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BBC iPlayer complaint
- covering letter 2008



iPlayer complaint
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-----Original Message-----

From: Gerry Gavigan [<mailto:gerry.gavigan@opensourceconsortium.org>]

Sent: Monday, March 10, 2008 7:40 PM

To: COMP STATE AID GREFFE

Cc: Mark Taylor

Subject: Review of the communication from the commission on the application of state aid rules to public service broadcasting

Response from the Open Source Consortium

The Open Source Consortium, a trade body in the UK, has made an official complaint to the BBC, we are submitting this as part evidence in response to the Review.

1.1

Not qualified to comment

1.2

Our attachments elaborate our argument expressed here. While we do not feel fully qualified to comment, in general terms we observe a diffusion of boundaries between public service broadcasting and a state broadcaster's commercial operations.

1.3

Our view formed as a result of our interest in issues specifically related to fair markets in software and open standards, suggest that without re-establishing clear boundaries of commercial and organisational behaviour, the situation we outline in 1.2 above can only get worse

CONFIDENTIAL

Our complaint to the BBC refers to both a CFI judgment and the preceding European Competition Commission decision on interoperability. Almost as soon as the decision was published we met the BBC Trust (and Ofcom) regarding what we considered to be a defective Market Impact Assessment regarding BBC iPlayer (ignoring parallel markets to media)

We consider that an organisation less in thrall to commercial practice would have taken the entire interoperability issue into consideration independently of an approach by Free Software advocates, let alone still be deciding whether to act, nearly one year after we first approached them. This in itself seems to indicate disregard of Competition Law.

CONFIDENTIAL ENDS

2.1

We do not feel qualified to comment

2.2

We think this area is one of greatest concern. We find the language used by BBC executives (referenced in our attachments, including "competing", "markets") suggestive of a body that has moved or is moving beyond a public service remit.

We would also draw your attention to the articles in "The Times", London, Thursday 6 March, 2008 and Saturday, 8 March 2008. The first "It's just semantics, Auntie, when it comes to sponsors" concerning sponsorship of BBC events by commercial organisations. An associated BBC website www.bbceventsponsorship.com (since withdrawn following complaints by commercial television companies, Saturday article) but also reflecting concerns we raised in our complaint to the BBC.

We think this article also informs the Review:

<http://www.theinquirer.net/gb/inquirer/news/2008/03/10/beeb-offers-smart-version>

2.3

In the national arena, our experience of regulation of the new media is that that "Web 2.0/convergence" falls between the cracks of national regulation - is it "media" (Ofcom) or is it "ICT" (OFT) and further, the role of the BBC Trust gives rise to further opportunity for the complainant to explore the nature of regulation rather than complain in an effective and timely manner.

2.4

Our concerns are contained in the arguments elaborated in our attachments

2.5

Our concerns are contained in the arguments elaborated in our attachments

2.6

If our concerns as expressed in the attachments and above were adequately addressed, our, admittedly non-expert, view is that a public service broadcaster retained income year to year would not matter.

2.7

We consider the fragmentation of regulation to be a source of the problem for "Web 2.0/convergence".

Our attachments elaborate many issues of relevance here

2.8

Not qualified to comment except that we would deplore in other state broadcasters, behaviours similar to those in our complaint to the BBC

3.1

We think the EU has already produced a commendable study of the benefits that Free Software and Open Standards bring to the European Union. Clearly it is our view that the market should operate fairly and transparently in allowing these to flourish.

3.2

We do not think that any state broadcaster should be compelled to use this software or that software. However in the light of the European study and the benefits of freely operating markets - state broadcasters would have no compliance costs associated with using Open Standards and using technology that is invisible to the client (i.e., the user user is unimpeded in their choice of client technology.

3.3

We are not qualified to answer this question

3.4

We consider that if the issues we highlight were addressed adequately the benefits would outweigh any negatives

Non-confidential version of covering letter

The BBC has an intertwining and unhealthy relationship with Microsoft as evidenced by "Gates hails age of digital senses" (1) an uncritical hagiography of the figurehead of a convicted illegal monopolist. The article allows Gates to claim as Microsoft's, technology which is the subject of widely conducted research, over a decade old, (2) and continues with a shopping list of Microsoft's marketing plans and proposals to attack its competitors.

The BBC comments on new technologies "The best gadgets of CES 2008" (3) including those produced by ASUS at a price point that may help close the digital divide, such price achieved not least by running GNU/Linux ("Linux") "Eee GOES WIMAX", ibid.

However when we read about this new product we see that the BBC helpfully notes that "It runs the Linux operating system, but can also run Windows XP".

We note that whenever the BBC reports on Microsoft based products we do not see the reciprocally helpful "but can also run Linux". Of course, while

the BBC reports on this product and reassure us that it runs Microsoft software, other attendees suggest that it was not even on display (4).

BBC journalists need to think twice *every single time* they mention Microsoft, as to why they are not mentioning other systems as well.

The BBC Director General sets his own benchmark regarding these actions in "a Question of Trust" (5):

"Unlike [others] the problems we uncovered at the BBC involved no commercial gain. Typically the stakes were small and the prizes nominal. But the public told us they still thought they were very serious. 'You're the BBC,' they told us, 'you're meant to be different.' "

The BBC Director of Future Media and Technology clearly knows that the key Microsoft technology identified by the BBC as a barrier to a platform neutral iPlayer doesn't meet its stated objective (6):

"...[the colleague] replied that he downloaded programmes through BBC iPlayer, stripped the DRM (hence his anonymity!), re-encoded the file, burned it to DVD from his PC, then took it to his DVD player connected to his TV in the lounge..."

(1)<http://news.bbc.co.uk/1/hi/technology/7174333.stm>

(2)<http://alexandria.tue.nl/repository/freearticles/586979.pdf>

(3)<http://news.bbc.co.uk/1/hi/technology/7173582.stm>

(4)http://www.reghardware.co.uk/2008/01/08/ces_2_gen_eee_pc_no_show/

(5)http://www.bbc.co.uk/blogs/theeditors/2008/01/the_trouble_with_trust.html

(5)http://www.bbc.co.uk/blogs/bbcinternet/2008/01/ip_to_tv_how.html

copied to Mark Taylor, President of the Open Source Consortium

Gerry Gavigan

www.opensourceconsortium.org

Please use ISO 26300 format (.odt - .ods - .odp - .odg) for attachments