



## **RESPONSE OF CHANNEL 5 BROADCASTING LTD TO OFCOM'S CONSULTATION ON PROPOSED PROGRAMMING OBLIGATIONS FOR NEW CHANNEL 3 AND CHANNEL 5 LICENCES**

Channel 5 is proud to be a public service broadcaster and wishes to maintain this status for a further ten year licence term and beyond. We have made clear consistently our wish to continue as a public service broadcaster<sup>1</sup>.

We are pleased Ofcom has recognised that it is commercially sustainable for the Channel 5 and Channel 3 licensees to continue to provide public service benefits for the duration of new licences<sup>2</sup>; and we were heartened that, in deciding to allow the relicensing process to go ahead, the Secretary of State recognised “the vitally important ongoing role the current licence holders play in investing in UK original content and providing high quality public service programming”<sup>3</sup>.

As Ofcom has recognised, Channel 5 makes a modest but significant contribution to public service broadcasting, especially when placed in the context of a universally available, free to air PSB system that includes the BBC, the ITV licensees and Channel 4.

We made some limited suggestions as to how our public service obligations might be recalibrated in the submission we made in response to Ofcom's open letter 18 months ago. However, in light of Ofcom's s229 report and the Secretary of State's decision, we have no wish to revisit these issues and are happy to make clear that we are not seeking any changes to our PSB obligations.

We are pleased the Channel 3 licensees wish to continue making news and other programming in the nations and regions. A commitment to the nations and regions has always been part of the ITV identity and the continued presence of such programming throughout the UK can only help underpin the PSB system for the future. However, Channel 5 has no wish to comment in detail on the precise

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<sup>1</sup> See for example: Response of Channel 5 Broadcasting Ltd to Ofcom's Open Letter about its s.229 Report, November 2011; Response of Channel 5 Broadcasting Ltd (Five) to *The Digital Opportunity*, Phase One of Ofcom's Second Public Service Broadcasting Review, June 2008; Response of Channel 5 Broadcasting Ltd (Five) to *Preparing for the Digital Future*, Phase Two of Ofcom's Second Public Service Broadcasting Review, December 2008

<sup>2</sup> Ofcom, Report to Secretary of State on Licensing of Channel 3 and Channel 5, 1 May 2012

<sup>3</sup> Letter from Rt Hon Maria Miller MP to Ed Richards, 16 November 2012

obligations in the new Channel 3 licences discussed in Ofcom's document, so we will not address questions 2-11 of the consultation document but limit this response to the two consultation questions relevant to us.

*Question 1 Do you agree that the existing obligations on Channel 3 and Channel 5 licensees in respect of national and international news and current affairs, original productions, and Out of London productions should be maintained at their current levels? If not, what levels do you consider appropriate, and why?*

We believe the current obligations on Channel 5 should be sustainable for the duration of a new licence.

There are potential changes in the media landscape and in consumer behaviour which may impact on the viability of commercial public service broadcasting as a whole, and which would thus affect the viability of the Channel 5 and Channel 3 licences. There are also possible regulatory changes which could ameliorate such effects. We discussed both sets of factors in our responses to Ofcom's open letter about its s229 Report<sup>4</sup>.

We assume that Ofcom will respond intelligently to any significant changes. Ofcom itself has said that it "will assume that neither the regulator nor licensee will engage in economically irrational behaviour" and that "PSB obligations will not be maintained at a level that makes holding the licence no longer commercially viable"<sup>5</sup>.

Nonetheless, we believe we will manage to maintain each of the specific obligations over the course of the new licence period.

The 5pm edition of *5 News* has just been revamped with the help of news provider ITN and plays an important role in our schedule. So far this year it has been watched on average by 634,000 people (a 4.9% audience share). Unfortunately, the 6.30pm edition is less successful, attracting audiences less than one-third that size (an average one per cent share). But we recognise the public value in providing a news programme in peak – and of continuing to screen mid evening news updates, which have been a feature of our schedule since our launch in 1997.

Our daily current affairs programme *The Wright Stuff* is also a schedule fixture and runs at considerably greater length than required under our licence. Over the years many different current affairs shows have featured as part of the broad menu of factual programming in our evening schedule.

We accept that it is a fundamental requirement of our PSB status for at least half of our programming to be original production. In recent years, we have shifted the balance of our peak time programming from acquisitions to originations, with the result that the proportion of original programming in peak has increased in each of the last three years. While we believe we will continue to exceed comfortably our

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<sup>4</sup> Response of Channel 5 Broadcasting Ltd to Ofcom's Open Letter about its s.229 Report, November 2011, and subsequent correspondence

<sup>5</sup> Ofcom, Methodology for determining the financial terms for the Channel 3 and Channel 5 licences, 21 February 2013, Paragraph 3.52

peak time quota for many years to come, if the definition of peak time was extended by half-an-hour this would become more difficult (as so much of our programming between 10.30 and 11pm is acquired) and we would expect our peak time quota to be amended accordingly. We address this issue in more detail in our answer to question 12.

Channel 5 was launched as a publisher-broadcaster and the great majority of our programmes continue to be made by independent producers. However, the proportion of programmes made by independents is likely to go down in the years ahead, for two reasons. Firstly, the trend for independent production companies to be sold to large media companies with UK broadcasting interests means companies with which we have traditionally done business no longer qualify as independents. Secondly, we have decided to grow our own in-house production business. But the creativity of the independent sector and our long-established relationships with many companies mean we will commission far more than 25% of our programme hours from independents for many years to come.

A considerable number of Channel 5's commissions are sourced from companies based outside the M25, and as a result we have never had any difficulty complying with the out of London value quota. However, because such programmes tend to be relatively well resourced peak time series, they occupy a smaller proportion of our overall programme hours than they do of our programme spend. As result it can be more challenging to meet the second quota (for a minimum volume of hours to be sourced from outside the M25), and it is more likely our commissioning decisions will be distorted in the interests of meeting it.

There are a number of other obligations placed on Channel 5 as a result of its PSB status. These include the requirement to have an Ofcom-approved Code of Practice governing its commissioning relations with independent producers; the requirement to make payments to support the National Television Archive; and the obligation to transmit Party Political Broadcasts. We accept that these obligations form part of the PSB compact; we believe Ofcom should recognise that they represent a cost to our business.

*Question 12 What views do you have on the proposal by STV and UTV to extend peak time to 11pm, which would extend the window in which they could schedule regional content that must be shown in peak time?*

Channel 5 believes Ofcom should think long and hard before proposing a change to the definition of peak time that may appear uncontroversial on the face of it, but could risk upsetting the delicate ecology around which broadcasters plan their schedules and decide how to meet their obligations.

The schedules of each of the three commercial PSB networks are structured differently. For example, in broad terms Channel 5 schedules our more popular weekday programmes between 2000 and 2300, while ITV schedules its more popular weekday programmes between 1900 and 2200. So the impacts of any change in the definitions governing our PSB obligations are likely to affect each of us in different ways.

The suggested change to the definition of peak time could thus make it easier for some licensees (such as UTV and STV) to fulfil their obligations, but more difficult for others. Our specific concern is that such a change might make it more difficult for Channel 5 to meet its peak time origination quota in each and every year of a new licence.

At present Channel 5 comfortably exceeds our peak time quota obligation. As already stated, over the last few years we have shifted the balance of our peak time programming from acquisitions to originations, which has led to an increased performance against quota. Our current programming strategy is to develop this approach further and for an even greater proportion of peak time programmes to be originations. So a change in the definition of peak time would not lead us to fail to meet this quota or to have to amend our schedule either now or in the foreseeable future<sup>6</sup>.

However, because a greater proportion of the programming we show between 2230 and 2300 is acquired than is the case for peak time as a whole, the effect of a change in the peak time definition would be for us to exceed the quota by a lesser amount than at present. This can be demonstrated in this analysis of our performance over the last three years:

#### **Channel 5: Origination as proportion of all programming in peak hours**

	Peak Hours 1800-2230	Peak Hours 1800-2300	Variance
<b>2010</b>	43.8%	40.3%	-3.5%
<b>2011</b>	47.2%	45.4%	-1.9%
<b>2012</b>	49.8%	47.8%	-2.0%

As can be seen, in 2010 our quota would only just have been met if peak time had extended to 2300. But in 2011 and 2012 it would not have caused us problems – and on the basis of our current plans, we would be unlikely to run into difficulty in 2013 or in the next few years hereafter.

But it is not possible in 2013 to predict how our programming strategy may develop over the lifetime of a new licence that extends all the way to 2024. It is possible (although this is not our current intention) that over the term of the licence we become more dependent on acquisitions in peak (and especially in the 2230-2300 slot), in which case a revised definition of peak time could have the effect of making it more difficult for us to meet our obligation in every year.

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<sup>6</sup> Ofcom is thus wrong to state that Channel 5 “would be required to show significantly more original content each year in order to continue to meet an unchanged peak-time quota” (paragraph 5.13); instead, it should have said that Channel 5 “*could* be required to show significantly more original content each year in order to continue to meet an unchanged peak-time quota”.

A change in the definition of peak time would be an effective change in our PSB obligations, as it could prove harder to meet our peak time quota obligation than under the current definition. We do not believe this change would be defensible, as all our other obligations are expected to remain unchanged under the new licence.

We believe Ofcom should leave the definition of peak time unchanged. If Ofcom is minded to change the definition to 1800-2300, then it should reduce peak time origination quotas accordingly. In Channel 5's case, we believe a reasonable quota would be 37%, as this would keep the effective level of obligations broadly stable.

*Channel 5 Broadcasting Ltd*

*May 2013*