applies to feeds of the same editorial content but broadcast at different times.<sup>8</sup> Members of the public would not be able to view the same television programmes at the same time on both feeds. This indicates that the feeds are separate services each needing a TLCS licence.
- 3.12 On the same basis, feeds of the same editorial content but with different advertisements, or with the same advertisements broadcast at different times, will normally also be separate services needing their own licences. Again, members of the public would not be able to view the same television programmes at the same time.

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<sup>6</sup> Though a different position may apply to PSB services provided under TLCS licences.

<sup>7</sup> Or the time difference is only the ordinary time zone difference between different territories (or one feed is a "+1" version of the other).

<sup>8</sup> Apart from time-shifted (e.g. "+1") services or where the time difference arises only out of the ordinary time zone difference between different territories.