

Review of Free-to-air Listed Events

Report by the Independent Advisory Panel to the
Secretary of State for Culture, Media and Sport

November 2009

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MEDIA AND SPORT

About the Panel

1. Following the then Secretary of State's speech to the Royal Television Society on 26 September 2008, I was appointed on 10 December 2008 to lead an independent Advisory Panel. Dougie Donnelly, Angus Fraser, Chris Gratton, Eamonn Holmes, Penny Hughes, Colin Jackson, Michael Pescod, Nick Pollard and Hope Powell were appointed as Panel members on 21 January 2009 following my recommendations to the Secretary of State. Our task was to assess the current arrangements which seek to ensure live or deferred coverage of sporting events of major importance to society on free-to-air television¹. We were also asked to make recommendations on their future in, by common consent, a rapidly changing media and sporting environment. The Panel was supported by a Secretariat provided by the Department for Culture, Media and Sport. The Secretary of State will reach his own preliminary conclusions in the light of our recommendations and will then consult further with the broadcasting authorities and affected rights holders before making his final decisions.
2. Hope Powell subsequently, with considerable regret, withdrew from the Panel because of the extent of her commitments as senior Coach to the England Women's Football team.
3. All members of the Panel were appointed in an individual and personal capacity for the wealth of experience, expertise, love of sport and intellectual rigour they could bring to the review, and for the different sporting, broadcasting and business perspectives they could collectively provide. They were not appointed to represent particular sporting or broadcasting interests or traditions, or for their experience of the negotiation of sports rights. Such interests and experience were consulted and drawn upon during the review.
4. During the consultation period the Panel met on 12 occasions in London to conduct its own business and to hear evidence first hand from a wide range of interested sports and media organisations, as well as individuals with extensive experience in relevant areas. It met on a further 2 occasions to finalise its recommendations and report to the Secretary of State. It also visited the Scottish Parliament in Edinburgh, the Welsh Assembly in Cardiff and attended a joint meeting of the All Party Media and Sports Groups at the Palace of Westminster.
5. This represented a significant contribution of unpaid time by my fellow Panel members who, without exception, already had considerable demands in their professional working

¹ In a UK context, free-to-air means that no payment needs to be made for reception except for the normal TV licence fee and the cost of receiving equipment, and that the broadcast is capable of reaching at least 95% of the UK population.

lives. I wish to pay fulsome tribute to their unstinting and unselfish contribution, and to their good humour and camaraderie. It was a privilege to work with them.

6. As Chairman of the Panel, I took part in various media activities, including a live webchat through the 10 Downing Street website, during the nine months of our deliberations.

Terms of reference

7. The terms of reference were that the Panel should review:
 - The principle of listing;
 - The criteria against which events were currently, or might in the future, be listed; and,
 - The events which make up the current lists, and those which should do so in the future.

It was agreed with the Secretary of State that the Panel would seek to put forward its recommendations in the second half of 2009.

8. This was a significantly different task to that assigned to the Panel, led by Lord Gordon of Strathblane, in 1998. It had been asked to assess the events that should be listed against a set of already defined criteria. Our task was to consider whether listing should continue at all in the future. Those events that are currently listed and the criteria which led to Lord Gordon's Panel recommending which events should be listed are set out in Annex A.

Consultation

9. To help in our task we:
 - launched a formal and wide-ranging consultation from 8 April to 20 July 2009, and issued a consultation document in written and on-line formats;
 - wrote to 187 sporting, media, broadcasting, viewer and other organisations – domestic and international - specifically informing them of the review and seeking their input;
 - researched listing arrangements in Europe and beyond;
 - commissioned the British Market Research Bureau (BMRB) to undertake quantitative and qualitative research to ascertain broader public views; and,
 - commissioned Frontier Economics to undertake an initial analysis of viewing patterns as well as developments in, and the impact of, the sale of sports broadcast rights.

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10. We received responses or evidence from the organisations and expert individuals listed in Annex B.
11. We also received 148 submissions from members of the public. A summary analysis of those responses is at Annex C.
12. The recommendations on the matters covered by the Panel's terms of reference (paragraph 7) which are set out later in this report were reached on the basis of unanimous or majority decisions by all members of the Panel.

A brief history of listing

13. The first "list" was a voluntary agreement drawn up in 1956 between the BBC and the Independent Broadcasting Authority (which had only come on air in 1954) – both believed a voluntary agreement to be in their interest, probably for different reasons. This agreement provided that neither party would seek exclusive broadcast rights for a list of major sporting events. In the generation that followed, it was not unusual for both the channels to show the same major event live eg, World Cup football matches and the Olympic Games.
14. However, it is worth noting that these were not days of extensive coverage of live sporting events. Top level club football was rarely seen other than on FA Cup and Scottish Cup Final day in May. The Wimbledon Lawn Tennis Championships and the then Five Nations' Rugby Union Tournament were screened, but very little other tennis, let alone club rugby. The England cricket team's home Test matches were shown, but certainly not away Test matches.
15. As a result of this voluntary arrangement breaking down during the 1970s, the Broadcasting Act 1981 was enacted to prevent the "making of exclusive arrangements for the broadcasting of sporting or other events of national interest". This legislation referred to terrestrial broadcasters only. No definition of "national interest" was included or has been included in any of the subsequent listed events legislation.
16. The provisions of the 1984 Cable and Broadcasting Act were intended to prevent the possibility of events of national importance and significance from being shown exclusively by cable companies on pay-per-view (PPV) terms unless broadcast rights had also been offered to the BBC and IBA on comparable terms. This Act introduced the concept of a list of events to be drawn up by the Secretary of State. The Scottish FA Cup Final in Scotland was added to the list following the passage of the Act. Subsequently the listed events regime was contained in the 1990 Broadcasting Act and is now covered by the 1996 Broadcasting Act. The regime is governed by European law set out in the 1989 Television Without Frontiers Directive (since amended and consolidated, and now known as the Audio Visual Media Services Directive). This Directive permits all member states to operate a listing regime in relation to events of "major importance for society" and provides, once a regime and list is verified by the Commission, for mutual recognition.
17. Reviews of the list were carried out in 1984, 1989, 1991 and 1998.

18. The earliest efforts to arrive at clear criteria for listing date back to 1984 following representations from the Central Council for Physical Recreation (CCPR). But the 1998 review, conducted under the terms of the 1996 Broadcasting Act, was the first review to take place on the basis of transparent and published criteria. Following that review the Secretary of State reached his decision on the list, which included accepting the review's recommendation that events should be categorised either as Group A or Group B events. Group A sought to protect live coverage; Group B to protect secondary – delayed or highlights - coverage.
19. Until now the UK has only listed sporting events, reflecting its strong sporting heritage. But non-sporting events can be listed as they are in some instances elsewhere in Europe. Austria lists the Vienna Opera Ball, Belgium lists the Queen Elisabeth Music Competition and Italy lists the San Remo Music Festival.
20. It is important to be aware that an event does not have to be of major importance to the whole of the UK to be listed. It is sufficient that it is of major importance to one of the nations and it can be listed on a national basis, eg currently the Scottish FA Cup Final is listed in Scotland alone. It is also important to note that listing does not of itself guarantee that an event will enjoy live, deferred or highlights coverage on free-to-air television. An event can be listed, but no rights holder can be compelled to sell its rights, and no broadcaster can be compelled to acquire rights and/or to broadcast an event for which rights have been acquired. Furthermore, it cannot be assumed that free-to-air broadcasters will bid for listed events, or that subscription broadcasters covet them.
21. If an event is not listed, the only other current protection for free-to-air television is the CCPR's Voluntary Code of Conduct for rights owners (see paragraphs 24 and 25).
22. The Panel were also aware that the rights to most events are sold well in advance. In those cases, any changes to the listing arrangements that it might propose could not have immediate effect, but would have to wait until the next rights negotiation (see Annex D).
23. Under the 1996 Act, a Code of Conduct operated by Ofcom gives practical effect to UK legislation on listing. In relation to the current Group A events, it requires that the rights to broadcast a listed event must be offered for sale on fair and reasonable terms to all broadcasters - free-to-air and Pay TV - and cannot be offered on an exclusive basis. If a broadcaster does nonetheless acquire exclusive rights – for example because no other broadcaster chooses to bid for them – then it must obtain Ofcom's consent before that event can be shown exclusively live. A similar regime applies in the case of Group B events.
24. Outside of the statutory protection offered by the current listed events arrangements, the Panel was made aware that the CCPR had developed a Voluntary Code of Conduct for rights owners in relation to the broadcasting of sporting events. Its initial Code was published in 1996.

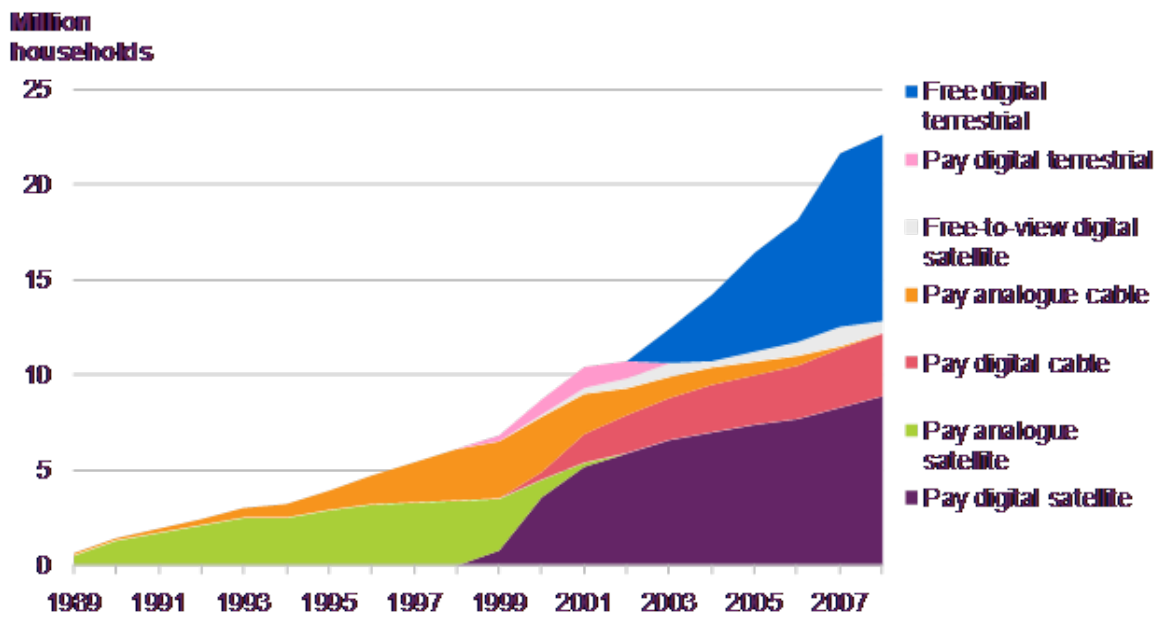
25. The Code was updated and agreed in late 2008, and published in early 2009. The signatories include all the biggest governing bodies of sport in England, apart from the Rugby Football Union, and signatories undertake to ensure that televised coverage of all major sporting events under their control are generally available free-to-air in the UK through live or secondary coverage, and that a minimum of 5% of the revenue generated from the sale of broadcasting rights is re-invested for the wider development of their sports.

The changing media landscape

26. This Review, by no means premature after 11 years, was nonetheless complicated by taking place against the background of a rapidly altering media landscape. The Panel had to be conscious throughout its deliberations that any recommendations that it might make, if accepted, were certain to be introduced into a still evolving media space.
27. The report by Lord Gordon of Strathblane's Panel in 1998 concluded that "We are conscious of the speed with which television technology is changing. The coming of digital television, the growing penetration of cable and satellite, and the possibilities of pay-per-view demonstrate that the landscape in which sporting events are broadcast is changing rapidly and dramatically." Even if pay-per-view may be less prevalent today than some had expected then, Lord Gordon's vision proved to be right.
28. In 1998 BSkyB's satellite TV service had already been in existence for almost a decade. But by the end of that year, it had launched Sky Digital, and introduced hundreds of new channels.
29. October 2002 saw the BBC, BSkyB and Crown Castle International launch Freeview, a package of 30 free channels through an aerial with no contract. Such a broadcasting partnership, however surprising to some at the time, showed how the broadcasters could work together if they chose to. "Freeview has the potential to foster co-operation among disparate and aggressively competitive broadcasters" was the conclusion of "Freeview -The Free Broadcasting Formula that Clicked", published by the European Media Forum in December 2006.
30. The landscape changed even more dramatically after the last major legislative changes under the 2003 Communications Act:
- Today, Freeview is the leading TV platform. 87% of homes watch digital services, and the majority have broadband access;
 - In 2003, the number of channels broadcasting in the UK was 204; today it is nearer 500;
 - In 1998, the 5 main terrestrial TV channels captured around 97% of total viewing. By 2007 this had fallen to 64%, and it has continued to fall since;

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- However the very biggest TV audiences of the past decade have been realised by the main terrestrial channels, most notably for England football matches at Euro 2004 and the 2006 World Cup. At their peak, those audiences exceeded 20 million;
- Ofcom has reported that, in 2007-08, almost 50% of UK households took Pay TV services, up from just under 40% in 2002. The following graphic, taken from Ofcom's second consultation in its Pay TV market investigation, illustrates the long term trend in the number of households accessing multi-channel platforms from their main TV set;

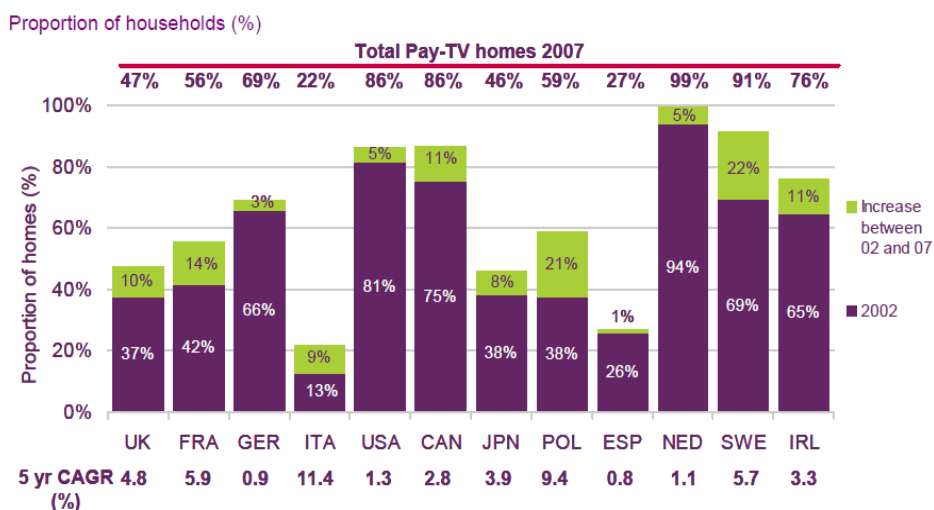


The penetration of multi-channel TV platforms in the UK, 1989 – 2008

Source: Ofcom, Pay TV Second Consultation: Access to Premium Content, September 2008

- But despite the growth in the uptake of Pay TV services, the penetration of Pay TV in the United Kingdom still currently lies below that in several other European markets, though that is now growing more rapidly as the following graphic illustrates;

Pay TV take-up: 2002 to 2007

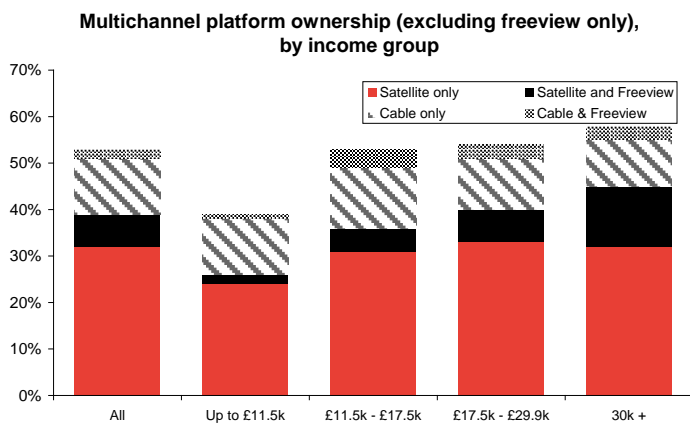
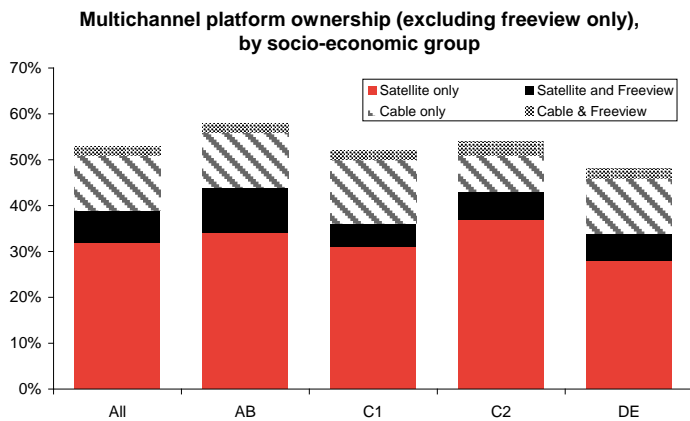
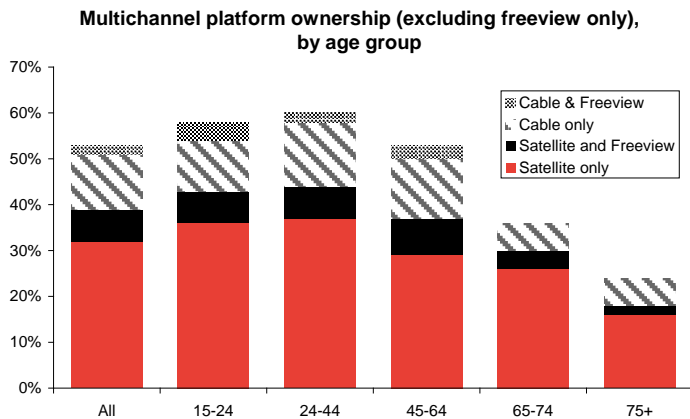


Source: World Television Markets 2008, IDATE/Ofcom
 Note: The data for Germany and the Netherlands should be treated with caution as pay-TV figures include households that pay a small 'cable relay' payment in return for access to free-to-view channels

- Taking a Pay TV service is a necessary, but not always sufficient, condition to enable access to coverage of major events shown by Pay TV broadcasters. Currently, for example, Sky Sports is only available to UK viewers as part of a premium package. Research by Frontier Economics undertaken on behalf of the Panel shows that, at maximum, 60% of BSkyB customers and 25% of Virgin Media customers may subscribe to such premium channels. Given Ofcom's estimate that there were 12.5 million Pay TV households in late 2008, this suggests that around 6.1 million households subscribe to premium channels, which include film as well as sports channels. BSkyB themselves told the Panel that two-thirds of their customers subscribed to premium channels, but declined to elaborate further as the information was commercially sensitive.

31. Whilst the take-up of Pay TV services has increased substantially in recent years, the pattern of take-up does appear to differ across social groups, most notably between different age and income groups in society, though these differences may not be as large as some might expect. Three illustrations from Ofcom's "The Consumer Experience 2008" reflect these differences:

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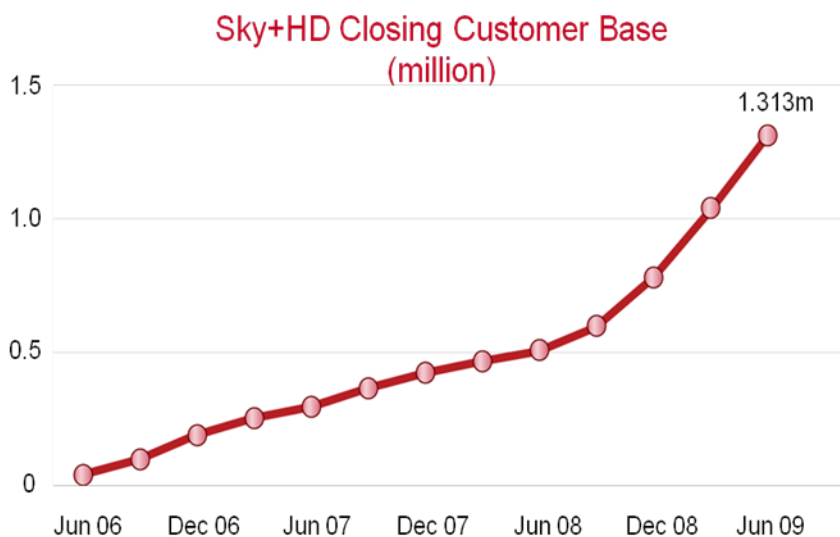


According to this data, just over half the UK population now has access to multi-channel TV either via a cable or satellite platform. The variation in take-up across social groups is relatively unpronounced. However, amongst older members of society (65+) and those on lower incomes (less than £11,500 per year) take up is considerably below

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50%. For those groups therefore, terrestrial free-to-air TV via the qualifying channels is a relatively more important source of broadcast coverage. Pay TV broadcasters regarded information they might have on this subject as commercially sensitive and declined to share it with the Panel.

32. The Panel's deliberations also coincided with the publication of Lord Carter's eagerly anticipated report "Digital Britain", which was to stress his belief that everyone should benefit from what he referred to as a "quiet revolution over the past decade in our lives at work, at home and at leisure".
33. Lord Carter's report covered the ever-wider range of digital technologies – broadband services, mobile phones and TVs, DAB radio – and new on-line technologies that had brought about, for example, the BBC's iPlayer and ITV's Player. The rapid advance of high definition television (HDTV), so recently in its infancy, was vividly illustrated for the Panel by BSkyB's evidence – in the following graphic - showing its HD customer base increasing more than 4-fold between 2006 and early 2009, when it reached 1.3 million. By October 2009, BSkyB reported that figure had passed 1.5 million. Experiments with 3DTV are already underway and are likely to improve still further the sports viewing experience.



As at 30 June, 31 December

34. The convergence of "television" and "on-line/broadband" services is underway, and the distinction between the two will effectively disappear for the viewers of the future. The technology to switch an "internet" feed or service onto a TV set (and, vice versa, switching a TV channel onto a laptop) is already available and at a reducing cost. That is

one reason why the long predicted market in internet sports rights has not so far materialised.

35. However, towards the end of the Panel's work in October 2009 England's penultimate FIFA World Cup qualifying match in Ukraine was shown exclusively live on the internet. As a result of last minute re-scheduling, announced after "Strictly Come Dancing" on BBC1 and after many supporters had already paid between £4.99 and £11.99, highlights were eventually shown on the BBC. The Panel noted concerns about picture and sound quality from several commentators, and about the process by which the national team had come to be showcased to so few. Even with marketing alliances with newspaper groups and online bookmakers, and however innovative and resourceful the organisers of this venture may have been, the live audience appears to have been well under 1 million. Other commentators observed "websites of supreme illegitimacy easily obviating the need for a £10 payment"².
36. Consumption patterns in this new environment needed to be understood by the Panel. A widespread perception appeared to exist that younger people in particular were increasingly choosing and preferring the internet – however they accessed it – to traditional TV. Indeed US research from NBC³ showed that while internet users watched just over 2 million video streams of the 2004 Olympic Games in Athens, the comparable figure for the 2008 Beijing Games was 75 million streams. However, further investigation⁴ also revealed that fewer than 1% of the American audience relied solely on the internet to view either Games, seeing their internet use as complementary to traditional TV viewing. Watching TV, including sports highlights, on mobile phones and other hand-held devices is another modern-day phenomenon. Jeff Zucker, CEO of NBC Universal in America concluded in 2008: "The lesson is clear..... the internet does not cannibalise TV viewing, but in fact supports and supplements it".
37. Viewing on the internet or on mobile devices are also more likely to be seen as individual, rather than communal, forms of activity.
38. Therefore, startling though the technological revolution may be, and despite the swirling controversy around digital piracy - the Panel noted the BBC Trust view that "Listing helps to protect rights holders against online piracy" - it had to be wary of making the assumption that viewing habits were undergoing a change with easily predictable, long term consequences. Visionaries and long-standing media observers presented often different visions to the Panel. It seems clear that younger people growing up with access to Freeview and FreeSat, digital channels such as Sky Sports, broadband internet access and services such as iPlayer, and who are also experienced users of mobile technologies, are often adept at accessing almost any sports event at a

² Daily Telegraph, 12 October 2009

³ Jeff Zucker, CEO of NBC Universal , in "Broadcast" Magazine, October 2008

⁴ Jeff Zucker, CEO of NBC Universal , in "Broadcast" Magazine, October 2008

time of their choosing. An older generation is however much more dependent on traditional media.

39. Crucially, it was apparent that the completion of digital switchover in the UK in 2012 would increase significantly the number of channels with a reach of 95% of the population of the United Kingdom which would qualify them to be designated by Ofcom as qualifying channels for the purposes of the listed events regime (see footnote 1).
40. Currently just 5 channels have been designated by Ofcom as qualifying channels. They are BBC1, BBC2, ITV, Channel Four and Five.
41. However, provided that the services currently available on Freeview via the public service multiplexes remain on those same multiplexes, they could all reach – in the absence of any other changes in the terms on which multiplex operators offer their services (see paragraph 45 below) – 98.5% of UK households after digital switchover. Channels in this category include BBC3, BBC4, CBBC, CBeebies, BBC News, ITV2, ITV3, More4 and E4⁵, although some fluidity should be expected in the future.
42. Channels broadcast on Freeview by the commercial multiplexes, such as Sky3, Sky Sports News and Virgin 1 are likely to reach up to 90%, or even more, of UK households after digital switchover, still short of the qualifying threshold, but a nonetheless not insignificant total. None of the non-public service broadcasters has so far sought qualifying status for any of their channels and the commercial terms on which such channels are made available to Pay TV operators would need to be made known to Ofcom if they did so. BSkyB made it clear to the Panel that offering major events free-to-air did not currently figure in their business plans, even though to do this might effectively obviate altogether the need for the UK to continue to maintain a listed events regime.
43. The Panel was also made aware in the BBC Trust's evidence via the Value Partners submission that whilst digital switchover might be expected to increase competition for listed events, it might also encourage a new free-to-air sports channel to enter the digital terrestrial television (DDT) market.
44. Digital switchover therefore unquestionably increases the potential number of channels which might broadcast free-to-air listed events if the broadcasters, including Pay TV operators such as BSkyB and ESPN, chose to operate channels that met the definition of a qualifying channel. The UK's newest sports broadcaster, ESPN, operates both free-to-air and Pay TV channels in the USA and that route remains open to BSkyB and ESPN in the United Kingdom.
45. There is however a further potential complication. Multiplex coverage levels could change significantly either way over the coming years. Multiplex operators face a trade-off between coverage and capacity and could decide to reduce coverage in less

⁵ Source: Ofcom advice to the Panel

populated areas in order to increase the number of channels in more densely populated areas. On the other hand, compression technology may continue to improve and transmission costs may fall allowing multiplex operators to extend coverage without reducing the number of available channels.

46. In summary, the media landscape has altered radically since Lord Gordon of Strathblane's review in 1998. It is highly likely to be very different again a decade from now, if not sooner. The Panel is bound to expect that listed events will have to be reviewed certainly more frequently in the future. Lord Gordon's Panel could not have predicted the impact of the partnership between the BBC and BSkyB that brought about Freeview and accelerated multi-channel television so rapidly. Looking ahead, assessing the speed of the advance of HDTV and 3DTV is equally unpredictable. But that technology will move on again is certain; unsurprisingly the public's viewing habits, especially amongst the young, will be far from static. But the Panel has been convinced that, at least in the foreseeable future, and as far as the biggest sporting events are concerned, most people's first choice of how to view them will be by means of what is still identifiably a television set, however removed it may be from the traditional TV set in the corner of the living room.

Public attitudes and viewing habits

47. The Panel's desire for up-to-date knowledge and analysis of public attitudes to the current listed events arrangements was the catalyst for the commissioning of two research projects – the British Market Research Bureau's "Free-to-air events – Understanding the Public's Views" and Frontier Economics' "The Impact of Listed Events on the Viewing and Funding of Sports". The findings of both accompany this report.
48. These projects were complemented during the formal consultation process by research presented to us by BSkyB – Deloitte LLP's "The Impact of Broadcasting on Sports in the UK" – and the BBC's "Crown Jewels" produced in conjunction with Ipsos Media CT. ITV also commissioned Ipsos Media CT to carry out research on its behalf for which the Panel was grateful.
49. It was estimated that sports-related activity in the economy of England alone amounted to £15.5 billion in the middle of the current decade⁶, and it has continued to rise since then.
50. A summary of BMRB's findings stressed the importance that most people attach to the role of sport in society:
- 84% saw sport as a vital way of bringing people together in society. Even 70% of those expressing no particular interest in sport agreed that this was true;

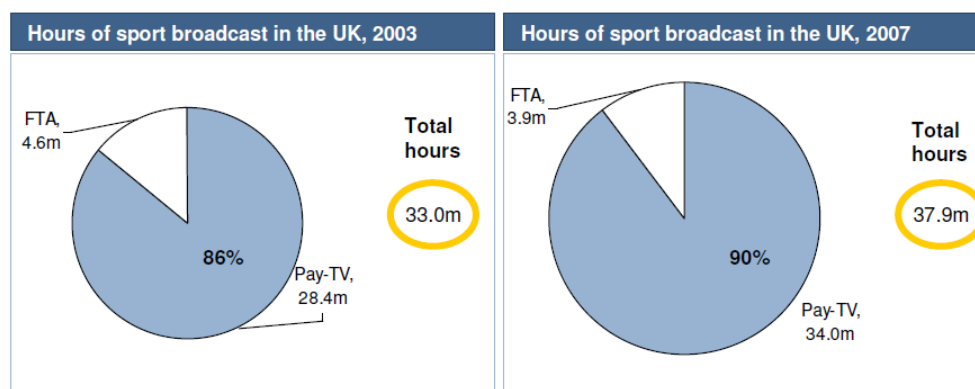
⁶ Sport England "The Economic Importance of Sport in England 1985-2005", December 2007

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- 82% believed they had an entitlement to watch certain key events free-to-air because they had already paid a licence fee. Ipsos Media CT's report for ITV showed 76% "expected" to be able to watch major events on free to air television;
- The current criteria for listing were generally felt to be fair though some found the terminology – for example “national resonance” – difficult to understand;
- The events currently listed were those most often mentioned by respondents as the ones that ought to be protected in the future. The Olympic Games, Wimbledon, the Grand National and major football events figured prominently;
- Events such as the Grand National were perceived to be part of a cultural heritage that should be available to the widest audience;
- No consensus existed for listing any particular non-sporting events in the UK;
- 53% perceived the best sport was now only available on satellite TV; and,
- Overall 43% agreed (21% disagreed) that they would rather see more sport on free-to-air TV even if it meant less money to invest in grass roots sport. National variations within the UK are summarised in the market research which accompanies our report.

51. Multi-channel broadcasters now contribute over 90% of the hours given over to sport on television in the United Kingdom. In 2009, BSkyB will broadcast more than 40,000 hours of sport across 5 channels, plus HD channels. Whilst the BBC told the Panel they had maintained the level of their sports coverage in terms of hours, figures from Mintel, provided by the BBC Trust, showed – see the following graphic - that the amount of sport shown free-to-air fell between 2003 and 2007. But, in summary, as Ofcom concluded in their Pay TV Phase 3 Report “Live top flight sports programming is likely to have a continuing appeal regardless of technical change.”

UK Sports Television Output



Source: Sports Marketing Surveys, Mintel

52. BSkyB’s evidence to the Panel highlighted their long-term commitment to British sport, and their major role in transforming how the nation watches sport on TV. They have also driven spectacular innovation in the way in which sport is covered, most recently in high definition, as noted earlier in paragraph 33, and through interactivity and multi-platforms including the internet and mobile phones.
53. Their evidence also reminded the Panel that 20 years ago there was very limited live coverage at all of the biggest sports on TV. Other than the occasional domestic football match in addition to the FA Cup Final, there was no club rugby union, and no major tennis beyond Wimbledon. As already noted, there was certainly no overseas Test match cricket.
54. But sport at its best has long been more than capable of attracting the biggest audiences across all genres. In the 1980s and 90s it was sport that provided two of the most watched TV events of those decades – an astonishing 23.95 million to see Torvill and Dean win the gold medal at the 1984 Winter Olympics, and 23.78 million watching an epic 1998 FIFA World Cup match in France, Argentina v England. Even in the days of more fragmented television audiences in the 21st century, 5 of the top 30 most watched programmes have involved England football matches at major tournaments eg, Euro 2004 (20.7 million for Portugal v England) and the 2006 World Cup (18.6 million for Sweden v England).
55. Overall, 86% of the UK population watched the last FIFA World Cup Finals on the BBC and ITV, while 74% viewed the Beijing Olympic Games on the BBC. The Panel received YouGov research from September 2008⁷ showing that more than half of the population (56%) believed the Summer Olympics created “shared viewing moments”. Ipsos Mori research for the BBC showed that while 36% of the population access sport via the internet, and 48% tune in to radio for sports coverage, such figures are well short of the 75% who watch sport on television.

⁷ YouGov Omnibus. September 2008

56. The continuing contrast between free-to-air and satellite audiences remains substantial, and is repeatedly highlighted by the terrestrial broadcasters and supporters of the listed events arrangements. The following figures⁸ illustrate their point:
- The 2009 UEFA Champions League Final was viewed concurrently by 7.89 million on ITV and 1.09 million on Sky Sports;
 - A 2009 UEFA Champions League Semi-Final between Manchester United and Arsenal – the first leg was watched live by 1.77 million on Sky Sports, and the second leg live by 7.48 million on ITV;
 - The average live TV audience per session of play during the 2005 Ashes series on Channel 4 was 2.4 million. The corresponding figure for the 2009 Ashes series on Sky Sports was 0.6 million; and,
 - 1.4 million saw Andy Murray in the Final of the 2008 US Tennis Open on Sky Sports. 8.5 million watched the same player in the last 16 of the 2009 Wimbledon Championships on BBC.
57. Pay TV companies stress, however, that viewing figures do not include those viewing “out of home” in pubs and clubs. BSkyB insisted that 1/3rd of such premises offered Sky Sports and, until its demise, Setanta UK. Actual audiences for Pay TV events can, they believed, be increased by 40% by out of home viewing. BBC evidence though referred to TGI Survey data suggesting that less than 5% of viewing of the 2006 FIFA World Cup took place “out of home”. It is clear that such communal viewing is not easily available and accessible to all, including the elderly and children, and particularly outside urban areas. In summary, the Panel found the data and evidence on “out of home” viewing sometimes contradictory, certainly unconvincing and in need of further research.
58. The Rugby Football Union in England briefly removed home rugby internationals from terrestrial television. England v Wales at Twickenham in 2001-02 attracted a Sky Sports audience of less than half a million. A year later the same teams in Cardiff attracted a BBC audience of 6 million.
59. But the Panel was told that audience figures and their significance could and should be only one of the factors that they addressed. BSkyB, senior figures from the former Setanta UK, and leaders of all the major sports repeatedly talked in their evidence about the judgements that governing bodies had to make in addition to leveraging what BSkyB referred to as “the appropriate television audience”. The Panel was urged to recognise the importance for any governing body of:

⁸ BARB weekly ratings and Future Sport+Entertainment

- The need to generate sufficient income to enhance the long-term interests of their sport, and most notably the development of its grass roots;
- The need to satisfy sponsors;
- The need to maximise the experience of fans watching inside grounds or stadia; and,
- The need to secure the best quality coverage appropriate to any particular sport.

60. Those opposed to the continuation of listing all stressed that the trade-offs between these factors could only be settled by sports governing bodies taking the right decisions for their own particular sports. They should not be fettered by the intervention in the market place that the listed events arrangements represented. As BSkyB's evidence concluded "The judgement of those charged with the job of looking after the interests of sport – the sports bodies – should be trusted, and they should be allowed to make the right decisions about broadcast coverage of their sport without interference".

61. The responses of so many governing bodies, and of the Pay TV broadcasters, to much of the public opinion polling we received highlighted the dilemma the Panel had, and ultimately the Secretary of State will have, to face. Substantial support continues to exist amongst the public for the protection of key events that they believe should be available free-to-air. These events can continue to expect substantially higher audiences on free-to-air TV as opposed to Pay TV.

62. But governing bodies, and Pay TV broadcasters, are overwhelmingly against the protection offered by the listed events arrangements. The governing bodies believe they represent a significant financial penalty for sport and are an unwarranted commercial interference that reduces competition for their rights. How far this was indeed the case was the next issue that the Panel wanted to consider.

The impact of listing

63. The Panel considered evidence of the impact of listing on three particular groups—the broadcasters, the governing bodies and the sports they run, and the viewing public.

The broadcasters

64. The Panel heard widespread concerns from within the sports industry about the long-term value of its TV rights. Confidence had clearly been shaken during the recent economic downturn, and particularly following the impact of significantly reduced advertising revenues on the relevant terrestrial channels.

65. ITV, Channel 4 and Five talked openly to the Panel about their limited, but as they saw it realistic, ambitions with regard to sports broadcasting. All three support the continuation of a listed events regime.

66. ITV insisted that its current concentration on top-level football and the Rugby World Cup, but little other sport on ITV 1, was part of a strategy that could change in the future, though precisely when they were unclear. Channel 4 confirmed significant cuts in their overall programme budgets, and insisted they would still bid selectively and opportunistically for major events, but at restricted financial levels. Five believed themselves always to be at a disadvantage compared to Pay TV companies, because of their reliance on advertising, not least during a recession. They would continue to seek to acquire sports rights wherever financially realistic opportunities presented themselves.
67. The Panel was also conscious of an unprecedented downturn in advertising revenues across all commercial channels by as much as 20% in the first quarter of 2009. Although there was some improvement in late 2009, it was far from clear that this was sustainable. Advertising accounts for almost 70% of ITV's revenues alone. 2009 has also seen significant speculation about the future ownership of Channel 4 and Five.
68. Put starkly, in the present economic climate, at least three of the five channels qualified to show listed events because of their 95% audience reach have struggled to table bids at a level most governing bodies would have found fair and reasonable. The Panel does not believe that situation is likely to change for some time.
69. BBC1 and BBC2 are the other qualifying channels. The BBC says that it is a firm supporter of listed events, and wants the list extended. It may not be widely realised though that the BBC appears to have no substantive obligation to bid for, let alone to screen, listed events whilst, at the same time, it may be seen as a major beneficiary of their existence. The overwhelming majority of the current Group A events are broadcast by the BBC. The Panel was told that every BBC bid to acquire any particular sports rights package went through a BBC Sport Fair Trading approval process. The Panel also saw a BBC memorandum on sports coverage prepared for the Charter Review Select Committee in November 2005. This conceded that whilst "we(the BBC) can never again be the home of all sports, we can be the national sports broadcaster for the UK by broadcasting matches of great importance, by showcasing the world's biggest events and creating new heroes".
70. The memorandum continued that the BBC provided public value for the licence fee payer with a balanced sports portfolio in line with its Charter commitment" to provide wide ranging coverage of sporting and leisure interests". Broadly, with a finite if significant pot of money for sports rights, BBC Sport declares it aims to provide a mix of programming that includes "uniting the nation" events.
71. The BBC defends the absence of a clear commitment to listed events by saying "it must assess the value of particular sports to licence fee payers taking into account the public service value to the BBC's portfolio". In practical terms, this has meant in recent times that the BBC has declined to bid for cricket Test Matches (Group B Listed) but paid a substantial sum of money for the rights to Formula 1 Motor Racing (not currently listed). BSkyB argued in their evidence that it was "not acceptable for the BBC to make these decisions on the one hand and, on the other, to ask for further subsidy – on top of the

£3.5 billion guaranteed income it receives from the licence fee each year – by having additional events added to the list, against the wishes of the sports bodies, in order to restrict competition for those rights.”

72. Referring to Pay TV broadcasters, the BBC Trust's research concluded "Event listing does not appear to have impacted Sky, (they) having built what many regard as the world's most successful Pay TV business under a listed events regime". Furthermore, "at the last change in listing in 1998, when the European Football Championships tournament, Rugby League Challenge Cup Final and Rugby Union World Cup Final were added to the A List, and Test Match cricket and the Commonwealth Games were removed, Sky's subscriber growth increased. There are many more factors than sports rights that govern Sky's performance, but it is difficult to find any correlation with event listing". Furthermore, as "the Economist" on 10 October 2009 observed "Satellite TV was a good business going into the recession and is now triumphant. Britain's BSkyB added more subscribers, obtained more revenue from each customer, and reported more profit than the year before."
73. BBC Trust research also noted that in the last ten years, two major new entrants into the subscription sports market had failed. In the cases of ITV Digital, which had closed in 2002, and Setanta UK, which failed in 2009, we had no evidence that their demise was linked to the existence of the listed events regime. The latest entrant to the UK market this year ESPN, with considerable experience of running free-to-air and Pay TV channels elsewhere in the world, entered the UK sports rights market after the end of the consultation period.
74. BSkyB meanwhile in summary recognised "FTA and PayTV broadcasters bring different advantages to different sports, and we recognise that some sports benefit from placing their coverage on a FTA terrestrial network ... most listed events would probably continue to be featured on the main FTA TV networks were the listed events regime to be abolished entirely."

The governing bodies of sport

75. As mentioned earlier in paragraph 64, the Panel noted a widespread fear amongst governing bodies about declining values for their rights both currently and in the future because of a lack of competition made worse, many contended, by the current listing regime.
76. Evidence was heard from the Jockey Club, owner of the rights to the Grand National and the Derby, that it believed the absence of competition from its most recent tendering process for Aintree placed the BBC in an overwhelmingly beneficial position. The Grand National is currently a Group A listed event and in the Panel's view continues to be an event of "national resonance". The reality is though, as the Panel learned, that the rights to both the Grand National and the Derby have declined in value over the past 5 years by a remarkable 70%. However, the assumption that this was wholly because of the listed events status of both races, and that its removal would thereby lead to fiercer competition and a higher price for their rights, was undermined by BSkyB's evidence.

They contended that one-off sporting events of whatever magnitude were of much lower priority for them than series of race meetings over a year that enabled them to build up a subscriber base. Whilst the Jockey Club agreed that there were other contributory factors in a difficult economic climate, they maintained their contention that the presence of their top two events as Group A listed events had resulted in a false market which impacted significantly on value. But as with most governing bodies of other sports, they declined to put a specific figure on the loss that could be attributed to listing alone.

77. Evidence was also received from those working on behalf of the Commonwealth Games Organising Committee, whose event is currently a Group B Listed event for which historically the BBC has been the only bidder. The last Commonwealth Games were in Melbourne, Australia in 2006; they will be followed by the Delhi Games in 2010. Despite insisting on a greater breadth of rights than in 2006 and despite the proximity of the London Olympic Games just two years away, the Panel was told that the BBC had sought to offer a rights fee of around 40% less than in 2006.
78. Of course, the BBC must act in the widest interest of licence payers; of course it may have overpaid for the rights to Melbourne 2006, but that is a matter for the BBC Trust. The Panel was also told by the Rugby Football League, long-term partners of the BBC for the Rugby League Challenge Cup Final – a Group A listed event – that it was made clear to them by the broadcaster that the value of their rights would have been cut by 75% had they not agreed to shift the Final from May to August.
79. Case studies by Frontier Economics presented to the Panel concentrated on the effect of listing on various governing bodies and their sports. Similar work by DeLoitte LLP, commissioned by BSkyB, addressed the same issue, and the wider impact of broadcasting policies on sports and events. These case studies accompany this report. As a result of these case studies and other evidence, the Panel noted:
 - The governing bodies of English football and rugby union (The FA and the RFU) have effectively pursued partnership strategies with both FTA and Pay TV broadcasters. Deloitte's study reports " The Six Nations strategy of FTA coverage for the tournament combined with the RFU's partnership with BSkyB for England home matches outside of the Six Nations means that the RFU benefits from an overall package each year of substantial revenues, full live coverage of all England home matches and exposure". Meanwhile, since 2000 The FA, rights holders of The FA Cup and the England football team, have actively pursued joint deals with first BBC and BSkyB, and more recently ITV and Setanta, until the latter's demise in the summer of 2009. The Panel was impressed by the way in which such deals achieved a balance between exposure and income;
 - Frontier Economics noted that broadcasting is not the major source of revenue for most national rugby unions. In 2008, it made up 22% of the RFU's income in England as compared to 24% from hospitality and catering. In Scotland, 19% came from broadcasting, with their main revenue source being ticket sales. In Wales, where the Panel was to find the strongest views for and against listing the Six

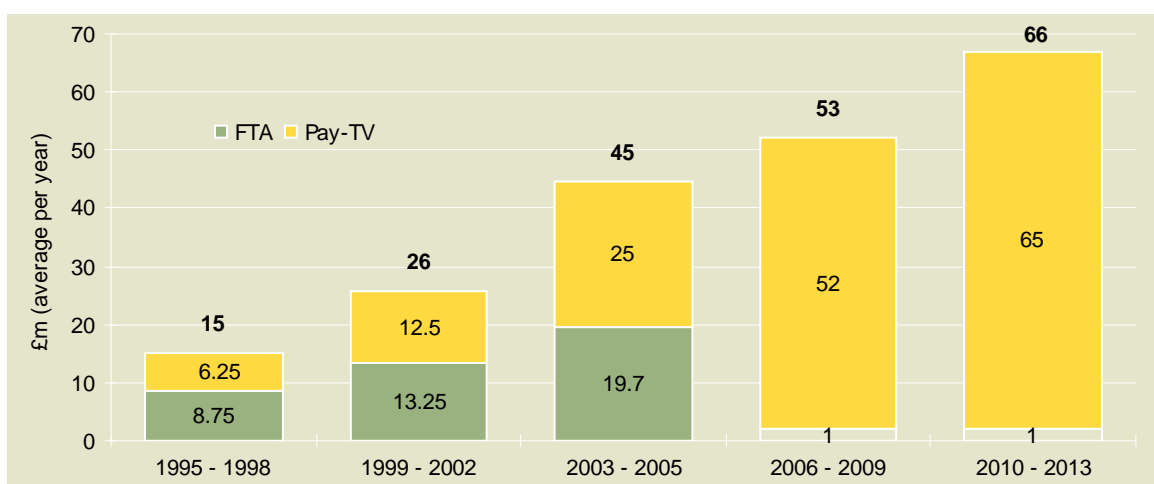
Nations tournament as a Group A event, 55% of revenue in 2008 came from match income, and 25% of its income derived from its share of the sale of the rights to the Six Nations alone. Given that the Six Nations Championship is currently only a Group B Listed Event, but is shown live on a qualifying channel eg BBC1, Frontier Economics concluded that listing does not appear to constrain the behaviour of either the broadcasters or rights owners;

- At present the broadcasting policies of the home nation football associations appear to differ. The FA in England, where in 2006/7 over one third of income came from broadcasting revenues courtesy of a joint free-to-air/Pay TV agreement, is a signatory to the CCPR Voluntary Code. This guarantees free-to-air access to its major events, live or recorded. The other home nation FAs are not signatories. Frontier Economics concluded that listing all the home nations World Cup and European Championship qualification games could constrain each domestic FA, and potentially reduce income streams from broadcasting and thus their ability to invest at grassroots level. At the same time it became clear that such home nations games on free-to-air television do attract significantly larger audiences and thus potentially attract more sponsorship. Most recently, England v Croatia on ITV in September 2009 peaked at 9.8 million viewers, and occupied a top 5 place in that week's overall television audience figures. BBC Scotland's coverage of the national team's match in Norway in August 2009 attracted almost 2 million viewers, and a 32% share of the audience in Scotland itself. BBC evidence to the Panel agreed that listing home and away qualifying matches would result in some market impact. However, they contended that with England home qualifying matches currently available on free-to-air television, listing them would have little market impact. England's away games, with an approximate value of up to £5m per match, would be impacted more significantly. As far as the market value of the other Home Nations' matches are concerned, estimated at between £300,000 and £600,000 per match, the BBC maintained "we expect any reduction in value due to listing is likely to be small." Such views contrasted sharply with those of BSkyB and the Home Nations' Football Associations (see paragraphs 102-107). The Panel recognised the inherent difficulty in forecasting in advance which would turn out to be the decisive game in any qualification process;
- As far as delisting non-home nation matches at major football tournaments is concerned eg, at the FIFA World Cup and UEFA European Football Championship Finals, the Panel heard evidence that the major issues it should be aware of centred on the potential value of these rights to UEFA and FIFA. In 2007, event income accounted for 89% (\$787m) of FIFA revenue with \$520m of this coming from the sale of TV broadcast rights to the 2010 World Cup. Both FIFA and UEFA, in giving evidence to the Panel, accepted the arguments in favour of the principle of listing, unlike most governing bodies in the United Kingdom. However, they believed listing their whole tournaments was disproportionate. FIFA highlighted the partnerships between free-to-air and Pay TV broadcasters in some European countries such as France. In Germany, however, even when parts of both tournaments had been de-listed, all broadcasting rights had so far remained with free-to-air TV providers. The Panel also learned that in the current situation, UK

broadcasters paid substantially less for the rights to the 2008 European Football Championships than their equivalents in other major Western European nations;

- UK broadcast revenues contributed around 57% of the ECB's revenues in 2008 compared to just 34% in 1997. From 2010, the ECB's broadcast revenues are set to increase further following the most recent negotiation of a new, four year contract with BSkyB and Five reported to be worth £66 million per year for live and highlights rights, an increase of over £10 million per year on current arrangements (see the graphic below). In the period 1997-2008 alone total ECB revenues more than doubled, and around 75% of this growth resulted from increases in broadcast revenues. The Chairman of the ECB told the Panel, in its written evidence of 1 June 2009, that "80% of the ECB's income is from broadcasting revenue".

ECB reported annual broadcast revenues for UK live and highlights rights 1995 to 2013



ote: The BBC was the FTA broadcaster for the period 1995 to 1998, and Channel Four was the FTA broadcaster for 1999 to 2002 and 2003 to 2005. FTA broadcaster Five acquired highlights for 2006 to 2009 and 2010 to 2013, with rights fees for these contract periods estimated.

Source: ECB, TV Sports Markets (various editions)

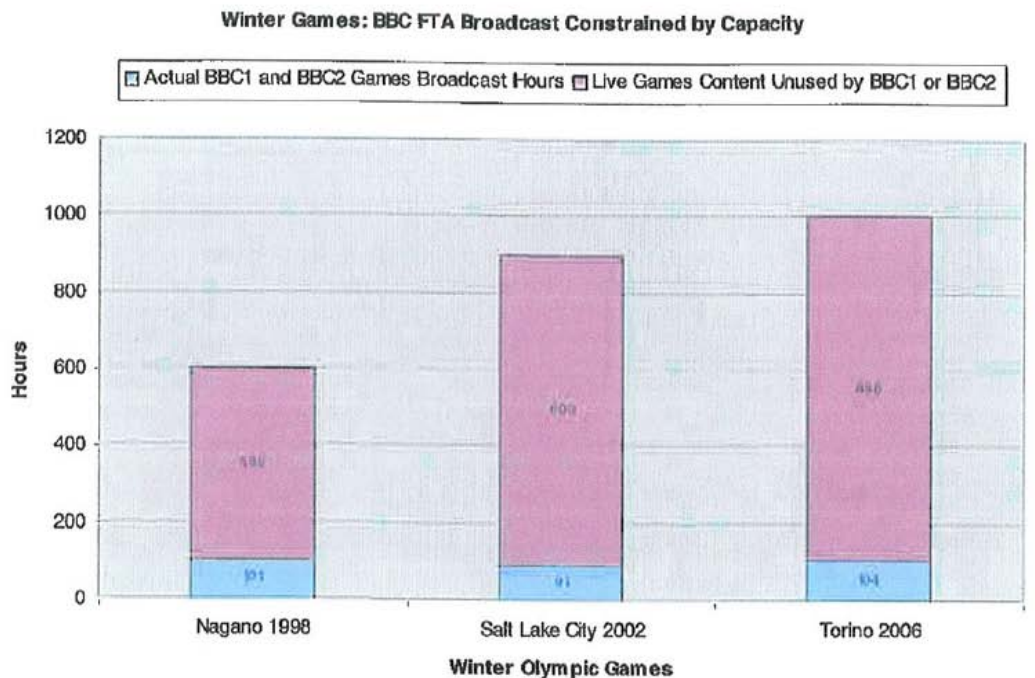
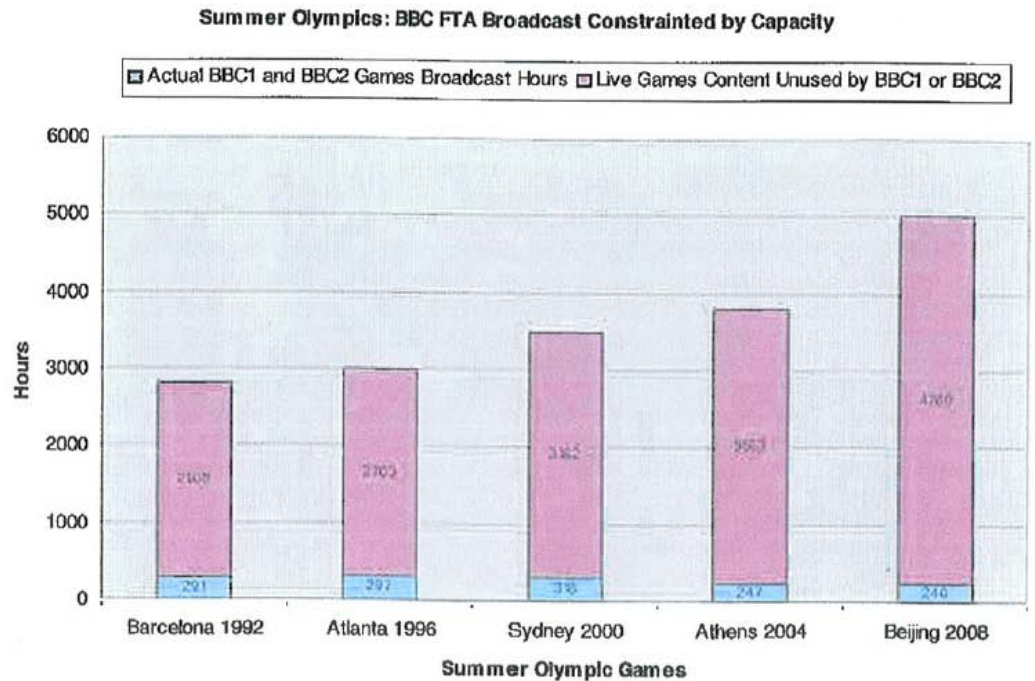
As a result, the ECB say that they will be able to increase payments to their counties by 34% from 2010. In February 2008, the ECB launched a five year strategy which will see more than £30 million invested in facilities and grassroots cricket. The Panel heard that BSkyB placed a significant premium in their bid on the exclusive rights they received from the ECB, who in return were able to require coverage of domestic as well as international cricket of all types that had rarely if ever been seen on television eg womens cricket, county and even club round-ups;

- Frontier Economics reported to the Panel that a significant decline in broadcast revenues (without a compensating increase in revenues from elsewhere) could impact the ECB's ability to fund both first class and recreational cricket at its current record levels. In 2008, for example, 50% of a smaller county's – Worcestershire's – revenues came from the ECB. The Panel understood that for the period 2006-09, accepting a Channel 4 free-to-air bid for the ECB's rights

would have cost cricket's governing body £20 million a year for 4 years. The ECB contend that they could not reasonably have been expected, whatever their desire to retain some free-to-air coverage, to have accepted such a large discount on the value of their broadcast rights. Meanwhile the BBC, for whatever actual reason, has effectively chosen not to bid for the rights to Test cricket in recent years;

- As elsewhere, sponsorship could provide one possible source of "compensating revenue" for the ECB were England's home Test Matches or any particular Test series to be listed. The Marketing Director of Npower, the sponsor of English Test cricket, was reported in "The Times" on 15 October 2009 as saying "Sky's cricket coverage of the 2009 Ashes series was first-class, and they have greatly enhanced the experience for the viewer. However, we cannot escape the fact that viewing figures for cricket on Sky have yet to match those achieved on terrestrial television in previous years." And other sports governing bodies such as UK Athletics consider wider availability of TV coverage enhances the value of potential sponsorship deals. The sports industry will have been encouraged by the recent Barclays/Premier League £82.25 million sponsorship deal for the next three years, up from £65.8 million in the previous three years. But the longer-term impact of the current recession on sponsorship of all sports remains to be seen;
- The Panel heard further evidence from the International Olympic Committee, long term partners of the BBC in the coverage of the Summer and Winter Olympic Games. They highlighted the capacity constraints that meant that only a fraction of available live Games' content has until now been shown on BBC1 and BBC2 eg, 4.8% of a total of 5000 hours of live content from the 2008 Beijing Olympic Games. The BBC has committed itself to showing all 5000 hours at future Games across a variety of platforms. The graphic below illustrates how the hours of unused live coverage from the Olympics have increased over the past two decades. The IOC has brought forward its own proposals that would delist parts of the Games and, as they described it, would "remove the undesirable effects of the existing listed events rules". These effects include the reduced income to the IOC that they believe hurts national Olympic Committees (including the British Olympic Association and the sports it promotes) as well as host cities such as London 2012. Such arguments were not dissimilar from those put forward by FIFA and UEFA in favour of partial de-listing. Frontier Economics' research, however, found that there appeared to be "no direct link between the amounts paid for broadcasting rights in the UK and the income provided by the IOC to the British Olympic Association";

AVAILABLE OLYMPIC GAMES CONTENT SIGNIFICANTLY EXCEEDS BBC1 AND BBC2 BROADCAST LEVELS



- The Panel noted, with some surprise given the BBC's opposition to de-listing part of major tournaments expressed elsewhere in their evidence to the Panel, the

conclusion of the Value Partners report for the BBC Trust that “with expanded programme propositions for larger competitions, there may be a case for listing an event not in its entirety”. The counter argument for being able to “tell the full story” and show “the whole event” was equally vigorously put before the Panel;

- Value Partners concluded "For some rights holders with listed events, the reduced number of potential buyers which results from listing may have reduced the fees they have received for their rights. This may be the case for UEFA and FIFA with the World Cup Finals Tournament and the European Football Championships Finals Tournament, which are well suited to Pay TV as tournaments running over a few weeks with a high volume of events. The example of cricket suggests that de-listing may help to accelerate growth in rights values by increasing competition for rights. However this effect is almost impossible to quantify due to the inability to establish what the market price would have been”;
- Golf’s Open Championship has been a BBC event since the 1950’s. The tournament’s organiser and rights holder is now R&A Championships Ltd. The R&A regards “widespread public access to the Open as a high priority consistent with its aim of growing the game through wide exposure” as it told the Panel in its written evidence. Furthermore, it had never sought offers for its broadcast rights from non free-to-air broadcasters. However, the R&A insisted it was “accepted wisdom that listing reduces the value of rights” and wanted no change to its current Group B status. The success of the Open Championship since 1986 has enabled the R&A to contribute substantial sums to grass roots golf in grants and loans. Frontier Economics advised the Panel that “changing the status of the Open Championship may not impart currently significant costs (or benefits) on any party”. The same research also informed the Panel that even when highlights were taken into account, the Ryder Cup commanded lower average TV audiences than the Open;
- As far as the all England Lawn Tennis Championships at Wimbledon are concerned, despite just the Finals weekend being currently listed as a Group A event, the whole tournament is a BBC-only event and has been over many years. In 2008, the surplus from the tournament generated £27m of revenues for the Lawn Tennis Association, 58% of its total revenue. This annual surplus is significant to the development of grass roots tennis. However, Frontier Economics concluded that “although broadcast revenues are a significant source of revenue for Wimbledon, much of these accrue from overseas broadcasters unaffected by the United Kingdom’s listing policy. Any changes to the proceeds from the sale of UK broadcasting rights (arising from a change in the listed status of the event) may therefore have only limited impact on the LTA’s funding of UK tennis programmes.”
- Ultimately the Panel found that the difficulty in conclusively quantifying the cost of listing was shared by most governing bodies from which it heard evidence.

The viewing public

80. As far as the viewing public are concerned, the listed events regime gives access to the broadcasting of events of major importance to society, either live or in the form of highlights or delayed coverage, to 95% plus of the UK population, for no payment other than the television licence fee and the cost of receiving equipment. Ending the listed events regime altogether could result in such events no longer being available to the section of the population that does not pay for subscription television. The merits and demerits of the principle of listing are discussed later in this report.
81. As already noted, analysts currently estimate that over 6 million households subscribe to Sky Sports out of a total subscription base in the UK of around 8.9 million BSkyB households. The arrival of ESPN as a significant holder of sports rights in the UK happened during the Panel's working life, and it is too early yet to assess its impact.
82. Some comparisons of viewing figures for some major recent events between Pay TV and terrestrial channels have already been included in paragraph 56. In the specific context of the impact of listing on the viewing public, recent research from Futures Sport + Entertainment vividly highlighted the numbers of children aged 4-15 who viewed the 2005 Ashes series on Channel 4 and the 2009 Ashes Series on Sky Sports. The average figure in 2009 was a mere 31,000 as compared to 131,000 in 2005, a fall of 76%. To put these figures in context, an average audience of 2 million children watched England play Sweden in the 2006 FIFA World Cup competition⁹.
83. The Panel sought evidence, if it existed, that live radio coverage of cricket might be a beneficiary of what was the first home Ashes series in modern times not to be live on terrestrial TV. The BBC were not able to produce such figures within our deadline. However, the radio audience for "Test Match Special" is thought to average between 3 and 4 million per Test Match, and this is likely to have been higher - an estimated 5 million - for the 2009 Ashes series.
84. The Panel addressed the impact of listing on participation, and the widespread assumption that the larger the audience that watched top-level sport, the greater the impact on participation and excellence at grassroots level. Through a number of policy initiatives, the UK Government is currently aiming to increase sporting participation and excellence. The Taking Part Survey is run annually by the DCMS. It surveys adults (those 16 or over) in England and their participation in sports. It includes data on TV viewing habits. But it does not establish a link between the two.
85. Insufficient evidence was presented to the Panel to enable it to establish a link either. The ECB, in its 2007 Annual Report, suggests that participation in club and school cricket increased by 27% during 2006/07. The ECB appears to link this specifically to its investment in grassroots (eg recreational) cricket following its TV deal with BSkyB. The

⁹ BBC and ITV audience figures

reported increase in participation is not reflected in the Taking Part survey, though the absence of children from this analysis may explain the apparent contradiction.

86. In summary, the realities of the modern broadcasting environment, compounded by the impact of an economic downturn, has limited competition for existing listed events to such an extent that the BBC currently appears to be the only realistic bidder for most listed events. There can be no guarantee, even with more channels crossing the 95% threshold after digital switchover in 2012, that competition will necessarily increase in practice, although the current Pay TV broadcasters, as noted in paragraph 42, have it within their power to transform this situation. Reduced advertising revenue, and the other financial constraints affecting ITV, Channel 4 and Five may not be short term phenomena.
87. The BBC, even though it currently covers most listed events in practice, appears to have, or certainly recognise, no explicit obligation to the listed events arrangements.
88. Other than football, whose broadcasting revenues worldwide may continue to increase, most other sports and their biggest events face real uncertainty over future income from broadcasting. Indeed, as has been the experience with the Grand National and the Derby, and the Commonwealth Games, significantly lower deals for some sporting rights seem probable after the big increases in recent years.

International Comparisons

89. As mentioned in paragraph 16, the EU's Audio Visual Media Services Directive allows Member States to list events considered to be of major importance to its society. Within the constraints of European law, it is up to each of them to decide the terms on which it draws up its list, and the criteria it applies in deciding what is of major importance to its society. The legislation and any list drawn up under it have to be verified by the European Commission. Once this has been done, European law provides that each Member State must ensure that broadcasters operating within its jurisdiction do not undermine another member state's list.
90. Austria, Belgium, Finland, France, Germany, Ireland, Italy as well as the UK have all notified listed events regimes and lists to the Commission – although the majority of EU Member States have not done so. The overall coverage of the lists differs between member states. Belgium and France list around 20 separate events. Austria, Finland, Germany, Ireland and Italy all include less than 10 events.
91. Beyond the EU, Australia had the longest list the Panel learned of - more than 25 events.
92. The Panel found that there were four major differences between the UK list and those elsewhere in Europe:
 - In other EU states there is a greater tendency to differentiate between games/events involving home countries and other games within the same tournament;

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- Home and away football qualification matches involving national teams are widely listed elsewhere in Europe;
 - The UK is the only member state to have differentiated its list between full live coverage and highlights or delayed coverage; and,
 - Several Member States list non-sporting events including music festivals and concerts.
93. The UK and Belgium are the only two European nations to list complete tournament finals eg, the FIFA World Cup Finals and UEFA European Football Championship. Others designate specifically:
- Games involving the home nation;
 - The Final; and,
 - Sometimes the Opening game and Semi-Finals.
94. Currently, FIFA is challenging the decisions of the European Commission to verify the lists of Belgium and the UK insofar as they include the whole of the World Cup Finals Tournament, and UEFA is challenging the decision of the Commission to verify the UK's list insofar as it includes the whole of the European Football Championship Finals Tournament.
95. Unlike the UK, other member states, except Austria and Finland, list football World Cup and European Championship qualifying games, home and often away too, involving their national teams. Friendly games involving national teams are sometimes listed too.
96. Germany and Italy list the later stages of the UEFA Champions League and the Europa League (formerly the UEFA Cup).
97. France lists its own matches in the Six Nations Rugby Union tournament, as well as the semi-finals and final of the Rugby World Cup.
98. Spain lists the Summer and Winter Olympics; national soccer and basketball team matches in official competitions; the semi-final and final of the World Cup and European Football Championships; the UEFA Champions League final; the Copa del Rey knock-out soccer clubs final; and any major international or national competition staged in Spain which receives state funding. In addition, Spain protects one top-flight domestic Liga BBVA soccer match every week.
99. Australia lists Ashes Test Matches against England home and away, plus one day matches between the two countries. Other Test Matches have been removed. It also designates The FA Cup Final at Wembley, the whole of the Wimbledon tennis tournament, all four major golf tournaments around the world, the Commonwealth

Games and the Olympic Games. The Australian Government is currently reviewing its listing arrangements.

100. Australia's current anti-siphoning list took effect on 1 January 2006 and runs until 31 December 2010. It is so called because it aims to prevent particular events of national importance and cultural significance being siphoned off by Pay TV to what is alleged to be the unreasonable detriment of free to air viewers. The Australian Government has the discretion to amend or even replace its list.
101. In addition to its anti siphoning policy, the Australian government also applies an anti hoarding policy. Commercial licensees, who acquire rights to a listed event, but who do not propose to use those rights fully, must offer the unused portion to other broadcasters for a nominal charge. Australia's anti-siphoning and anti-hoarding arrangements are themselves also currently under review to establish whether they remain fit for purpose in the digital age.

The Nations

102. The Panel heard some of its most passionately presented, if sometimes opposing, evidence from home nations other than England. Most striking were the differences between, on the one hand, the views of the elected administrations in Scotland and Wales and, on the other, of the governing bodies of football and rugby union. The Panel did not receive representations from broadcasters or sports governing bodies in Northern Ireland, where the position is, of course, somewhat complicated - in cases such as rugby union and cricket – by the fact that the national team may be organised on an all-Ireland basis.
103. The Scottish Government, quoting research contained in "Public Attitudes to Broadcasting in Scotland"(2008) concluded that 96% of those interested in football, and even 70% of those who were not interested, wanted Scotland's qualification games in both the FIFA World Cup and UEFA European Football Championships listed. "The importance of these qualifying games as events of national significance has been well established" said the Scottish Government in its written evidence. In their response to the Panel though, the Scottish Football Association could hardly have taken a more different view. "Should our ability to go to an open market be restricted" they believed "the shortfall to Scottish football could be up to £12million per year. To put it simply, Scottish football cannot afford to lose this amount of money and be expected to exist in the future." Similar contrasting sentiments and views were heard in Wales where the Football Association of Wales believed listing their qualification games would be "catastrophic".
104. Inside the Welsh Assembly in June 2009, the Assembly Government's Cabinet confirmed its view that Six Nations Rugby Union Championship matches involving Wales should be guaranteed free-to-air and live. According to Minister for Heritage, Alun Ffred Jones "The public is the most important part of the jigsaw when it comes to viewing rights" he said. "We must act in the best interests of the people of Wales." His statement mirrored the comment of Scotland's First Minister, Alex Salmond. As BBC Scotland mentions in its evidence, when talking of the widest TV availability of international football matches

involving his country, the First Minister has said "This could be done, and should be done".

105. The Welsh Rugby Union meanwhile, both publicly and in evidence, forecast that Group A Listing for Wales matches in the Six Nations would "decimate the sport" in Wales with consequences for playing success on the field, player/coach development as well as for the development of the Millennium Stadium. The Scottish Rugby Union wanted the Six Nations Tournament to continue to be a Group B listed event.
106. The Panel welcomed evidence from MG Alba which, in partnership with the BBC, broadcasts BBC Alba, the Gaelic digital television channel. It also heard from S4C, the Welsh language TV channel in Wales. It noted S4C's support for the Group A listing of Six Nations Rugby Union matches involving Wales, and their view that such matches were the principal events of national resonance in the country. The BBC produced figures to suggest the 2009 Six Nations tournament reached - or at least was watched at some point - by 65% of the population of Wales, well ahead of the 41% across the United Kingdom as a whole. BBC Alba meanwhile concluded that "sport ranks at the top of our most popular programme genres". They proposed a significant extension of the listed events regime including FIFA World Cup and UEFA European Football Championship qualification games.
107. Overall, as noted earlier in paragraph 79, the BBC conceded that listing such home and away qualification matches would "result in some market impact. But as the open market value of these matches is relatively low (ranging from £300-£600,000 per match in the case of Wales and Scotland), we expect any reduction in value due to listing is likely to be small". Such a conclusion could hardly be in sharper contrast to the SFA contention that it would cost them £12 million per year, and the FWA view that it would be "catastrophic" for their organisation (paragraph 103). BSkyB, in their Deloitte report submission, stressed that broadcast revenues are a key income stream for each Home Nation Football Association, accounting for up to 40% of total revenues. Under existing contracts, broadcasting revenues are set to increase substantially for the Irish, Scottish and Welsh Football Associations over the next few years as well.
108. On listing matches involving Wales in the Six Nations Rugby union tournament, in contrast to the WRU view that it would "decimate Welsh rugby", the BBC contend that though listing "could result in some reduction in the value of rightsthis appears unlikely. The Six Nations has a history of being sold to Category A broadcasters in its entirety". This contention clearly assumes that the BBC, without the threat of being outbid by a Pay TV broadcaster, would still offer what the WRU and the Six Nations would regard as a fair and reasonable price.

The Principle of Listing

109. However important and fascinating such matters as the future media landscape, future patterns of consumption and future competitive pressures may be to broadcasters, rights holders and indeed viewers - and however valuable to the Panel in understanding

the backdrop to our enquiry - the central question to which the Panel was required to address itself was a relatively narrow one.

110. The listing of major events in the UK, as has been stated, is permitted under the EU's Audio Visual Media Services Directive, which says that:

- "Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of national importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing, the Member State concerned shall also determine whether these events should be available by whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage".

111. The Review addressed the principle of listing in the UK in two ways. Firstly, it asked whether there were today events of "major importance to society", and secondly, if there were, how they should be protected for the wider television audience through listing, or any other means.

112. The concept of an event of major importance to society - or as the criteria on which the current arrangements are based puts it - an event which:

".....has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned; it is an event which serves to unite the nation; a shared point on the national calendar"

raises immediate and fairly clear definitional issues. But it is something which has an immediately instinctive feel to it which is about drawing people together from all walks of life, and from very different backgrounds around events and moments that are special to most people for a rich variety of reasons around tradition, heritage, pride, excitement and many other things besides.

113. The response from our focus group research and surveys confirmed that the public, whatever their view of some of the language, understood instinctively and supported the concept. The broadcasters and rights holders we consulted also overwhelmingly accepted that there were such events and such moments and there would be more in the future.

114. Such views were largely shared by those who nonetheless opposed a continuance of the listing regime. In July 2009, Sky Sports trailed their exclusive live coverage of the cricket Test series against Australia by reminding its audience that "The 2005 Ashes series gripped the nation". BSkyB's Chief Executive, Jeremy Darroch, confirmed to the Panel his

view "Clearly there are events of substantial national interest". David Morgan, President of the International Cricket Council and former Chairman of the England and Wales Cricket Board said there were most certainly "events of national resonance in cricket". Jerome Valcke, Secretary General of FIFA, football's world governing body, told the Panel "We recognise there must be a list". The Football Association understood "the wider policy and public concerns that have led to the existence of a list."

115. Given such a broad consensus, what followed was to ask whether protecting major events by listing or any other means was the appropriate response. Very different responses were forthcoming. The public and the terrestrial free to air broadcasters supported protection and wanted the UK listing regime extended to a greater or lesser extent. Most rights holders, and subscription TV providers, certainly did not.
116. For those who supported listing, the issue was one of universality regardless of ability to pay, of social cohesion, of creating tomorrow's role models for the young people of today. Michael Grade of ITV likened the arguments in favour of listing to those in support of a National Health Service.
117. For those who opposed listing, there was the strongest belief that the Government had no place in substituting its own view for that of the governing bodies of sport. They were best placed to make the balanced judgement between broadcast exposure of their sports, and the need to develop their grassroots as well as elite performers at whatever cost. In particular, they felt it wrong that any sport should suffer a financial loss - without compensation - from reduced competition when the rights to their biggest events were assured to a free-to-air broadcaster. Competition, the Panel was repeatedly told, was essential to keep the FTA broadcasters "honest" in the bidding process. If listing was to remain nonetheless, they preferred the current arrangements to continue, with as few changes as possible.
118. The Panel was also aware of the Central Council for Physical Recreation's "Voluntary Code of Conduct for Rights Owners" that had most recently been revised in early 2009. Its signatories included major governing bodies in England representing football, cricket, tennis, athletics and rugby league. The Code agreed in principle to "endeavour to ensure that broadcasting coverage of all major sporting events should be generally available in the United Kingdom through free to air broadcasters (in live or recorded form)". It recognised the need to achieve what was called "a reasonable balance" between exposure on television and the "appropriate commercial return" to develop grassroots sport. The Panel welcomed this Voluntary Code while noting its signatories did not include the Rugby Football Union, the governing bodies of sport in Scotland, Wales and Northern Ireland, or international governing bodies of sport. It concluded that, in its present form, it did not remove the need for a listed events regime.
119. As has already been observed in paragraph 79, however, rugby union did appear to be at the forefront of sports actively seeking to balance responsibilities to a wider television audience and to the development of its sport. Rugby Union's Six Nations Championship is currently a Group B listed event thus guaranteeing highlights on free-to-air television, but its organisers choose nonetheless to sell its live rights to the BBC, while the Home

Nations individually sell their rights to other international matches elsewhere as they see fit. Similarly, although only the Wimbledon finals weekend is a Group A listed event, the organisers nonetheless choose to make the whole of Wimbledon fortnight available free-to-air live on the BBC.

120. Rugby union was also one of the few sports to address at least indirectly the vexed and emotive question of "who owns the national team?" in any sport. The Six Nations Committee seemed to indicate their view in written evidence to the Panel:

"The Championship may be competed for by the national representative rugby teams of the six participating unions, but it is NOT a public asset, owned by "the nation."

121. It is surely though the sense that the national team, someone representing the nation (Great Britain or whichever home nation), and to some extent the major event in which they are taking part as well, are all "owned" beyond the confines of any organisation that lies at the heart of the case in favour of protecting key events for the widest possible audience. This is a view that has been held particularly strongly in Australia which, as noted in paragraph 91, has a longer list than many other nations, and which protects its events on the basis of national importance and cultural significance.
122. The Panel believed that governing bodies should, of course, be best placed to know what was in the interests of their sport, both now and for the future. But the Panel's task was to look beyond the singular interest of any one sport. The EU's Audio Visual Media Services Directive refers to "events" that Member States regard as "of major importance for society" and effectively justifies drawing up "a list of designated events, national and non-national" on the grounds of the risk that they could be lost to what is referred to as "free television".
123. The Panel also noted the BMRB research it had commissioned which, even in these days of a greater acceptance of paying for sport on TV, showed that 82% of respondents believed they deserved to be able to watch key sporting events free after purchasing their TV licence fee. The Panel believed that the continuing existence of the licence fee might be seen to some extent as a justification for listed events going forward. But the Panel did question how, in such circumstances, the BBC could continue to have no apparent obligation to prioritise such events, or to do so at a transparently fair and reasonable price.
124. The Panel concluded that in current circumstances they supported the principle of protecting some major events for the widest possible TV audience, if necessary by means of listing them.

The Criteria for Listing

125. The current criteria are multi-layered. They involve an essential criterion which seeks to express in a UK context the concept of an "event of major importance to society"; then

the likely features of such an event; and other factors which the Secretary of State might take into account in reaching a final decision.

126. In evidence to the Panel, most public service broadcasters supported their retention. Virtually all of the major rights holders, having expressed their opposition to the principle of listing, supported their abolition. Generally, their view though, if listing was to continue, was the maintenance of the status quo.
127. The Panel's research suggests the public, once they are aware of the listing regime, support it but may sometimes find the language of the current criteria a little difficult to understand fully. BMRB suggested that an alternative to "an event of national resonance" might be "an event which excites interest in the majority of people". The Panel concluded, however, that "national resonance" was likely to be understood by an overwhelming majority when placed in the context of preserving events on free to air TV for the widest audience. Fragmentation of the TV audience may have made "national resonance" a more elusive concept, but, despite vast changes in broadcasting and cultural habits over the past decade, it remained a valid one. Interestingly, the Oxford English Dictionary defines "resonant" as "suggesting images, memories, or emotions".
128. On the essential criterion, the Review concluded that it could nonetheless benefit from some simplification. The current criterion reads:
- "The event has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned; it is an event which serves to unite the nation; a shared point on the national calendar".
129. The Panel believed the second and third elements of the current criterion blurred the basic concept. "Uniting the nation", however desirable, was aspirational not evidential. Beyond this belief, the Panel had concluded that the UK should not be listing any non-sporting events.
130. The Panel therefore recommends that the following amended criterion should be adopted:
- "The event has a special national resonance and not simply a significance to those who ordinarily follow the sport concerned"
131. This leaves the matters surrounding the exemplifications of the essential criterion. Currently these state that:
- "Such an event is likely to fall into one or both of the following categories:
- it is a pre-eminent national or international event in the sport;
 - it involves the national team or national representatives in the sport concerned

132. An event which satisfies the essential criterion is likely to be considered for listing, but listing of such an event is not automatic. It is more likely to be listed if it exhibits particular characteristics making listing an apt response, such as:

- it is likely to command a large television audience
- it has a history of being broadcast live on free to air services

133. Most respondents, regardless of their view on the principle of listing, agreed that if listing existed it should generally relate to national and international events, as well as those involving the national team or national representatives. The Panel agreed with that view and recommends retention of the first exemplification.

134. The Panel also believed the size of viewing audience is likely to be a factor typical of an event of special national resonance. But it did not consider that past broadcast history should be a necessary consideration. Listing, if it was to continue for whatever length of time, needed to be responsive to a changed and still changing media world, and to changed and still changing public attitudes. The current consideration of broadcasting history tended to reinforce a status quo which was not beneficial in keeping any list relevant and modern.

135. Finally, in deciding whether to list an event, the current criteria provide that the Secretary of State may take into account other factors affecting the likely costs and benefits to the sport concerned, to the broadcasting industry and to viewers, such as:

- whether it is practical to offer full live coverage on a general channel--extended events such as season long championships involving many matches will not normally be listed in their entirety;
- the impact of listing in reducing the income or potential income of the sport and the consequences of that reduction for its investment in increasing participation and /or improving levels of performance and/or in creating safe facilities:
- the likely impact of listing on the broadcasting market, including future investment in sports broadcasting, the level of competition and the position of public service broadcasters;
- whether there are arrangements to ensure that access to the event is available to all viewers by means of highlights, delayed coverage and/or radio commentary.

The Secretary of State should have regard to these other factors cumulatively. No single factor automatically commands listing as a response or disqualifies an event from consideration.

136. It was largely in response to the last of the above factors that the Panel's predecessors in 1998 recommended the creation of Group A and Group B Listed events, something which our Panel was told remains unique among listed events regimes elsewhere in the world.

137. The Panel concluded that these "other factors" that the Secretary of State might take into account clearly involved political judgements that should not strictly form part of the key criterion for determining whether an event was of such a nature that it should be protected. That is not to say that such factors, which seek to balance the needs of viewers, broadcasters and sport in making a final judgement, are not relevant if it is proper for the Secretary of State to take them into account in reaching his conclusions. Many of the arguments presented for and against listing related to just such matters. The Panel has sought to reflect extensively the evidence that it heard from the public, viewers, sports rights holders and broadcasters in the course of its review. Ultimately, however, in making its recommendations, the Panel's judgements are based solely on the proposed key criterion set out in paragraph 138 below ahead of any other matters which might require decisions within the political arena.

138. The Panel therefore recommends that the criteria going forward should be as follows:

"In order to be eligible to be listed, an event must have a special national resonance and not simply a significance to those who ordinarily follow the sport concerned.

Such an event is likely to fall into one or both of the following categories:

- it is a pre-eminent national or international event in sport;
- it involves the national team or national representatives in the sport concerned.

It should also be likely to command a large television audience."

139. In summary, the Panel's recommendations on what should be protected through listing are ultimately based on these criteria.

Group A and Group B listing

140. In proposing two categories of listed events back in 1998, the Panel's predecessors observed that "most sports viewers prefer live coverage to any alternative. But where we believe that extended live coverage is simply no longer the right solution to the clash of competing interests, then ensuring the rapid availability of recorded highlights seems to us to be a necessary consequence".

141. They also noted that "a number of the events that we have considered, while not possessing the degree of national resonance necessary for "full" listing in the terms of the criteria, merit some form of protection to avoid the possibility of terrestrial viewers being deprived of meaningful coverage by a subscription broadcaster holding the rights".

142. The 1998 Panel effectively saw Group B as a safety net to ensure that events that the viewing public was used to seeing free to air were not lost in their entirety to Pay TV.

143. Our predecessors also believed that certain events of clear national resonance presented serious scheduling problems for the broadcasters either because of their

duration or because of the number of events involved. A decade after their report, the terrestrial broadcasters in 2009 put noticeably less emphasis on their problems of scheduling events of a longer duration, perhaps even over several weeks, than they did before. Today the BBC for example stresses its ability to use its portfolio of digital audio-visual services to maximise the breadth and depth of its coverage for example of the Olympic Games. The Director General told the Panel that its ambition in 2012 was to show all 5000 hours broadcast coverage across its outlets, and to maintain that level of coverage in 2016 and beyond.

144. The reality is that today there has never been more live coverage of top sporting events on British TV. Sky Sports output alone, much of it live, rose 60% between 2005 and 2007. The view that sports fans have never been better served by the broadcasters has much to commend it.
145. The Panel debated at length the reasons for and against retaining, eleven years after they had been created, two groups of listed events in today's changed and still evolving broadcasting environment. The Panel concluded that guaranteeing highlights or delayed coverage was no longer a sufficient response. Scheduling issues, for broadcasters who are now operating a range of new channels and outlets with scope for events to be broadcast behind the "red button", have significantly diminished in their relevance. Highlights or delayed coverage cannot now be seen as a sufficient substitute for the live event in this generation. And it may fairly be asked how an event can resonate if the result is already known.
146. In contrast, in its evidence, the BBC recommended splitting the Group A List into three groups, A1, A2 and A3, to reflect the different nature of various events. They described:
 - A1 events, the "UK conversation" events, the most socially important events that ought to be protected for universal free to air access in their entirety eg, the Winter and Summer Olympic Games, the FIFA World Cup, the UEFA European Championships;
 - A2 "resonance in the nations" events that need to be protected in those nations where they have particular resonance eg, The FA Cup Final, the Scottish Cup Final;
 - A3 events that are "pinnacle sports events", key UK moments that rise above the normal day-to-day sporting mainstream.
147. The BBC in its evidence also argued for the maintenance of a Group B List as at present.
148. The Panel noted the BBC's proposal to extend the categories of listed events from two to four, but was unconvinced. Its sub-division of Group A added no particular value, and the Panel remained anyway committed in principle to simplifying the system, rather than to complicating it further.
149. The Panel therefore decided to recommend a single list of live events protected for free-to-air television based on the criteria recommended in paragraph 138.

Summary - The Way Forward

150. The Panel recognised from an early stage of its deliberations the strength of feeling on all sides of the debate about the future of free-to-air listed events. The contrast between, on the one hand, public opinion, as demonstrated by BMRB and Ipsos Media's research (paragraph 50) – 82% believed that they had an entitlement to watch certain key events free-to-air because they had already paid a TV licence fee, and 76% expected to be able to watch major events on free-to-air television - and, on the other hand, the almost unanimous opposition of sports governing bodies to the listing regime, could hardly be greater. The Panel was also impressed by the strength of support for listing from elected Members of the Scottish Parliament and the Welsh Assembly (paragraphs 103-104).
151. It soon became clear that public knowledge of the current protection afforded by the listed events arrangements was not widespread. It is the Panel's hope that the debate that is likely to follow its recommendations to the Secretary of State will increase that knowledge and understanding. A simplification of the arrangements, and notably of the criteria for listing, should help to achieve this objective.
152. The Chairman of the Panel was told by several media commentators in the early days of its deliberations that the existence of so many long-term contractual commitments between sports rights holders and broadcasters – some lasting until 2014 – could undermine the relevance of any recommendations that might be made. By contrast, the Panel believes this to have been beneficial. Any changes it may propose, if adopted by the Secretary of State, can be more adequately built into future business plans by all sides. The Panel welcomes the fact that the Secretary of State will be able to consult further on his preliminary decisions.
153. The Panel concluded that in current circumstances it supported the principle of protecting some major sporting events for the widest possible television audience, if necessary by means of listing them (paragraph 124).
154. It concluded that the present criteria should be amended as set out in paragraph 138. It also concluded that the "other factors" in the current criteria that the Secretary of State may take into account – including the potential impact of listing on the income to a sport – should not strictly form part of the criteria for listing, but were matters for the Secretary of State to the extent that it is appropriate for him to take them into account (paragraph 137).
155. The Panel concluded that guaranteeing only highlights or delayed coverage of a major event was no longer a sufficient response, and that in the modern age it could no longer be seen as a sufficient substitute for live coverage (paragraph 145). The Panel also concluded that there should be a single list of live events protected for free-to-air television which it believed met its recommended revised criteria (paragraph 138).
156. The Panel accepted that sports governing bodies should be best placed to know what was in the best interests of their sport now and for the future. But the Panel's task was

to look beyond the singular interest of any one sport (paragraph 122). It had been asked to assess events “of major importance for society”, as the EU’s Audio Visual Media Services Directive puts it, and which have “a special national resonance, not simply a significance to those who ordinarily follow the sport concerned” as expressed in the criteria that the UK has adopted.

157. The EU Directive permits Member States to draw up their listing arrangements to ensure that a substantial proportion of the public is not “deprived” of the chance to view events of major importance to society. The Panel heard evidence (paragraphs 30 and 31) on the take up of Pay TV services in the UK. Ofcom statistics show that, in 2007-08, almost 50% of UK households took Pay TV services. Frontier Economics research suggested that a maximum of 60% of BSkyB customers and 25% of Virgin Media customers purchased premium packages, including sports channels. The take up of Pay TV amongst different social groups may vary eg fewer elderly and lower income customers are Pay TV subscribers, but is relatively unpronounced. However, those who oppose protection have to accept that their view means there are circumstances in which a significant proportion of the population could be denied the chance to view major national and international events, including senior citizens who currently qualify for free TV licences.
158. The Panel noted the radical changes to the media landscape since Lord Gordon of Strathblane’s review of listed events more than a decade ago. It is clear that younger people, growing up with access to Freeview and FreeSat, digital channels, broadband internet and services such as iPlayer, and who are also experienced in the use of mobile technologies, are often adept at accessing almost any sports event at a time of their choosing. An older generation is much more dependent on traditional media (paragraph 38). The growth of viewing on the internet reached a new landmark during the Panel’s deliberations. Whatever the technical quality of the coverage of the England v Ukraine FIFA World Cup qualifying match in October 2009, and however acceptable it was for supporters to be informed at the last moment (and after an investment of up to £11.99) that highlights would be available on the BBC, the reality is that in many parts of Europe and beyond, where such matches are generally listed, it would have been regarded as an unacceptable way of viewing the national team in the national sport. The Panel remains convinced that, at least for the foreseeable future, and as far as the biggest sporting events are concerned, most people’s first choice of how to view them will be by means of what is still identifiably a television set.
159. The Panel also gave serious consideration to alternatives to listing. They invited broadcasters to consider what they might propose other than abolition of the listing arrangements. The Panel reviewed the recently revised CCPR “Voluntary Code of Conduct for Rights Owners” which endeavours to ensure that broadcasting coverage of all major sporting events should be generally available in the United Kingdom through free-to-air broadcasters in live or recorded form, and asked itself whether, in this new form, the Code might have removed the necessity for listing. The Code stresses the need to achieve what is called “a reasonable balance” between exposure on television and the “appropriate commercial return” to develop grass roots sport. The Panel, whilst welcoming the Code, was forced to note the absence from its signatories of the Rugby Football Union, the governing bodies of sport in Scotland, Wales and Northern Ireland,

or international governing bodies of sport (paragraph 118). It also later concluded that highlights could no longer be seen as a satisfactory substitute for live coverage of major events (paragraph 149).

160. Whilst not strictly within the Panel's remit it also considered, as it sought to explore all the issues surrounding listing, the argument in favour of some form of outside regulation of a "fair and reasonable price" for the sports rights for listed events where disputes might arise. The potential for such disputes in an at best unpredictable market place seems to be increasing. Ofcom, however, only has certain limited powers to intervene if it receives a complaint that a listed event was not offered on fair and reasonable terms to all broadcasters, and a wider role would require a significant extension of its powers. In the case of the BBC, sports rights holders do have an opportunity to pursue any grievances with the BBC Trust (see paragraph 166). Rights holders and broadcasters may wish jointly to consider how such issues might be addressed in the future. Alternatively the Secretary of State may wish to do so. But the Panel foresaw no realistic prospect that an incumbent Chancellor of the Exchequer would contemplate compensating governing bodies for any loss of income that might be attributable to listing, not least because of the difficulty in assessing what any loss might have been.
161. To assist the Secretary of State in his deliberations, the Panel sets out in its report the evidence that it received on the impact of listing from broadcasters, sports governing bodies and the public (paragraphs 63-88). It is of course for the Secretary of State to determine whether and to what extent that evidence should or should not be taken into account in deciding whether to list an event which meets the criterion of having "special national resonance". The Panel notes, however, that, other than in the case of football, whose broadcasting revenues worldwide may continue to appreciate, most other sports and their biggest events face real uncertainty over future income from broadcasting. The Panel was concerned, however, by the extent to which some sports, and notably cricket, have come to rely on broadcasting income. The Chairman of the England and Wales Cricket Board, Giles Clarke, told the Panel in his letter of 1 June 2009 that "80% of the ECB's income is from broadcasting revenue". But, as even the most financially wealthy sports can and did confirm, such revenues can go down as well as up. The Football Association received around £340 million from the BBC and BSkyB for its 2000-03 deal, but just £300 million for the 4 years that followed. The Panel was reassured by the existence of several long-term contracts, including that between the ECB and BSkyB/Five, and that any proposals it might make would not impact on those contracts. Again, the Panel noted the understandable difficulty or reluctance that governing bodies, with the notable exception of the Scottish Football Association, had in quantifying any potential loss. They will however have a further opportunity in due course to make representations on this matter, if they are necessary, to the Secretary of State.
162. The Panel's report recognises and applauds BSkyB's role "in transforming how the nation watches sport on TV. They have also driven spectacular innovation in the way in which sport is covered, most recently in high definition and through interactivity and multi-platforms" (paragraph 52). BSkyB made it clear (paragraph 42) that offering major events free-to-air did not currently figure in their business plans despite the fact that this

might effectively obviate altogether the need for a listed events regime. Its capacity, with ESPN, to reach 90+% of households in 2012 via commercial multiplexes and Freeview, was confirmed by Digital UK, which has overall responsibility for completing digital switchover in just over two years' time. In such circumstances, the Secretary of State may wish to review the continued appropriateness of the threshold of 95% reach which determines whether a channel is a "qualifying channel" and may therefore broadcast listed events free-to-air (paragraph 39 and 40). The Panel was also aware of ESPN's commitment to both free-to-air and pay channels elsewhere in the world. It would urge both BSkyB and ESPN to consider again what may be in the best interests of UK viewers in a changing media environment, and the circumstances in which they might broadcast a small number of major events free-to-air.

163. ITV, Channel Four and Five talked openly to the Panel (paragraphs 65 and 66) about their limited, but as they saw it, realistic ambitions with regard to sports broadcasting. All three supported the continuation of listing. ITV insisted that its current concentration on top level football and the Rugby World Cup but little other sport on ITV1 was part of a strategy that could change in the future. Channel 4 confirmed significant cuts in their overall programme budgets, and insisted that they would still bid selectively and opportunistically for major events but within tight financial constraints. Five believed themselves, like ITV and Channel 4, always to be at a disadvantage because of their reliance on advertising. The Panel was conscious of an unprecedented downturn in advertising revenues across all commercial channels of as much as 20% in the first quarter of 2009. This was far from certain to be a short term phenomenon. Meanwhile, 2009 has continued to see significant and continuing speculation about the future ownership or leadership of all three channels. As long as those factors persist, the Panel believes that the BBC, as far as listed events are concerned, will continue to enjoy a privileged position.
164. It is important that the BBC recognises this privileged position. The Panel were informed that the BBC does not have any formal commitment or substantive obligation to bid for, or to screen, listed events (paragraphs 69-71). At the same time it may be seen as a major beneficiary of their existence. In practice, the overwhelming majority of the current Group A listed events are broadcast by the BBC. At the same time, it became clear from the Panel's consumer research that the public expects the BBC to cover such events. BMRB reported (paragraph 50) that 82% of respondents believed that they had an entitlement to watch certain key events free-to-air because they paid a TV licence fee. The BBC defends its absence of a clear commitment to listed events by saying that "it must assess the value of particular sports to licence fee payers taking into account the public service value to the BBC's portfolio". In practical terms this has meant in recent times that the BBC has declined to bid for cricket Test matches (which are currently Group B events) and paid a substantial sum for the rights to Formula 1 motor racing (not currently listed). BSkyB contend that such decisions, coupled with the guaranteed income provided by the licence fee and the continued existence of listed events cannot be seen as "acceptable". It is also interesting to note that whilst recent BBC coverage of Formula 1 may have attracted significant audiences, Formula 1 attracted little support from the general public in BMRB's research for the Panel as a sporting event that ought to be protected and listed.

165. The Panel recognises the demand on BBC resources, but it also finds compelling evidence of public expectation that the BBC should give a higher priority to listed events. The Panel hopes that this is recognised by the current internal BBC review of what the Corporation's size and scope should be in the future. It also believes that the Corporation, without extending its resources beyond reason, should be expected, as the BBC suggested in its own evidence, to give greater emphasis to some minority sports, paralympic sports and to women's sport in particular, in the build-up to the London Olympics and Paralympics and beyond. The Panel was pleased to have new commitments from the BBC to show all 5,000 hours of action from future Olympic Games across a variety of platforms and via red button technology, as well as to HD coverage of the Open Golf Championship, and to tendering for future Test match cricket rights.
166. BBC Sport also has in place a Fair Trading Approval process designed to ensure that the Corporation pays a fair price for the sports rights it purchases. The Government may wish to seek reassurance in future that the BBC Trust recognises the uniquely strong position that the BBC enjoys in the sports rights market, what responsibilities this should bring with it, and that sports rights holders have adequate recourse to the Trust if any issues arise.
167. In summary, the Panel is of the view that the BBC has a responsibility to a listed events regime for so long as one exists, which is greater still in the difficult economic circumstances in which other free-to-air terrestrial broadcasters find themselves.
168. In the Panel's view, however, listed events by no means have a certain long-term future. The changing media landscape may render them obsolete sooner than some might expect. That time might arrive more quickly if the current free-to-air and Pay TV broadcasters came together – as they did with Freeview – to agree voluntarily a list of events that they would guarantee free-to-air to the widest audience; and the Panel has suggested (paragraph 162) that there may be merit in looking at whether the current 95% threshold hinders that outcome.
169. Finally, the impact of the Secretary of State's final decisions will need to be monitored closely. The Panel agreed that the list should benefit from rather more regular review than hitherto.

Proposed single list of live events protected for free-to-air television

170. Based on the criteria recommended in paragraph 138, the Panel's recommendation for the new list is as follows:
- The Summer Olympic Games, the FIFA World Cup Finals Tournament and the UEFA European Football Championship Finals Tournament should continue to be listed. The current contract for the Summer Olympics with the BBC and Eurosport runs until 2010; and the current contract for the World Cup with the BBC and ITV runs until 2014. The rights to the 2012 European Football Championships have not yet been awarded. The Panel noted that, with

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expanded propositions for future events, there may be a stronger case in due course for not listing all of these events in their entirety;

- The Grand National should continue to be listed. The current contract with the BBC and the Racing Channel runs until 2010;
- The FA Cup Final should continue to be listed in England, Wales and Northern Ireland. The current contract with ITV runs until 2012;
- The Scottish FA Cup should continue to be listed in Scotland. The current contract with the BBC and BSkyB runs until 2014;
- Home and away qualification matches in the FIFA World Cup and UEFA European Football Championships should be listed in the Home Nation to which they relate. Current contracts - England with ITV; Wales and Northern Ireland with BSkyB – run until 2012 – and in the case of Scotland with BSkyB until 2014. The Panel's recommendation reflects the widespread support for football across the United Kingdom;
- The All-England Wimbledon Lawn Tennis Championship should be listed in its entirety. The current contract with BBC runs until 2014. The Panel took the view that the Wimbledon tournament as a whole was a pre-eminent event in the world tennis calendar;
- The Open Golf Championship should be listed. The current contract with the BBC runs until 2011. The Panel was convinced that the Open had a special resonance across the United Kingdom and was pre-eminent as one of golf's four Majors;
- Cricket's Home Ashes Test matches should be listed. The current contract with BSkyB and Five runs until 2013 and the first series to be affected would be in 2016. The Panel believed the events of 2005 and 2009 and the reaction to them from the public confirmed the special status of the home Ashes Test series;
- The Rugby Union World Cup Tournament should be listed in its entirety. The UK rights to the 2011 World Cup are expected to be awarded in early 2010. The Panel believed, with 4 Home Nations taking part, that the Rugby World Cup has grown steadily in status and prestige since its inception;
- Wales matches in the Six Nations Rugby Championship should be listed in Wales only. The current Six Nations contract with the BBC runs until 2013. The Panel was persuaded of the "special national resonance" of rugby union in Wales.

171. All of these events are pinnacle events, and the list established by the proposed amended criteria reflects the sporting diversity and tradition of the UK and its constituent parts.

172. The Panel recommends that the following current Group A events should be de-listed altogether as they do not meet the proposed amended criteria:

- The Winter Olympic Games. The current contract with BBC and Eurosport runs until 2010;
- The Derby. The current contract with the BBC and the Racing Channel runs until 2010;
- The Rugby League Challenge Cup Final. The current contract with the BBC and BSkyB runs until 2011.

173. And as a consequence of its recommendation that highlights and delayed coverage should not be protected, the Panel recommends that the following, currently Group B, events should also be delisted:

- Cricket Test Matches played in England (apart from the Ashes series). The current contract with Five for highlights coverage runs until 2013;
- The Commonwealth Games. The rights to 2010 and 2014 have not yet been awarded;
- The World Athletics Championships. The rights to 2011 have not yet been awarded;
- The Cricket World Cup Final, Semi-Finals and matches involving Home Nations-teams. The current contract with the BBC for highlights coverage runs until 2011; and,
- The Ryder Cup. The current contract with the BBC for highlights coverage runs until 2012.

174. The Panel's recommendations therefore also include a significant de-listing of events currently in Groups A and B. This does not of course mean that live or deferred coverage of the events in paragraphs 172 and 173 will be lost to free-to-air television – simply that an unfettered market will operate for the rights to those events. Those rights holders who are signatories to the CCPR's "Voluntary Code of Conduct for Rights Owners" (paragraphs 24,25 and 118) will of course be bound by the commitments to which they have signed up in relation to broadcast coverage; and many of those rights holders which are not signatories to the Code already have a commitment to ensuring that they strike a proper balance between, on the one hand, exposure through broadcast coverage to the widest possible audiences and, on the other, maximising their income from selling their broadcast rights in order to develop their sports.

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175. The Panel's recommendations exclude any events of a non-sporting nature. No compelling evidence was received (paragraph 129).

176. The Panel commends its findings to the Secretary of State.

David Davies (Chairman)

Dougie Donnelly

Angus Fraser

Chris Gratton

Eamonn Holmes

Penny Hughes

Colin Jackson

Michael Pescod

Nick Pollard

11 November 2009

ANNEX A

List of events currently protected under Part IV of the Broadcasting Act 1996 and the criteria on which the list is based

Group A (Full Live Coverage Protected)

The Olympic Games

The FIFA World Cup Finals Tournament

The European Football Championship Finals Tournament

The FA Cup Final

The Scottish FA Cup Final (in Scotland)

The Grand National

The Derby

The Wimbledon Tennis Finals

The Rugby League Challenge Cup Final

The Rugby World Cup Final

Group B (Secondary Coverage Protected)

Cricket Test Matches played in England

Non-Finals play in the Wimbledon Tournament

All Other Matches in the Rugby World Cup Finals Tournament

Six Nations Rugby Tournament Matches Involving Home Countries

The Commonwealth Games

The World Athletics Championship

The Cricket World Cup - the Final, Semi-finals and Matches Involving Home Nations' Teams

The Ryder Cup

The Open Golf Championship

The Criteria for the 1998 Review

In considering whether to list an event, the Secretary of State is required to consult the broadcasting regulators and the holders of the rights in question. The following are factors which the Secretary of State will take into account in deciding whether to list an event. In order to be eligible to be listed, an event must meet the following main criterion:

- the event has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned; it is an event which serves to unite the nation; a shared point on the national calendar.

Such an event is likely to fall into one or both of the following categories:

- it is a pre-eminent national or international event in the sport;
- it involves the national team or national representatives in the sport concerned.

An event which satisfies the essential criterion is likely to be considered for listing, but listing of such an event is not automatic. It is *more likely to be listed* if it exhibits particular characteristics making listing an apt response, such as:

- it is likely to command a large television audience;
- it has a history of being broadcast live on free-to-air services.

In considering whether to list such an event, the Secretary of State will have regard to other factors affecting the likely costs and benefits to the sport concerned, to the broadcasting industry and to viewers, such as:

- whether it is practical to offer full live coverage on a general channel - extended events such as season-long championships involving many matches will not normally be listed in their entirety;
- the impact of listing in reducing the income or potential income of the sport, and the consequences of that reduction for its investment in increasing participation and/or improving levels of performance and/or in creating safe facilities;
- the likely impact of listing on the broadcasting market, including future investment in sports broadcasting, the level of competition and the position of public service broadcasters;
- whether there are arrangements to ensure that access to the event is available to all viewers by means of highlights/delayed coverage and/or radio commentary.

In considering events for listing, the Secretary of State will have regard to these other factors cumulatively. No single factor automatically commands listing as a response, nor does failure to meet an individual criterion disqualify an event from consideration.

ANNEX B

LIST OF ORGANISATIONS AND EXPERT INDIVIDUALS WHO SUBMITTED RESPONSES OR GAVE EVIDENCE TO THE PANEL

Broadcasting and Media Organisations

BBC

BBC Scotland

BSkyB

Channel 4

Five

ITV

MG Alba

S4C

Current Listed Events Rights Holders

All England Lawn Tennis and Croquet Club

England and Wales Cricket Board

FIFA

Football Association

International Cricket Council

International Olympic Committee

International Rugby Board

Jockey Club

PGA European Tour

Royal and Ancient

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Rugby Football League

Scottish Football Association

Six Nations Rugby Limited

UEFA

Sports Organisations

BADMINTON England

Bowls England

British Darts Organisation

British Horseracing Authority

British Lions Ltd

Central Council of Physical Recreation

Commonwealth Games England

English Golf Union

European Rugby Cup Ltd

Football Association of Wales

Formula 1 Administration Ltd

Great Britain Wheelchair Basketball Association

Guernsey Commonwealth Games Association

International Paralympic Committee

London Federation of Sport

MCC

National Council for School Sport

Premier League

Sports Council for Wales

Sportscotland

UK Sport

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Women's Sport and Fitness Foundation

Others

Andrew Stunnell MP

Brian Barwick

David Elstein

David Kogan

Emily Thornberry MP

European Sponsorship Association

Greg Dyke

John Grogan MP

Leisure Review

Methodist Church

Scottish Government

Scottish Screen

Simon Green

Trevor East

Voice of the Listener and Viewer

Welsh Assembly Government

Welsh Language Board

ANNEX C

SUMMARY ANALYSIS OF RESPONSES TO THE CONSULTATION DOCUMENT FROM MEMBERS OF THE PUBLIC

A total of 148 responses were received:

Q1. Do you think that the UK should continue to protect certain major events through live or deferred coverage on free-to-air television?

Yes	-	142
No	-	3
No view	-	2
Deferred only	-	1

Q2. Do you think that events other than sporting events should be listed?

Yes	-	73
No	-	39
No view	-	34
Undecided	-	2

Q3. Do you agree the essential criterion test?

Yes	-	117
No	-	16
No view	-	15

Q4. If your answer to Q2 was that non-sporting events should also be considered for listing, what might an essential criterion be?

Should not be listed	-	48
No view	-	39
National unity/pride/interest/significance/eminence	-	27
Historical/traditional/cultural/	-	20
As for sports criterion political	-	10
Educational	-	2
Public funding given	-	1
Inspirational/achievement	-	1

Q5. Do you consider that these characteristics (ie large TV audience, history of FTA broadcasting) remain appropriate?

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Yes	-	77
No view	-	26
No	-	3
Other qualified responses ¹⁰		

Disregard/less weight to audience size	-	22
Disregard/less weight to FTA history	-	20
Include promotion of participation	-	7
Include issues of cost, access and social inclusion	-	2

Q6. Are these the appropriate other factors (ie the interests of sport, broadcasting and the viewer/public) that the Secretary of State should take into account when considering whether or not to list an event?

Yes	-	54
No view	-	26
No	-	4

Other qualified responses¹¹

Attach less weight to income loss	-	26
Highlights are unsatisfactory	-	14
Attach less weight to scheduling issues	-	10
Attach more weight to maintaining sporting prestige/culture	-	7
Attach more weight to public interest	-	5
Attach more weight to exposure/participation	-	4
Exclude radio coverage from factors	-	4
Include affordability for lower income groups and the elderly	-	4

Q7. Do you agree that both an A and B list should be maintained?

Yes	-	83
A list only	-	40
B-list only	-	1
No view	-	22

¹⁰ Some expressed more than one view, so total sums (157) to slightly more than 148

¹¹ Some expressed more than one view, so total sums (158) to slightly more than 148

Review of Free-to-Air Listed Events – November 2009

No - 2

Q8. Are there any issues that you would wish to draw to our attention in regard to the way in which the listing arrangements are given practical effect by Ofcom?

No view - 137

Other qualified responses¹²

Transmission quality of FTA sport - 4

Remove from process - 1

Make role less subjective - 1

Highlights on sooner/longer - 1

Remove Pay TV monopoly on

Premier League football - 1

Pay TV to unbundle sports packages - 1

More use of red button - 1

No channel to have a monopoly of a sport - 1

Broadcasters to share equally any unwanted listed sports rights - 1

Q9(a) Do you think the Secretary of State should leave the current arrangements unchanged?

Yes - 9

No - 131

No view - 8

Q9(b) Do you think the Secretary of State should move existing events between the A and B lists?¹³

No - 21

All B list to A list - 15

All A list to B list - 1

No view - 14

To A list from B list

Test match cricket/Ashes - 75

Six Nations - 29

¹² Some expressed more than one view, so total sums (149) to slightly more than 148

¹³ Do not sum to 148 because of multiple choices

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Ryder Cup	-	14
Open Golf	-	12
Rugby World Cup – all	-	17
Home, QF on	-	1
QF on	-	1
Wimbledon	-	15
Commonwealth Games	-	9
Cricket World Cup - all	-	8
Final only	-	1
SF and Final	-	1
Home, SF and Final	-	1

World Athletics Championship	-	4
Champions League Final	-	1

To B list from A list

League Challenge Cup Final	-	4
Football World Cup – all except opening match, home nations, SF and Final	-	3
All when no home interest	-	1
European Football Championships – all except opening match, home nations, SF and Final	-	3
All when no home interest	-	1
Winter Olympics	-	1
Grand National	-	1
Wimbledon	-	1
Rugby		

Q9(c) Do you think the Secretary of State should add any entirely new events?

Yes	-	72
No	-	58
No view	-	14
Proposal unclear	-	4

Those who answered “Yes” suggested¹⁴

Group A

¹⁴ The events suggested sum (180) to very substantially more than the 72 respondents in favour of adding new events as many made more than one suggestion

Review of Free-to-Air Listed Events – November 2009

England 1 day internationals	-	5	
England T20	-	5	
Away Test Matches	-	3	
Domestic cricket finals	-	3	
World Twenty20	-	2	
World Twenty20 Semis and Final	-	2	
World Twenty20 Final	-	1	
World Twenty20 England and Final	-	1	-
Other domestic cricket	-	2	
Women's international cricket	-	1	
One whole tournament	-	1	
All cricket internationals	-	1	
Test Match Special	-	1	
World Cup Finals (UK teams)	-	1	
World Cup qualifiers	-	3	
European Championship qualifiers	-	3	
All national football	-	9	
All National competitive football	-	4	
Champions League Final	-	6	
Champions League Final (UK teams)	-	2	
Champions League QF on (UK teams)	-	1	
UEFA Cup Final (UK teams)	-	1	
All European club (UK teams)	-	1	
Premier League Football	-	3	
Premier League (1 match per week)	-	3	
Premier League (1 package)	-	1	
Football League	-	2	
FA Cup matches	-	1	
FA Cup (1 match per round)	-	1	
Domestic football play-offs	-	1	
Domestic football play-off finals	-	1	
Football League Cup	-	1	
All domestic football Cups QF on	-	1	
Women's FA Cup Final	-	1	
Women's Football World Cup and internationals	-	1	
All Scottish football	-	1	
British and Irish Lions Tour	-	5	
All national rugby union	-	5	
Welsh rugby matches (Wales only)	-	2	
All domestic rugby Cups QF on	-	1	
Guinness Premiership	-	2	
Heineken Cup	-	1	
Anglo-Welsh Cup Final	-	1	

Review of Free-to-Air Listed Events – November 2009

Super League	-	1
World Rugby League Cup Final	-	1
All national rugby league matches	-	2
GB Formula 1 Grand Prix	-	4
Formula 1	-	5
GB MotoGP	-	2
All motor sport	-	1
Grand Slam Tennis finals	-	3
Davis Cup	-	1
Masters Golf Finals	-	2
US Masters	-	1
Walker Cup	-	1
Golf (generally)	-	1
Cheltenham	-	2
Royal Ascot	-	2
The Classics	-	1
World Dressage Championships	-	1
European Eventing Championships	-	1
Athletics (generally)	-	1
European Athletics Championships	-	1
Great North Run	-	1
London Marathon	-	1
Snooker World Championships	-	2
UK Snooker Championships	-	1
Snooker (generally)	-	1
National Swimming Championships	-	1
World Track Cycling Championships	-	1
Cycling (generally)	-	1
Boat Race	-	2
Boxing (generally)	-	1
Target shooting	-	1
Archery	-	1
Clay pigeon shooting	-	1
All national team games	-	1

Review of Free-to-Air Listed Events – November 2009

Group B

Overseas Test Matches	-	2
World Twenty20	-	2
England 1-day internationals	-	2
England T20 matches	-	1
Domestic cricket (generally)	-	1

World Cup qualifiers	-	3
European Championship Qualifiers	-	3
Home country international football	-	1
Home country friendlies	-	1
Champions League (all except Final)	-	1
Premier League	-	8
Scottish Premier League	-	1
Domestic football semi-final play-offs	-	1

British and Irish Lions Tour	-	4
Heineken Cup	-	2
Guinness Premiership	-	1
Guinness Premiership Final	-	1
Magners League Final	-	1

World Athletics Championships	-	1
European Athletics Championships	-	1

Tennis Grand Slam except Final	-	1
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US Golf	-	1
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Q9(d) Do you think the Secretary of State should remove any events that are currently listed?

No	-	124
Yes	-	12
No view	-	12

Those who answered "Yes" suggested removing¹⁵

The Derby	-	7
Rugby League Challenge Cup Final	-	3
Grand National	-	2

¹⁵ The events (16) sum to more than the 12 respondents in favour of removing events as some made more than one suggestion

Review of Free-to-Air Listed Events – November 2009

Open Golf	-	2
World Athletics Championships	-	1
All events	-	1

Q10. If you have suggested that live coverage of tournaments that take place over an extended period of time or over a period of days should be listed do you think that:

- a. the entire tournament should be listed; or,**
- b. only selected stages, events or matches involving national teams or representatives¹⁶**

Whole	-	69
Depends on event	-	10
Partial	-	12
No view	-	53
Proposal unclear	-	1
No	-	1
Pay TV/FTA to share cricket coverage	-	2

Q11. Please suggest which non-sporting events you would like to see listed

None	-	34
No view	-	57
Yes	-	57

Those who answered “Yes” suggested¹⁷

General royal/parliamentary events	-	19
Proms/Last Night	-	16
Popular music festivals	-	10
Festival of/Remembrance Day	-	5
Unique/cultural/regional/civic	-	5
Chelsea Flower/agricultural show	-	4
Trooping the Colour	-	3
Major charity events	-	3
Eurovision Song Contest	-	3
Queen’s Christmas address	-	3
Lord Mayor’s Parade	-	2
Oscars	-	2
Edinburgh Festival	-	2

¹⁶ There was a significant degree of misunderstanding of this question with many answers relating only to the specific events respondents had earlier suggested should be listed

¹⁷ The events (90) sum to more than the 57 respondents in favour of listing non-sporting events as some made more than one suggestion

Review of Free-to-Air Listed Events – November 2009

Heritage/major public figures	-	2
Plays	-	1
Glyndebourne	-	1
Hogmanay	-	1
Crufts	-	1
London Marathon	-	1
Publicly funded events	-	1
Boat Race	-	1
Notting Hill Carnival	-	1
LGBT Pride	-	1
Talent	-	1
Vienna New Year's Day concert	-	1

Q12. Do you have any other issues that you would like the Panel to take into account in considering what its recommendations should be?

No	-	83
Yes	-	62
No view	-	3

Those who answered "Yes" suggested ¹⁸

Affordability for lower income groups	-	12
NGBs - better balance between income and FTA exposure	-	9
Resist pressure from vested interests (NGBs, Pay TV, FTA channels)	-	8
Need for regular review of list	-	6
FTA key to health of sport	-	3
Pay TV/FTA should share rights	-	2
No excessive listing/sport not free	-	2
Digital switchover allows easier scheduling	-	2
No purchase of men's rights without women's	-	1
Oppose listing of cricket	-	1
Remove from lists if audience under 2m	-	1
Restrict Pay TV to 2 PL packages	-	1
Insufficient minority/women's sport on TV	-	1
Listing fosters social inclusion	-	1
Live coverage is key	-	1
Need wider variety of sports on TV	-	1
Pay TV serves sport better	-	1
Set minimum price for rights for FTA	-	1
Remove Ofcom from process	-	1

¹⁸ The issues raised (64) sum to more than the 62 respondents as some made more than one suggestion

Review of Free-to-Air Listed Events – November 2009

Freeview channels should be “qualifying channels”	-	1
Highlights best for young people	-	1
Reflect regional differences (Wales/Rugby)	-	1
Too much sport on TV	-	1
Follow Australian listing model	-	1
Follow European practice	-	1
Pay TV too expensive for sports clubs	-	1
Pay TV to market stand alone sports packages	-	1
BBC should own all sports rights	-	1

ANNEX D

CONTRACT STATUS OF CURRENT LISTED EVENTS - AS OF 5 OCTOBER 2009

CATEGORY A LISTED EVENTS

(1) Olympic Games **to 2012**

BBC and Eurosport 2010 Winter Olympics and the 2012 Games.

* The EBU has played a central role in acquiring the IOC rights on behalf of the EBU's members, the European public service broadcasters.

The BBC bid last year, as part of the EBU bid, for the 2014 Winter Olympics in Sochi, Russia and 2016 Olympics in Rio De Janeiro, Brazil. That EBU bid was turned down by the IOC on the grounds that the financial element of the EBU bid was insufficient.

(2) FIFA World Cup Final Tournament **to 2014**

ITV and BBC have signed a deal with FIFA to broadcast both the World Cup Finals in 2010 (South Africa) and in 2014 (Brazil). (ITV has live rights for both ITV's Category A service (ITV1) and ITV's other Category B (digital) services).

(3) European Football Championship Finals Tournament

The rights to 2012 tournament have not been awarded. The 2008 tournament was shared between the BBC and ITV.

(4) FA Cup Final **to 2012**

ITV will broadcast the final for the 4 year period from 2008/9 to 2012. Following the administration of Setanta, it is unclear who which Category B broadcaster will simulcast the Final.

(5) Scottish FA Cup Final **to 2014**

The BBC will broadcast the final from 2010 to 2014. The final will also be shown by BSkyB during this period.

(6) Grand National & (7) The Derby **to 2010**

Review of Free-to-Air Listed Events – November 2009

The BBC will broadcast the Grand National and The Derby until 2010. The Racing Channel will also broadcast these races up to 2010.

(8) Wimbledon Tennis Finals **to 2014**

The BBC will continue as host broadcaster for a further 5 year period from 2010 - 2014 (inclusive).

(9) Rugby League Challenge Cup Final **to 2011**

The BBC secured the live rights from 2008 to 2011. BSkyB will also broadcast the final during this period.

(10) Rugby World Cup Final

The next tournament takes place in 2011 in New Zealand; rights not yet awarded.

CATEGORY B LISTED EVENTS

(1) Cricket Test Matches played in England to 2013

BSkyB will be broadcasting live and Five will broadcast highlights covering the period 2010 – 2013.

(2) Non-finals play in the Wimbledon Tournament to 2014

The BBC will broadcast live and highlights - see above

(3) All other matches in the Rugby World Cup Finals Tournament

The next tournament takes place in 2011 in New Zealand; rights not yet awarded

(4) Six Nations Rugby Tournament Matches involving home countries to 2013

The BBC will broadcast live and highlights coverage. Setanta broadcast highlights prior to its administration. A new Category B broadcaster will now need to be sought.

(5) The Commonwealth Games

Delhi in 2010, Glasgow in 2014. Rights have not been awarded yet.

(6) World Athletics Championship

The BBC and Eurosport will broadcast coverage of the Championships in Berlin in 2009. The Championships will be held in Daegu (South Korea) in 2011. Rights have not yet been awarded.

(7) Cricket World Cup: the final, semi-final and matches involving home nation's teams

The next tournament will be held in Bangladesh, India, Pakistan and Sri Lanka in 2011. BSKyB will broadcast the live rights and BBC the highlights.

(8) Ryder Cup to 2012

BSkyB will broadcast live and highlights for 2010 (Wales) and 2012 (Illinois) with extensive highlights on BBC.

(9) Open Golf Championship

to 2011

The BBC will broadcast exclusive live coverage. The rights to broadcast highlights or deferred coverage of this event had been acquired by Setanta, which meant that, under the rules, the BBC did not require Ofcom's consent to broadcast live coverage of the Open Golf Championship. Setanta's licence to broadcast The Open has since been terminated by the rights holder. The rights holders were unable to secure a replacement for Setanta as the category B broadcaster for this event.

In light of these exceptional circumstances, and as the BBC is still airing the live event on a free to air basis, Ofcom has given its consent for the BBC coverage to go ahead.