

A new approach to public service content in the digital media age: The potential role of the Public Service Publisher

A Response from the British Film Institute

Introduction

The BFI welcomes this opportunity to respond to OFCOM's consultation on the Public Service Publisher.

The development of the PSP is one in which we have a keen interest as we are seeking to accommodate the emerging world of new forms of participation and innovative viewing possibilities in our operations and services using digital and network technologies.

The BFI operates with a Royal Charter by which we are charged with the care of the nation's film and television heritage and to enhance learning and understanding of these media. We hold one of the largest collections of film and television in the world albeit where the rights are usually held by other organisations. In the past eight years we have been at the forefront in the development of online access to film and television archives. In 2003 we launched the lottery-funded Screenonline (www.screenonline.org.uk), making British film and TV material from the BFI National Archive available to all schools, universities, colleges and libraries in the UK (and supporting textual material globally). In 2005, the BFI was a founding co-partner in the Creative Archive Licence Group, providing material from the Archive to be downloaded and repurposed for non-commercial use (<http://creative.bfi.org.uk>). We are planning to incorporate social networking functionality across our web activities as and when resources allow.

Our response has two parts. Firstly we comment generally across four interlinked areas: organisation, IPR, culture and creativity, and broader market context. Then in conclusion we have focused on the four questions to which OFCOM has requested a response

1. Organisation

A key question is what sort of organisation of the PSP might meet the needs of the UK economy where the emphasis is both on developing a competitive sector and providing UK citizens with a vibrant range of content on the emerging platforms, and which, without public investment, would not be commissioned. Any such intervention is in danger of being dwarfed by the scale of investment by commercial players and therefore needs to be a sufficiently large investment (assuming state aid laws are not transgressed) with focused objectives enabling a creative climate to flourish in these new sectors.

We believe that a heavily devolved model of commissioning body would be the most suitable organisational structure. In a way this would be similar in intention to the old ITV model but adapted to current technological possibilities and audience needs. We would expect a regulated requirement of the PSP would be to reflect the diversity of

cultures in these islands. We believe the devolved structure would ensure decisions being made as close as possible to the citizens whose interests would be served through the commissioning of content. Funding would be allocated by a formula which ensured regions with smaller populations were not disadvantaged in commissioning large scale projects. However, we believe there would also need to be a UK-wide fund alongside the local/regional funds to secure the production of groundbreaking content. This would probably be based outside of London.

2. Culture and Creativity

It is our view that the primary purpose of any new organisation – and we are by no means convinced that the additional administrative overhead justify the conclusion that a new organisation is needed - should be to encourage innovation and enhance the creative outputs on new media platforms. A primary objective would be to take account of the continually emerging possibilities for participation in developing ‘content’ reflecting and contributing to UK culture. This will require a strategy which seeks to identify burgeoning areas of innovation and the talent to realize the promise.

We would also suggest a role in the new organisation for content from existing public organisation, and particularly from the many world class cultural organisations in the UK. This would draw both from archival heritage material and new commissions, where a current lack of funds is inhibiting the possibility of providing access through new platforms to material with a high public value.

Content provided might range from interviews to theatrical performances but would also include an unlocking of the huge potential of the nation’s archives for creative reinterpretation. The Creative Archive Licence Group pilot (with membership including the BFI, MLA, Community Channel, Teachers’ TV, Open University, BBC and Channel 4) has suggested an appetite for this sort of offer and it is very much with the grain of recent developments in the Web 2.0 space. OFCOM will also recognize the benefits which would accrue to the media literacy initiatives through such an initiative, in encouraging citizens as viewers to also become active producer-participants. We are particularly keen to pursue the proposal by Lord Puttnam to investigate an extension of the Public Lending Right to the Creative Archive to provide fair compensation to underlying rights holders.

3. IPR issues – ad support or creative fuel

OFCEM has drawn attention to the IPR issues and we would reiterate our enthusiasm for finding ways of making a significant proportion of the material, which we hold in trust for the nation in our Archive, available under a Creative Archive licence where the rightsholders are in full agreement. The amount of material that could be easily made available could be increased significantly were the EU to legislate to unlock the intellectual capital locked up in orphan works held in our Archive. We were very pleased to see Government acceptance of the Gowers Review proposal to seek legislation at an EU level to this end. We are of course aware that much is possible within the existing IP

regime but the cautionary note in the consultation document about rights management does need to be addressed.

We recognize the future importance of DRM but do not want its parameters to be so restrictive that it eviscerates the balance between the rights of the creator and the legitimate interests of the user. DRM is an evolving technology which should enable the fullest participation while also ensuring rightsholders are fairly remunerated.

4. Market context

We are concerned that any proposal will be opposed by the private sector, which will claim that the market has provided, and will provide, sufficient innovation, and that therefore there is no need for public investment. It is certainly the case that the level of investment currently suggested in the PSP would provide for limited intervention to address any areas of market failure.

A key factor in the success of a PSP will be ensuring the public service content is easily found. This is a challenging task in the world of proliferating ‘channels’ across numerous new media platforms. Whether ‘signposting’ would be a sufficient response is unclear but in the world where branding is seen as so important to success it should certainly be a condition of funding.

Summary Conclusions:

We note the four areas for which OFCOM has requested a response and wish to use them to structure and summarise our conclusions.

- i) The appropriate nature of intervention in the digital media age, and the balance between TV and non-TV forms of public service distribution

When and how to intervene to ensure a continuing provision of public service content on new platforms will be a process of constant adaptation for the foreseeable future. It remains unclear on which platforms significant public service content will be required and where specific intervention will become necessary. Clearly the existing PSC providers - BBC and Channel 4 – will remain active on multiple platforms and can be expected to continue to experiment and adapt their other services.

The key issue then might become whether this provision is sufficient to address market failure in the delivery of public service content and whether another provider, dedicated to provision only through new distribution platforms should be established by Government.

Currently there are a number of public organisations outside the world of traditional broadcasting but with a stake in content production in the analogue world, which could be mobilized so that their work is more widely available; viz. the public sector cultural bodies like the BFI.

ii) The potential role of the PSP and its creative remit

The creative remit of the PSP must be a continuation of the existing psb remits but will need to take account of the potential for even finer grained audience address made possible by distribution on the proliferating platforms. Hence, the ability to serve local as well as national communities, to draw together interests groups from across the country, and more widely, where before this was uneconomic. The specific creative remit should encourage innovation and include much broader participation by the public in developing its own content.

Our participation in the Creative Archive Licence Group has suggested a nascent interest amongst the general public in using older archive material in new ways. This has been further confirmed by Channel Four's introduction of the FourDocs web site, and by the range of mini-sites for short films on the BBC's web site. We believe the demand for this level of participation will grow and the PSP could become its main source of operational stability.

iii) The operating model – in particular, the approach to rights management

The operating model for the PSP remains another imponderable while its scale of operations remains unclear. Perhaps for now it is sufficient to identify the main principles by which it might operate: a body which operates autonomously in the public interest, but acts as a series of regional commissioning bodies, with ties to other public sector organisations. Content is commissioned from all sources including independent companies but requires distribution across platforms.

Rights management issues remain complex and as all business models utilizing rights management are still evolving along with the technology it would be unrealistic to identify an approach other than in terms of key principles. We believe that wherever feasible rights should enable users to appropriate and reuse content (for non-commercial ends) in line with the Creative Archive licence. This 'repurposing' clause in contracts could then be funded using a variation of the Public Lending Right for books to compensate underlying rightsholders. Rights must not be an obstacle to securing the UK as a leading knowledge economy by providing users with the possibility of developing media literacy skills

iv) The scale of funding required

The figure of £50 million at 2007 prices seems modest given the challenges which any body would face and we believe in excess of £150 million would be a minimum annual income.