



**EQUITY RESPONSE TO OFCOM DISCUSSION DOCUMENT
“A NEW APPROACH TO PUBLIC SERVICE CONTENT IN THE DIGITAL
MEDIA AGE”**

INTRODUCTION

1. Equity is a trade union representing 37,000 performers and creative personnel who work across the whole spectrum of entertainment in the UK. Our members work in a range of media and the creative industries including visual broadcasts, sound recordings and film. These Equity members work principally in drama, comedy or entertainment roles.
2. Therefore any decisions regarding the future of public service content (PSC) across traditional and new media are likely to have a direct impact upon the production, distribution and funding of our members work.

BACKGROUND

3. Equity supports Ofcom’s attempts to consider the future of public service broadcasting (PSB) and its delivery in a digital age. The publication of the discussion document is a welcome development and offers helpful insights into the remit and operating model of a Public Service Publisher (PSP), which could have an important role to play in ensuring diversity and plurality in the production of original content for television and new media.
4. Plurality in the provision of PSB has been vital to its success. Not only does this create the conditions for competition to spur innovation and drive higher quality, but it also avoids an over-reliance upon a sole provider of PSB programming. Although the current system of PSB does depend largely on the role of a publicly funded BBC, the system is sustained by the obligations that also rest with other main providers of terrestrial television channels – that is ITV, Channel 4, S4C and Five.
5. Undoubtedly the proliferation of digital television channels and other content providers will put pressure on this method of providing PSC. As a result the system cannot and should not remain static. However, we welcome Ofcom’s commitment to securing a public service system for the future which continues to deliver the best elements of the previous model. We agree with Ofcom’s statement “the rationale for intervention in support of public service content is likely to remain in the digital world” (para 1.14).
6. Equity agrees that the methods of delivery will change, but the principle of plurality should remain constant, even in a digital age. This will help to

encourage and enable the continuation of original high-quality production across a range of genres including drama, comedy, entertainment and children's programming. The prospects for maintaining plurality will also depend upon appropriate regulatory and legislative support, so it is helpful that Section 264(3) of the Communication Act 2003 provides Ofcom with "an obligation, with a view to maintaining and strengthening the quality of public service television broadcasting in the United Kingdom".

7. This support for a broad range of high quality PSC in a digital age will ultimately help users to differentiate providers of content on new platforms. Providers with a reputation for producing the best content are likely to achieve the greatest success in attracting an increasingly fragmented audience to the new technology and platforms. Therefore, the success and popularity of new technology will depend heavily upon the quality of original production – and especially programmes that feature the work of Equity members. In short, technology is nothing without content.

THE PSP PROPOSAL

8. Equity has acknowledged the PSP is a creative and original approach to maintaining the plurality of PSC in the new broadcasting environment. Moreover, we were heartened by Ofcom's willingness to argue for a significant amount of financial support of up to £300m a year to enable the production of high quality original content, as well as new types of distribution and engagement with users.
9. The PSP has the potential to meet some of the challenges that will inevitably be faced in an era where broadcasting (and similar services) are changing at an unprecedented rate. Since the original idea was floated in Ofcom's review of PSB in 2004 there has been an explosion of user generated and community generated content, providing the potential for public service goals to be fulfilled through greater participation and engagement. In addition, the number of distribution channels for content continues to grow rapidly.
10. However, the proposal for the PSP to engage effectively with new types of content and distribution should not preclude it from supporting existing linear broadcast services. On the contrary, the PSP could also be a useful mechanism of supporting a future system of plurality by making funding available to existing commercial broadcasters with PSB obligations, which have pressure on their current funding model. In particular, ITV or Channel Four should be considered as possible recipients for this support in their capacity as existing providers of PSB with a positive track record, brand value and wealth of experience.
11. To that end we welcome Ofcom's statement that "were the Government to make available £300m of funding for PSC delivery, this would need to be directed at a range of interventions in the public service system – including but not limited to the PSP" (para 5.4).

12. In order to fulfil any of these objectives the PSP must also overcome the biggest practical hurdle that it faces – that is establishing a source of funding. Ofcom has proposed funding either through direct taxation, an increased licence fee or a levy on existing broadcasters.
13. Equity has said that it would support a levy on the income of non-PSB licensed broadcasters operating in the UK. This would provide a mechanism, after digital switchover, which would enable these broadcasters to provide greater support to the overall level of PSB commitment. It would also mean that broadcasters such as BSkyB would be required to make a significant contribution to the PSP – although this could be discounted against the level of PSC agreed in their licence
14. Funding for the PSP should not be diverted from the BBC licence fee. The licence fee has already been effectively top-sliced, with £600m to pay for the move to digital television and targeted help associated with switchover. The Corporation cannot continue to make such additional contributions from its core revenue. To do so will result in less investment in PSB overall; less original production; more redundancies; and a disconnection with licence fee payers.

THE PSP OPERATING MODEL

15. Therefore, while Equity has some reservations about the implementation and structure of PSP proposal, it does appear to be a useful mechanism for providing substantial amounts of high quality UK-originated content, characterised by a number of suppliers competing to provide that content.
16. Yet Equity is particularly concerned at the “new rights approach” advocated by Ofcom, which appears to misrepresent or misunderstand the existing structures that support copyright and related rights and suggests that traditional copyright models be abandoned.
17. Ofcom is quick to dismiss the possibility of the existing “rights-reserved” approach being adopted by the PSP on the understanding that this “could create barriers to participation and potentially unmanageable friction”. (para 5.19). However, Ofcom provides no evidence to support this view and ignores the fact that rights-owners have developed practical approaches like collective licensing, which mean that users do *not* have to seek permission every time they access particular content. In addition, the majority of EU member states operate statutory licensing schemes and levy provisions, which reflect international recognition of the need for rights owners to continue to receive recognition and remuneration for their work.
18. Equity members and other rights holders are usually keen to ensure that their work is made available to as many people as possible across a range of new media. This has enabled the licensing of content with very few restrictions for users and viewers. The restrictions that do exist – such as those on adapting a literary, dramatic or musical work – are important for

the protection of the distinct identity of the author and are supported by the moral rights recognised for performers.

19. Therefore, while Equity accepts the need to support innovation and the potential for multi-party exploitation of public service content (Box 5.1), we do not see why these objectives cannot be achieved while continuing to apply internationally respected rules on copyright and related rights. This approach has been successful and adaptable, while a regime of open access for a single commissioner of content (the PSP) would distort the market and limit the ability of creators to benefit from additional uses.
20. Moreover, Ofcom's approach to the subsequent commercial exploitation of PSC content (para 5.26) fails to recognise the lack of negotiating strength of individual rights holders, such as performers. That is why copyright supported by contractual rights (such as those negotiated by Equity) remain the most efficient and equitable arrangements for the exploitation of rights. This enables clarity and flexibility for users, while providing fair rewards as well as protecting the identity and reputation of creators.

CONCLUSION

21. Equity is pleased to have the opportunity to contribute to Ofcom's discussion document and continues to support the broad concept of a PSP, which is capable of ensuring high-quality and original content in the digital age. Nevertheless, the commercial PSBs (particularly ITV and Channel Four) should continue to be required to fulfil their responsibilities, potentially through close co-operation with the new PSP.
22. Finally, we would stress that Ofcom has not provided any compelling reasons why the PSP should be granted unique rights exemption for its content. Genuinely non-commercial content can be licensed on that basis (as currently happens with educational content). However, unsubstantiated arguments that refer to "unmanageable friction" in the system, do not justify an open access approach to rights acquisitions for the PSP. This ignores the existing flexibility of rights holders and would create an unfair distortion in the market.

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