

**Ofcom consultation: Digital Dividend Review
Response to consultation**

20 March 2007

UK Film Council

- 1.1. The UK Film Council is the strategic agency sponsored by the Department for Culture, Media and Sport to develop, co-ordinate and deliver a coherent and comprehensive public strategy for film in the UK.
- 1.2. The UK Film Council welcomes the opportunity to comment on Ofcom's Digital Dividend Review.
- 1.3. The UK Film Council's overall role is encapsulated in its goal, "to help make the UK a global hub for film in the digital age, with the world's most imaginative, diverse and vibrant film culture, underpinned by a flourishing, competitive film industry."
- 1.4. In this response, the UK Film Council has focussed solely on the issue which has the most direct impact on film policy – this is the issue that relates to the use of wireless microphones.
- 1.5. As the Government's strategic agency for film, the UK Film Council would very much welcome the opportunity to engage in direct dialogue with Ofcom on the issues raised below. It would also like to be informed of planned oral and written consultations with the industry going forward and, with the help of Ofcom, to find a way of engaging constructively in this process.

Question 1 : This executive summary sets out Ofcom's proposals for the release of the digital dividend. Do you agree with these proposals?

Answer:

We do not fully accept the premise that because the regulator "simply cannot say with confidence what will be the best of use spectrum over the coming decades", that therefore the regulator should not pick preferred

uses or users for spectrum. Indeed, at least one of the options set out later in the document by Ofcom in relation to some of the issues raised would seem to undermine this article of faith (the proposal that Channel 69 be reserved for particular users on a licence-exempt basis).

We suggest that it is precisely the task of regulators, and public policy makers more generally, to make decisions, based on the best available evidence, to decide how scarce resources, whether it be the proceeds of taxation or spectrum, should be allocated over time – even, or especially when, the particular future policy landscape is full of unknowns, as it usually is.

In this regard, the UK Film Council believes that the proposed option around Channel 69 to make it available on a licence-exempt basis is fundamentally flawed. Any proposals to auction Channel 69 or interleaved spectrum which might otherwise be made directly available on a gifted basis to the Programme Making and Special Events (PMSE) sector are also fundamentally flawed. These options would have very serious consequences for Government policy for the UK film sector.

All film productions in the UK now rely on the use of wireless microphones – whether on location or in studios.

This is a very disparate sector which does not have the financial means to mount a competitive bid for spectrum in an open auction, and which would also suffer severely if Channel 69 were susceptible to interference from other users, a situation which is likely to arise if the whole of Channel 69 were made available on a licence-exempt basis.

If the PMSE sector were to lose this spectrum this would, quite simply, be disastrous for the UK film sector because of its impact on film production in the UK. It would mean that film production in the UK would come to a halt. It would deprive the sector of what is, in effect, a “utility” that is as basic to its operation as electricity.

The loss of spectrum would render Government policy to support indigenous film production and inward investment production through tax reliefs redundant, and would have the same impact on National Lottery funding for indigenous production.

We comment in more detail on the options around Channel 69 in answer to Question 6 below.

Question 2 : Do you have any comments on our analysis of the essential constraints that will apply to the available UHF spectrum?

Answer: We have no comment on this question.

Question 3 : Do you agree with the more detailed analysis and proposals regarding these technical constraints as set out in Annex 10?

Answer: We believe the PMSE Pro-User Group has serious reservations about the analysis of the problems of interference to PMSE services in the UHF spectrum from other services. We would urge Ofcom to take proper account of this reservations in considering how best to make future provision for PMSE users.

Question 4 : Do you have any comments on Ofcom's assessment of the potential uses of this spectrum? Are there any potential uses which should be considered that are not mentioned in this document?

Answer: We have no comment on this question

Question 5 : Do you have any comments on our analysis of the choice between a market-led and an interventionist approach to the release of this spectrum? Do you agree with the analysis of different mechanisms for intervening to remedy potential market failures?

Answer: As stated in our answer to Question 1, we believe that an interventionist approach cannot simply be excluded on the basis of principle in respect of the public allocation of scarce resources. This does not exclude the possibility that market-led solutions may provide a more appropriate solution to such allocation.

In the case of the allocation for a user group (PMSE) which is relatively small, highly diffuse and has comparatively very little resource as compared with other market participants, we do not accept that, *prima facie*, a market-led approach is appropriate.

Question 6 : Do you agree with our proposals to continue making available channel 69 for use by low power PMSE devices? Do you agree with our proposal to make some or all of the spectrum available for use on a licence-exempt basis?

Answer: We agree that Channel 69 should continue to be available for use by low power PMSE devices.

We do not agree with the proposal to make some or all of the spectrum available for use on a licence-exempt basis. We share the concern of PMSE users that making Channel 69 available on an unlicensed “Pro-Am” basis would result in undue levels of interference which would render professional use entirely impracticable. The wireless microphones used on film sets require the complete absence from interference, and any compromise of this cleared bandwidth this would have serious consequences.

We would propose that the present system of licensing Channel 69 for the PMSE sector should continue as we believe it provides the most effective way of ensuring that the value to society and to individuals of a broad range of cultural and economic public policies (e.g. the production of British films) can continue.

Question 7 : Do you agree that there should be transitional protection for professional PMSE users to ensure that they can continue to access interleaved capacity until at least the end of 2012? Do you have any views on the mechanism for providing future access to this spectrum?

Answer: We support transitional protection for PMSE users to access to

interleaved capacity. We recognise that there are a number of different views as to the point at which transitional protection should end, and we believe that Ofcom should engage in further debate on the issue of timing.

Question.8 : Do you consider that additional spectrum from the digital dividend should be reserved for low power applications? If so, please provide as much evidence as possible about the nature of the application and its potential value to society.

Answer: We have no comment on this question.

Question.9 : Do you consider that it would be desirable to hold back some spectrum from award with a view to its potential use for future innovation? If so, please provide comments on how much spectrum should be held back, and for how long.

Answer: We have no comment on this question.

Question.10 : Do you agree with our proposal that we should package the interleaved spectrum in a way that would be suitable for use by local television services, but not reserve spectrum solely for this use?

Answer: We have no comment on this question.

Question.11 : Do you agree with our proposal to package the spectrum in a way which does not preclude mobile broadband use, but to take no further action in relation to this use?

Answer: We have no comment on this question.

Question.12 : Do you agree with our proposal that we should not intervene in the award of this spectrum to reserve spectrum for DTT? Do you agree that we should package the spectrum in a way which is suitable for DTT use?

Answer: We have no comment on this question.

Question 13 : Do you consider that we have included in our analysis the most material risks in relation to market failure?

Answer: We have no comment on this question.

Question.14 : Do you agree with our proposal to auction licences for the use of the available UHF spectrum?

Answer: Our response to Question 1. above sets out our views.

Question 15 : Do you agree with Ofcom's proposals as to the timing of any auction? If not, what alternative proposal would you make and why, and what evidence and analysis can you provide in support of your alternative proposal?

Answer: We have no comment on this question.

Question 16 : Do you have any views on which of the packaging options identified for the cleared spectrum would be most suitable?

Answer: No.

Question 17 : Do you have any views on which of the packaging options identified for the interleaved spectrum would be most suitable?

Answer: We have no comment on this question

Question 18 : Do you have any views on which of the auction design options would be most suitable?

Answer: As stated in answer to Question One, we do not believe it is appropriate that Channel 69 should be included in any auction process.

Question 19 : Do you agree with Ofcom's proposals for the non-technical terms of the licences to be awarded for use of the UHF spectrum?

Answer: We have no comment on this question

Question 20: Do you agree with the analysis of the options as set out in this Impact Assessment?

Answer: We agree with the analysis that "a market-based award of the available UHF spectrum may result in a suboptimal allocation of spectrum for professional PMSE use."

But we do not agree that making all of Channel 69 licence-exempt is the best option for resolving the market failure concerns identified.