



# OFCOM: 'A NEW APPROACH TO PUBLIC SERVICES CONTENT IN THE DIGITAL MEDIA AGE'

## BECTU COMMENTS

1. BECTU, as a trade union with many members in the audiovisual sector, has commented on Ofcom's previous public service broadcasting (PSB) reviews and consultations. We retain a close interest in the development of future policy in this area, including the document currently under discussion, which we recognise is a discussion paper rather than a formal consultation paper.

### **THE BALANCE BETWEEN TV AND NON-TV FORMS OF PUBLIC SERVICE CONTENT (PSC) DISTRIBUTION**

2. We welcome Ofcom's recognition that the proposed Public Service Publisher (PSP) 'is only a part of the overall solution, and its role needs to be considered alongside approaches to the major areas of PSC, and existing PSB providers' (p2).
3. Specifically, we note that Ofcom recognises that further intervention could 'be limited to linear television only' or 'have an important digital media element' - but that 'these options are not mutually exclusive' and that a PSP could operate 'alongside an enhanced role for existing PSBs in either television or other digital media' (p25).
4. We further note that Ofcom's previous estimate of £300m funding for PSC delivery 'would need to be directed to a range of interventions in the public service system - including but not limited to the PSP' (p39).
5. We have previously agreed (eg in our response to Ofcom's PSB Review Phase 2 and in the recent attached submission to the Parliamentary Culture, Media & Sport Committee - Appendix A) that it is both desirable and justifiable to provide an up to £300m per year injection of investment into commercial PSB (principally ITV and C4) in order to promote a strong plurality of PSB providers within the digital media future. We further argued that such funding could be provided by means of a levy on the turnover of UK licensed broadcasters who are not PSB providers - in particular BSkyB.
6. We continue to believe that a strong and plural PSC presence within the 'linear TV' world will be necessary for the foreseeable future and that while we welcome the current debate on 'non-TV' forms of PSC

distribution, we would not wish this to displace a continuing policy focus on the future of commercial PSB.

7. We would therefore ask that Ofcom considers:
  - That up to £300m per year should be allocated for the future of commercial PSB (specifically via ITV and C4) beyond digital switchover.
  - That this be funded by a levy on non-PSB broadcasters such as BSkyB.
  - That such proposals should be developed on the same timescale and with at least the same prominence as the PSP proposal.

## **THE PSP PROPOSAL**

8. We recognise the need to address the growth in new digital media outlets and services - including both the means of distribution (eg the internet, mobile phones, video games, storage technologies such as personal video recorders) and the type of content (interactive, personalised, participative, web-generated - with myspace, YouTube and wikipedia as recently prominent examples).
9. However, we believe strongly in the continued relevance of public service content within the new digital media. We therefore agree with Ofcom that 'the factors that continue to drive intervention in linear television - namely that public service content continues to achieve economic and social benefits that would not be realised without intervention - are also relevant for the wider digital media' (p5).
10. The rationale for public service intervention is well summarised on pages 22-3 of the Paper. Without such intervention, the market will simply not provide content of comparable quality and diversity; will not maintain the broader cultural, democratic and citizenship benefits of PSB (which informs and educates as well as entertains); and - crucially for our members - will not sustain a high and continuing level of original content-production.
11. We can therefore support, in principle, Ofcom's continued exploration of the PSP proposal - provided, as indicated above, that this is done in conjunction with continuing support for traditional, linear PSB beyond digital switchover.
12. However, in moving from support in principle to the more specific operational proposals for the PSP, there are - as Ofcom clearly anticipates - a number of potentially contentious issues.

## **Funding**

13. We noted above Ofcom's overall estimate of £300m per year as the value of the shortfall in public service content which may need to be

compensated for as we move from the analogue to the digital era. Our view on the need for continuing support for commercial PSB and the means of funding this (the levy) is set out above.

14. We further note Ofcom's initial estimate of £50 - £100m per year as the sensible 'starting-point' (p7) for funding the PSP from within the overall total of £300m - with the additional proviso that this is likely to grow over time as the PSP takes on a growing role.
15. While recognising that we are dealing with hypothetical proposals and roughly-estimated figures, we have several initial concerns:
  - If the funding focus increasingly shifts from commercial PSB to the PSP, we may eventually be left with a relatively-closely argued rationale for a costed-out PSP and a residual amount out of which commercial PSB would have to do the best it could. To avoid this, we would want at least as much focus on commercial PSB's funding needs beyond digital switchover.
  - The discussion paper still begs the questions of whether £300m per year as an overall figure is sufficient; and of the actual funding mechanism (tax, levy etc).
  - The £50-£100m estimate for the PSP, based as it is on very rough equivalence to the BBC's online expenditure, may itself prove insufficient. If, as Ofcom already indicates, this may in the future need to be expanded, what source is envisaged for additional funds (other than diverting funding from commercial PSB)?

### The Operating Model

16. Leaving aside the issue of rights (see below), we note that the key elements of the PSP operating model would encompass the following:
  - a commissioner rather than a producer of content
  - a non-commercial business model
  - a partnership approach to distribution.
  - a non-London base (or bases)
  - a role as a public service navigator (guiding users to PSC generally).
  - a preference for a new organisation rather than an extension of an existing PSB
17. While reserving judgement on some of these points, our initial views are as follows:
  - Operating a non-commercial business model and with a partnership approach to distribution may be eminently sensible up to a point. However, given the scarcity of public funds and the extreme profitability of large parts of the media sector, we believe that strong safeguards are needed to ensure that the PSP receives suitable returns on this public investment - ie the PSP should seek to

enforce its own continued financial survival and should therefore take due care in its contractual arrangements with the commercial partners.

- We strongly agree with the suggestion that the PSP could act as a public service navigator - not just for its own output but also for PSC generally. We further believe that the PSP should seek to cater for those who do not have ready access to the new range of digital technologies by ensuring a continued engagement with broadcast TV. Without this, a key element of public service - universal access - will be lost.
- Most importantly, we do not automatically accept the desirability of establishing the PSP as a new organisation. The advantages of awarding a tender to an existing PSB - existing high profile, a pool of experience and expertise, economies of scale, coproduction possibilities, a guaranteed broadcast outlet - should not be underestimated. Nor should the growing expertise of existing PSB organisations in the new media area. We think this point should be reconsidered - especially when set against the broader context - acknowledged by Ofcom - of the need for continued support for commercial PSB quite apart from through the proposed PSP.

### Rights

18. We note the suggested new 'open rights model' and the reference to the Creative Business License as a possible precedent. As an organisation representing a number of individual creators with rights (eg writers, designers, animators, still photographers, visual artists), we have significant concerns about this approach.
19. Creative Commons and other forms of open access licence offer just that - a licence which is itself based on the copyright model. We recognise that the Creative Commons model is a useful means for making available certain types of material for copyright and adaptation for education use. However, we do not believe it is appropriate for a PSP dealing with creators, whether individuals or SMEs whose livelihoods depend on their ability to transact in their rights. Copyright is the right of the creator to earn a return for his or her innovation. Its primary purpose is not 'the task of managing dealings between a limited number of professional organisations' though it is also effective in that context.
20. As a representative of authors and creators, particularly those contributing content to a PSP, BECTU is concerned by the suggestion that traditional copyright models should be abandoned. Surely the most effective procedure for facilitating effective exploitation of content is a tried and tested one and the one which broadcasters are most experienced in dealing with, both with content providers and among themselves. That is copyright.

21. Returning to the creator, it is the major means by which most earn their livelihood and without which they are afforded little protection or have little incentive to create. Making content available to users and allowing extensive re-use of material is already permitted under the existing copyright licensing system. What the PSP and other users of copyright material are perhaps unwilling to recognise is the need to provide appropriate payment for that additional use.
22. BECTU also recognises that there will be increased demand for interaction and the potential to modify content in the future and believes that the copyright system is well able to licence this but reminds Ofcom that the moral rights of authors and creators must be taken into account within whatever system is used to transact in creative works.

### Conclusion

23. We hope you will take note of our views, including those on continuing funding for commercial PSB, the operating model and rights. We look forward to the continuing progress of Ofcom's work in this area.



Appendix A  
CULTURE MEDIA & SPORT  
COMMITTEE INQUIRY - PUBLIC  
SERVICE MEDIA CONTENT:  
BECTU RESPONSE

1. BECTU is the trade union for workers (other than performers and journalists) in the audiovisual and live entertainment sectors. Our members work for all existing broadcasters and throughout independent production for broadcast. We have a close and longstanding interest in issues relating to public service media content:

**Plurality in Public Service Broadcasting (PSB) in the Digital Age**

2. We note that the White Paper on BBC Charter Review confirmed the Government's support for a continuing plurality of PSB provision. We also note that the Ofcom paper on Digital PSB (July 2006) identified (pp 7-8) a number of benefits from a plural PSB system:
  - Complementary services to different audiences
  - A range of perspectives, especially in news and current affairs
  - Competition to spur innovation and investment
  - Provision of benchmark information on the performance of different providers, thereby aiding regulation
  - Competition for quality in PSB delivers benefits to viewers, especially as citizens.
3. We further note Ofcom's view (p9) that 'A lack of plural PSB provision could, for instance lead to the relative isolation of PSB content in the marketplace and a reduction in its influence and accessibility'.
4. As strong supporters of our plural PSB system we fully endorse these arguments. We believe that a plural PSB system should and can be retained in the digital age. The continuing popularity of PSB channels - relative to audience levels on the vast majority of digital channels - means, in our view, that our plural PSB system is sustainable in the digital age provided that we retain a suitable supportive system of regulation.
5. The persistence of market failure in broadcasting (ie the market's failure, in the absence of regulation, to provide the range and quality of PSB programmes which are demonstrably popular with viewers); the position of plural PSB as a public good (bringing a much broader range of benefits than can be measured by the narrowly economic criteria of the market); and the continuing international success of our PSB programmes (as measured in programme sales) mean, in our view,

that our plural PSB system can and should remain a vital element in any future digital broadcasting landscape. We believe that a key future role for our broadcasting regulators will be to ensure that this is the case.

### **The Continuation of PSB Obligations on Commercial Broadcasters**

6. It follows from the above analysis that we believe it is both practical and desirable to continue to impose PSB obligations on commercial broadcasters. We note that even Ofcom, in the paper cited above, has stepped back from some of the pessimistic conclusions of its earlier PSB review:
  - 'The take-up and impact of personal video recorders has been slower than many thought' (p3) and 'the long term impact on commercial broadcasters' revenues may be less dramatic than expected' (p13).
  - 'Channel 4 has continued to perform well' (p3).
  - 'The overall advertising market has held up to date' (p3) and 'revenues are above expectations' (p23).
  - 'There has been a growth in programme investment by non-PSB channel providers' (p23), thereby providing and encouraging more scope for commercial PSB.
  - 'Local and indigenous services have expanded' (p23).
7. We of course acknowledge, as does the Ofcom report, that some trends run counter to this. However, as we indicated in our submission to the Ofcom PSB review, no convincing case has yet been made as to why PSB obligations on commercial broadcasters are unsustainable. It is fashionable in some quarters to argue that the new technology and market forces are irresistible - but we simply do not accept this and believe such arguments to be largely initiated by commercial self-interest and a wish to scrap PSB obligations for narrowly economic reasons.
8. We believe that public policy on PSB should have regard primarily to the interests of viewers, who have consistently demonstrated a strong appreciation of PSB programming of range and quality. PSB obligations on commercial broadcasters - if necessary amended to take account of the changing broadcasting landscape - can and should, in our view, be retained in the digital age. To accept the opposite (ie that such obligations are unsustainable) would be a political choice (albeit sometimes disguised as 'inevitability') which we believe should be emphatically rejected. Our PSB system, incorporating commercial broadcasters as well as the BBC, is an international success story for the UK and should be preserved rather than undermined.

### **The Viability of Existing Funding Models for ITV/Channel Four/Five**

9. The underlying position of **ITV** has recently been obscured by the turmoil concerning changes in shareholding, takeover bids and the appointment of a Chairman. Some trends are, however, clearly discernible in the recent period. Despite stronger than expected TV advertising revenue as a whole, ITV1's share of net advertising revenue has been falling and is forecast to continue doing so. ITV1 audience share is also down, including the key (for advertisers) 16-34 year old age band (although, depending on the period measured, the decline is less than that of BBC1 and Channel 4). Its original distinguishing characteristic (regional, structures and identity) has long since been lost sight of as ITV management has followed a deliberate policy of reducing regional commitments.
10. By posing the question of 'the viability of the existing funding model of ITV', the CMS Committee almost invites the response, in the face of these trends, that it is not. Before rushing to any conclusions, however, we believe that some more positive points about ITV should be noted:
  - ITV is still by far the UK's largest commercial terrestrial broadcaster with a far more dominant domestic position than any equivalent US network.
  - It now has a linked family of digital channels, with rising revenue and audience share.
  - It can attract strong investor interest (albeit for very mixed motives) from major players such as BSkyB and ntl.
  - Its status attracts and should continue to attract, prominence on the Electronic Programming Guide, with resulting benefits for audience and revenues.
11. For the reasons set out above, we strongly disagree with any future strategy for ITV involving the removal of its PSB obligations (which would simply, in our view, render the company even more vulnerable to foreign takeover - to the long-term detriment of UK viewers). We address below the issue of where supplementary funding might be found for ITV's long term PSB future. We are very clear, however, that ITV can have a perfectly viable future as a commercial PSB company.
12. A vital necessity in the short term, will be for ITV to refocus on quality programming and creative vision as the centre of its strategy - rather than accountancy-led cost-cutting and dumbing down. As has been pointed out elsewhere, the experience of the nearest equivalent example of a major terrestrial broadcaster trapped in seemingly-irresistible decline (ABC in the US) was that programme investment (in shows such as Lost and Desperate Housewives) turned the broadcaster's position around - rather than a further slide into reality TV and gameshows. ITV, under the disastrous chairmanship of Charles Allan, completely lost its focus on programming and followed a strategy of cost-cutting leading to even further decline. This now needs to be

reversed. Ideas for additional funding to supplement PSB programming are discussed below.

13. The Ofcom PSB Review noted that **Channel 4** retains a long-term role as a not for profit provider of innovative and diverse programmes; that this applies up to and beyond digital switchover; and that privatisation should be resisted. Since the review, C4 has up until recently enjoyed strong performance in terms of advertising revenue, including a contribution from its digital channels.
14. However, we note that - in the light of digital, multi-channel developments and threats to C4's revenue stream - Ofcom is shortly to conduct a full review of C4's financial and operating performance, including the issue of whether regulatory intervention will be necessary to sustain the channel's distinctive PSB remit.
15. Our own position on Channel 4 is to support the retention of its distinctive PSB remit beyond digital switchover and to oppose privatisation. Our views on possible sources of supplementary funding for PSB programming are set out below. We note that there are completely separate issues covering S4C and we take that to be outside the scope of this Inquiry.
16. **Five** remains part of the PSB universe - but only just. Its programme origination requirements have been further reduced in the latest example of regulator flexibility, which begins to beg the question of why the channel exists in the first place. If its original justification was to add a further element to PSB pluralism then any further slide into reducing PSB requirements should be resisted.
17. Five's revenues have so far held up well and the company has powerful owner-backing in the form of RTL (ultimately Bertelsmann). Therefore, in our view, it is still viably placed to operate as a commercial PSB provider. In fact, to retain a distinctive place in the market, the channel needs more not less original programming - as a means of distinguishing it from its many multichannel competitors. Ofcom should therefore hold the channel to its PSB requirements.

### **The Case for Public Funding of Broadcasters in Addition to the BBC**

18. In our view, this question is posed in the wrong way. On any argument yet to surface, the case for public funding of broadcasters in addition to the BBC has, in effect, been a case for public funding at the expense of the BBC. A principal focus of this debate has been on so called 'top-slicing' of the BBC licence fee (ie reallocating part of the fee to a fund to which commercial broadcasters could have access for funding PSB programming). We are well aware that this debate will re-emerge during the Government's proposed review of the case for public funding to be distributed beyond the BBC.

19. We are strongly and fundamentally opposed to redistributing public funds - either directly or indirectly - from the BBC to commercial broadcasters. We believe the consequences would be:
- A serious weakening of a viable and internationally successful BBC service.
  - A redirection of secure public resources to private profit.
  - An extra layer of chaotic and wasteful competition (in the form of bids for access to public funds)
  - Most importantly, an ultimately inferior broadcasting service for viewers, with the harm to the BBC far outweighing any gains to commercial broadcasters.
20. Our views, therefore, are as follows:
- We believe that alternative sources of funds are available for commercial PSB (see below).
  - We strongly oppose any proposed top-slicing of the BBC licence fee and the consequent redistribution of funds from the BBC to commercial broadcasters.
  - We do not believe that the proposed Government review should be undertaken at a prematurely early and disruptive stage (as advocated by Ofcom) - but rather at the end of the forthcoming Charter period.

### **The Future of Key Areas of Content such as News and Children's Programming**

21. **News**, as identified by the Ofcom PSB Review, is 'the most valued programme genre on UK television'. It is valued, we believe, because of its high quality, because of the plurality of provision and because of its perceived impartiality (albeit this is sometimes a matter of controversy).
22. There are worrying developments in respect of ITN, including the loss of the news contract for Five to BSkyB; the closure of the ITV News Channel; BSkyB's acquisition of a significant ITV shareholding; the forthcoming contract discussions for the ITV news contract; and the ultimate fear that this will be awarded to BSkyB. We are in distinct danger of moving from a system of 3 major news providers to just 2 (BBC and BSkyB).
23. We believe that both Government and Ofcom would be failing in their duties to viewers (and certainly to viewers as citizens with a need for access to impartial news and information) if they were to stand back and allow an arm of News Corporation to become the overwhelmingly dominant commercial source of television news in the UK. This, when placed in the context of News Corporation's newspaper interests and the overtly right-wing performance of Fox News in the US, would present an unwelcome development with consequences not just for our

broadcasting sector but for our democracy. We hope that Ofcom's planned project on the future of television news will take note of these arguments.

24. **Children's programming** faces even more immediate problems. While welcoming Ofcom's rejection of the proposal to reduce ITV1 children's programming from 8 hours to 2 hours per week, we note the following issues:
- Ofcom's ban on junk food advertising during programming aimed at under-16's could lead to a £39m advertising revenue deficit, which in turn could prejudice any future investment in children's programmes.
  - Since Channel 4 no longer makes children's programming, ITV is the only significant UK provider apart from BBC. Yet ITV is now likely to seek a further reduction in its children's output (probably to 5 hours per week).
  - There are no clear and specific regulatory rules on children's programme production and investment.
  - Digital commercial broadcasters do indeed provide some children's output but virtually all is imported and none is original.
25. The arguments for original children's programme production have been well expressed by the Save Kid's TV Campaign (which we fully support). Children's TV is ultimately too important to be left to the market, in view of the social, cultural and educational implications of leaving British children without any alternative to a television diet of American imports. We should also note that British children's programming has in the past proved to be an internationally successful sub-sector of our programme production industry, and has provided a platform for a range of creative talent which has gone on to contribute to our wider broadcasting/film industry.
26. We hope the CMS Committee will pay careful attention to the analysis and arguments of the Kids' TV Campaign, including the need for regulatory and funding intervention to save our children's TV sector.

### **The Public Service Provider Concept**

27. We acknowledge Ofcom's earlier analysis of the need - in the light of the challenge to our existing PSB system from the new digital, multichannel universe - for a Public Service Publisher (PSP) to provide a £300m per year injection of investment into commercial PSB to remedy the estimated losses arising from loss of privileged access to the analogue spectrum at digital switchover.
28. We further acknowledge that Ofcom has now modified its PSP proposal to incorporate a model centred on the new media rather than broadcasting; and that a further full policy review of PSP will shortly be undertaken by the regulator.

29. While reserving our detailed response to the proposed review and while remaining open to proposals for a PSB model within the new media, we already hold the following views on the future funding of commercial PSB in the UK.
- We believe that the issue of a PSB funding gap for ITV and Channel Four (as referred to above) should be addressed not by reducing their PSB obligations but by providing alternative funding sources for PSB programming.
  - As already indicated, we do not believe such funding should take the form of monies effectively redistributed from the BBC. Nor have we ever advocated the use of general tax revenue as an additional funding source - which would be politically vulnerable, would have serious implications for editorial independence and could become extremely unpopular with the public.
30. Instead, and as we argued in our response to the Ofcom PSB Review, we believe the PSB funding gap facing ITV and Channel 4 should be remedied by a levy on the turnover of UK-licensed broadcasters other than PSB providers. The levy should go to form a fund accessible to all providers of PSB programming (other than the BBC). Such a levy could, if necessary, be linked on a sliding scale to the provision of original PSB programming (ie the more such provision, the less the levy).
31. BSkyB in particular is an immensely powerful and lucrative commercial franchise which has long enjoyed the benefits of light regulation and the ability to 'commodify' areas such as live sport while contributing, relative to its revenue stream, a pitifully small amount of original programming. We believe such a levy would be easily financially supportable by such major commercial players and would ensure the redistribution of necessary PSB funding not from the public to the commercial sector but primarily within the commercial sector.
32. We hope the CMS Committee will give proper consideration to this proposed funding mechanism and discount the foreseeable counter arguments arising from narrow commercial self-interest. British television viewers will be the main beneficiaries of policies which preserve a plural PSB system in the digital age and their interests, rather than the interests of commercial forces in broadcasting, should in our view be the primary concern of public policy.