

BBC iPlayer and Microsoft Windows Media Player

The complaint

The July 2007 launch of the “beta” BBC iPlayer [1], requiring Microsoft Windows Media Player (“WMP”) and Windows XP (“XP”), despite the more recent addition of a streaming service for more platforms [2], distorts the market for computer operating systems by giving advantage to Microsoft.

This exclusive arrangement for the downloadable BBC iPlayer service is only one example of such an arrangement between the BBC and Microsoft. Overall there appears to be collusion. For example, the advertising campaign for iPlayer [3] mentions only one website by name:

“ ...digital ad campaign, created by Agency Republic, will include collaborations with websites such as MSN, homepage takeovers and banner...”

The aims to commercialise iPlayer [4] jointly and severally with the general supportive relationship with Microsoft require the BBC to take care to avoid distorting the market (raising the issue of State Aid and he need to consider its legality).

The actions of the BBC cause harm

collusive anti-competitive behaviour

The European competition authorities have confirmed that the BBC is subject to the competition regime [5] and that Microsoft should not adopt any technological, commercial, contractual or other measure which would have an effect equivalent to tying Windows operating systems and WMP, [6] a decision upheld by the European Court of First Instance (CFI) [7] .

The CFI confirmed that Microsoft was guilty of anti-competitive behaviour which caused loss to consumers and competitors including (from Recital 1013):

It follows from the foregoing considerations that the final conclusion which the Commission

sets out at recitals 978 to 984 to the contested decision concerning the anti-competitive effects of the bundling is well founded. The Commission is correct to make the following findings:

Microsoft uses Windows as a distribution channel to ensure for itself a significant competitive advantage on the media players market (*recital 979*);

because of the bundling, Microsoft's competitors are a priori at a disadvantage even if their products are inherently better than Windows Media Player (*ibid.*);

Microsoft interferes with the normal competitive process which would benefit users by ensuring quicker cycles of innovation as a consequence of unfettered competition on the merits (*recital 980*);

the bundling increases the content and applications barriers to entry, which protect Windows, and facilitates the erection of such barriers for Windows Media Player (*ibid.*);

Microsoft shields itself from effective competition from vendors of potentially more efficient media players who could challenge its position, and thus reduces the talent and capital invested in innovation of media players (*recital 981*);

by means of the bundling, Microsoft may expand its position in adjacent media-related software markets and weaken effective competition, to the detriment of consumers (*recital 982*);

by means of the bundling, Microsoft sends signals which deter innovation in any technologies in which it might conceivably take an interest and which it might tie with Windows in the future (*recital 983*).

(Paragraph 1229)

It follows that the claims [by Microsoft] relating to the annulment of the contested decision [by the Commission] must be rejected in so far as they concern the bundling of Windows and Windows Media Player.

state aid

The BBC has promoted iPlayer and directly or indirectly, its relationship with Microsoft in :

- (a) television
- (b) radio
- (c) new media (online etc.)
- (d) print

If failing to meet any strict definition of advertising, the relationship between Microsoft and BBC appears to amount to product placement, both activities are already identified as examples of illegal State Aid [8].

We do not have the resources to calculate the value of State in these circumstances, however we can identify qualitatively, the size of the basis for the calculation. Factors to be considered, including the cross border impact on markets by the BBC already identified by the European Commission relating to the BBC Digital Curriculum [9].

Product placement (passive inclusion) and product integration (active inclusion) has been measured to be valuable – product placement to a control group showed 16% greater awareness than a standard “30 second” advertisement, integration produced 24% greater awareness. 45% of the control audience would be more likely to purchase (9% less likely). Placement increased “brand affinity” by 20%, integration by 8% [10],

In 2006, commercial TV advertising expenditure was £3.9bn; new media, £2bn and national newspaper advertising £1.9bn according to a report by the Internet Advertising Bureau and PricewaterhouseCoopers [11]. According to Ofcom [12], in 2005 commercial radio advertising was £579m, against a background of “*the increasing listening share of the BBC relative to commercial radio*” (our emphasis).

Any calculation needs to account for the trusted brand position of the BBC, together with product placement of Microsoft (passive promotion through promoting iPlayer) and product integration (the active promotion of Microsoft by BBC, described subsequently) in a cross-media campaign, against a background of commercial advertising expenditure estimated at £8.5bn for 2007.

We understand the value of any State Aid would be nowhere near the total value of advertising in the relevant sectors. However every mention of iPlayer in the news or on the BBC adds to the value of the equivalent of free advertising. For example, in January 2008, as well as newspapers [13] the advertising campaign has widened [14] multiplying the effects of “product placement” or similar by the BBC.

The situation is complicated by the BBC Trust decision to allow advertising on the BBC website www.bbc.com [15] as although not intended for UK audiences it begins to blur the lines around public sector broadcasting and commercial enterprise. Advertising by the BBC on the web has a target to generate revenue of £222 million annually [16].

There are plans to extend advertising into iPlayer and exploit the BBC's position as a market competitor [17]:

"We are taking on the big American channel providers and there isn't another UK competitor who can," said Worldwide's channels boss Darren Childs"

Remedy

The proposed remedy sought is in two parts:

regarding media players, with immediate effect, for the BBC to be compelled to provide an on-demand service which is both technology neutral and does not leverage WMP.

on the issue of State Aid, with immediate effect, for the BBC to be compelled to stop the promotion of any economic undertaking, to identify the value of State Aid already conferred and create an appropriate remedy.

The reasoning for seeking such a remedy is largely equivalent to that contained in the analysis of the case by Professor Harry First [18], while the CFI decision “stiffens the strong spine of European competition law when it comes to judging the conduct of dominant firms” [but] reveals the soft underbelly of competition law and not just in the EU” [...] Unfortunately though, the commission is mired in its effort to force protocol disclosure [...] as for the fines they are now in escrow awaiting the conclusion of the case [...] perhaps next time Europe will think about a structural remedy”.

Time is of the essence in addressing the actions of Microsoft and BBC

There are many broad based reasons for suggesting time is of the essence, related to the distorting effects of the collusive actions of Microsoft and the BBC in relation to the consumer market and the advantages it would offer to the promotion of Vista and/or Microsoft's plans for mobile technologies including a desire to prevent the growth of its competitors.

However, the best case for taking action now is contained a report provided in relation to Civil Action 98-1233 (CKK) in the United States District Court of the District of Columbia [18]. The report relates to the effectiveness of the final judgment in relation to the violations of anti-trust law (by Microsoft) and contains observations of the relevant markets since the complaint was filed in 1998, in the context that a fundamental purpose of an anti-trust decree is “to ensure competition” [19] and quotes anti-trust scholar, Professor Herbert Hovenkamp [20]:

“The D.C. Circuit stated the goals for an antitrust remedy in *Microsoft*. It must “seek to 'unfetter a market from anticompetitive conduct,' to 'terminate illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future...” [...] By the time each round of the *Microsoft* litigation had produced a “cure” the victim was already dead”

This argument clearly sets out the basis for a case for early action here and underpins similar argumentation by DG Competition [21].

Detail

The BBC decision to launch iPlayer only for XP and work on Vista compatibility in the first instance is a timely contribution to Microsoft's efforts to render less attractive, earlier versions of its operating systems [22] and promote its newest version of its operating system, Vista and continues to try to increase its market share in mobile platforms.

The availability of the BBC iPlayer download service only for Microsoft together with plans for BBC to increase provision for mobile devices [23] also leverage Windows in the mobile

phone market. Figures for Q1 2007 suggest that only 6.9% of mobile phones capable of video, use Microsoft Windows (Symbian 72%, Linux 14%) [24].

Figures for browsers other than Microsoft Internet Explorer (“MSIE”) put their market share is at least 20% and increasing [25] . On top of the requirement to use XP, BBC iPlayer also requires MSIE thus indirectly affecting choice of browser. The requirement for MSIE appears to be reopening the “Browser Wars” in that it could be seen as another attempt to “cut off the air supply” of alternatives to MSIE (United States v Microsoft, 1998) there were similar concerns expressed in the EU [26]. A further complaint to the European Competition Commission has just been launched [27], with the Commission, considered to be strengthened by the CFI decision [28].

Further suggestions of such attempts to create dependency on Microsoft centric “standards” continue to emerge . The importance of this issue is clearly explained [29]

“The issue of standards is seen as important because if all Web browsers do not use the same standards, Web site developers are likely to design their Web sites to work with the most widely-used browser, which is Internet Explorer. That gives people a disincentive to use other browsers”

- How is the BBC changing its plans for iPlayer given the competition decision of the CFI in September 2007, on the market distorting effect of bundling (both media players and browsers) with operating systems?

Publicly available information suggests that the implementation of iPlayer is highly dependent on Microsoft technology and that it is impossible or there are no plans to make this technology available for use on other operating systems or browsers [30].

- Is the BBC aware of the effect of iPlayer on choice of browser and its relationship with previous competition authority rulings and current competition issues?

Continuing growth in the use of browsers other than MSIE [31] creates greater opportunities for non-Microsoft client software solutions, weakens Microsoft's hold on the server market and reduced the advantages for Microsoft systems on mobile devices. The BBC technology choices work to reverse that competitive pressure.

The BBC has moved from an absolute deadline of 24 months for platform neutrality, to a “six month review” and has declared itself to be unable to commit to a firmer timetable as the solution is in the hands of third parties [32] and “value-for-money” [33]. At the same time it continues to strengthen its technology relationship with Microsoft through related product sales, making any value for money calculation skewed in favour of the initial decision.

- How will the BBC deal with competition issues if, using current solutions, it cannot deliver platform neutrality for its downloadable iPlayer?

It is difficult to assess usage of Linux on the desktop (“LOTD”) as traditionally users self-installed it on existing equipment, however there are an increasing number of commercial offers [34] proving popular [35]. If the BBC were taking its Charter obligations more seriously, specifically, Section 4, public purposes [36]

- (a) sustaining citizenship and civil society
- (b) promoting education and learning; and
- (c) stimulating creativity and cultural excellence

particularly as it relates to issues such as the digital divide, access and opportunities for learning, then the BBC would be enabling the use of cheap but fully featured computers and even the re-use of technology rendered obsolete by the dominant provider of desktop software [37].

A conservative estimate [38] suggested that when iPlayer was launched, about 25% of the population that has home access to a computer do not use XP and so not be able to use the downloadable iPlayer, except through the purchase of new Microsoft products.

Despite a response to the original consultation, in which about 80% of the 10,000+ expressed views were critical of the single platform proposed for the iPlayer 30 day download and a petition to the Prime Minister, affirming the public opinion already expressed [39] the BBC reply was worse than before, Linux was ignored, [40] and there are still no plans for iPlayer for older versions of Microsoft Windows operating systems.

While the BBC Trust has reiterated that the BBC must produce an operating system neutral version [41] it has also confirmed that the decision remains with BBC.

In September 2007, in a speech to a mobile phone manufacturer, a market with significant Linux presence, the BBC still could not bring themselves to mention that platform [42] in its best light, and, even if it was inadvertent, markets new Microsoft products [43]. This is conveniently helpful to Microsoft, even if inadvertent, as its new products seem to be meeting consumer resistance [44] despite favourable editorial for Vista from the BBC [45] and disparaging editorial for those meeting consumer demand including a since proven wrong reminder that Microsoft decides when Vista will become the only choice [46].

On its own, such behaviour, might be insignificant, or at worst, careless. However when summed with all other activity that is “Microsoft friendly” we suggest the BBC need to consider more carefully the product placement arguments presented elsewhere in this paper.

The BBC justified its actions in the marketplace [47] with the statement

“we're prioritising the largest audiences first - starting with the 22 million people who are broadband connected in Britain, of which PC users with Windows XP represent the vast majority of the market share (over 80%)”

This decision is disingenuous as it would have been possible to provide a technology neutral solution from the outset, reaching 100% of all content access devices, failing in its duty as a State broadcaster to avoid distorting the market.

Further, despite the BBC Trust reiterating the requirement for platform neutrality, those responsible for the delivery of iPlayer seem to hold independent views [48].

- Does the BBC recognise the anti-competitive dangers of tying its 30-day iPlayer to Microsoft? What would be the alternative argument?

The head of Microsoft, Bill Gates, is reported to have said [49]:

“Microsoft will help the BBC deliver its charter commitments for delivering content that is compelling and accessible. Microsoft's strength is in driving digital innovation, and our vision is to open up rich, new consumer experiences that allow people to enjoy digital content anytime, anywhere and on any device”

- How is the BBC ensuring that this relationship with Microsoft will be taken forward in a manner that “any device” includes, without need for the consumer to be technology aware, those devices that do not use Microsoft products?

The BBC was pleased to announce its memorandum of understanding with Microsoft which will “define the framework within which the companies can explore opportunities for the delivery and consumption of BBC content and the evolution of next-generation broadcasting” [50].

- What is BBC doing others, e.g., with other operating system providers in order to explore the opportunities for ensuring that it maintains a technology neutral stance including making iPlayer work with these technologies?

We suggest that there are only two analyses, neither of which provide a defence:

Either: Despite 4 years in gestation, beginning life as the “iMP (Integrated Media Player)”, and at a reported cost of £130 million [51] the technology decision appears to be questionable [52]. Why has the BBC been prepared to spend so much money promoting a solution that only supports XP and Vista?

Or: We understand that of the quoted figure of £130 million only £4.5 million was spent to the iPlayer technology itself [53]. However, while we understand that this is not insignificant, the relative amount calls into question claims that it would be impossible to cater for a platform neutral approach, particularly given the reputation of the BBC's own video technology [54], its platform neutrality [55] and the availability of suitable plug-ins for media players [56]. Other platform neutral solutions appear to exist in the market place [57].

Generally, it is not convincing that the BBC were able to claim that there were no alternative DRM solutions [48,ibid]

“the DRM offered by Microsoft - which is not available for Linux and has not been licensed from Microsoft by Apple for Macs - is the only solution at present.”

As the simplest of searches revealed alternatives [58] compatible with its own technology.

Further, it is difficult to believe that those responsible for iPlayer really see DRM as a barrier to platform neutrality, especially when they identify that the DRM solution they have chosen does not meet its stated objectives [59]...

“...he 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...”

...in contrast to earlier public statements [60]

“... Once watched, the file clears itself up by deleting itself. Using DRM, we can protect our rights holders' fears that their programmes will be copied around the world”

“...rights holders - the people that make the programmes [...] - simply wouldn't have given us the rights to their programmes unless we could demonstrate very robust digital rights management.”

- How has the BBC been allowed to use expense or the absence of other DRM solutions as a reason for failing to meet its charter obligations?

The nature of the relationship between the BBC and Microsoft is deepening for example:

“The BBC and Microsoft want your photos to synthesise Britain” [61]

The initiative requires for the latest versions of Microsoft operating systems [62].

This appears to be another example of “product-placement“ or other free advertising. There are numerous examples of this behaviour on the web, [63] and print media [64] most recently in an uncritical publication of a Microsoft sales presentation [65] as though this is the only organisation working in these technologies.

- Does the BBC recognise the potential market distorting behaviour associated with its apparent endorsement of specific companies' computing technologies?

Microsoft and BBC plan to expand the use of BBC content [66]. A “major issue still to be resolved” is described [67] as “where to draw the line between the expectations of the licence-payer and the revenue potential of the archive” in circumstances where £55m has been spent preparing BBC archive material for transmission, would seem also to call into question whether issues of transparency [68] are being properly addressed:

- What is the BBC doing to ensure that it properly accounting with the promotion of iPlayer relating to costs and benefits and associated externalities?

Secondary or network effects are beginning to arise, for example, editorial in the consumer magazine “*Which?*” (“no advertising, no bias, no hidden agenda, just expert advice from an independent source” [69]) discusses the benefits that one might gain from iPlayer while linking it to a requirement to use XP [70].

Concluding Remarks

A criticism levelled at Linux is that is not suitable for everyone as not every application is available for it [71]. Clearly as long as publicly funded corporations continue to ignore the need for technology neutral provision and interoperability, this criticism can be supported. However, it is also easy to see how a technology neutral solution by the BBC could undermine these criticisms. Microsoft’s first entrant advantage with the BBC iPlayer, continued at a time when it is seeking maximum opportunity to promote Vista, also points to a requirement that the BBC delivers the 30 day iPlayer in a technology neutral capacity within a short, defined time period. If the BBC is not able or willing to deliver a technology neutral 30 day iPlayer then it should be withdrawn, particularly as the 7 day streaming service available for all platforms, is now available.

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“When a PC beats a TV” Financial Times, 17/18 November 2007, similarly indirectly promotes XP at the expense of alternatives

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Appendix 1 – Extract from BBC iPlayer terms and conditions (at October 2007)

www.bbc.co.uk/iplayerbeta/tandc.shtml

Important issues regarding BBC iPlayer

Making BBC iPlayer available on Mac, Linux and other platforms

The BBC has always taken a multi-platform approach to all its services to make our content as widely available as possible and the same is true for BBC iPlayer. The BBC iPlayer platform has been engineered to be platform neutral and can be adapted to deliver content to any platform.

So we're prioritising the largest audiences first - starting with the 22 million people who are broadband connected in Britain, of which PC users with Windows XP represent the vast majority of the market share (over 80%).

Concurrently, we're continuing to develop the platform for use with Windows Vista, Apple Macintosh and Linux operating systems. We're also developing it for use on portable devices and for access through other cable and ADSL platforms, such as Video On Demand services.

This ensures we can roll the service out while supporting users effectively in dealing with any issues they have.

Timelines for other platforms

There will be a Vista version of BBC iPlayer available this year. We are actively working on Mac and cross platform support.

The BBC iPlayer Video On Demand service is intended to be launched before the end of this year on Virgin Cable services and will be available on ADSL Video On Demand services soon after.

Other platforms and services will follow.

Appendix 2 - The March 2004 EC Competition Commission decision (extracts)

Microsoft violated Article 82 of the EU Treaty requiring various remedies, including:

within 90 days, to offer a version of Windows without Windows Media Player to PC manufacturers (or when selling directly to end users).

The Commission statement included the following:

"Microsoft abused its market power by deliberately [...] tying its Windows Media Player, a product where it faced competition, with its ubiquitous Windows operating system." [...]

"Dominant companies have a special responsibility to ensure that the way they do business doesn't prevent competition on the merits and does not harm consumers and innovation [...] Microsoft's conduct has significantly weakened competition on the media player market. [...]"

"The ongoing abuses act as a brake on innovation and harm the competitive process and consumers, who ultimately end up with less choice and facing higher prices."

In that decision it was a requirement that Microsoft must not use commercial, technological or contractual terms that would have the effect of rendering the unbundled version of Windows less attractive or performing. The investigation concluded that the ubiquity which was immediately afforded to Windows Media Player as a result of it being tied with the Windows PC operating system artificially reduced the incentives of music, film and other media companies, as well as software developers and content providers to develop their offerings to competing media players.

Appendix 3 – The BBC iPlayer Controversy Explained

Date: Jul 20, 2007 By [David Chisnall](#). Article is provided courtesy of [Prentice Hall PTR](#).
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At the end of July, the British Broadcasting Corporation plans on releasing its new "iPlayer" service, which will make TV shows available for download within the UK. Some controversy surrounds this launch, including a lawsuit from the Open Source Consortium.

The core of the controversy is the fact that the iPlayer system is built atop DRM supplied by Microsoft (somewhat ironically for a product that appears to be trying to leverage Apple's mind share with its choice of name). The effect of this is to lock the player to the Windows operating system.

This wouldn't be such an issue for most broadcasters, but as BBC advertisements constantly state, things are slightly different for them "due to the unique way in which [they] are funded." The BBC is funded from a license fee collected from everyone who owns equipment capable of receiving a broadcast television signal. In recent years, this has been expanded to include computers used to receive simulcast streams.

Due to this funding mechanism, the BBC is free from concerns of profitability. They are not beholden to investors or shareholders. They are, however, required to abide by a charter. This includes aims such as (from the latest version of the charter):

Promoting education and learning.

Stimulating creativity and cultural excellence.

In promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television.

There is some debate as to whether distributing content encumbered with Microsoft DRM falls within the bounds of the last of these points (Public Purpose "f," for anyone following at home).

Illegal Monopoly Abuse

In March 2004, the European Commission fined Microsoft for monopoly abuse. The judgment claimed that Microsoft:

"...broke European Union competition law by leveraging its near monopoly in the market for PC operating systems onto the markets for work group server operating systems and for media players."

The media player in question included Microsoft's own video and audio compression algorithms, file formats, and DRM. While the rest of the judgment was somewhat toothless (requiring Microsoft to offer a version of Windows without Windows Media Player), the fine indicates the seriousness of this breach.

The basis for the judgment was that Microsoft was using its dominant share of the market for desktop operating systems to push its way into other markets. By bundling their own media system with their operating system, they could immediately (via Windows Update) ensure that it was installed on the vast majority of desktop computers. This made life very difficult for their competitors, since it meant that users had to install extra software to use their product, but got Microsoft's (for free) without doing anything.

Interestingly, the rationale given by the BBC for choosing Microsoft as a supplier of DRM was that they have the majority of the desktop computer market share. Apparently they weren't listening when the EC handed down their verdict. If the iPlayer deployment goes ahead as planned, this will further help cement Microsoft's monopoly in this market. Their product is installed on most desktop PCs due to bundling, and now people wanting to build other devices that support the iPlayer will also have to license the formats from Microsoft.

Yes, But Does it Run Linux?

Much of the OSC's focus is on the fact that users of other desktop operating systems are not able to access the service. The BBC points out that this still means that the majority can. While this may be true, it effectively excludes some categories of devices from supporting this service.

The Home Theater PC is a relatively new innovation. Until recently, storage and processing costs made the concept too expensive for most people. Microsoft even released a "Media Center Edition" of Windows to run on them. While Windows MCE is popular on a HTPC systems that are also intended for general purpose computing, it is by no means ubiquitous on special-purpose devices. Manufacturers building consumer-electronics type devices for this role often prefer Free Software, since it allows them to make any modifications they need to, and doesn't require a per-device license fee. Tivo is a good example of this, although not one popular with the Free Software community.

When designing such a system for the UK market in future, OEMs will have to weigh the benefits of Free Software against the fact that they can only provide iPlayer support if they use Windows. Since a device without iPlayer support is likely to sell less well than one with, they are likely to choose Windows, irrespective of other benefits.

One manufacturer likely to be affected by this is Apple. Their recently-launched Apple TV plays videos bought from their iTunes store and downloaded from YouTube, but it will be locked out of supporting the iPlayer service since it runs OS X. Microsoft's CODECs have been ported to OS X, but their DRM remains a Windows-only product.

When digital TV was deployed in the UK, it was based on the DVB-T standard. This standard can be implemented by anyone. The GNU Radio project has a pure software implementation under development, to complement their existing ATSC decoder. People with existing TVs were required to buy an external DVB-T decoder box, but they could do this from a number of different suppliers. The situation with Microsoft's DRM is very different. There is only one supplier: Microsoft. I suspect that there would have been some serious complaints if the BBC had deployed a form of digital TV that only worked with Sony TVs.

What's the Market?

One question that doesn't seem to have been asked much is "who actually wants to watch TV on their computer?" This seems like it's going to be a fairly small subset of the total number of computer users, and this should be taken into account when making this kind of decision.

Desktop users are unlikely to watch TV on their computers. The average desktop computer has a smaller (although higher-resolution) screen than the owner's TV. It often has worse sound, and generally makes too much noise to provide an enjoyable viewing experience. The exception to this is desktop computer owners who have broadband Internet connections but not TVs. I suspect that most of the people in this market are students. From wandering around campus, it seems that Apple has a much larger proportion of the market share than in the real world, and Linux does very well amongst science and engineering students.

Discounting the desktop, laptop users seem like a larger potential market. Laptop sales have now passed desktop sales, so most computer users will be laptop users quite soon (I've been desktop free for about four years, and never want to go back to using a computer that doesn't let me work outside in a deck chair).

In May, almost 15% of all laptops sold were Macs. Assuming that some fraction of those that weren't were going to run Linux, *BSD, Solaris, or something more esoteric, this means that only around 80% of laptops sold were going on to run Windows as their primary operating system. While 80% is a lot, it's still a long way from 100%.

While watching on a laptop is attractive for laptop owners, since they can do it in places where they usually don't cart their TV, laptop owners are still only a comparatively small part of the population. When we get away from traditional computers, things get even more interesting.

Is that an iPlayer in your Pocket?

While not everybody owns a laptop, almost everybody owns a mobile phone. The latest generations have reasonably sized screens (for something that goes in your pocket) and enough resolution to watch reasonable quality video. I got my current phone a little over 18 months ago, free with a cheap contract, and it is capable of playing back MPEG-4 videos. With 1GB of storage, it's also capable of storing quite a few. Of course, it can't play back Microsoft DRM's content.

Why do I say "of course?" Because, in the mobile phone market place, Microsoft only has around 6% market share. When it comes to mobile phones, making a Microsoft-only

product makes as much sense as making a Mac-only desktop product. It's worth doing sometimes, but not if you're aiming for the biggest market possible.

This could change a lot in the next year. Imagine going into a mobile phone shop and being told "this one can play back BBC TV, and this one can't." Which one would you choose? Unless you have a pathological hatred of Microsoft's SmartPhone OS (which would be quite understandable, since most mobile phone interfaces tend to engender this feeling), you'd probably go for the BBC-compatible one, and watch Microsoft's market share climb. Well, maybe you wouldn't, but if one in twenty people used that as their main purchasing criterion, Microsoft's market share would double. This doubling would come not from developing a better product, but rather from the fact the BBC had chosen to only support one platform.

Straying slightly from mobile phones, a lot of people seem to be wandering around with portable media players these days. Most of these are iPods. In the UK, currently, none of them are Zunes, since the Zune UK launch has been delayed until 2008. So, in the portable media player market, one of the prime candidates for watching downloaded TV shows, we see the following breakdown:

Apple: 70-80%

Others: 20-30%

Microsoft: 0%

Are there more people who own iPods than own TVs that are better than their computer monitors? Are there more people who own a Symbian mobile phone than own a Windows laptop? I suspect the answer to both of these questions is a resounding "yes." While choosing a Windows-only solution might make sense if your only market is desktop operating systems, it starts to look slightly ridiculous when you look at people who might actually want to use the service.

Why DRM?

The obvious solution for interoperability is to choose some form of MPEG-4 without any DRM. I could play an MPEG-4 video on my MacBook Pro, my FreeBSD machine, my Symbian phone, my Nokia 770, and the iPod I don't own. Looking back at the BBC

charter, I find my eye drawn to this section:

"...helping to deliver to the public the benefit of emerging communications technologies..."

Does DRM deliver the benefit of emerging communications technologies? Internet-connected desktop PCs are certainly not emerging; they are old and boring technology that is on the decline. By locking content to a single supplier's products, they reduce innovation. Any product that is built to take advantage of the content made available by the BBC though the iPlayer must run Windows, or must contain technology licensed from Microsoft. Unlike the BBC, Microsoft are a for-profit corporation who have no requirement to license their technology for use in products that would threaten their business.

In an era when even EMI are selling their content without DRM, it seems somewhat anachronistic to be considering introducing a new product based on it.

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