

**Submission to Ofcom's Second Public Service Broadcasting Review
Communication and Information Committee
United Kingdom National Commission for UNESCO
17 June 2008**

The following consultation response is presented in two sections.

The first section deals with the consultation in the context of relevant international directives, namely the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and the European Union's Audiovisual Media Services Directive. This submission highlights the extent to which the Ofcom review is in line with these directives.

The second section addresses World Summit on the Information Society (WSIS) documents to which the UK Government is committed. These documents deal with public service content across all media.

The points raised in these sections address particular questions outlined in Ofcom's Second Public Service Broadcasting Review. These questions are noted accordingly.

Executive Summary

1. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005 underpins nation states' rights to take measures aimed at enhancing the diversity of the media, including through public service broadcasting.

2. The revised EU Audiovisual Media Services (AMS) directive 89/552/EEC, adopted in December 2007, calls on Member States to ensure that all audiovisual media services (as defined in the directive) contain at least 51% of EU/national public service programming in their output. This should be applied to all relevant services licensed in the UK.

3. Where this level of broadcast is not practicable (or in certain circumstances) applicable, particularly where new on-demand services are concerned, then discussions should take place between government, Ofcom and the relevant services, including video-on-demand channels, as to the appropriate proportionate levels of investment to be made in public service programming, as defined in the directive.

4. Ofcom should commission an in-depth study, including economic modelling, as to how the AMS directive could be applied fairly and proportionately to all traditional and on-demand audiovisual media services and what outcomes in terms of investment in original public service programming would result.

5. The Ofcom consultation does not contain a sufficiently coherent vision for public service content. The concept of public service digital content needs to be extended to e-services in general, as the split between platform, content and applications converge. The models for delivery of public service content appear to be too tightly based on the broadcast and new media practices of traditional broadcasters, as opposed to widening its remit to consider all the new media providers.

6. There are also international considerations in respect of the internet and digital content, especially as they relate to cultural and linguistic diversity, learning and culture, to which the UK government is party, other than the public service broadcasting purposes, as defined in the Communications Act. Included in these are the declarations emanating from the World Summit on the Information Society.

7. Cultural, academic and scientific organisations should have an explicit role in future public service content and e-services. Learning from past public investment in these areas (including Culture Online, NOF Digitise and Curriculum Online) needs to be taken into account.

Section 1

UNESCO constitutional underpinning for Public Service Broadcasting

“The unique role of PSB is central to UNESCO’s constitutional mandate in promoting the flow of ideas and information, but the concept and idea of PSB is often not well understood and sometimes even misunderstood”.

Dr. Abdul Khan, Assistant Director-General for Communication and Information, UNESCO, 2005

UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (signed October 2005, ratified by the UK government in November 2007)

This Convention describes cultural diversity as concerning the human right to live ones’ own cultural identity as well as the human right to have access to the wealth of cultural diversity represented by others through, inter alia, the strong provision of public service broadcasting.

Furthermore, the Convention underlines that cultural diversity - flourishing within a framework of democracy, tolerance, social justice and mutual respect between peoples and cultures - is indispensable for peace and security at local, national and international levels.

Article 6 – Rights of parties at the national level

1. Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.

2. Such measures may include the following:

(h) measures aimed at enhancing diversity of the media, including through public service broadcasting.

The Convention underpins and encourages measures for the adoption of public service broadcasting; for greater PSB investment and output where it already exists; and for greater cooperation between signatory states in producing and broadcasting public service programming.

EU Amsterdam Treaty on Public Service Broadcasting (July 1997)

The EU has expressly underlined the centrality of public service broadcasting as follows:

“CONSIDERING that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism,”

2008 is the EU Year of Intercultural Dialogue, which aims to encourage increased dialogue and exchange between different cultures both within and between EU Member States and their partners. There is a clear role in this respect for public service broadcasting content to reflect different cultures and promote public service audiovisual cooperation between different countries.

Response to Executive Summary of Ofcom report

Regarding paragraph 1.5 of the Executive Summary;

This is an important statement of values and is to be welcomed. It reflects the values expressed in the UNESCO Convention cited above.

These values should be reflected in any approach to ensure the financing and broadcast of a diverse provision of audiovisual content on all TV channels.

EU Audiovisual Media Services Directive

The overarching legislative framework is the EU Audiovisual Media Services Directive which the UK Government signed in December 2007. The government is currently studying its implementation.

Its guiding principle is that these services are as much cultural services as they are economic ones and that they are increasingly important for the promotion of democracy, education and cultural diversity in maintaining and broadening diversity of opinion and media pluralism. All television channels are expected to invest in and broadcast at least 51% of British/EU drama, documentary and film. This investment in public service television creates high value indigenous audiovisual material which encourages and illuminates the diversity of our culture and that of our neighbours.

In some EU countries member governments have reached agreement with those channels that do not presently achieve this level of indigenous programme broadcast to prepare plans that will enable them reach this target over time. Prior to the establishment of Ofcom, the Independent Television Commission opened discussions with a range of non-terrestrial channels as to their increasing the number of British-made dramas, documentaries and films they transmitted. It was planned that such agreements would be monitored. Since the establishment of Ofcom no further action in this regard appears to have been undertaken.

There is a role for the Government and Ofcom to re-open this dialogue to ensure greater investment in, and broadcasting of, locally-made public service programmes across all indigenous television channels.

In response to Question 6, section (iii):

iii) In maximising reach and impact of public service content in the future, what roles can different platforms and services play?

Paragraph 1.28 of the Executive summary states:

“But investment in UK content by digital channels remains very limited compared to the public service broadcasters, and is concentrated in sport, entertainment and to a lesser extent news. Public service broadcasters still account for 90% of investment in UK content. This is unlikely to change significantly, and in particular is unlikely to fill gaps in genres that are unsustainable on commercially funded public service channels.”

The above assertion - “This is unlikely to change significantly” – is not a statement that should go unchallenged. It is the role of government and regulators to seek to comply with relevant EU legislation – in this case the EU Audiovisual Media Services Directive.

In a digital age all channels should be obliged to contribute proportionately to public service broadcasting, which entails investing appropriately in UK cultural diversity in compliance with the EU Audiovisual Media Services directive. Other OECD countries like Canada and France make provision for similar such investment.

In seeking to maintain current levels of investment in public service broadcasting the Ofcom consultation suggests, as one alternative, ‘top-slicing’ the BBC licence fee. This is not a course of action favoured by the UK National Commission for UNESCO. Instead we would propose working towards securing a full implementation, by all television channels, of the relevant EU audiovisual legislation adopted by the UK (as outlined above) which seek to enhance the UK production sector and enhance media plurality and cultural diversity.

In response to Question 7, section (i):

i) What are your views of the high-level options for funding public service broadcasting in future?

Paragraph 1.32, section (iii) of the Executive Summary states:

Regulatory assets: *these could include access to spectrum at below-market prices, revised advertising minutage rules, or public service broadcaster status for additional channels;*

As outlined, Ofcom should propose a progressive and proportional system for implementing the EU Audiovisual Media Services Directive target of 51% of indigenous UK/EU programming, in addition to the provision of news, current affairs and sport with a focus on investment in drama, including comedy, film, documentary, children’s and education programmes. Regional programming

should be considered as part of the 51% of indigenous programming as defined by the directive.

Paragraph 1.32, section (iv) states:

***Industry funding:** a wide range of industry levies could be considered, similar to the proposals currently under consideration in France.*

If attaining the 51% of indigenous programming is not always practicable, then in the interests of cultural diversity and fair competition all presently non-designated PSB channels, and in particular, video-on-demand channels, should be asked to make an appropriate investment in UK/EU public service programming as defined above. This investment should be based on turnover or advertising revenue and implemented by Ofcom, or through an independent national production fund, as is practised in Canada and as is being proposed in France. This is a fair and pragmatic option.

It should be noted that France Telecom already commits 10% of its video-on-demand turnover to investment in French/European film thereby contributing to the cultural and linguistic diversity aims of EU audiovisual policy.

Commercial advantages for new audiovisual organisations

If new audiovisual players, as well as existing ones, choose to invest more in original production, (as previously defined in this paper), then their commercial interest will be well-served by their obtaining an important catalogue of exploitable rights. In this respect, it is useful to study the example of Canal Plus in France, where, subject to legislative obligation, the Channel invests over 20% of its turnover in French/EU film production and, as a result, has amassed the most valuable European owned film and drama catalogue of rights within the EU.

Conclusion

Before developing further proposals for achieving greater expenditure and broadcast of public service programming, Ofcom should commission an in-depth study as to how the AMS Directive, through broadcast or investment, could be applied fairly and proportionately to all traditional audiovisual media services and on-demand, audiovisual media, including what outcomes, in terms of investment in original public service programming, would result.

Section 2

In response to Section 4, Question (i):

Do you agree with Ofcom's conclusions about the way that other digital channels and interactive media contribute towards the public purposes?

World Summit on the Information Society (WSIS)

Ofcom rightly has reframed the debate around public goods being delivered via a range of media including traditional broadcast models, new digital 'television'- and 'radio'-style channels and a plethora of other emerging digital content forms and delivery mechanisms such as podcasts and enriched mobile media.

Hence, we need to consider public service content and e-services in their entirety, reflecting the media usage and information needs not only of young people but of all ages and sections of society.

The UK has been an active participant in the WSIS process during which various principles and plans of action have been agreed by participants, including the UK Government. The most relevant of these to public service content follow below.

The WSIS principles provide an international context and wider set of public purposes to which the UK government is committed, beyond the PSB definition in the Communications Act. We would ask that Ofcom consider to what extent the public purposes need to be challenged in the light of increased globalisation (especially of digital media) and the following set of WISI-originated international obligations:

Geneva Declaration of Principles:

52. ...The Information Society should be founded on and stimulate respect for cultural identity, cultural and linguistic diversity, traditions and religions, and foster dialogue among cultures and civilizations...

53 ... The creation, dissemination and preservation of content in diverse languages and formats must be accorded high priority in building an inclusive Information Society, paying particular attention to the diversity of supply of creative work and due recognition of the rights of authors and artists. It is essential to promote the production of and accessibility to all content—educational, scientific, cultural or recreational—in diverse languages and formats...

Geneva Plan of Action:

23 a) Create policies that support the respect, preservation, promotion and enhancement of cultural and linguistic diversity and cultural heritage within the Information Society... This includes encouraging governments to design cultural policies to promote the production of cultural, educational and scientific content and the development of local cultural industries suited to the linguistic and cultural context of the users.

- e) Support local content development, translation and adaptation, digital archives, and diverse forms of digital and traditional media by local authorities.
- f) Provide content that is relevant to the cultures and languages of individuals in the Information Society, through access to traditional and digital media services.
- g) Through public/private partnerships, foster the creation of varied local and national content, including that available in the language of users, and give recognition and support to ICT-based work in all artistic fields.

Tunis Agenda:

90. k) ...supporting educational, scientific, and cultural institutions, including libraries, archives and museums, in their role of developing, providing equitable, open and affordable access to, and preserving diverse and varied content, including in digital form, to support informal and formal education, research and innovation...

Digital and interactive public service content

In response to Section 6, Question (i):

Do you agree with Ofcom's vision for public service content?

The consultation document does not articulate a sufficiently robust vision for public service content. Further thought needs to be given as to how digital and interactive technologies can address public goods in 21st century UK. Public service content as a category encourages people to consider too narrow-a-question. Instead we need to be considering public service in terms of e-services of which content is a part.

We need to have intermediate goals and objectives for public service content (and e-services) which specifically articulate where such services and content may be able to deliver on aspects of the PSB principles to specific segments of the population in focused content areas.

These goals should also set out how digital media and traditional broadcast models (even if delivered digitally) complement each other and together form a newly configured mosaic of provision.

Without this thinking in place, government will have no criteria by which to judge:

- the relative merits of different media platforms (c.f. 1.21 bullet 5);
- how their funding and other support is to be prioritised;
- how traditional broadcast providers use digital media in ways that create diversity of provision rather than creating dominant market positions through the lack of regulation of their digital offerings (c.f. 1.21 bullet 4)

The WSIS principles and plan of action set out above form a good starting point for development of this strategy.

Section 6, Question (iii)

In maximising reach and impact of public service content in the future, what roles can different platforms and services play?

The role of educational, scientific and cultural institutions needs to be made more specific in future PSB visions for the UK.

In a digital world, we no longer need 'channel'-style intermediaries between these content creators and users/audiences. Specifically these intermediaries do not need to commission content in the broadcast channel model.

New models of public service publishers should provide those functions which it is difficult for small and innovative content and e-service providers to economically and sustainably offer. Candidate functions include advertising sales, securing sponsorship, media hosting, aggregation, brand, search engine optimisation and syndication.

Section 6, Question (iv)

Do you agree that the existing model for delivering public service broadcasting will not be sufficient to meet changing needs in the future?

Yes.

Ofcom risks assuming that the new commissioning, production, delivery, enjoyment value chain will have the same structure and market dynamics as broadcast models. The language and concepts of the consultation document are rooted in broadcast models.

The digital media and in particular social media revolution, permits a more level playing field between media 'experts' and non-expert users. Models from other cultural, creative and entertainment industries need to be examined as potential templates for UK PSB futures, not just other PSB broadcast models from around the world.