

telegraph group

From the office of the Chief Executive

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September 15, 2010

Hugh Robertson, MP
Minister for Sport and the Olympics
Department of Culture, Media and Sport
2 Cockspur Street
London
SW1Y 5DH

Dear Hugh,

I am writing to follow up your recent very useful meeting with Keith Perry during which you discussed the issue of the BBC's digital rights for the 2012 Olympics.

This is an issue of great importance to us, which also impacts on the whole of the newspaper industry – at both national and regional level – and we'd be enormously grateful for your advice and help.

It might be useful just to recap the current position. As we understand it, under an agreement dealt with under the last Government, the BBC has been granted sole broadcast rights for the Olympics within the UK. This very broad agreement covers both television, online and mobile for both live and on-demand coverage during the Games. In turn, it is understood that the BBC will make some of these rights available to others.

This is, disturbingly, a very similar position to the 2008 Beijing Olympics. On that occasion, the BBC offered only very limited packages of rights to the market, and very late in the day. These turned out to be neither commercially viable nor deliverable in the timescales. They were also targeted not on the mainstream media – newspapers and other broadcasters – but the Internet Service Providers and mobile operators. A repeat of this would be deeply unsatisfactory.

As you will know well, the media market place – for both publishers and consumers – has changed enormously since the Beijing Olympics, and indeed since this latest agreement with the BBC was signed. Video is now vital to us as publishers and to our own viewers. It is crucial that we have easy access to video material, and that we do so in good time and in a manner which is commercially viable.

Given the incredible importance of the London Games to the whole of the media – and not just the BBC – we think it would be appropriate to revisit the agreement with the BBC to ensure that there is an open playing field across the media.

If it is too late, or impossible, to do so, then we believe it is vital to ensure the BBC sub-licences a number of events during the Games to the wider digital industry, and that there is early clarity and transparency about this. This might include certain events that the BBC may not perceive to have a high importance, but which could find a real audience in other media. We would welcome an opportunity urgently to discuss this.

I am sure your officials will have to hand a copy of the agreements between BBC Sport, the European Broadcasting Union and the IOC, but for ease of reference I attach the 2008 Invitation to Tender for Sub-licences and correspondence between IOC Director Timo Lumme and David Davies which also contains information on the BBC's level of coverage and its limitations.

This is a matter of great importance to us, and to our readers and viewers – and although the Games are still some time away, we do believe it is important that these issues are dealt with at an early stage so that publishers like the Telegraph Media Group, and other independent media, can have some certainty on which to plan.

We'd be most grateful for your help and advice.

With very best wishes,





IOC
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Ref. No 10190/TLE/rmm
By email

Lausanne, 16 June 2009

Free-To-Air Events Review

Dear Mr. Davles,

I am writing to you again in respect of the Free-To-Air Events Review, following the meeting with the Panel on 4 June 2009, for which I thank you, on behalf of the IOC. I address in this letter a number of points raised by members of the Panel, and enclose additional material that I hope you will find useful.

As explained, were a Free-to-Air events list maintained, we would invite the Panel to take account of the reality that only the BBC has broadcast the Olympic Games over the last two decades on BBC1 and BBC2 and that, understandably, capacity constraints have meant that it has always broadcast only a fraction of all available live Games content on BBC1 and BBC2: 4.8% of the total 5,000 hours of live content at the 2008 Beijing Olympic Games. This still represents about 15 hours of live broadcasting each day during the 16 days of the Olympic Games on BBC1 and/or BBC2. The charts attached as Annex 1 show how the volume of live Games content not broadcast on BBC1 and BBC2 significantly exceeds the amount of content shown.

Listing the entire Olympic Games in these circumstances has a number of undesirable practical and legal consequences that mean that the *status quo* cannot be maintained.

As a practical matter, over 95% of all available live Olympic Games content has hitherto failed to reach the UK viewing public via BBC1 and BBC2, and the IOC has been unable to obtain any market for its unused live Games content. Reduced revenue to the IOC hurts Olympic International Federations, National Olympic Committees (including the BOA) and directly impacts cities hosting the Olympic Games: the IOC depends on broadcast revenue to fund the operations of Olympic Games organising committees for the staging of future Games, including the London 2012 Olympic and Paralympic Games.

As a legal matter, there is a mismatch between the total hours of live Olympic Games content guaranteed, in practice for the BBC, and the BBC's own capacity constraints. These capacity constraints enable it to show only a small fraction of this total on BBC1 and BBC2 and place a serious question mark on the legality of listed events rules covering the entire Olympic Games, principally because they exceed what is necessary to preserve the listed events rules' public interest objective, *i.e.*, the free-to-air broadcast of events that are of significant importance. I enclose as Annex 4 a note by Counsel to the IOC analysing this issue in more detail.

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The IOC has presented a proposal for reform that has two main elements:

- First, the new listed events rules should set a maximum limit on the total number of hours of live Games content subject to free-to-air designation based on the number of hours of live content historically aired by the BBC on its free-to-air channels. This would be 240 hours for the Summer Olympic Games and 100 hours for the Olympic Winter Games.
- Second, the new listed events rules should establish a framework to be supervised by Ofcom for determining which Olympic Games events are of significant importance for the UK viewing public in light of the events broadcast live on free-to-air channels under the listed events rules during the last Olympic Games and in light of established and objective criteria.

In effect, rather than reserving the whole of the Olympic Games to the BBC (or to any other qualifying broadcaster), the hour cap in the new listed events rules would tailor the BBC's right to broadcast live Games content to the level at which the BBC has historically broadcast the Olympic Games. The new listed events rules would match current and historical practices but remove the undesirable effects of the existing listed events rules. The proposal for reform would leave unaffected and safeguard the UK viewing public's ability to view the Olympic Games on free-to-air television channels at their current levels. At the same time, it would encourage competition among broadcasters for the unused portion of live Games content, and would be likely to result in significantly more live Olympic Games content reaching the UK public than ever before.

The process for determining which Olympic events are of major importance for society need not be complex or contentious. Pursuant to the Audiovisual Media Services Directive, the European Commission must determine whether national rules comply with the EC Treaty. This process involves verifying that the national rules cover only outstanding events of interest to the domestic viewing public. To make this determination, the European Commission will assess whether an event meets at least two out of the four following criteria:

- The event has a special resonance within the UK, and is not simply of significance to those who ordinarily follow the sport.
- The event is generally recognised as being of distinct cultural importance for the UK population, in particular as a catalyst of cultural identity.
- The event involves a national team.
- The event has traditionally been broadcast on free television and has commanded large television audiences.

For example, events such as the Olympic Games opening and closing ceremonies, blue ribbon events (such as the 100 meters finals), medal rounds involving UK athletes, and non-medal rounds involving UK athletes in events with particular cultural importance to the UK public (such as equestrian and rowing) would be likely to satisfy at least two of these criteria. Other events that have not typically received significant broadcast coverage or attention from the UK public, such as fencing or weightlifting, would not. We attach as Annex 2 BBC broadcast data for sports that have received coverage on BBC1 and BBC2 at the Beijing 2008 Olympic Games. Applying these criteria would produce a list of events designated for free-to-air broadcast that would be of actual importance to the UK public, an



approach already adopted in a number of other countries, examples of which are set out in Annex 3.

In our view, the new listed events rules could incorporate one or several alternative methods of determining events that should be covered by the new listed events rules. We provide some possible approaches below.

The new listed events rules could adopt an approach identical to that taken, for example in Spain, by designating for free-to-air coverage the Olympic Games opening and closing ceremonies, medal rounds in selected sports with particular cultural importance to the UK public, and events involving UK athletes.

A similar approach would be to designate the opening and closing ceremonies, medal rounds involving UK athletes, and non-medal rounds involving UK athletes in events with particular cultural importance to the UK public.

As an alternative, the events designated for free-to-air coverage could be determined using the method Sky Italia and RAI propose to use in Italy. The IOC has granted Sky Italia the broadcast rights for Italy to the 2010 and 2012 Olympic Games. The Italian listed events rules cover the summer and winter Olympic Games. However, like the BBC, RAI has broadcast only a fraction of the available live Olympic Games content on its free-to-air channels. This reality is reflected in the arrangement reached between Sky Italia and RAI, in consultation with the competent Italian authorities. Under Sky Italia's sub-license, RAI must broadcast at least 200 hours (and may broadcast up to 215 hours) of "High Viewer Interest Events" at the Summer Olympics (and between 100 and 110 hours at the Winter Olympics). High Viewer Interest Events are undefined, but include at least the opening and closing ceremonies, as well as the medal rounds of any sport in which Italian athletes or teams compete. In addition, Sky Italia and RAI have agreed to divide between them a series of events for exclusive broadcast that are of higher interest in Italy by making alternate selections from a list of sports, with Sky Italia having the first choice. RAI nevertheless retains the right to broadcast the medal rounds from sports selected for exclusive broadcast by Sky Italia involving an Italian athlete or team.

One member of the Panel asked at our 4 June meeting why the BBC (or another rights holding qualifying broadcaster) could not simply be required to sublicense the live Olympic Games content that it does not intend to show on its free-to-air channel(s). The IOC would respond that the very essence of the listed events rules means that, by definition, they are not designed to guarantee access by qualifying broadcasters to live content that they do not intend to broadcast on their free-to-air channels. There is therefore no legal or commercial reason why the BBC or any other qualifying broadcaster should be the "gatekeeper" of all live content. Indeed, in a number of EC Member States, for example Germany, the role of "gatekeeper" may be taken on by a non-qualifying broadcaster.

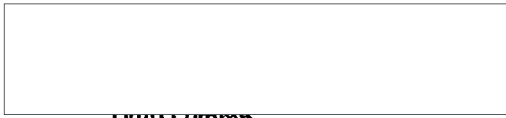
Finally, the issue of the "safety valve" also arose during our discussions at our 4 June meeting. The IOC recognises that the unexpected success of a UK athlete at the Olympic Games, or some other anomalous event, could suddenly create broad societal interest in an event or sport that had not been designated for free-to-air broadcast prior to the Olympic Games. Although such instances would be very unlikely to satisfy two of the four criteria listed above (because they imply that an event must have already reached sufficient notoriety to qualify as an event of major importance for society), the IOC recognises that some flexibility may be desirable in order to ensure some free-to-air coverage of that particular athlete or event. In order to accommodate the interests of the UK public and other broadcasters, the IOC would propose that the BBC (or another rights-holding qualified broadcaster) be entitled to broadcast any event from the Olympic Games,



regardless of whether it is designated to be of significance, on a deferred basis during a regularly scheduled daily highlights program. The timing of the deferred broadcast would be subject to the maximum timing restrictions set out in paragraph 1.18 of the Code on Sports and Other Listed and Designated Events (*i.e.*, in all cases the deferred broadcast would not take place before an event's scheduled finish).

We thank the Panel for its continued attention and consideration, and would be pleased to address any questions or concerns the Panel may have about the IOC's submissions, or other matters concerning the Olympic Games.

Yours sincerely,



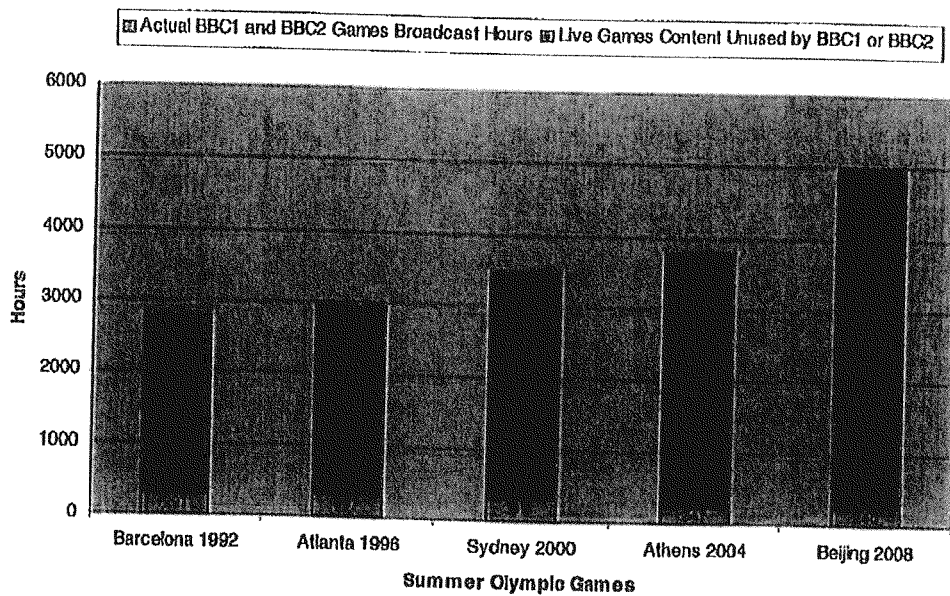
Filippo Lummp
IOC Director, Television & Marketing Services

cc: Tony Dyer, Head of Secretariat, Free-to-air Events Review Panel
Sir Craig Reedie, IOC Member
Romano Subiotto QC, Solicitor-Advocate England & Wales

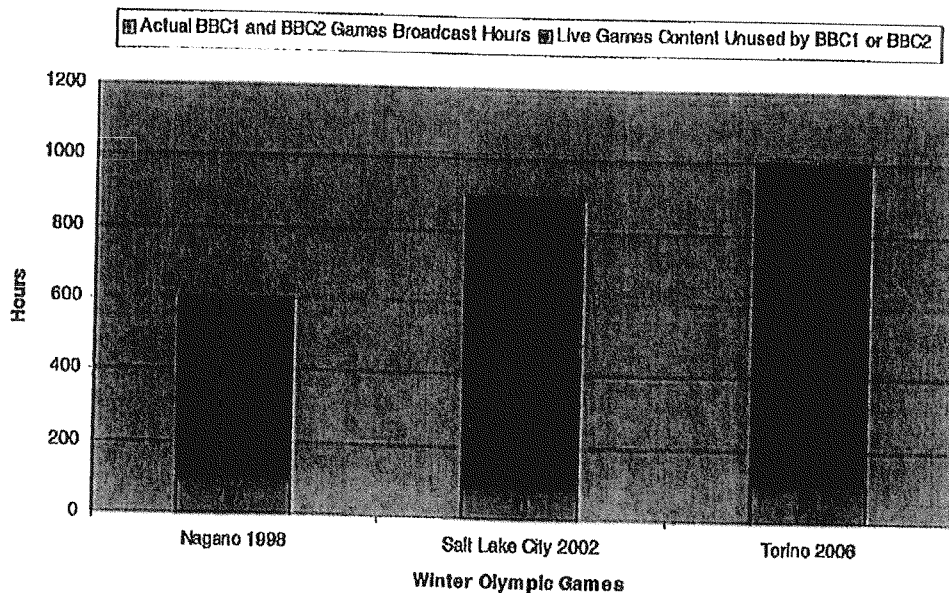


ANNEX 1: AVAILABLE OLYMPIC GAMES CONTENT SIGNIFICANTLY EXCEEDS BBC1 AND BBC2 BROADCAST LEVELS

Summer Olympics: BBC FTA Broadcast Constrained by Capacity



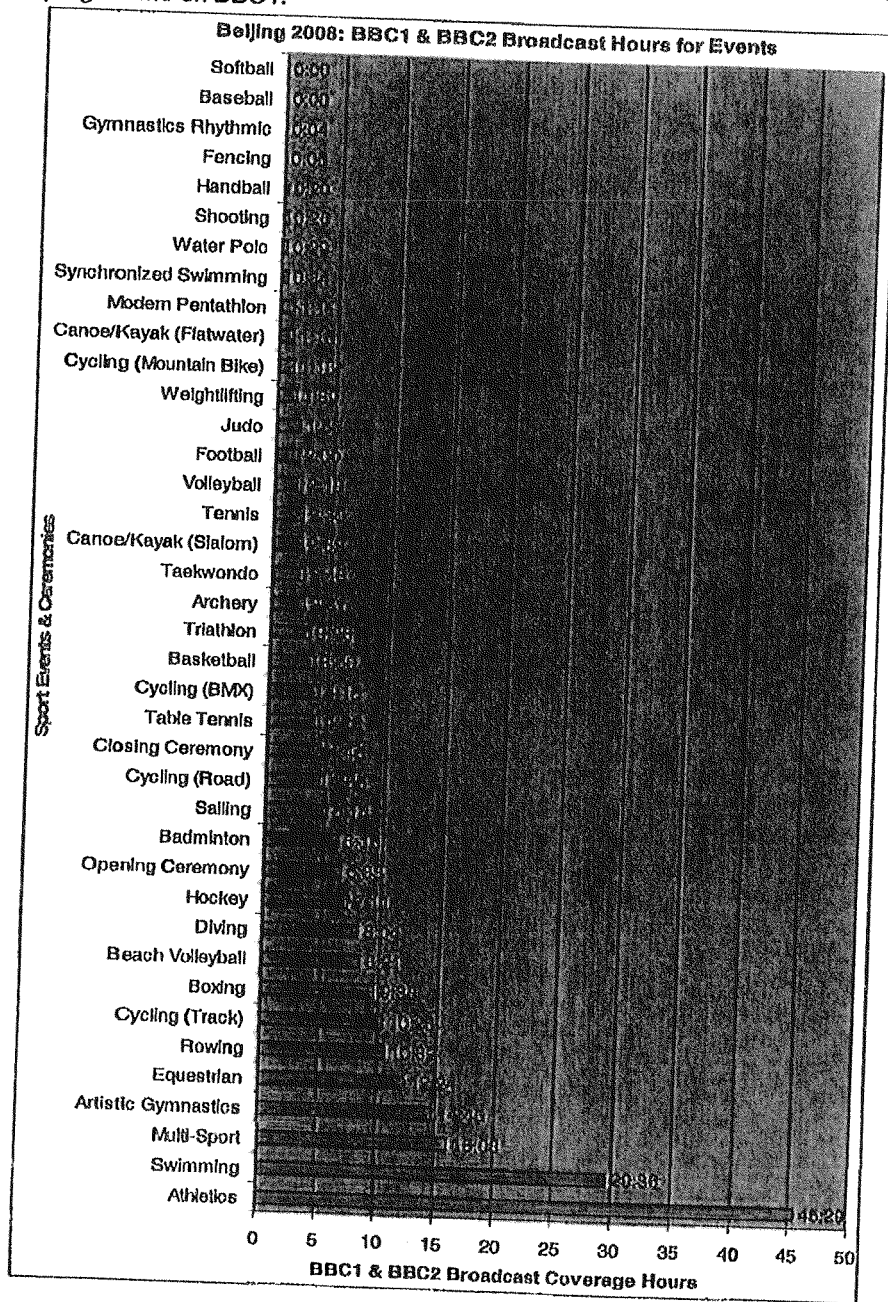
Winter Games: BBC FTA Broadcast Constrained by Capacity





ANNEX 2: BBC BROADCAST OF EVENTS OF DIFFERING IMPORTANCE TO THE UK PUBLIC

The BBC divides its available broadcast capacity among the many sports of the Olympic Games. The chart below compares the broadcast hours on BBC1 and BBC2 of the 28 sports in the Beijing Games on a dedicated basis (i.e. as opposed to a multi-sports basis, as in the case of a highlights programme). None of the bottom 12 sports was broadcast for more than two hours (in total) throughout the entire Olympic Games on BBC1 and BBC2 combined. The multi-sports coverage refers to the nightly highlights programme on BBC1.





ANNEX 3: EXAMPLES OF PROPORTIONATE TREATMENT OF OLYMPIC GAMES IN OTHER COUNTRIES' BROADCASTING RULES

Appendix 3 to the *Free to Air Review - Consultation Document* lists events designated as of significant importance in other EEA States under Article 3j of the Audiovisual Media Services Directive. In addition to those countries, and aside from the numerous countries that do not have listing rules, a number of other countries, both inside and outside the EEA, maintain more proportionate regulations governing the broadcast of events at the Olympic Games. Some illustrations are summarised below.

Country	Proportionate Designation of Olympics as an Event of Significant Importance
Spain	Spain decides which events are of significant importance on a per Olympics basis. For the Beijing 2008 Olympic Games, the opening and closing ceremonies, events in which Spanish teams competed, and the finals in athletics, swimming, gymnastics, tennis, basketball and handball were designated as being of significant importance.
Portugal	Portugal decides which events are of significant importance on a per Olympics basis. For the Beijing 2008 Olympic Games, the opening and closing ceremonies and all events in which Portuguese athletes competed were designated as being of significant importance.