Digital Television Programme Services

Digital Television Additional Services

Guidance notes for licence applicants

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Introduction

1. These notes are for the general guidance of applicants for Digital Television Programme Service (DTPS) and Digital Television Additional Service (DTAS) licences. The guidance notes provide an overview of the licensing process, the licensing requirements and the conditions that licensees are subject to, but do not purport to explain all the relevant provisions of the legislation, or give an exhaustive account of the licensing requirements or licence conditions. Applicants should seek their own legal advice for this purpose. The guidance notes cannot be taken as modifying the effect of the statutes or the conditions of the licence.

2. The guidance notes, the application form, the standard form DTPS and DTAS licences, and further information about the television services that Ofcom licenses can be found on the Ofcom website, (http://licensing.ofcom.org.uk/tv-broadcast-licences/dtps-dtas/).

3. You can contact the Ofcom Television Broadcast Licensing team by email (tv.licensing@ofcom.org.uk), phone (0207 783 4118). Please note, however, that application forms must be submitted in hard copy to:
   Ofcom
   Television Broadcast Licensing (5th Floor)
   Riverside House
   2a Southwark Bridge Road
   London
   SE1 9HA

General disclaimer

4. Information is supplied on a wide range of matters in this document, many of which depend on interpretation of the law. The information provided is not an exhaustive account of the statutory and licensing requirements and should not be regarded as a complete and authoritative statement of the law. Nor does any information issued by Ofcom, whether in guidance notes or elsewhere, imply any judgement by Ofcom as to commercial prospects for the licences, or that licensed services will be profitable.

5. Persons to whom these guidance notes are made available must make their own independent assessment after taking their own professional advice and making such further investigations as they deem necessary on all relevant matters. Ofcom makes no representation or warranty, express or implied, with respect to information contained in these guidance notes (together with the standard form licence and other documents referred to in this document) or with respect to any written or oral information made or to be made available to any potential applicant or its professional advisers. Any liability therefore is expressly disclaimed.

6. Applicants should be aware that certain key features of the licensing process, such as fees, sanctions procedures and the drafting of the relevant content codes, may change in the future as a result of consultation.

7. Ofcom reserves the right to alter or correct any part of this document.
The licensing process

Submitting a valid application

8. The application form for DTPS and DTAS licences can be found on Ofcom’s website at http://licensing.ofcom.org.uk/tv-broadcast-licences/dtps-dtas/the application form also serves as the form of notification to Ofcom of a service provider’s agreement with a multiplex operator (see paragraphs 13-14 below). Applications for DTPS or DTAS licences can only be made using this form. Applicants should ensure that they always refer to the most recent editions of the guidance notes and application form when submitting their application.

9. We encourage applicants to download the editable version of the application form from our website and fill it in on their computer. Ofcom will accept handwritten application forms, but they must be filled in using block capitals and black ink. We will not accept illegible application forms.

10. You should fill in all sections of the application form. If a section is not applicable to your application, you should indicate that. The declaration in section 4 of the application form must be signed and dated, and the form submitted in hard copy to:

Ofcom
Television Broadcast Licensing (5th Floor)
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

11. The application form must be accompanied by the supporting documents detailed in the checklist. If the original documents are not in English, it should also be accompanied with a translation into English. These documents are a copy of the Memorandum and Articles of Association (or, if a body corporate without such, the nearest equivalent along with a translation, if it is not in English), together with copies of any resolution amending or updating them and a copy of the last Annual Return (or if the entity is recently established such that it has not yet been required to make that return, a copy of all filings made to Companies House since incorporation) and Accounts of the applicant; along with the relevant fee (see paragraphs 21-22 below).

12. We will normally acknowledge your application within two working days from receiving it. If an application cannot be considered (for example, because it is illegible, the appropriate fee has not been submitted, the applicant has used the wrong form etc) we will normally return the application form to the applicant.

Notification of agreement with multiplex licensee

13. In submitting your DTPS or DTAS licence application, you are formally notifying Ofcom of an agreement with the multiplex licensee that will carry your service. In addition, in support of your application, you must supply a letter from the multiplex licensee, confirming what you have stated in your application in respect of the notification (see section 2 of the application form).

14. If you are notifying Ofcom of a new agreement with a multiplex licensee (for example, for carriage of another service), or a variation or a cessation to such agreement, and therefore need to request a variation to an existing DTPS or DTAS licence, you should also fill in section 2 of the application form. The notification must be made as soon as the agreement has been made, and in any
event not later than 28 days after that agreement (see Condition 12(2) of the DTPS licence or Condition 9(2) of the DTAS licence).

**Timescales**

15. Licence applications are considered as and when they are received. As a guideline, our aim is to issue a licence within 25 working days of receipt of the application. There is no guarantee it will be done within this timeframe. Applications are assessed on a first come, first served basis, and during peak periods it may take longer. The timeframe assumes that full and accurate information has been provided by the applicant in the application form and accompanying documentation.

16. Applicants with religious objects are advised to allow approximately eight weeks for their application to be considered by Ofcom in the light of the Guidance for religious bodies applying for a Broadcasting Act licence ([http://licensing.ofcom.org.uk/tv-broadcast-licences/other-issues/religious-guidance](http://licensing.ofcom.org.uk/tv-broadcast-licences/other-issues/religious-guidance)). Applicants should be aware that Ofcom is under a duty to ensure that it does not license bodies with objects which are of a wholly or mainly political nature, and will consider applications carefully in the light of its duties. Applications where questions arise in relation to this issue may take a number of months to consider.

17. Ofcom may refuse to issue a DTPS or DTAS licence if the applicant is not a “fit and proper person”, if the applicant is a disqualified person (see paragraphs 55-57) or if the proposed service would be likely to involve contraventions of the standards for programmes and advertising (see paragraphs 72-74).

18. In cases where Ofcom has instigated sanctions procedures against a licensee, it will not generally consider any applications for new licences by the same licensee or by a person/body connected to that licensee until such time as the sanctions procedure against the existing connected licensee is concluded. This means any sanction imposed, must be satisfied (e.g. in the case of a fine, full payment of the fine must have been made) before any new application by that licensee or by a person/body connected to that licensee can be considered.

19. Ofcom will normally only issue a DTPS or DTAS licence, or vary a licence to add a new service, once the applicant has supplied a letter from the relevant multiplex operator confirming carriage of the service.

20. To be able fully to consider an application, we may need to request further information or clarification from the applicant. If we don’t receive a response to a request for further information within one month, the application will be considered to have lapsed.

**Fees**

21. The application must be accompanied by the application fee. Application fees are reviewed by Ofcom annually, and applicants should consult the Ofcom website for the most up to date information on fees. The tariff tables are published no later than 31 March each year. The application fee for 2013/2014 is £2,500 per application.

22. The application fee is non-refundable.

23. Once a service is licensed, fees are charged annually in April. The annual fee is based on a percentage of Relevant Turnover subject to a minimum fee (for all services licensed as DTPS/DTAS except teleshopping services, which are charged a fixed annual fee). For further information about fees, see Ofcom’s Statement of Charging Principles.
and Ofcom’s Tariff Table (http://www.ofcom.org.uk/files/2013/03/tariff-tables-2013-14.pdf). Non-payment of fees may result in revocation of the licence and appropriate action for recovery of any debt (see paragraph 111).

24. If a licence is no longer required it may be surrendered. If an invoice for the annual licence fee has been issued, the licence must be surrendered within 30 days of the date of the invoice in order for the annual licence fee to be waived. If a licence is surrendered before the end of the annual licence period, no refund for the remaining period will be made.

25. Ofcom also charges a fee for considering requests for consent to transfer DTPS/DTAS licences. The current fee for requests for consent to transfer a DTPS/DTAS licence is £1,000. For more information about transferring a licence, see paragraphs 89-93.

26. Please note that Ofcom now offer the facility to pay for your annual licence fees online by credit or debit card. We accept all major credit/debit card types against any invoice with a value of up to £5000. To log into the online payment portal, please visit https://secure.ofcom.org.uk/payments/welcome.php. Alternatively this can be accessed through the main Ofcom website (http://www.ofcom.org.uk/). To use this service you will need your Customer Reference Number and Invoice Number which can be found on your latest invoice. We know that security is an important concern for our customers when it comes to making online payments therefore Ofcom is working with Sage Pay, who holds a PCI DSS Certificate of Compliance for security, to ensure the protection of consumers’ card details.

27. Fees can be paid directly by BACS transfer. Payment should include a reference to the application being made or in the case of payment of annual fees, a reference to the invoice number. Confirmation of payment should be emailed to ofcom.remittances@ofcom.org.uk. Annual fees can also be paid by credit/debit card. If you wish to pay by this method then please access the online payment system either from the Ofcom website or by using the following url: https://secure.ofcom.org.uk/payments. You will need the customer reference number and invoice number which you wish to pay.

Lloyds TSB Bank LTD
69-73 Borough High Street, London, SE1 ING

Account Name: Office of Communications
Account Number: 00782415
Sort Code: 30 97 90

BIC: LOYDGB21351
IBAN: GB05 LOYD 3097 9000 7824 15
SWIFT: LOYD GB 2L

Remittances: ar@ofcom.org.uk
Fax: 0207 783 4901

28. Annual fees can also be paid by direct debit. If you wish to pay your annual fee by direct debit, please enclose a direct debit form with the application.
Nature of the service: editorial, teleshopping or self-promotional

29. There is only one form (respectively) of the DTPS and the DTAS licence. Each licence contains the same conditions which apply to the licensee throughout the licence period http://licensing.ofcom.org.uk/tv-broadcast-licences/dtps-dtas/). Further information about some of the conditions that licensees are subject to is set out in paragraphs 66-114 below.

30. Ofcom recognises three types of service which can be provided under a DTPS or DTAS licence. The nature of the service can either be editorial, teleshopping or self-promotional. In each case, the licence obliges the licensee to, among other things, comply with the Code on the Scheduling of Television Advertising (COSTA) (http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/). COSTA sets out how much advertising a service may carry and deals with other matters such as where and when advertising can be inserted in the service. Please refer to COSTA for the detailed rules on these matters. You are advised to carefully consider the rules in COSTA, as the type of service you choose to provide will affect how these apply to you. This choice also determines what fee category applies to you.

- An **editorial service** is a “normal” programme service, with conventional programme material and scheduled advertising breaks. The majority of television channels (including electronic programme guides) fall within this category. Editorial services are category B licences for the purposes of Ofcom’s Statement of Charging Principles.

- A **teleshopping service** is a service which consists of teleshopping. Teleshopping (also known as home shopping, advertorials, infomercials, etc) is a particular form of advertising involving the broadcast of direct offers to the public with a view to the supply of goods or services in return for payment. Spot advertising and teleshopping for other products and services are permitted on teleshopping services up to same limits as for editorial services. For the avoidance of doubt, teleshopping services may not broadcast material (other than permitted advertising) which does not contain direct offers to the public. A teleshopping service may therefore not contain any conventional programme elements such as news, sport, films, documentaries or drama, etc. Teleshopping services are category E licences for the purposes of Ofcom’s Statement of Charging Principles.

- A **self-promotional service** is a service which consists of self-promotional material. Self-promotional material is a particular kind of advertising in which the broadcaster promotes its own products, services or channels. Spot advertising and teleshopping for other products and services are permitted on self-promotional services up to same limits as for editorial services. For the avoidance of doubt, self-promotional services may not broadcast material (other than permitted advertising and teleshopping) which does not promote the broadcaster’s own goods or services. A self-promotional service may not therefore contain any conventional programme elements such as news, sport, films, documentaries or drama, etc. Self-promotional services are category B licences for the purposes of Ofcom’s Statement of Charging Principles.

Transactional gambling services will be treated as providing a teleshopping service rather than editorial output and licensed accordingly. The same will apply to ‘windows’ of transactional gambling within an otherwise editorial service.

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1 Typically, transactional TV gambling output offers roulette, card games and virtual horse and dog racing.
Licensees should continue to be able to choose what output they wish to provide: specifically, whether they wish to provide a purely editorial gambling-themed service, rather than a teleshopping service, and be licensed accordingly. However to qualify as editorial, any such services should provide genuine programming and not include transactional gambling in which offers are made, express or implied, to viewers to participate in the services on screen.

Where a service offers transactional gaming; the licence will not authorise the provision of transactional gaming content in the UK outside Great Britain where such content remains prohibited.²

Adult chat, adult sex chat and psychic programming are licensable as teleshopping. The BCAP code requires that these types of services are specifically licensed for the purpose. ³ If you intend to include this programming as part of your proposed service the annex to your licence will include a reference to the provision of such programming.

31. You must state, when applying for a licence, what type of service you intend to provide. Should you wish to change the nature of the service once the licence has been granted, the change must be agreed with Ofcom in writing prior to any change taking place. This would require a variation to the licence (see paragraph 115).

**Name of the licensed service**

32. The applicant chooses the name for their proposed service, and it is your responsibility to ensure that you are able to use that name. Ofcom’s statutory remit does not extend to intellectual property matters, and it is for you to satisfy yourself that the proposed name of the service will not cause problems, from your own point of view, with (for example) a similar name for an existing service. Ofcom considers the proposed name of a service in an application to the extent that it may be relevant to the licensing criteria. This could concern, for example, matters relating to the Ofcom Broadcasting Code, such as the use of explicit language that viewers would find offensive.

33. Should you wish to change the name of the service once a licence has been granted, the change must be agreed with Ofcom in writing prior to any change taking place. This would require a variation to the licence (see paragraph 115).

34. It is the responsibility of the applicant to enter into agreements with the appropriate copyright licensing bodies before commencing broadcasting

**Music Copyright**

35. The licensee is responsible for reaching agreement with those owning copyright or performing rights to any of the material which it is proposed to broadcast. If you intend to broadcast any music you must get a licence from the Performing Right Society (PRS) www.mcps-prs-alliance.co.uk 29/33 Berners Street, London W1P 4AA. (tel 020 7580 5544). To broadcast any recorded music you must also get a licence from Phonographic Performance Limited. (PPL) www.ppluk.com 1 Upper James Street, London W1R 3HG (tel 020 7534 1000). The playing of

² For further information see http://www.ofcom.org.uk/tv/ifi/guidance/gambling/

³ Please refer to BCAP code rule 23.3.2 in relation to telecommunications based sexual entertainment services and BCAP code rule 15.5.2 in relation to services relying on belief systems such as astrology, tarot or other psychic services. http://www.cap.org.uk/The-Codes/BCAP-Code.aspx
music originating outside the UK, will still be subject to copyright or performing rights licensing.

36. The recording of music for any purpose, including MCPS production library discs, will require a licence from the Mechanical Copyright Protection Society (MCPS) which is at the same telephone number, address and website as PRS (www.mcps-prs-alliance.co.uk).

37. We cannot advise on copyright or performing rights requirements, and you should contact the relevant bodies directly for such information.

Publication of information about applications and licensed services

38. Please complete the question at the end of the application form telling us which information provided by you, you consider to be confidential. If an applicant asks us to keep part or all of an application confidential, we will treat this request seriously and will try to respect this. However, sometimes we will need to publish such applications, including those that are marked as confidential, in order to meet legal obligations for example under the Freedom of Information Act, 2000.

39. In this regard, please note that Ofcom is a Data Controller under the Data Protection Act 1998 ('the Act') and is committed to protecting and processing any personal information shared with us in a manner which meets the requirements of the Data Protection Act 1998 as outlined in the statement on our website at http://www.ofcom.org.uk/about/cad/dps/dps/.

40. When a licence is granted, the name of the service, contact details for the licensee and a brief description of the licensed service are published on the Ofcom website. These are the details supplied by the licensee in the application form. If you have any questions about the information that we publish, or there are any changes to this information, you should contact the Television Broadcast Licensing team.

41. Additionally, Ofcom considers issued DTPS and DTAS licences to be public documents and the Television Broadcast Licensing team will make copies of licences available on request.

42. Ofcom also publishes a monthly update which lists new services licensed, licences revoked, licence transfers, and changes to the name or nature of the licensed service during the past month. The licensing updates are available on the Ofcom website, http://licensing.ofcom.org.uk/tv-broadcast-licences/licensing-updates/.
Licensing requirements

Determining whether a service requires a DTPS or DTAS licence

43. Applicants are responsible for assessing whether their proposed service requires a licence, and which type of licence is required. You may wish to take your own professional advice in order to comply with this obligation. Ofcom cannot determine for you whether you need a licence or not and you should not rely on the guidance provided in these notes.

44. It is an offence to provide a licensable service without the appropriate licence.

45. DTPS and DTAS are services broadcast for reception by members of the public on a digital terrestrial television multiplex. Sections 1-27 of the Broadcasting Act 1996 (as amended) describe digital terrestrial television multiplexes, DTPSs, DTASs and the licensing regime which applies to them. Further information about multiplexes is set out in paragraphs 49-51 below. Whether your service requires a DTPS or a DTAS licence depends on the service you will be providing.

46. A Digital Television Programme Service (DTPS) is a service consisting in the provision of television programmes with a view to their being broadcast in digital form for reception by members of the public on a digital terrestrial television multiplex. A service is not a DTPS unless it consist wholly or mainly of images capable of being seen as moving pictures. Further, the definition of DTPSs excludes qualifying services and teletext services, but includes text or data which is ancillary to the DTPS (such as subtitling or audio-description). Generally, “normal” television channels (consisting of moving pictures), including their interactive enhancements, fall within the definition of a DTPS.

47. A Digital Television Additional Service (DTAS) is a service, broadcast in digital form for reception by members of the public on a digital television multiplex, which is not a DTPS. The definition of a DTAS also excludes qualifying services, digital sound programme services, ancillary services and technical services. Generally, self-standing text or data services, including teletext services and EPGs, fall within the definition of a DTAS.

48. Television services made available using either satellite, a radio multiplex, or an electronic communications network (like cable) are licensed as Television Licensable Content Services (TLCS). Separate Guidance notes for applicants for TLCS licences are available on the Ofcom website under http://licensing.ofcom.org.uk/tv-broadcast-licences/tlcs/

Digital Terrestrial Television Multiplexes

49. A multiplex is a collection of television programme, radio and data services that are broadcast together in a digital signal that occupies no more spectrum than just one analogue television service. Multiplexes are licensed by Ofcom under the Broadcasting Act 1996 or, in the case of multiplex 1, granted by the Government. There are six television multiplexes:

- Multiplex 1 is operated by the BBC under their Royal Charter and Agreement with the Secretary of State for Culture, Media and Sport

- Multiplex 2 is operated by Digital 3 and 4 Ltd (jointly owned by Channel 3 and Channel 4) and the capacity on this multiplex is split between Channel 3 (48.5%) and Channel 4 (48.5%)
- Multiplex A is operated by SDN Ltd (controlled by ITV plc), and 50% of the capacity on this multiplex is reserved for Channel 5 and (in Wales) S4C.
- Multiplex B is operated by BBC Free to View Ltd.
- Multiplexes C and D are operated by Arqiva Limited

50. The multiplex licences contain conditions for the provision of services over the multiplex and the behaviour of licensees. Some of the conditions place obligations on the multiplex licensee with regard to the range and nature of the services they carry. Each application for a DTPS or DTAS licence must be accompanied by a letter from the relevant multiplex licensee, confirming that they will carry the service.

51. Please note, however, that the multiplex licences do not all contain identical conditions. For full information about the conditions that multiplex licensees are subject to, you should refer to the multiplex licences and, where appropriate, the relevant legalisation. The multiplex licences issued by Ofcom, along with contact details for the multiplex licensees, are available on the Ofcom website, http://licensing.ofcom.org.uk/tv-broadcast-licences/current-licensees/multiplex/.

Determine who should hold the DTPS or DTAS licence

52. The appropriate licensee will be the “provider” of the service. The provider of the service is the person who is in a position to determine what is to be included in the service or, in the words of the Communications Act, the person “with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service)”. For example, the licensee could be a company, a partnership or a sole trader as appropriate.

53. Ofcom has published guidance about who we regard as the person who is the provider of a broadcasting (i.e. TV and radio) service and should therefore hold a broadcasting licence to provide the service. Generally, the provider of the service is the person who is in a position to determine what is to be included in the service or, in the words of the Communications Act 2003, the person “with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service)”. The full text of the document can be found at the following link:


Before an application is submitted, the applicant should ensure that the Guidance Notes have been read in conjunction with the guidance in relation to the provider of the service and that the correct provider of the service is applying to hold the licence.

54. Licences are granted in respect of a particular DTPS or DTAS provider rather than an individual DTPS or DTAS. Each DTPS or DTAS licence can cover (respectively) one or more DTPS or DTAS on one or more television multiplexes. For example, a broadcaster which provides three different television channels on the digital terrestrial platform would require one DTPS licence with the three different services listed in the Annex to the licence.
Ownership restrictions

55. The Broadcasting Act 1990 (as amended by the Broadcasting Act 1996 and the Communications Act 2003) lays down a number of restrictions on who may hold Ofcom's broadcasting licences. The following are among those who are disqualified from holding a DTPS or DTAS licence or from controlling a licensee:

a. a local authority (except where the service is provided exclusively for the purposes of carrying out the functions of a local authority under Section 142 of the Local Government Act 1972 (as amended) (provision by local authorities of information relating to their activities);

b. a body with political objects;

c. a body with religious objects, other than where Ofcom is satisfied that it is appropriate for a particular person to hold a licence and makes a determination to that effect. If you wish to seek such a determination, please consult the Ofcom Guidance for religious bodies applying for a Broadcasting Act licence ((http://licensing.ofcom.org.uk/tv-broadcast-licences/other-issues/religious-guidance).

d. any person controlled by any of the above or by their officers or associates;

e. an advertising agency or any company controlled by such an agency or in which it holds more than a 5 per cent interest.

56. Please note that the Broadcasting Act 1990 (as amended) provides for Ofcom to determine that in certain circumstances a person with less than a 50 per cent share can be deemed to control a company.

57. Where information is relevant to determining whether an applicant is a disqualified person, it is an offence for the applicant to supply false information or to withhold information with the intention of misleading Ofcom. If a person is convicted of such an offence the court may make an order disqualifying the applicant from holding a licence for a specified period. A disqualification order applies not only to the individual concerned but to any company of which he or she is a director or involved in the management of (whether directly or indirectly).

Jurisdiction and freedom of reception

58. The Audio Visual Media Services Directive (Directive 2010/13/EU) amends and renames the Television without Frontiers Directive which is referred to below as the “Directive”, provides for freedom of retransmission and reception for television services within the European Economic Area. A service which is licensed (or otherwise appropriately authorised) in one Member State does not need separate licensing in any other Member State. Dual licensing is not permitted.

59. Ofcom can only license a service if the provider of that service (“the broadcaster”) falls under UK jurisdiction in accordance with the Directive. In order to assess whether a broadcaster falls under UK jurisdiction, applicants will need to apply the criteria in Article 2 of the Directive. Applicants should also have regard to the European Convention on Transfrontier Broadcasting and its amending Protocol (ETS132 and ETS171).

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60. Applicants should be aware that a DTPS/DTAS licence will only enable a broadcaster to broadcast its services as long as that broadcaster continues to fall within the UK’s jurisdiction. Should a broadcaster cease to remain within the UK’s jurisdiction (for example, it moves its head office to another Member State and all its editorial decisions are then taken in that State) it will need to obtain a new authorisation from the Member State in whose jurisdiction it is operating. The Ofcom licence for that service should also be surrendered.

61. In accordance with Article 2 of the Directive, the broadcaster may fall within UK jurisdiction in the following circumstances:

(i) the broadcaster falls within UK jurisdiction under one of the primary establishment criteria set out in Article 2(3) of the Directive (e.g. the broadcaster has its head office in the UK and the editorial decisions about the audiovisual media service are taken in the UK); or

(ii) the broadcaster falls within UK jurisdiction under one of the subsidiary technical criteria set out in Article 2(4) of the Directive (e.g. the broadcaster uses a satellite up-link situated in the UK). Please note that these criteria are applicable only if the broadcaster does not fall within the jurisdiction of any Member States under any of the primary establishment criteria set out in Article 2(3) of the Directive; or

(iii) the broadcaster is established in the UK in accordance with Articles 43 to 48 of the Treaty establishing the European Community. Please note that this is a subsidiary establishment criterion in the sense that it is applicable only if the question as to which Member State has jurisdiction cannot be determined in accordance with the criteria set out in Article 2(3) and Article 2(4) of the Directive (as referred to in (i) and (ii) above).

These criteria are considered below.

**Primary establishment criteria under Article 2 (3) of the Directive**

62. The Directive states that a provider of a service shall be deemed to be established in a Member State in the following cases:

I. the broadcaster has its head office in that Member State and the editorial decisions about programme schedules are taken in that Member State;

II. if a broadcaster has its head office in one Member State but editorial decisions on programme schedules are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the television broadcasting activity operates;

III. if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in each of those Member States, the broadcaster shall be deemed to be established in the Member State where it has its head office;

IV. if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in neither of those Member States, the broadcaster shall be deemed to be
established in the Member State where it first began broadcasting in accordance with the system of law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

V. if a broadcaster has its head office in a Member State but decisions on programme schedules are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in that Member State.

Subsidiary technical criteria set out in Article 2(4) of the Directive

63. Broadcasters to whom the above provisions are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

I. they use a **satellite up-link** situated in that Member State. If the service is uplinked from more than one Member State, the broadcaster shall be deemed to be under the jurisdiction of the Member State where the first established uplink among those which are still being used to transmit the service is located. However, if the oldest up-link concerns a satellite whose footprint is not focussed on Europe while the more recent one concerns a satellite whose footprint is focussed on Europe, the more recent one should be taken into consideration for determining the jurisdiction;

II. although they do not use a satellite up-link situated in that Member State, they do use satellite capacity appertaining to that Member State. This subsidiary criterion will apply if jurisdiction of any Member State cannot be established under the “satellite up-link” criterion referred to in (a) above;

64. **Subsidiary establishment criterion set out in Article 2 (5) of the Directive**

If the question as to which Member State has jurisdiction cannot be determined in accordance with the criteria above, the competent Member State shall be that in which the broadcaster is established within the meaning of Articles 52 and following of the Treaty establishing the European Community

65. Broadcasts intended exclusively for reception in third countries, and which are not received directly or indirectly by the public in one or more Member States are not normally licensable by Ofcom.

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5 The focus of a footprint is the region where the highest signal strength occurs.
Licence conditions

66. This section provides an overview of some of the conditions that DTPS and DTAS licensees are subject to. It does not purport to be an exhaustive account of the licence conditions or relevant legislation. Standard form copies of the DTPS and DTAS licences are available on the Ofcom website, http://licensing.ofcom.org.uk/tv-broadcast-licences/dtps-dtas/. Please note that some of the conditions differ between the DTPS and DTAS licences. Applicants must refer to the relevant licence and consult the legislation for themselves, and may wish to seek their own professional advice for this purpose. In the event of any conflict between these notes and the terms of the licence and relevant legislation, the terms of the licence and relevant legislation prevail.

67. Where Ofcom has contracted out functions to other bodies (such as the contracting out of the regulation of broadcast advertising to the ASA), the references to Ofcom in the licence conditions and in these notes should, where relevant, be read to also refer to those other bodies.

Purpose and length of licence

68. A DTPS or DTAS licence authorises the provision of the service or services specified in the Annex to the licence. The Annex will set out the details (name and nature of service, times of broadcast, identity of multiplex and multiplex licensee carrying the service) of each service authorised under the licence.

69. The licence remains in force from the commencement date until it is surrendered by the licensee or revoked by Ofcom. It is only valid for the services specified in the Annex. See paragraphs 109-114 for further information about surrender and revocation.

Quotas for independent programmes (DTPS only)

70. DTPS licensees must ensure that in each year not less than 10 per cent of the total amount of time allocated to the broadcasting of qualifying programmes included in each service in the Licensed Service is allocated to the broadcasting of a range and diversity of independent productions.

Fees

71. The licensee pays an annual fee to Ofcom. The fees are revised annually and published no later than 31 March of each year. The annual fees are based on a percentage of Relevant Turnover, the minimum fee being £1,000 for the 2010/2011 charging year. For teleshopping services, there is a fixed annual fee. The fixed fee for the charging year 2010/2011 has been set at £2,000. For further information about fees, see Ofcom’s Statement of Charging Principles (http://www.ofcom.org.uk/consult/condocs/socp/statement/charging_principles.pdf), and Ofcom’s Tariff Tables (http://www.ofcom.org.uk/files/2013/03/tariff-tables-2013-14.pdf).

Content standards

72. The licensee must ensure that all content included in the licensed service complies with the relevant Standards Codes including, but not limited to, the Ofcom Broadcasting Code, the Code on the Scheduling of Television Advertising (COSTA), the Cross-promotion Code and the BCAP Television Advertising Standards Code.

73. Copies of the Ofcom Broadcast Codes are available at: http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/
74. The regulation of broadcast advertising has been contracted out by Ofcom to the Advertising Standards Authority (ASA), and the BCAP Television Advertising Standards Code is available on the ASA website, www.asa.org.uk.

**Electronic Programme Guides**

75. If the licensed service is an electronic programme guide (EPG), in addition to the relevant Standards Codes referred to above, it must comply with Ofcom’s Code of practice on Electronic Programme Guides (http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/epg-code/).

**Listed events (DTPS only)**

76. Certain events are “listed” by the Secretary of State. The legislation restricts the acquisition by broadcasters of exclusive rights to the whole or any part of live television coverage of listed events and the broadcasting on an exclusive basis of such coverage without the previous consent of Ofcom.

77. Ofcom publishes a Code on Sports and other Listed Events (http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/code-sports-events/), which includes details of the events that are currently listed. Events may be added to or deleted from the list by the Secretary of State after consultation with Ofcom, the BBC, the Welsh Authority and appropriate rights holders.

**Subtitling, signing and audio-description (DTPS only)**

78. A television service achieving an average audience share of all UK households of 0.05% or more may be required to provide subtitling, signing and audio description, subject to passing an affordability threshold and not facing technical difficulties that are impracticable to surmount. These obligations would apply from the first anniversary of the launch of the service.

79. Television services aimed exclusively at an overseas audience are exempt from television access service requirements. Other television services excluded from the requirement to provide television access services include those comprising advertising only, for example, a shopping channel; electronic programme guides; and those licensed outside the United Kingdom. Further details are provided in the Code on Television Access Services (http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/tv-access-services/) which sets out the targets that apply, and how they change over time.

**Retention and production of recordings**

80. The licensee must retain, or arrange for the retention of, recordings of everything included in the licensed service for a period of 60 days. If Ofcom requests a copy of any recording, the licensee must provide this forthwith. Recordings must be of a standard and in a format which allows Ofcom to view the material as broadcast. The licensee must also (where possible) provide Ofcom with scripts or transcripts of any material included in the service.

**Provision of information to Ofcom**

81. The licensee has to supply to Ofcom any information that Ofcom may require for the carrying out of its duties. This includes (but is not limited to) information about the licensee’s corporate structure, any information that Ofcom may need to determine whether the licensee is on any ground a disqualified person, and information relevant to the calculation of fees.
82. The licence also obliges the licensee to inform Ofcom about changes to the nature, characteristics or control of the licensee body, including:

a. Details of any changes of the licensee’s country of establishment, within 28 days of the licensee becoming aware of such change;

b. Notification to Ofcom, in advance as soon as reasonably practicable, of proposals affecting the control of the licensee, and changes in control;

c. Information about changes in shareholders and directors, no later than 28 days from the changes taking place;

d. Information about changes in management, key staff and contact details as soon as they take place;

e. Notification to Ofcom, immediately, if the licensee becomes aware that any order is made or resolution passed which would result in the licensee going into administration, liquidation, or if the licensee may become insolvent;

f. Notification to Ofcom if a court judgement is passed against the licensee, or the licensee is convicted of a criminal offence.

83. The licensee must notify Ofcom in writing when it enters into an agreement with a multiplex licensee relating to the provision of a licensable service on the multiplex (or the variation or cessation of such agreement). If the agreement requires the addition of another service to the DTPS or DTAS licence, or changes to the description of a licensed service, the licensee needs to request a variation to the licence.

84. Please note that the requirements in the licence for the provision of information to Ofcom are broad, and the above is only a brief overview.

**Fair and effective competition**

85. Ofcom has a duty to ensure fair and effective competition in the provision of licensed services and services connected with them. Ofcom's general policy is to include in Broadcasting Act licences a condition requiring the licensee (a) not to enter into or maintain any arrangements or engage in any practices which are prejudicial to fair and effective competition in the provision of licensed services or connected services and (b) to comply with any code or guidance approved by Ofcom for the purpose of ensuring fair and effective competition in the provision of licensed services or connected services, and (c) to comply with any direction given by Ofcom for that purpose. Ofcom has adopted this general policy because of the merits of ex ante regulation in securing fair and effective competition.

86. Before taking enforcement action under the licence pursuant to this condition, Ofcom would need to consider whether, in the circumstances, it would be more appropriate to proceed by enforcing the relevant provisions of the Competition Act 1998 rather than by enforcing the licence condition. If you think that there are special or exceptional circumstances in your case which mean this condition should not be included in the licence for which you are applying, please set out in writing what those circumstances are so that Ofcom can consider them. You should aim to provide as much detail as possible.

87. In accordance with the provisions of section 317(1)(a), (4) and (5) of the Communications Act, Ofcom is required to notify you (and hereby notifies you) that, pursuant to section 317(6) you may appeal a decision by Ofcom to include this condition in your licence to the Competition Appeal Tribunal.
Compliance with ownership restrictions

88. The Broadcasting Act 1990 (as amended by the Broadcasting Act 1996 and the Communications Act) lays down a number of restrictions on who may hold Ofcom's broadcasting licences. The licensee is obliged to comply with these ownership restrictions and failure by a licensee to do so will constitute a breach of the licence and if not rectified may result in revocation of the licence. For further information about revocation, see paragraphs 109-114.

Transferability of the licence

89. A DTPS/DTAS licence is transferrable only with the prior written consent of Ofcom. A request for consent to transfer a licence must be submitted in writing by the proposed transferee using the transfer application form available from our website and must be accompanied by the transfer application correct fee and a written letter from an authorised individual from the current licensee consenting to the transfer application. The current fee is £1,000 (fees are revised annually).

90. Transfer application fees are non-refundable.

91. To be able to consent to a transfer of a licence, Ofcom must be satisfied that the proposed transferee can comply with all of the conditions of the licence. We therefore require the same information about the proposed transferee as when considering an application for a licence from a new applicant. To comply with this duty, we may need to ask for further information before deciding whether to consent to a transfer of a licence.

92. If consent is granted, it is for the relevant parties to effect the transfer of the licence. Once the transfer has taken place, the transferor must inform Ofcom. We will not be able to amend our records to reflect the transfer until we have received confirmation (in writing) from the transferor that the transfer has been effected. A notice of transfer will then be issued to by Ofcom to the new licensee. This confirmation should be signed by an appropriate authorised person, dated and include the date that the transfer was completed.

93. In cases where Ofcom has instigated sanctions procedures against a licensee, it will not generally consider any applications for transfers of licences by the same licensee or by a person/body connected to that licensee until such time as the sanctions procedure against the existing connected licensee is concluded. This means any sanction imposed, must be satisfied (e.g. in the case of a fine, full payment of the fine must have been made) before any new application by that licensee or by a person/body connected to that licensee can be considered. We would also not consider a transfer application if either the current licensee or proposed licensee has outstanding annual fees. These must be paid in full before the application will be considered.

Compliance

94. The licensee must adopt procedures that are acceptable to Ofcom for ensuring that the licensed service complies with the requirements of the licence, including complying with any direction issued by Ofcom. Such procedures would include ensuring that there are enough persons, and of sufficient seniority, involved in providing the service that are adequately versed in the licence requirements and the programme and advertising standards that apply to the service; and making arrangements for the adequate clearance of advertising.

95. The licensee must supply details of the licensee’s compliance procedures to Ofcom, if Ofcom requests it.
European production quotas (DTPS only)

96. Licensees must meet the requirements for European productions in Articles 16 and 17 of the Audio Visual Media Services Frontiers Directive. European productions should account for over 50% of the transmission hours (subject to certain exclusions) and European independent productions must account for at least 10% of transmission hours. Of these, an ‘adequate proportion’ must be works transmitted within five years of production.

97. The following are exempt from the requirements for European productions:
   a. services that are not receivable in the European Union;
   b. services which comprise of programming broadcast in a language other than a language of the European Union;
   c. services which serve a local or regional audience, and do not form part of a national network; or
   d. services which are comprised wholly of news or sports event programming, games, teletext services or teleshopping.

98. For further information, please refer to the Ofcom Guidance on European production quotas, [http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/epq.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/epq.pdf)

Government directions and representations

99. The Government may notify Ofcom that it wishes an announcement to be included in a licensed service, or a licensee to refrain from including an item in the licensed service. If notified, Ofcom will direct the licensee to that effect.

Complaints relating to the licensed service

100. Licensees must ensure that they have procedures acceptable to Ofcom in place for the handling and resolution of complaints about their service. Licensees must keep a record for 12 months of all complaints it receives and its responses to them and make this available to Ofcom on request.

101. The licensee must also comply with all of the specific provisions relating to fairness complaints (such as the provision of transcripts, copies of documents and correspondence related to the complaint, recordings etc to Ofcom and the complainant).

102. If requested by Ofcom, the licensee must publicise Ofcom’s functions in relation to complaints.

Variations to the licence

103. Ofcom may vary the licence by notice served on the licensee, provided that the licensee has been given a reasonable opportunity to make representations to Ofcom about the proposed variation.

104. The licensee may apply to Ofcom to consider an amendment the annex of the licence (see paragraph 115).

Equal opportunities and training

105. Any holder of an Ofcom television or radio broadcasting licence who employs, or is likely to employ, either individually or as a group, more than twenty individuals in connection with the provision of its licensed service and provides a service which is authorised to broadcast for more than 31 days a year (a “Relevant Licensee”) is under certain duties as regards training. A DTPS or DTAS licensee who is a Relevant Licensee for this purpose is obliged to make
and from time to time review arrangements for training and retraining of people it employs in, or in connection with, the provision of the licensed service or the making of programmes for that service. In making and reviewing those arrangements, the Relevant Licensee must comply with any Ofcom guidance.

106. Ofcom will continue to carry out its functions relating to the promotion of equal opportunities between men and women and between different racial groups and the equalisation of opportunities for disabled persons under section 337 of the Communications Act.

**Sanctions**

107. Ofcom can impose sanctions on a licensee for breaches of the licence conditions, including the requirements for the content of the licensed service. The sanctions available to Ofcom range from the broadcasting of Ofcom’s findings to the imposition of a fine on the licensee and revocation of the licence. For further information about sanctions, please consult Ofcom’s Outline procedure for statutory sanctions (http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/).

108. In cases where Ofcom has instigated sanctions procedures against a licensee, it will not generally consider any applications for new licences by the same licensee or by a person/body connected to that licensee until such time as the sanctions procedure against the existing connected licensee is concluded. This means any sanction imposed, must be satisfied (e.g. in the case of a fine, full payment of the fine must have been made) before any new application by that licensee or by a person/body connected to that licensee can be considered.

**Revocation and surrender**

109. If you no longer require a DTPS or DTAS licence, the licence may be surrendered. To surrender your licence, you must serve a notice, in writing, on Ofcom. The notice must be signed by an appropriately authorised person on behalf of the licensee. The notice can be in the form of a letter, and take effect on the date of service or on a date specified in the notice.

110. Ofcom can revoke the licence for a number of reasons, including breaches of the licence conditions, failure to comply with a direction, and as a result of a sanction (see paragraph 108). Revocation of a licence follows the procedure set out in the licence. This is not an exhaustive account of the provisions for revocation.

111. Failure to pay licence fees will normally result in revocation of the licence, as well as appropriate action for the recovery of the debt. For further information about fees, see Ofcom’s Statement of Charging Principles (http://stakeholders.ofcom.org.uk/consultations/socp/statement/), and Ofcom’s Tariff Tables (http://www.ofcom.org.uk/files/2013/03/tariff-tables-2013-14.pdf).

112. Ofcom may also consider revocation of the licence if:

a. the licensee has provided false information (or withheld information) with the intention of causing Ofcom to be misled, either in purporting to comply with any condition of the licence, or in connection with the application for the licence;

b. the licensee becomes a disqualified person;

c. any change takes place affecting the nature, characteristics or control of the licensee which would have precluded the original grant of the licence;
d. Ofcom ceases to be satisfied that the licensee is fit and proper to hold a licence;

e. the licensee provides the licensed service whilst failing to comply with any requirement to hold (or have held on his behalf) a licence under the Wireless Telegraphy Act 1949 (as amended), or if the licensee ceases to comply with requirements applicable to the licensed service under Chapter 1 of Part 2 of the Communications Act (relating to electronic communications networks and services);

f. the service provided by the licensee no longer constitutes a service licensable by Ofcom as a DTPS or a DTAS, respectively.

113. The licensee being placed in administration or liquidation, or becoming insolvent, are examples of circumstances when Ofcom would consider revocation. Before revoking a licence, Ofcom must notify the licensee and give the licensee a reasonable opportunity to make representations.

114. When a licence has been revoked or surrendered, the information about the licensed service is removed from the list of licensed services on Ofcom’s website and the fact that the licence has been revoked or surrendered is included in the monthly update that Television Broadcast Licensing publishes (available on the Ofcom website, http://licensing.ofcom.org.uk/tv-broadcast-licences/dtps-dtas/).

Description of the licensed service (the annex to the licence)

115. A DTPS/DTAS licence can cover one or more licensed services. The licensed services are described in the Annex, which forms part of the licence. Any changes to the licensed services require a variation to be made to the Annex. The cost to add a service to the Annex is £1,000 but there is no charge to remove a service from the Annex.

Please submit your request for variation to:

Ofcom
Television Broadcast Licensing (5th Floor)
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Email: tv.licensing@ofcom.org.uk
Phone: 0207 783 4118