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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

18 September 1989

Dear Catherine,

BROADCASTING BILL: MAJOR SPORTING EVENTS

Thank you for your letter of 8 September to Caroline Slocock, which the Prime Minister has seen together with Jonathan Taylor's letter to you dated 15 September.

The Prime Minister shares the Chancellor's views. She considers that the listed events should be very limited and phased out as quickly as possible.

I am copying this letter to the Private Secretaries to members of MISC 128, to Linda Joyce (Chancellor of the Duchy of Lancaster's Office), Kate Bush (Department of the Environment) and Trevor Woolley (Cabinet Office).

*Yen.
Paul*

(PAUL GRAY)

Miss Catherine Bannister,
Home Office.

EX



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

8 September 1989

Dear Caroline

BROADCASTING BILL : MAJOR SPORTING EVENTS

The Home Secretary has been giving thought to the extent to which the Broadcasting Bill should safeguard viewers access to broadcasts of major sporting events. This is a potentially politically sensitive area, and it proved the single most difficult issue during the passage of the Cable & Broadcasting Act 1984. The Prime Minister and other colleagues will therefore wish to be aware of his proposals.

The 1984 Act introduced complicated arrangements to protect the continued availability to the general viewing public of major sporting and other events. The fear was that the rights to these events might otherwise be acquired on exclusive terms by cable channels not available to all viewers. These present arrangements are set out in Annex A to this minute.

The Home Secretary is clear that these arrangements should be simplified and liberalised in the Bill. He is equally clear, however, that some measures will still be needed to lessen the risk that a handful of major sporting events - the Grand National, the FA Cup Final and so on - might disappear from the screens of most viewers. Some of these events regularly attract over ten million viewers and there would be an outcry if many people found themselves suddenly unable to watch them. This could happen if the satellite channels showed them on pay-per-view terms, which could generate a large amount of revenue from a relatively small number of households. BSB's technology would allow them to charge for programmes on this individual basis.

/Accordingly,

Ms Caroline Slocock
Private Secretary
10 Downing Street

Accordingly, he proposes that the Bill should sweep away the majority of the restrictions in the 1984 Act, leaving only the requirement that so-called "listed events" (ie sporting events of national interest designated by me for these purposes) should not be shown on a pay-per-view basis. This restriction would be generalised, in the interests of fairness so that it applied to the BBC as well as to all ITC licensed services. The Home Secretary would keep the list of events in this category as short as possible, and would keep it under review with the intention of pruning it as the penetration of the new satellite television channels increased. His proposals are summarised in Annex B.

Officials have consulted the sporting bodies and broadcasters on the basis of these proposals. The results were largely as expected, with the new broadcasters broadly content with what was proposed, but the traditional broadcasters wishing to retain the protection offered by the 1984 Act. The reaction of the sporting bodies was mixed, but they generally favoured deregulation.

When these proposals became public there was press speculation that the proposed removal of most of the existing safeguards would result in the rights to all major events being bought by satellite operators. There was concern at the possibility that such events, particularly Wimbledon, might not be universally available in future. On present and projected levels of dish and cable penetration, the only way in which an operator could show such events profitably would be to charge viewers substantial amounts to do so. The purpose of retaining the pay-per-view restriction is to guard against this very possibility. But there is a risk that, even with this restriction in place, an operator might purchase exclusive rights to some of these events as a substantial promotional loss leader. Indeed, there is some evidence that Sky and BSB are adopting this strategy with sporting events. To that extent, the concerns which have been expressed have some basis in reality.

This issue will certainly continue to be of public concern, and the Home Secretary believes that it can be expected to cause some difficulty during the passage of the Bill. He has therefore reviewed the arguments to see whether anything further could, or should, be done to allay these concerns at this stage. Officials have identified the following options:

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- (a) To make it unlawful for any non-universal television channel to show listed events. This would involve greater intervention in the operation of the market than the existing law envisages;
- (b) To place the ITC under a duty to ensure that where a non-universal service showed a listed event, the rights had first been offered to a universal service on equal terms. This would amount to maintaining the existing safeguards; or
- (c) To allow non-universal services to show listed events live, but only if the ITC was satisfied that the rights to show them within a specified period (say 24 hours) had been made available to a universal service.

None of these options is attractive; they could not be guaranteed to be effective; and they would be difficult, if not impossible, for the ITC to enforce. Furthermore, the degree of regulation of the market implicit in all three options would not sit easily with the overall thrust of broadcasting policy. The Home Secretary is therefore minded to stand by his original liberalising package and not to propose additional safeguards at this stage. But he thinks it important to recognise that this course will be controversial and that the Government may well face criticism and amendments, including from Conservative backbenchers.

I am copying this minute to Private Secretaries to members of MISC 128, to the Chancellor of the Duchy of Lancaster and to the Secretary of State for the Environment, and to Sir Robin Butler.

Yours sincerely

pp Helen Mungy

MISS C J BANNISTER

ANNEX A

Cable & Broadcasting Act 1984 : LISTED AND PROTECTED EVENTS

For the purposes of the 1984 Act

- a listed event is one included on a list maintained by the Secretary of State, currently consisting of 10 major sporting events (Appendix A);
- a protected event is one which, in the Cable Authority's opinion, is one of a series which it is the practice of a broadcasting authority (ie the BBC or IBA - including BSB's services) to show and would still be but for the acquisition of rights by the cable operator.

Under section 14 of the 1984 Act a cable operator

- cannot show protected or listed events on a pay-per-view basis or include them in restricted services;
- can only show a listed event if the BBC and IBA have had the opportunity to acquire the rights to it on equal terms (the "equal opportunity" safeguard).

APPENDIX A**LISTED EVENTS**

In a written answer to the House of Commons on 12 July 1985, the Home Secretary announced that, after consultation with broadcasters, cable interests and the Sports Council, he had drawn up a list for the purposes of Section 14 of the Cable and Broadcasting Act 1984. The list consists of:

- (1) The Commonwealth Games when held in the UK
- (2) Cricket Test Matches involving England
- (3) The Derby horse race
- (4) The FIFA World Cup Finals
- (5) The FA Cup Final
- (6) The Grand National horse race
- (7) The Olympic Games
- (8) The Oxford and Cambridge Boat Race
- (9) The Wimbledon Tennis Championships
- (10) Additionally in Scotland, the Scottish FA Cup Final

ANNEX B

LISTED EVENTS : SUMMARY OF HOME SECRETARY'S PROPOSALS

- the ban on showing listed events on pay-per-view terms should be extended to the BBC and the services licensed by the ITC;
- the prohibition of the inclusion of listed events in restricted services should be retained;
- the "equal opportunity" safeguard (section 14(1)) should be removed;
- the category of protected events should be abolished and,
- the composition of the list of listed events should be kept under constant review with an aim of pruning and ultimately abandoning it.

