



David Elstern  
Chief Executive

13 August 1997

[REDACTED]  
Head of General Broadcasting Policy Branch  
Room 413  
DCMS  
2 - 4 Cockspur Street  
London  
SW1Y 5DH

Dear [REDACTED]

I am responding to the letter sent out by the Secretary of State on July 10<sup>th</sup> in connection with listed events.

Channel 5 has a number of concerns on the issue of listed events, which are not solely connected with the criteria for inclusion and exclusion.

Our first concern is the definition of Category B broadcasters. The Secretary of State's letter, in its first paragraph, referred to 'everyone' having 'reasonable access to those events', and in the next sentence to the contribution to sport made by 'subscription broadcasters'. There has always been the implication in the argument for listing certain events that it is the principle of 'free-to-air' access which is important - that people should not have to pay an extra fee (be it by subscription or pay-per-view) to watch a particular event.

The note on possible criteria for listing refers to Category A broadcasters as those with 'near universal reach', and Category B broadcasters as pay-TV channels or 'those which are not generally accessible'. The EU position paragraph refers to transmissions 'which would deprive a substantial proportion of the public of the possibility of following those events on free television'.

Thus, Channel 5 has apparently been consigned to Category B, even though it is free-to-air, simply because only 70% of the UK can receive its signal

.../

13 August 1997

terrestrially. This seems to us inherently unfair. To watch television at all requires the consumer to invest in suitable equipment and pay the licence fee. Channel 5 is available terrestrially to millions of viewers who have so far failed to invest in the right aerial to see our signal. Moreover, Channel 5 is also available, at no charge, to anyone who installs a dish or cable - putting us theoretically within reach of well over 90% of the population.

Channel 5 is therefore 'generally accessible', and its 'reach' (but not its actual level of household tuning-in) is 'near-universal' - that millions of households have not so far installed the right equipment to watch us does not diminish the fact that we are available. Indeed, the kind of programming which might incentivize householders to install that equipment - major, exclusive sports events - is in part denied to us because of the listing principle, which thus becomes a self-fulfilling proposition.

A second concern of Channel 5's is that the Category B broadcaster is put in an invidious position by the operation of the rules. The commercial value of an event which is simultaneously carried by a Category A broadcaster is virtually zero. To negotiate for such an event on two different bases - exclusive coverage and non-exclusive coverage - would quickly expose this fact. The ITC is empowered to require any listed event licensed by a Category B broadcaster to be offered on 'fair and reasonable' terms to a Category A broadcaster. Yet the only such terms that would be fair and reasonable to the Category B broadcaster would be for the Category A broadcaster to pick up the entire cost of the event. Even the subsequent division of costs, proportionate to the actual viewership of the event on the two broadcasters, would be unfair to the Category B broadcaster, for whom the commercial value of exclusivity is much greater.

A third concern of Channel 5's is therefore that although the Secretary of State is required to consult sports rights holders before listing takes place, there is no obligation to take into account strongly held opposition to listing. Nor is there any provision for removal from the list. This is particularly unfortunate in that the nature of those events currently listed is highly inequitable, with all domestic test matches treated as the equivalent of a 3-minute horse race.

This issue is of relevance to the suggested criteria. For instance, this year's sixth test against Australia is a 'dead' match. Its outcome has no 'special national resonance', and although it is part of a major international tournament, the outcome of the tournament is already known. Moreover, although it is a readily defined event, it is stretching language to describe it as 'of limited duration'.

.../

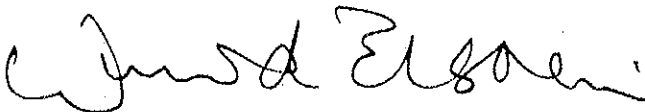
13 August 1997

Moreover, the current definition of listed events includes all test matches involving England, including overseas ones, for which there is only the sketchiest 'history of being broadcast live on free-to-air services'. It does seem as if the sport of cricket has been singled out for unfair and commercially damaging treatment, which has the effect of discrediting the whole notion of listing.

It is also important to take into account whether the public and political desire to secure major sporting events for free-to-air services is best and most properly achieved by forcing sports rights holders to act against their own commercial interests. As Channel 5 has itself shown - in purchasing the rights to the Poland v England World Cup qualifying match - there is no reason why free-to-air broadcasters should not compete against pay-tv channels for one-off sports events. Even though the BBC is not a commercial broadcaster, it acts in the television and rights market-place in a highly-commercial way in many respects: it certainly has funds sufficient to compete for major sports if it chooses to apply them. Alternatively, it could make the case to Parliament for a special supplement to the licence-fee to fund high-profile sports events that are deemed beyond its financial reach. At least that way it would not be sport which suffers in the name of the armchair fan who does not even pay the price of a ticket at the turnstile.

In summary, Channel 5 would respectfully suggest that, in addition to examining scrupulously the criteria for exercising the right to list, the Secretary of State might also re-examine the principles underlying that right, and consider whether that right is a disproportionate reaction to a minor problem which might be more appropriately and fairly dealt with in other ways.

Yours sincerely



DAVID ELSTEIN