

Channel 4 response to Ofcom's Third PSB Review

Channel 4 welcomes the opportunity to respond to Ofcom's consultation as part of the third PSB Review. We believe it is an important time to be conducting such a review. Ofcom's consultation document paints a picture of a strong and vibrant television sector, and high audience satisfaction levels with the output of the public service broadcasters who lie at the heart of the sector. But it also points to the massive technological and market changes that are having a profound impact on audience behaviour, and emphasises that the impact of these changes is highly uncertain. Moreover, we believe the downside risks to the PSB system are substantially greater than the upside opportunities that these developments present (as we argue in our response to Q9). As such, there is a lot at stake.

Before responding to the individual consultation questions below, we would like to make three overarching points that inform our detailed responses.

First, it is important to not just maintain but also strengthen the PSB system.

TV remains vitally important, even in a connected world of digital and social media, and the near-ubiquity of smartphones and other mobile devices. People are still watching around four hours of TV a day, not counting all the programmes they watch on-demand away from their TV sets. Now, viewers have more choice and flexibility than ever before in how they consume TV programmes. Some commentators argue that we have entered a "golden age" of television, in which the best TV dramas, for example, are eclipsing films in terms of their creative scope and ambition. TV has also become a key driver of engagement and public discourse on Twitter and other social media platforms, while new modes of viewing have emerged, such as "box-set binging".

The UK benefits from one of the strongest and most vibrant TV sectors in the world, in both cultural and economic terms. Programmes made by British broadcasters for British audiences are admired and loved across the country, and account for the majority of primetime TV viewing in a multichannel environment in which hundreds of alternative options are available. The appeal of British TV programmes extends far beyond our shores. UK TV programmes and formats are sold globally to hundreds of territories – at a scale exceeded only by the US – while UK talent is garlanded with international awards. In economic terms, too, the TV sector plays a vital role. At a time when politicians are looking to boost growth in the UK, the most recent Government statistics show that the creative industries – of which television is one of the largest parts – punch well above their weight as drivers of economic growth, employment and exports.

The UK's TV sector has always been underpinned by a strong PSB core. The UK's first broadcaster, the BBC, ensured that a public-spirited ethos was embedded into the broadcasting system right from the start. The creation of Channel 4 in 1982 was also a significant moment. The new channel was charged with taking an alternative approach to everything it did. On-screen, it boosted innovation and increased the plurality of voices and views on British TV. Off-screen, its unique publisher-broadcaster model, whereby all of its programmes were sourced from external companies, served to kick-start the independent production sector. For more than 30 years now, Channel 4 has played a vital role as part of the PSB system, with an empowering public remit underpinned by enduring values around risk-taking and diversity (see below).

Of course, the environment in which public service broadcasters operate has changed radically in the decades since Channel 4 was established. We have moved from a world of four analogue channels to hundreds of digital channels and the availability of vast amounts of content online. New forms of digital content and services from a variety of sources enrich audiences' lives in many ways, and they undeniably contribute to the delivery of the PSB purposes. And yet the PSBs still occupy a central and unique place in a crowded media landscape, and continue to play a pivotal role in the delivery of Ofcom's PSB purposes:

- As audiences fragment ever more across digital services, no other platform or form of media comes close to matching the main PSB channels for their ability to reach mass audiences – millions of viewers in peak-time – every single day. As a result, the PSBs still play a unique role in portraying and reflecting UK cultural identity and bringing people together. It has been argued that society is atomising into smaller inward-looking groups; that key social spaces that traditionally brought people together, from the high street to the pub, are in decline; and that this puts pressure on the social bonds that unite citizens of the UK. In this context, the role for mass-audience television to provide a space for shared experiences (the third of Ofcom’s PSB purposes) is more important than ever.
- New services can help inform people’s understanding of the world, and stimulate knowledge and learning (Ofcom’s first and second PSB purposes). In particular, the internet has clearly made a significant contribution to the diversity of views that are available (the fourth PSB purpose). But there is a growing body of evidence that suggests that digital media can, perversely, lead to people being exposed to a narrower range of information and perspectives than before (the “filter bubble”). People tend to look online for things that reflect their own outlook on the world. Smart technologies make this ever easier to do: thus Google’s search algorithms actively aim to give people more of what they want based on previous searches. Meanwhile, people tend to link to others with similar views to themselves in social networks, so the recommendations they see from their friends and contacts will likewise reflect the views of people with similar outlooks on life. Most people are unaware that these biases exist. The PSBs, therefore, play a more important role than ever in exposing people to alternative views that differ from their own and those in their social networks. As they have always done, public service broadcasters enrich people’s lives through serendipity: letting people discover things that they might not have even known they were interested in, or presenting viewpoints that they would not actively choose to seek themselves.

For these reasons, the PSB system – comprising institutions charged with ensuring the universal delivery of high-quality PSB content to every household in the UK – not only remains relevant in a connected world, but is at least as important as it has been in the past. And, as we discuss below, Channel 4’s distinctive place within the PSB system is also as important as ever, given both its remit-driven approach to bring challenging ideas to mainstream audiences and its strong connection with young audiences, who are generally the hardest to reach with PSB content and, perhaps, the most susceptible to the “filter bubble” due to their avid use of digital and social media.

In conclusion, Channel 4 believes that through the PSB Review, it is imperative that Ofcom fulfils its duty to maintain and strengthen the PSB system. We believe that Ofcom must strengthen the PSB regulatory framework in order to at least maintain PSB delivery and outcomes at current levels. We have outlined the ways in which we think the system should be strengthened in our response below.

Second, the main PSB institutions have adapted to respond to the significant market and technological changes in the sector, and the PSB system remains remarkably resilient. But the regulatory framework has not kept up with changes in distribution and consumption patterns, and needs to be brought up to date.

The PSB system has evolved constantly in response to changing market conditions and technological developments. Over the last 10-20 years, the PSBs have expanded their output mix from just 1-2 analogue TV channels to each offering a suite of digital channels, including “+1” and other variants that give audiences further opportunities to view their programming. They have supported new TV platforms, such as Freeview and YouView, which offer more flexible ways of viewing their channels and provide healthy competition with the main pay-TV platforms. And beyond the linear space, they have developed catch-up on-demand services that are available on a wide range of devices and platforms, and which are the most-used TV VOD services available.

The commercial PSBs have also evolved their operational strategies, developing new revenue streams and more sophisticated approaches to maximise the effectiveness of their core advertising income. Channel 4 has been particularly innovative in this respect. Through its pioneering data strategy, it has built closer direct relationships with its members than it ever had before. This provides benefits to viewers, who can be offered recommendations, offers and other attractive features built around the shows that they like, as well as shows they may be surprised by; and to advertisers, who can create more efficient and targeted campaigns. Channel 4 now has well over 11 million registered viewers – far more than any of the other PSBs – including more than 50% of all 16-34 year olds. Channel 4's relationship with young audiences is more important and valuable than ever, particularly given that other PSBs tend not to focus on this age group. But the challenges of engaging with this audience group – who tend to be early adopters of new services and technologies – are ever growing, and Channel 4 needs to be able to respond nimbly to changes in their behaviour and consumption patterns.

However, as Channel 4 and the other PSBs seek to respond imaginatively to market conditions and viewer expectations, they are increasingly hampered by a PSB framework that has not kept up to date with the different ways in which PSB content is being delivered, and the ways in which audiences are consuming content more generally.

Ofcom highlights most of the key areas that need addressing in its consultation document. The rules around PSB universality and discoverability of content need updating to reflect the range of platforms and services on which the PSBs are increasingly providing PSB content (Q12). The relationship between broadcasters and the production sector needs to be reviewed to reflect the emergence of new forms of distribution, which impact on both primary and secondary rights exploitation (Q14). The overall framework between platforms and PSBs should also be reviewed, to ensure PSBs can seek fair value for their content services (Q15). Ofcom should also consider harmonising the rules on ad minutage, which impact the commercial PSBs' ability to generate the revenues they need to invest in programming, and updating the rules on cross promotions, which do not take into account the full range of ways in which the PSBs make and distribute their content, including feature films, which are of particular importance to Channel 4. We believe Ofcom should also amend its strategy on spectrum pricing, the introduction of which would reduce investment in content (Q15).

This is a broad range of rules for PSBs that need to be looked at. Some of the issues are subtle in nature, but their impact collectively is significant. Both individually and taken together, the risk is that they will increasingly inhibit, rather than incentivise, investment in PSB content. The regulatory framework therefore needs to be brought up to date to address these issues. The framework also needs to respond to the fact that the nature of the PSB compact – whereby the PSBs are provided a range of benefits in return for delivering public service obligations – is also changing. As the value of DTT spectrum declines, EPG prominence remains the main benefit and incentive for PSBs, against which are set a host of programming quotas and other regulations. It is important to ensure that the components of the PSB compact remain balanced overall, so that the PSBs have the right incentives to invest in content.

Finally, Channel 4 particularly welcomes the debate Ofcom has begun on giving greater flexibility to PSB institutions in how they deliver public service content (Q13). We are increasingly delivering our remit across the full extent of our digital TV channel portfolio and online services, in a natural extension of Channel 4's cross-funding model. It is therefore anomalous that the organisation does not get formal recognition for its PSB delivery beyond the main channel. It is likewise anomalous that while audience consumption of Channel 4's content is spreading across the portfolio, PSB licence obligations remain focused on the main channel, meaning that Channel 4 cannot distribute its content across its linear and online services in the most effective way.

In summary, Channel 4 believes that action is needed across all of these areas in order to bring the regulatory framework up to date, to ensure that the PSB compact remains balanced, and to provide the optimal incentives to stimulate investment in public service content.

Third, Channel 4 will become an even more important part of the PSB system in the future, alongside the BBC. Its social enterprise model remains fit-for-purpose, but some updating is needed.

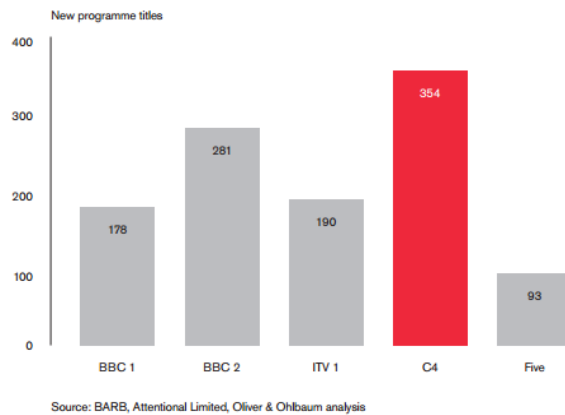
Channel 4 is an entirely unique organisation. It is a publicly-owned public service broadcaster (like the BBC), but is commercially self-reliant and funded entirely in the marketplace (like other private broadcasters). This social enterprise model means that its primary purpose is to deliver its public remit, but also that as a not-for-profit organisation all of its surpluses are reinvested in content. It was set up as, and remains, a publisher-broadcaster, which means that all the UK programmes that it commissions are sourced externally from production companies across the UK, including many SMEs.

Channel 4's role has of course evolved over time, to ensure it remains distinctive in a world of ever greater competition. It acts now as an "Alternative Mainstream" channel, bringing impactful and ambitious programming to large audiences. Its output is more diverse and challenging than that of the other mainstream broadcasters, while its scale and reach ensures it can still connect with large mainstream audiences in ways that digital or online services cannot. Channel 4's distinctiveness, compared to other broadcasters, can be grouped into three overarching areas:

1. **Broadcasting's creative greenhouse.** Through the range and depth of its relationships with independent production companies, Channel 4 acts as a seedbed and accelerator for new ideas in TV and digital content. It supports more than 350 production companies each year across TV, digital and film. The main channel works with substantially more independent TV production companies than any other UK channel. More than 50% of hours of commissioned programmes for the main channel come from outside London, and its spend in the UK Nations continues to rise. Channel 4's new £20 million Growth Fund invests in small and medium-sized independents across the UK, to help develop the next generations of talent. Our formats are sold globally, providing opportunities for indies to exploit international rights. In 2013 alone Channel 4 commissioned over a quarter of the British programme formats in the Top 100 in Europe and these formats grossed over \$0.5 billion dollars in estimated European broadcasting revenue.
2. **PSB challenger brand.** Channel 4 is at the forefront of innovation and risk-taking, trying more new things than any other broadcaster. Analysis undertaken by Oliver & Ohlbaum¹ shows that over the last five years, Channel 4 has commissioned, on average, 354 new programme titles each year, far more than any of the other main PSB channels as provided in the chart below. The channel reputation surveys looking at the main PSB channels that Channel 4 conducts every quarter show that viewers consistently associate Channel 4, far more than any of the other PSB channels, with taking risks with programmes that other channels wouldn't, taking different approach to subjects compared with other channels, and being experimental. Channel 4's innovation also extends to what it does off screen: 4oD was the first long-form TV catch-up service in the world, for example, and Channel 4 has a more advanced online viewer registration scheme than any of its competitor set.

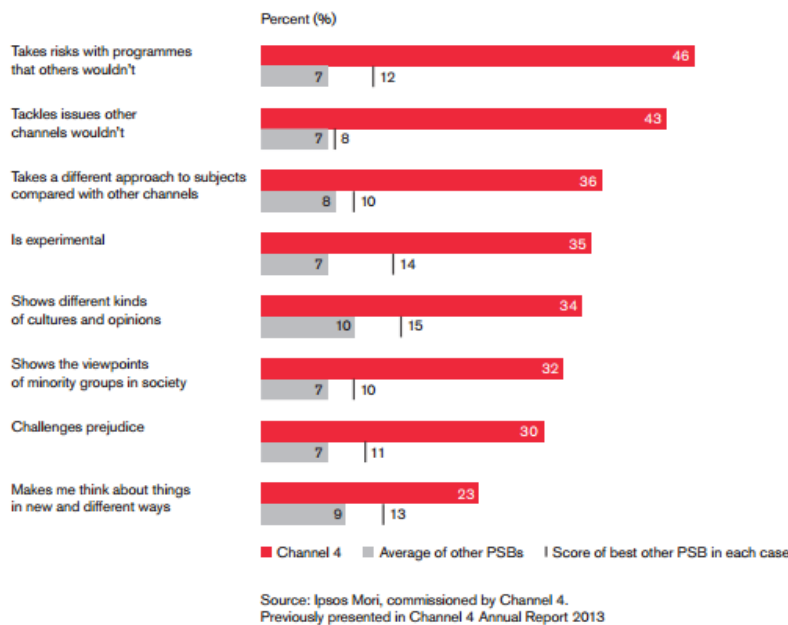
¹ Taking Risks, Challenging the Mainstream, Oliver and Ohlbaum and Channel 4, 2014

Fig 9: New programme titles commissioned per year by broadcaster (average 2008–2013)



3. **A catalyst for social change.** Channel 4 offers a greater range and diversity of perspectives in everything that it does. This means working harder than any other broadcaster to portray the full diversity of modern Britain across its entire output. And it means confronting viewers with perspectives that they might not normally come across. In the channel reputation surveys (as shown in the chart below) Channel 4 has strong leads over other channels for tackling issues that other channels wouldn't, showing different kinds of cultures and opinions, challenging prejudice, and making people think about things in new and different ways.

Fig 7: Audience opinions about Channel 4



Channel 4's ability to inspire change is especially valuable given its strong connection with hard-to-reach audiences, in particular young people and those from diverse backgrounds or minority groups. A significantly higher proportion of Channel 4's audience, across its TV portfolio, is aged 16-34 than that of any of the other public service broadcasters. A survey commissioned by Channel 4 in 2014 showed that E4 is the favourite channel of 17% of all 16-34s, a higher proportion than any other channel.

Aggregating the channels to broadcaster level, Channel 4's channels were selected by 29% of all 16-34s, more than the channels of any other broadcaster. Channel 4 has a unique ability to engage with this audience – being the only PSB between 2008 and 2014 to actually grow its share of 16-34s, despite significant competition for their attention. This indicates that young people will engage with high-quality PSB content when it is relevant and compelling to them – and Channel 4 believes its distinctive role with this age group will only become more important as consumption habits evolve and other PSB providers focus less on younger viewers.

Channel 4 also has a particularly strong connection with black and minority ethnic (BAME) audiences, LGBT groups and people with disabilities. Amongst all audiences, the channel reputation surveys show that Channel 4 is, by some distance, the best PSB channel for showing the viewpoints of each of these groups, and its reputation amongst people from the minority groups themselves is stronger still. *Channel 4 News'* audience has a higher proportion of 16-34s and a higher proportion of BAME viewers than the news programmes on the other main PSB channels. Channel 4's efforts to bring disability sports into the mainstream – including its multi-award-winning coverage of the London 2012 Paralympics Games – are seen as world-leading.

In these ways, Channel 4 remains an important and distinctive force in British broadcasting. This is underlined by the historic number of creative and business awards achieved over the last 12 months, including Channel of the Year, 3 Oscars, 8 TV Baftas and TV and Digital Sales Team of the Year. Moreover, it is likely that its relative contribution to the overall PSB system will grow in the future. In its consultation document, Ofcom discusses the different incentives faced by the PSBs and how they can be expected to respond to likely market developments (see Q10). The privately-owned public service broadcasters, ITV and Channel 5, do not have public service remits that cover their entire output, as Channel 4 and the BBC do. As a result, increased competitive pressures may lead to them to narrow their PSB contributions, reducing them to the minimum required in their licences, to enable them to maximise value for their shareholders. This is an entirely legitimate and rational strategy for commercially-driven organisations.

As the PSB contributions from ITV and Channel 5 decline, the BBC and Channel 4 will play more important roles at the heart of the PSB system. This means that it will be more important than ever for Ofcom to safeguard a plurality of voices outside the BBC. And it means that Channel 4's distinctive contribution to PSB provision will become even more valuable – both in and of itself and through its role in providing a competitive balance with the BBC.

In conclusion, we have discussed in this section how Channel 4's delivery of its remit and its operational strategy have evolved over time, ensuring that its model remains fit-for-purpose overall. However, some important changes are needed now to ensure that Channel 4 can maximise its delivery of public value in the future:

- First, the changes to Channel 4's remit in the 2010 Digital Economy Act represented an important first step in recognising Channel 4's role as a PSB institution rather than just a single PSB channel. But we need to go further now, and we look forward to working with Ofcom to take forward the debate on giving greater flexibility to PSB institutions in how they deliver public service content. The issues raised are, arguably, more relevant to Channel 4 than to any other broadcaster.
- Second, given the extent of the commercial risks outlined by Ofcom in its consultation, it is clear that we are not operating in a world of plenty and – like all organisations – Channel 4 needs to deploy its resources efficiently. We believe that the organisation should be focusing its activities in those areas where it delivers the most distinctive public value, in particular building on its connection with hard-to-reach audiences. It may be appropriate for Ofcom to review elements of Channel 4's remit in the round to enable this to happen.

- And third, it is important for Channel 4 itself to continuously look at how it can optimise its public service delivery. Over the last few years, we have been through a period of investment and creative renewal, as a result of which Channel 4 has achieved a solid and stable business footing under its commercially self-sustaining model. As part of this, our data strategy and other forms of technological innovation are putting us on the best possible footing to compete in a digital world. From this strong vantage point, we are now actively looking at how we can deliver the greatest impact in the future through a clear articulation of the organisation's creative vision as a PSB institution along with further innovations in our commercial model.

Q1: Do you agree with our assessment of the context in which the PSB system operates, and how the trends identified might affect the PSB system? In particular do you agree with our analysis of the independent sector?

Channel 4 welcomes Ofcom's recognition of the plurality of institutions that deliver public service broadcasting and the significant cultural, economic and social value this system delivers. The UK is well-served by its mixture of PSB models – comprising of a publicly funded and publicly owned BBC, a publicly owned and commercially funded Channel 4, and commercially funded, commercially owned PSB-licensed ITV and Channel 5. Each broadcaster has a particular set of PSB obligations, a specific business model and a distinct relationship with the UK audience, which we believe ensures that viewers have access to a diverse and compelling range of high-quality public service content, free of charge. The competition provided by the mixed PSB ecology has also encouraged increased investment by other commercial broadcasters, for whom UK originated television is now seen as an important selling point.

As Ofcom recognises, PSBs invest around £2.5bn a year in UK first-run originated content, sustaining the hugely successful British production sector (comprised of both in-house and independent production), nurturing creative talent and directly supporting thousands of high-quality jobs in the creative economy. Public service broadcasting is also a vital cultural resource – whether through provision of impartial news, access to high quality drama, comedy or documentaries. In their previous PSB Reviews Ofcom rightly identified the PSB purposes as “informing our understanding the world, stimulating knowledge and learning, reflecting UK cultural identity, and representing diversity and alternative viewpoints”. The audience research contained in the Third PSB Review, as well as the fact that PSBs continue to account for over half of all UK television viewing, demonstrates continued support for these purposes.

We also support Ofcom's analysis that the PSBs play a wider cultural role - through for example the development of talent from other creative disciplines, bringing audiences to artistic and cultural subjects and partnering with cultural institutions. We welcome Ofcom's recognition that public service broadcasting is not just an economic intervention, but an essential part of the fabric of the UK's cultural life.

Within this system, Channel 4 has a clear point of difference to all of the other PSBs. It is the creative greenhouse of UK television; able through its not-for-profit model to take creative risks that enable the entire sector to grow. Our unique remit ensures that audiences are provided with distinctive, innovative content that challenges established views and promotes new perspectives. As noted, audience research regularly shows that viewers perceive Channel 4 as being the best PSB for providing a home for alternative voices, for taking a different approach to subjects and for tackling issues and taking risks that others wouldn't. This research demonstrates not just Channel 4's continued success in delivering its remit, but also the importance of distinctive voices within the PSB system.

In addition to Ofcom's analysis of the continued importance and relevance of the PSB system, Channel 4 broadly agrees with the structural changes outlined in Ofcom's document. We provide a more detailed analysis of these changes, and their impact on PSBs, in our response to Questions 9 and 10 – but in particular, we welcome evidence showing the continued resilience of the PSBs despite significant technological and market change - for

example, the assessment that patterns of TV consumption have changed more slowly than many had anticipated. However, Channel 4 believes that at times Ofcom have downplayed future risks in the public service broadcasting sector relative to the opportunities. We believe that the market will continue to put additional pressures on the PSB system, and it is therefore vital to consider how the current regulatory framework can be adapted to help maintain and strengthen PSB over the next 5-10 years.

It is also important to highlight that Ofcom's aggregation of data by all PSBs tends to hide the specific trends of each PSB. For example, while the overall level of investment by PSBs has been declining, Channel 4 has actually increased its spend on the main channel since 2010. While Ofcom's analysis indicates that young audiences are watching increasingly less television than older people, and it is clear that this demographic are more likely to be early adopters of new technologies, the C4 portfolio in 2014 actually recorded its best ever year for 16-34s, and in general Channel 4 has been able to retain its young audiences better than other PSBs over the review period. Channel 4 is the only public service broadcaster in the world that attracts a larger share of viewing among hard-to-reach 16-34s than the general population.

In relation to the independent sector, we believe Ofcom's analysis is broadly accurate, although we note that the impact of consolidation on small companies may have been masked by deliberate strategic initiatives such as Channel 4's increased investment in SME companies over the review period². Similarly, in contrast to evidence about producer's deficit financing and the BBC's position on this, Channel 4 almost always fully funds commissions (in 2014 C4 fully funded 267 out of 299 programmes commissioned). In addition, we do not agree with the implication from Ofcom that no changes are needed to the definition of independent producers as "*the only remaining super indies whose new commissions will qualify as independent producers under the legislation are Tinopolis, Zodiak, Fremantle and IMG Sports Media*". As we outline later in this response, Channel 4 believes that this is a case of the regulation working by accident rather than design, and therefore should not be taken as proof that the framework is already set up to support SMEs effectively. Channel 4 has provided a more detailed response on this issue, and a wider analysis of the independent sector as part of its response to Question 14.

Q2: Have we identified the key differences in Northern Ireland, Scotland and Wales?

Channel 4 continues to play a significant and specific role within the UK's public service broadcasting ecology – to reflect the rich diversity of the UK to audiences across all parts of the UK. This is clearly distinct from the role played by both the BBC and ITV, both of whom have opt-out services and operate content specifically for viewers in Scotland, Wales and Northern Ireland. Within the devolved nations, there also exists a number of broadcasters and channels providing content specifically for viewers within each nation – most notably S4C in Wales.

This multi-layered approach – with Channel 4 and Channel 5 operating at a UK-wide level, the BBC and ITV offering additional nation-specific programming and other services providing bespoke content – remains an important and effective way of the public service broadcasters fulfilling the competing priorities of different viewer demographics. Ofcom's own research highlights a difference in opinion between younger and older viewers in the devolved nations, with the former placing greater value on ensuring programmes reflect their local and national identities and the latter regarding representation of diversity across the UK as more important.

Audiences continue to be well served from this plurality of public service broadcasting at both a UK-wide and regional level. Channel 4's own figures show that perceptions of its own role in this ecology are consistent across all regions of the UK, with viewers in every region rating Channel 4 as the strongest PSB for statements relating to 'taking risks other channels wouldn't', 'being experimental', and 'showing different kinds of cultures and opinions within the UK', among others.

² Companies with a turnover of £25m or less made up 28% of C4's proportion of spend in 2013, compared with 8% in 2011.

Within this context, however, the unique circumstances of Channel 4's service provision in Wales – where Channel 4 is not provided with the same level of EPG prominence as in other parts of the UK – continues to impact on Channel 4's performance in this area. Channel 4 currently operates the eighth slot on the EPG in Wales on Freeview, behind S4C on four, and the position is even less favourable on Sky – where we are on slot 117 in Wales. We note that this has had a material detrimental impact on both our share of viewing from Welsh audiences and our advertising revenue, as compared with other regions.

Q3: Do you agree with our assessment that the PSB system remains strong overall?

Channel 4 agrees with Ofcom's analysis that the overall PSB system has proved robust despite significant market and technological change. In particular, we welcome Ofcom's recognition that:

- PSB channels continue to account for over half of all UK television viewing
- PSB channels account for around 85% of the value of all UK non-sport first-run UK original programmes
- Overall audience satisfaction with the PSB system remains high

Ofcom is right to note that despite the structural changes affecting PSBs, viewing patterns have not changed as significantly as predicted. Indeed, we welcome Ofcom's recognition that PSBs have themselves played an important role in developing new content services, ensuring that viewers have more opportunities to view content than ever before. Channel 4 has launched a family of portfolio channels which has ensured that its overall audience share has been maintained at c.11% throughout Ofcom's review period (2008-2013) – and indeed prior to this period. As noted elsewhere in this document, 4oD was the first video on demand service to launch in the UK and since then Channel 4 has pioneered a range of 'digital firsts', culminating in the evolution of our digital service into All4, a new online destination encompassing on-demand, simulcast and short-form content launching in 2015. These efforts have ensured that Channel 4 has remained a competitive and relevant force even in the face of significant market disruption.

Despite this overall picture, however, neither the broadcasters nor Ofcom can afford to be complacent. It is clear that the PSB sector is facing significant and increased market challenges, and Channel 4 believes that the risks to the PSB system posed by these are likely to outweigh the upsides. As noted above, the regulatory and legislative framework underpinning the PSB system has also failed to keep up with the rapid rate of change experienced by the broadcasting sector. Despite the efforts of particular broadcasters such as Channel 4 to increase its investment, as well as an overall focus on peak-time investment to ensure that original public service content can have as much reach and impact as possible, these pressures have meant an overall decline in investment by the PSBs over the last 5 years. Channel 4 therefore strongly believes that Ofcom should use the PSB Review as an opportunity to identify ways to strengthen the system to ensure it can continue to remain robust in the years ahead.

We provide a more detailed analysis of the potential impact of market changes on the PSBs and their future investment in our response to questions 9 and 10.

Q4: Given the resources available, to what extent is the system meeting the needs of as wide a range of audiences as practicable?

Channel 4 notes the importance of ensuring that the public service broadcasting system is meeting the needs of as wide a range of audiences as practicable. We believe that the plurality of PSB providers outlined above, each with their own distinct remit and particular strengths in reaching specific demographics means that the PSB system is effectively reaching a wide range of audiences.

This objective is of particular importance to Channel 4, which – as Ofcom outlines – has a statutory remit to “appeal to the tastes and interests of a culturally diverse society”. Channel 4 continues to perform strongly in this area, with audiences regarding it as the best public service broadcaster for “showing different kinds of cultures and opinions” (24 point lead over the average for other PSBs), “showing the viewpoints of minority groups in society” (25 point lead), and being a “home for alternative voices” (28 point lead). In line with our remit, Channel 4 also enjoys significant leads over other PSBs for showing the viewpoints of a number of minority groups, including BAME, LGBT and people with disabilities – with individuals within each group similarly recognising our strengths in these areas. It remains important that this positive, and distinctive, contribution to plurality in the UK and to the wider public service broadcasting ecology is recognised by policy-makers.

Channel 4 aims to build on this success through the delivery of its recently published 360° Diversity Charter, aimed at increasing diversity across its full range of activities through a number of new initiatives. This includes the introduction of Commissioning Diversity Guidelines, which will help to ensure that all new Channel 4 commissions include elements of diversity – both on and off screen – across the genres. Ensuring greater diversity within all of our work will help us to further strengthen our delivery of our remit to appeal to the interests of a culturally diverse society.

Channel 4 also continues to connect strongly with 16-34 year olds, with a significantly higher proportion of its audience from this demographic compared to any other PSB channel in the world. While Ofcom’s figures highlight a downward trend in viewing amongst 16-34s, viewing to Channel 4 amongst this age group remains strong. Indeed, Channel 4 was the only PSB between 2008 and 2014 to actually grow its portfolio share of 16-34s, with 2014 as our best year ever for portfolio share of this age group. Channel 4 is committed to superserving this demographic and demonstrating that young people will continue to consume PSB services if there is compelling enough content available.

In addition, Channel 4 also disproportionately attracts ‘light viewers’, enabling it to deliver greater reach faster and, in turn, enhance the overall reach of public service broadcasting.

Channel 4 believes that Ofcom is right to frame this question in terms of resources available, and we welcome the acknowledgement of the reality that trade-offs have to be made in order to cater to a range of audiences. Channel 4 has the broadest remit of the commercial PSBs by some stretch, requiring us in many cases to cross-fund loss-making high public service genres, such as News and Current Affairs, with revenues from commercially ‘rich’ programming in genres such as factual entertainment. However, it should be recognised that even within this stretching model, no broadcaster can be “all things to all people”, and that rather than depending on each PSB to serve all audiences equally, provision should be viewed in the round. For example, the BBC excels at things like mainstream news provision and original children’s programming in ways that other broadcasters with fewer resources cannot, while there are other elements (such as reaching 16-34 year olds or representation of diverse groups) where Channel 4 has particular expertise. We therefore believe audiences are best served by a strong PSB sector made up of complementary parts, each delivering to its own strengths.

Q5: Given the resources available, does the PSB system deliver the right balance of spend and output on programming specifically for audiences in Wales, Scotland and Northern Ireland and programmes reflecting those nations to a UK wide audience?

Given Channel 4’s position as a UK-wide public service broadcaster, with no specific nations programming, Channel 4 does not feel that it is appropriate to comment on the broader focus of Ofcom’s question, and will limit its response largely to its own specific contribution in this area.

We do note, however, that Ofcom’s research shows spend across the PSBs outside of London and outside of England rising over the review period, as well as a marked increase in audience satisfaction regarding portrayal

of the nations and regions. This evidence suggests that the PSBs overall are getting the balance of spend and output broadly right.

As discussed in our response to question 2, Channel 4 has a specific role within the UK's public service broadcasting ecology to reflect the rich diversity of the UK to audiences across all parts of the UK. This is distinct to that of the BBC and ITV, who have opt-out services and provide programming specifically for audiences in the devolved nations. This system was specifically designed to ensure that audiences in Wales, Scotland and Northern Ireland can access programming specifically for them as well as programmes that reflect these locations to a UK-wide audience.

Channel 4 believes that UK audiences benefit from this plurality of UK-wide and nation-specific content within public service broadcasting. Audience research figures for Channel 4, for example, show that audiences across all of the UK recognise Channel 4's public service impact, in particular in relation to being experimental, challenging prejudice, and providing programmes that show different kinds of cultures and opinions within the UK. These figures are underpinned by a range of Channel 4 programming that seeks to represent communities from across the UK, both during the course of UK-wide commissions – such as the long-running series *Location, Location, Location* – as well as in location-specific programmes, such as 2014's comedy series *Scotland in a Day*. We believe that this model continues to serve viewers well and should be maintained.

In terms of production, as a national public service broadcaster Channel 4 is committed to engaging with the widest spread of suppliers across the UK in order to get the most distinctive and diverse ideas. We are required to fulfil quotas relating to both Out of London production (35% of spend and hours) and Out of England production (3% of spend and hours). Channel 4 consistently exceeds both of these quotas, with 55% of hours and 46% of spend from Out of London in 2013 and 6.6% of hours and 5.9% of spend from Out of England, representing an upward trend of commissioning spend in the Nations and Regions. In particular, Ofcom's data shows that Channel 4's investment in network productions in the nations has risen every year since 2008, and this will be maintained in 2014. Building on this upward trend, Channel 4 has committed – as part of its renewed licence – to a new Out of England quota of 9%, to be achieved from 2020. We anticipate that this new quota will be achieved through incremental annual increases, and will help to deliver a suitable balance between continuing our long-term investment in the UK nations and fulfilling the many other commitments set out in our remit.

Q6: Is declining investment affecting the quality of PSB and is it a cause of concern?

Whilst Ofcom's analysis makes clear that overall PSB investment in first run UK originated content has declined between 2008 and 2013, we would note that Channel 4 is the exception to this rule.

Despite the challenging economic environment during this period and a massive increase in competition, both from digital switchover and online services, Ofcom's own data shows that Channel 4 increased investment in first run UK originated content on the main channel by 8.2% from 2010 to 2013. This is a demonstration of Channel 4's commitment not only to delivering our remit and obligations but also to continuing to invest in public service programming from the UK production sector.

Whilst 2009 and 2010 saw dips in our overall spend on UK originated content as a result of the economic environment at the time, our current levels of spending have now risen back up to 2008 levels at around £430m each year. As Ofcom rightly identifies this sustained commitment is made possible in large part by our publicly owned not for profit model which ensures that any increase in revenue is ploughed straight back in to the delivery of our remit.

Channel 4 welcomes Ofcom's acknowledgement that despite the overall decrease in investment viewer satisfaction has remained high. Channel 4 concurs with Ofcom's analysis that this is partly down to viewers' ability to personalise what they watch and the increased availability of PSB services. We would argue that our viewer-focussed investments in technology, innovation and content mean that viewers are getting more value than ever before. However, it is important to acknowledge that this level of satisfaction is also a result of the high levels of quality the PSBs have managed to maintain in their content output despite the overall reduction in investment, as well as their efforts to maximise their spend where possible – for example by focussing investment on peak-time, and reducing spend on foreign acquisitions.

However, whilst PSBs have been able to maintain audience satisfaction as a result of these efforts, this should not give policy-makers cause to be complacent. As Ofcom rightly identifies, PSBs have managed to achieve this careful balancing act by focussing on peak time viewing and thereby maximising the impact and reach of the content they invest in. Whilst this strategy has ensured viewer satisfaction has remained high it is clearly preferable for PSBs to be able to spread investment as widely as possible over the schedule.

While Channel 4 agrees that the PSB system remains strong, it is Ofcom's duty to not only look to maintain the status quo but to also look to strengthen PSB where possible. Channel 4 therefore believes Ofcom should treat the downward trend in investment as a matter of concern and should actively work with PSBs to identify ways to support the PSB system in the immediate term.

Question 7: Do you agree with Ofcom's provisional findings in the Review of C4C's delivery of its media content duties?

Channel 4 welcome's Ofcom's recognition that C4C has *“performed well”* and *“made a broad range of high quality media content of wide appeal; produced high quality films for cinema release; and continued to support creative talent.”*

We have addressed a number of issues raised by Ofcom below.

Channel 4 reach and share

Whilst we acknowledge that there has been a decline in the reach and share of our main channel, and recognise that that these are important metrics which we are seeking to remedy in a number of ways, we would also note that these Channel 4's overall success should be evaluated within a wider context of measures. Channel 4's primary goals are fulfilling its remit and ensuring the financial stability of the organisation. On both of these measures Channel 4 is in good health.

Channel 4 has also had an incredibly strong period of creative renewal since the end of Big Brother in 2010. In 2014 this was recognised through unprecedented critical acclaim with Channel 4 winning a historic peak of awards, including eight Baftas, three Oscars and the Channel of the Year award at the Edinburgh Television festival.

Importantly this critical acclaim is also reflected in how audiences feel about Channel 4. Our annual report includes a series of trackers which measure how people feel we have performed against key areas of our remit including catering for audiences others don't, challenging prejudices, tackling issues others wouldn't, showing alternate points of view, showing different cultures and opinions and showing the viewpoints of minority groups. 2013 saw Channel 4 achieve record peaks in many of these measurements, reflecting the success of our creative renewal strategy.

As Ofcom correctly identifies, the dip in the share of the main channel can be largely attributed to the explosion of competition since the last PSB review which took place before digital switchover was completed and before the launch of many online services which now also compete for viewers. Channel 4 has been quick to adapt to

these changing market conditions; by launching a number of successful digital channels, by innovating online, and becoming the first broadcaster in the world to launch an on demand player in 4OD.

These strategies have proved extremely effective for Channel 4. Channel 4 Corporation has maintained roughly the same level of share across our portfolio of services throughout the period since the last PSB review despite the massive increase in competition. The launch of our digital channels has been especially effective in reaching our core 16-34 year old audience – in 2014 E4 was again the biggest digital channel amongst 16-34s reaching a record share of 5.47% (up +8% year on year). Overall, the share of 16-34s viewing Channel 4's portfolio has risen in share (up 0.7%) between 2008-2014, whilst the portfolios of other PSBs have either fallen or remained flat in the same period. This has helped to ensure the profitability of our advertising proposition as well as ensuring this audience is served with distinctive public service content. Importantly, this growth has been driven by original content as well as acquisitions – indeed; we have maintained viewing to network originations across the portfolio which has remained steady at around 65% since the last PSB review.

Beyond the launch of 4OD in 2006 Channel 4 has also continued to innovate online, seeking ways to both maximise the reach and impact of our programming and also increase revenues. Our successful data strategy has not only enabled us to tailor advertisements to individual viewers, thereby maximising advertising revenue, but has also allowed us to form closer more personal relationships with our viewers. More people are now registered with Channel 4 than any other PSB. In 2015 Channel 4 will continue to innovate, launching All4, a proposition which brings all of our online offerings together under one umbrella.

Overall, Channel 4 believes the way in which Ofcom headlines the measurement of share and reach on the main channel, focussing on this as a headline weakness, risks overlooking and lagging behind the commercial reality of the digital world that C4C is actively responding to. As Ofcom correctly observes in other areas of their review C4C now comprises a wide portfolio of channels which appeal to different audiences and through which it delivers public service content. Focussing on the share and reach of the main channel is at odds with other parts of Ofcom's Review which acknowledge the importance of the PSB institutions as a whole in delivering PSB content.

Channel 4 would also note that despite a decline in share on the main channel, revenues have increased, demonstrating C4C's ability to deliver our remit and obligations whilst maintaining the financial stability of the organisation despite a massive increase in competition and a challenging economic environment.

Children's content

While we acknowledge that Channel 4's investments in content made specifically for older children have been limited we do not agree that this amounts to a "lack of ambition" in meeting our duty to provide content which appeals to the tastes and interests of older children.

Channel 4 believes that it has always been clear with Ofcom that its investments in this area would be necessarily modest, given the multifaceted nature of our remit and because, compared with other PSBs, there is no historical slot or dedicated channel available for this type of content on Channel 4. As outlined in the 2010 Annual Report, in 2011 we ring-fenced £1m of commissioning budget for content for this age group, and this budget has remained broadly constant. Indeed, as we have detailed in data provided to Ofcom as part of their review process, since 2012 we have actually exceeded this budget for our 10-14s activity. We would also note that Ofcom has not previously raised the level of C4C's spend on content for older children as an area of concern and as a result Channel 4 has continued to deliver to this obligation to what we believe was the expected level or above.

While we believe it is less of a natural fit with the rest of our remit, Channel 4 has continued to produce distinctive and targeted content for older children in the 10-14 bracket.

Despite the commercial and strategic challenges for Channel 4 of providing children's content, we believe we have had success in this area over the course of the review period and have produced high quality targeted and distinctive content for 10 – 14 year olds. In 2012 the *Snowman and the Snowdog* aired with ratings of over half a million for 10-14 year olds and the accompanying app was downloaded over 1 million times. In 2013 and 2014 we aired a pre-watershed drama on E4, *Youngers*, about a group of young teens living in South London. The show proved particularly popular with this young audience, with audience research from the first series showing that 8 in 10 of viewers aged 10-14 agreed the show was different from anything else on TV at the moment. Series 2 of *Youngers* had a 73% higher share of 10-14 year olds versus the year to date E4 slot average.

Channel 4 has a particularly strong relationship with younger people and has had significant success in reaching this audience: 28% of our share comes from 16-34 viewing which is significantly higher than other PSBs (the comparative figure for our closest PSB competitor is 18%). Channel 4 also produces educational content aimed at 14-19 year olds focussed on "life skills" and issues that matter to this age group. This content is designed to bridge the gap between what young people learn at school and what they learn from their parents – and has clear overlap with content that will appeal to the younger audience of 10-14 year olds. For example, the team collaborated with *Hollyoaks* producers on the online spinoff, *Tom's Life*, which looked at the issue of divorce from the perspective of a 14 year old boy – an issue with clear resonance for both the older children and young adult audiences. The project was delivered through a series of shorts on 4OD. Most recently, the team has launched "Am I Normal", an online hub centring on issues that affect young people, such as family and friendships, online behaviour and mental health. It includes clips from C4 programmes on these issues, as well as polls and facts on these topics.

In addition to content tailored specifically for this audience, we would note that PSB content which has been made with other audiences in mind also appeals to older children. Indeed, the programmes most popular with 10-14s on Channel 4 are not acquisitions but UK originated public service content, including *Gogglebox*, *The Undateables*, *Educating the East End* and *Benefits Street*. So whilst we acknowledge that Channel 4's expenditure on specific 10-14s content has been limited, we disagree with Ofcom's analysis that output on the main channel, E4 and More4 is not likely to appeal to older children. Channel 4 believes a broad range of the content we make does appeal to the interests of this age group. In addition, programmes such as *Mr Drew's Summer School*, *Dinner at 11* and *Child Genius* show a commitment to reflecting the lives and experiences of older children on-screen.

In the year ahead we plan to continue to invest in content which appeals to the tastes and interests of a wide range of young people, including 10-14 year olds. One example of this is *The ABC's*, a school based drama which will centre on the school and local community and focus on relationships between characters. Whilst this programme is not designed solely for 10-14 year olds, we anticipate that it will feature storylines which appeal directly to the tastes and interests of this age group and will feature characters in this age bracket. Other programmes, such as an upcoming programme about attendees of a contemporary stage school, will follow the lives of a group of older children.

We appreciate Ofcom's recognition that producing content for this age group is particularly commercially challenging especially given the limited size of the potential audience – indeed Channel 4 does not sell advertising for this demographic precisely because the audience size is narrow. We would also note that any increase in investment on the provision of this kind of content will inevitably mean reducing investment in other equally important areas of our remit.

A further challenge is that, as younger audiences move online, we are unable to capture commercial value from the 10-14 age bracket in the same way as we can for 16-34 year olds. For data protection reasons we are unable to register viewers under 16. We therefore cannot extend the benefits of our data and advertising strategy to this

group. Older children therefore become an even more challenging audience to invest in for Channel 4 as a commercially-funded broadcaster.

Finally, we note in particular that Ofcom's research has found that "*the importance parents attached to providing content for older children was consistently lower for Channel 4 than for the PSBs combined.*" The lack of expectation amongst parents that Channel 4 would produce this kind of content demonstrates an understanding that such content does not naturally fit with the other content Channel 4 produces and as such parents are more likely to look elsewhere for this content.

We look forward to discussing with Ofcom Channel 4's ongoing approach to this age group whilst also continuing to deliver the other elements of our remit and public service obligations.

News:

We recognise that in past years share for the *Channel 4 News* programme has been declining and we have been deploying a series of measures, as discussed previously with Ofcom, to remedy this decline. These have included an increased focus on exclusives, international coverage, alternative voices, agenda setting coverage and specific content that appeals to 16-34 year olds. We have also sought to appeal to 16-34 year olds with contemporary social issues in other parts of our schedule such as documentaries. We are pleased to report that these measures have contributed to *Channel 4 News* successfully growing share by 2% in 2014, for the first time since 2007.

Whilst our strategy remains continuing to deliver a distinctive hour long news programme in peak time, it is clear that people are increasingly looking online to get their news and this is especially the case when it comes to 16-34 year olds. *Channel 4 News* is already the youngest of the main bulletins with a 16-34 profile of 17% but we recognise the importance of continuing to find new ways of reaching this audience. As such we have sought to diversify how we deliver *Channel 4 News* content, broadening our reach by expanding our presence online through new distribution methods such as syndication of our content through selected partners and via social media. This strategy has proved hugely successful and more people are now watching *Channel 4 News* video content on syndicated platforms than on the *Channel 4 News* website itself.

We have also begun to produce content tailored for online audiences in the form of shorter, snackable, curated content. We now produce a whole suite of different content including a catch up service, apps, breaking news stories, YouTube videos, picture galleries, short form video, Snowmail, in depth analysis in blogs and comment pieces and links to further information and social media engagement.

This diversification is crucial to maintaining the reach and impact of *Channel 4 News*, and has led to a massive increase in viewer engagement and in reach.

In 2014 website page views grew by 46% and unique visitors grew by 73%. Video views as a whole increased by more than 200% year on year, including views across YouTube, Facebook, AOL and Yahoo. In 2014 views to our YouTube channel grew to over 26.5 million, an increase of nearly 50% on the previous year, whilst subscribers gained in the same period nearly doubled.

Importantly this distribution strategy is also a means of increasing the wider media coverage of our stories. *Channel 4 News* seeks to set the news agenda as opposed to simply reciting the news and we believe it has a strong reputation for breaking important news stories, such as "Plebgate", which then ripple out to other news sources such as newspapers, websites, or other news programmes.

Whilst we recognise that at present the industry is facing challenges in how we quantify and measure the impact of these new forms of distribution we believe it will be increasingly important for Ofcom to properly consider and analyse this data when assessing the impact and reach of news services going forward. Ofcom should also seek

to give due consideration to qualitative measures like audience perceptions, real world impact, the multiplier effect of stories and the impact of exclusives.

We would also note that beyond our specific news content, across our portfolio we produce programming in other parts of our schedule which focus on contemporary social issues, whether Benefits Street or Educating Yorkshire, which has particular resonance with this young age group.

International:

Channel 4 has a strong reputation for programming covering international topics, particularly in Current Affairs, News and in Documentaries, and has received significant critical acclaim for its work in this area, most recently for its ground breaking coverage of the Syrian civil war and Sri Lanka.

Ofcom highlights a decline in programming covering international topics on Channel 4. We would note though, that this decline was in large part down to a particular strategic decision in 2012 to increase the reach and impact of one of our key factual strands.

In 2012 we sought to give *True Stories* a wider platform by moving it largely to the main channel and also refocussing it towards fewer, higher impact films. Whilst this led to a significant reduction in the number of programmes covering international topics it also led to a huge uplift in viewing with an average audience in 2012 of 1.6 million – compared to 200,000 a year earlier. So, while there has been a reduction in the volume of programming, the reach and impact of that programming has increased.

We would also note that Channel 4 News has a reputation for challenging international content and indeed is widely recognised as the most internationally focussed of the PSB news programmes. This is in addition to long-running current affairs strands, *Unreported World* and *Dispatches*, which both feature hard-hitting stories from around the world, as well as regular single films. Highlights from the review period include acclaimed and impactful documentaries on Sri Lanka, Sudan and Syria.

Channel 4's international programming extends beyond documentaries and current affairs to programming like the foreign language drama *The Returned*, or entertainment formats filmed abroad, such as *The Island*. The formal metrics contained within Channel 4's Annual Report do not yet account for this fuller range of international output. In 2015 Channel 4 will continue to invest in compelling and distinctive international programming, producing both big budget drama in the form of *Indian Summers* and revolutionary observational documentaries such as *The Tribe* whilst also continuing to produce ground breaking and high quality documentaries focussed on international affairs.

Although our status as a UK broadcaster has meant that our activity has been primarily focused on bringing the wider world to British audiences, we have also sought to ensure that some of our most compelling international content is accessible to viewers around the world. For example in 2011 our international affairs strand *Unreported World* became the first Channel 4 series to be made available to view online free of charge around the world. This meant that viewers in countries featured in the series - many of whom live in areas where accessing free media and impartial journalism can be challenging - were able to watch them. We are continuing to explore ways in which we can further harness our international credentials.

Question 8: To what extent do you agree with our assessment of the degree to which the non-PSB services play a role in helping to deliver the public service objectives?

Channel 4 recognises the challenges associated with the provision of public service content so we welcome and are supportive of any organisation which aims to deliver content which meets public service objectives. We would note, though, that in order to deliver content which can be considered a true public service it is vital that this content is made as widely available as possible and crucially is free at the point of use.

Many of the services Ofcom highlights do not meet these thresholds. This is because many households are either unable to receive these services due to inadequate or erratic broadband connections or are unable to afford to pay the cost of entry to access these services. We note analysis from Ofcom that the price of access to free-to-view TV via the BBC licence fee has decreased in real terms. In contrast, trends in pricing for pay TV are mixed and some pay TV prices have gone up. It is also instructive to note that the pay TV channel with the highest reach still only reaches 31% of the population, less than half of the lowest main PSB channel which reaches 75%. Whilst this in no way diminishes the quality of the content that non-PSB services produce, Channel 4 believes their limited availability does inevitably limit their public service value.

We welcome Ofcom's acknowledgement that the amount spent by PSBs and the reach and impact of this content continues to dwarf other services. We would also note that the figures provided by Ofcom in their report on non-PSB spend, actually *includes* the portfolio services of PSBs. We believe that including a significant portion of spend from PSB institutions (albeit on channels which do not technically have PSB status, such as E4, More4, and Film4) in this figure does not give a fair reflection of the level of investment made by entirely *non-PSB* organisations.

Our non-linear output also delivers to many of the public service objectives. In line with the increasing trend to consume content online Channel 4 is leading the way in digital innovation amongst broadcasters;

- In 2010 Channel 4 launched a companion app for the Million Pound Drop which became the most successful play along format in the UK delivering previously unseen levels of viewer participation and engagement
- In 2011 we rolled out registrations to Channel 4 whereby users could register their details in return for an enhanced and more personalised experience online. This growing database now exceeds 11.5 million and includes half of all 16-34 year olds in the UK
- In 2012 we released the first feature film to be made available simultaneously across multiple channels – cinema, on TV, DVD and VOD
- In 2013 we launched 4Now – becoming the first broadcaster to launch an aggregated second screen proposition
- In 2015 we will launch All4 a reimagining of our pioneering on demand service, 4OD, which brings all our online services together under one umbrella

Channel 4 believes these investments enable us to better deliver our public service remit by increasing the impact of our content and making it available to as wide an audience as possible. We expand on this issue in further detail in response to Ofcom's question on giving PSBs greater flexibility to provide PSB content at an institutional level (Q13).

Question 9: How likely are we to see steady evolution and have we identified all of the potential alternative scenarios and risks to the system?

Channel 4's view is that while extrapolating recent trends may point to a steady evolution along the lines described by Ofcom, there are considerable uncertainties in the assumptions underpinning the steady evolution model and, crucially, we believe there is considerably more downside risk than upside benefit from the evolutionary path.

Many TV industry forecasts over the last decade and beyond have predicted the imminent demise of linear television. They pointed to technological and structural changes that are disrupting the TV market such as the rapid growth of penetration of broadband, and increasingly superfast broadband services capable of supporting video content; the growing popularity of Netflix and other subscription-VOD services hosting large libraries of video content; new IP-based distribution platforms that bring TV and other audiovisual content to the TV set, such as games consoles, Apple TV and Roku; the ability to watch TV programmes on new devices, especially

smartphones and tablets, along with integrated ecosystems from the likes of Apple and Google that allow people to switch film and TV viewing seamlessly between platforms.

These changes, taken together, provide viewers with unprecedented control, choice and flexibility over what they watch. On the face of it this would seem to threaten traditional broadcasters, particularly free-to-air channels given that they historically have no direct consumer relationship (as pay-TV broadcasters do). Commercial free-to-air broadcasters would seem to be more vulnerable still, given the ability of viewers to ad-skip using PVRs.

However, Channel 4 believes that reports about the death of TV, and the PSB model, have been greatly exaggerated. As Ofcom shows, most TV viewing is still “live” viewing of linear TV channels. This means that there is far less “ad-skipping” than was anticipated when PVR functionality became widespread, which in turn means that the TV advertising model has not suffered from a structural collapse. Meanwhile, the PSBs have not stood still, and have created successful digital TV channel portfolios and, more recently, on-demand catch-up services to sustain PSB viewing and funding. This has protected their investment in new UK originated content: as Ofcom notes, the PSBs accounted for 85% of investment in non-sport UK content in 2013. Hence Ofcom’s analysis that, on extrapolation of recent trends, we may see only steady evolution in the next decade.

Ofcom also identifies a series of areas which have the potential to cause more radical change, stating that “any one or a combination of these factors could have profound effects on the future effectiveness of the PSB system”. Channel 4 believes the potential downside risks associated with these factors, such as a faster shift to on-demand viewing, the emergence of new disruptive entrants, faster fragmentation of audiences, production cost inflation outpacing funding, and structural changes to the licence fee of TV, outweigh the potential opportunities. Moreover, Channel 4 is arguably the PSB most likely to face the future first, given its focus on risk-taking and trying new things, and also its targeting of young audiences, who are the most avid users of new technologies and platforms. For example, research into time-shifting of viewing commissioned by Channel 4 from Red Shift suggests that while the proportion of TV that is viewed “live” may fall only gradually for audiences overall, from 82% of viewing in 2013 to 71% by 2020, it will fall much faster for 16-34s, to just 57% of viewing by 2020.

Channel 4 is concerned about the position expressed by Ofcom, which seems at times to downplay the risks relative to the opportunities. In para 5.26, Ofcom states that: “These alternative scenarios could present opportunities for the PSBs to better serve audiences and to improve sources of funding, as much as they may also present downside risks” – which seems to imply that the potential benefits could be as great in magnitude as the downside risks. However, elsewhere in the consultation document (in a different section to that which contains the consultation question), Ofcom takes a different position. In para 6.2, it states that: “there appears to be little headroom for PSB investment growth, and there is the potential for more radical change to impact negatively on the PSB system.” We believe this to be a more realistic assessment. As such, steps should be taken now to strengthen – and not merely maintain – the PSB system.

In summary, it is important that Ofcom does not conclude that “steady evolution” is the most likely market outcome, and that no regulatory action is therefore needed. The assumption should be that at least some of the transformational changes will come to pass, and that these will put additional pressures on the PSB system. It is therefore vital, through the PSB Review, for Ofcom and the Government to consider amendments to the current regulatory framework that would help maintain and strengthen PSB to address a plausible set of market evolution scenarios over the next 5-10 years.

Question 10: How might incentives to invest change over time?

Channel 4 agrees with the analysis presented by Ofcom that increased competition for viewers, time-shifting and other technologically-driven factors may change the incentives of organisations, especially the commercial PSBs, to invest in key PSB genres. In particular we agree with the Mediatique analysis that Channel 4’s public ownership, public service remit and obligations together should mean that the correct incentives are in place for

C4C to maximise investment in its overall programme budget in line with the levels of funding available (i.e. maximising PSB output within a break-even budget). With a unique model that protects and prioritises its public service delivery, Channel 4 may become a more important contributor to the overall PSB ecology if the other commercial PSBs' contributions decline over time.

From an economic perspective, an analysis of the incentives faced by each organisation is the right way to consider how the commercial PSBs' content strategies may evolve over time. As the market evolves, all broadcasters will face adjustments to their incentives to invest, and the commercial PSBs can be expected to respond to these pressures in different ways, with different implications for PSB provision. The privately-owned broadcasters would be expected to focus ever more on the most profitable genres, to exit loss-making "prestige" genres, to take fewer risks and to reduce their PSB delivery to the minimum required in their licences, in order to sustain their profitability.

Channel 4, by contrast, would behave differently. Ofcom is correct to argue in its report that Channel 4's unique model of public ownership, public service remit and obligations means that it would continue to take risks and to offer a range of content in unprofitable PSB genres. Relative to other broadcasters, it might even become more distinctive than it is now, as they narrow the diversity of their schedules. Overall, the evolving incentives mean that Channel 4 may become an even more important contributor to the overall PSB ecology if the contributions made by the other commercial PSBs decline. Regardless of market conditions, it will always seek to maximise its PSB output within its break-even budget.

Q11: Have we identified all the relevant ways in which the PSB system might be maintained and strengthened?

We believe that Ofcom is right to recognise that there is currently a ceiling for PSB investment, and agree that under the current policy framework there is 'little headroom for PSB investment growth'. For Ofcom to fulfil its duty to strengthen PSB it is therefore essential to consider and recommend regulatory and public policy changes that will support the system.

Channel 4 welcomes the specific issues raised in Ofcom's consultation – notably the crucial and continued importance of prominence to the PSB compact, as well as issues around the relationship between broadcasters and the production sector. Channel 4 believes these proposals could have the most significant impact on strengthening the PSB system to the benefit of viewers and the industry.

In addition, Channel 4 supports many of the other policy avenues suggested by Ofcom, such as changes to rules around advertising minutage, exemption from AIP charges and the principles that should underpin universality. In particular, we welcome Ofcom's analysis on both the desirability and the challenges of giving greater flexibility to PSB institutions in their delivery of public service content, and look forward to discussing with Ofcom in more detail how this could work over the coming months. We would also note that many of these issues have overlap with each other – for example, thinking about PSB status across institutions is necessarily influenced by the existing framework on EPG prominence, terms of trade, advertising minutage and universal availability.

Channel 4 has also identified a number of other regulatory changes, which are smaller-scale in their benefit but nevertheless important to consider. These include:

- amending the cross-promotion rules
- ensuring advertising regulation is fair and proportionate
- ensuring copyright legislation is fit for purpose

Our thoughts on these issues are outlined in more detail in Q14.

Question 12: Does universal availability and the easy discoverability of PSB remain important and how might it be secured in future?

(a) Universal availability of PSB

Channel 4 believes that it remains a fundamental right of all UK citizens to have access to PSB services that are free at the point of use. Television continues to play a unique cultural, social and democratic role in modern life that is not matched by any other form of media. C4 therefore agrees that “universal availability” – whereby PSB services are as widely available as possible and free at the point of use – remains important. We strongly welcome Ofcom’s review of the definition and scope of universality, which needs to be brought up to date to reflect changes in technologies and consumption behaviour. While the central principle of universality remains clear, in practice though there are some complex issues that need to be worked through carefully to ensure a proportionate solution.

In particular Ofcom’s Option 3 would, beyond a certain point, require broadcasters to divert funds from content to technology development, in order to reach audiences who can easily watch PSB content on other platforms. In the linear TV world, there have only ever been a small number of platforms (over-the-air, satellite and cable), each of which reached large proportions of the population, and it was both sensible and practical to apply universality rules to them all. Now, however, there are dozens, if not hundreds, of ways of accessing television programmes: directly via devices such as smart TVs, personal computers smartphones and tablets; and indirectly, via games consoles and other devices that bring IP TV to the TV set, such as Apple TV, Google Chromecast, Roku and Amazon Fire TV. Each of these has different underlying operating systems, and some of them are used by only very small numbers of people. 4oD is currently available on more than 20 platforms. If universal access rules applied to PSB on-demand catch-up services for every single device and platform in the market (Ofcom’s Option 3), then broadcasters’ VOD apps would typically need to be rewritten for every single platform that exists, however small, which would impose substantial costs that would not be justified for those platforms with low reach, especially given that individuals typically have access to content on multiple devices and can watch PSB VOD services by other means. This would lead to a perverse outcome whereby broadcasters would have to divert funds from content investment to app development to reach, at the margins, negligible numbers of people who can access their services anyway on another device. As such, Ofcom’s Option 2 seems to strike a sensible middle ground, with a proportionate approach that recognises the costs of extending universal access rules to each platform and device.

We would however, welcome Ofcom setting out the details of this approach more clearly, as it raises a number of important issues depending on how the rules would be applied. First, there are important differences in what universality should mean in practice for linear and non-linear platforms. For linear platforms, universal access rules provide a clear benefit to audiences for each platform to which they apply because, if a PSB service were not available on each of those key TV platforms, then significant numbers of households would immediately be deprived of those PSB services altogether. Conversely, in the on-demand space, there are typically multiple ways of accessing PSB VOD services on any given device. On smart TVs, for example, they may be accessed via the TV set’s own programme guide, or via standard TV set-top boxes that have an internet connection, or via other devices such as games consoles or TV streaming players that are connected to the TV set. Non-availability of a PSB service on any one of these individual devices does not prevent households from accessing the same service on their TV set via other means. Universality rules need to take into account these various ways of providing PSB on-demand services to audiences when determining a proportionate approach. For their part, the ability of PSBs to strike commercial deals with platforms for their VOD services could be undermined by a disproportionate approach to universality that prevented them from seeking the most efficient and cost-effective route to reaching audiences across platforms and devices.

A second challenge relates to the definition of the PSB services themselves that would be captured by new universal access rules. The commercial PSBs have entirely legitimate commercial arrangements with platform providers for services beyond their licensed PSB channels, which provide revenues that support the distribution of core PSB channels. Some TV channels in their portfolios, including variants of PSB channels (e.g. HD versions), may be offered exclusively on some platforms. In addition, while core catch-up VOD services are free on most platforms (absent being available through basic subscription packages on some platforms such as Sky/Virgin), broadcasters may wish to offer premium services (e.g. with premieres, ad-free content or deeper archives) that are not free at the point of use. Universality rules that undermine these commercial arrangements might be counterproductive if they undermine revenue streams that generate funds that are reinvested in programming, especially given the likelihood of limited growth in commercial PSBs' core revenues in the years ahead. Some of these issues are also relevant to Ofcom's proposals on PSB institutions (see Q13).

We would also like to raise a third important issue that was not covered by PSB regulation in the analogue world, but which is of growing importance in the connected digital world. Data on consumer behaviour is increasingly valuable to all participants in the value chain for television. Yet, by its nature, this data is captured directly by platform operators, and they typically choose either not to share this information with broadcasters or to share it only on a limited basis. This point is relevant to both linear (e.g. Sky, Virgin Media) and non-linear platforms (e.g. YouTube). Channel 4 believes it is unreasonable that platforms should have sole control over data that relates to consumption of services supplied by third parties, such as broadcasters and other distributors, and should be obliged to share this data as a matter of course. This would help broadcasters to develop a greater understanding of their audiences' behaviours, and thereby to better meet their needs with their original programming. While this point applies in general, the sharing of data with PSBs would be especially beneficial to supporting PSB outcomes. We therefore believe that Ofcom should consider sharing of data as part of the universality obligations. This benefit would become part of the PSB compact, helping to offset the declining value of other benefits such as access to DTT spectrum.

With this in mind, we believe that a proportionate framework for universal access would be guided by the following principles:

- Rules on universal availability should continue to apply to licensed PSB services, which should remain available on all traditional linear TV platforms
- They should also be extended to cover the PSBs' core catch-up on-demand services, subject to commercial terms and to a proportionality test that takes into account the multiple ways in which audiences can access PSB catch-up services on any given device. This should also balance the cost of developing apps for a platform or device against its size.
- PSBs should remain able to offer pay-VOD services beyond the basic catch-up functionality, e.g. for ad-free services or ones that offer deeper archive content (universal access rules would not apply to such services)
- Ofcom should ensure platforms share with PSBs data on consumer behaviour relating to viewing of their specific services.
- In the event of organisations being reclassified as PSB institutions (see Q13), it may be appropriate to apply universal access rules more broadly to their services. This needs careful consideration in order to avoid counterproductive outcomes whereby universal access rules undermine legitimate commercial arrangements that help underpin investment in PSB content. In particular PSBs should not be obliged to make the VOD services available on individual platforms if their services are accessible by other means on the various screens people use to watch TV programmes.

(b) Easy discoverability of PSB

C4 shares Ofcom's view that EPG prominence has played an important role in the PSB system historically, by helping make viewers aware of PSB programming. It has also ensured PSBs have sufficient incentives to invest – helping to sustain a virtuous circle between viewing, revenues and programme budgets. Prominence is also a key part of the PSB compact whereby the PSBs are provided benefits in return for delivering public service obligations. We agree that prominence should remain part of the PSB compact in the future, and indeed becomes more important as audiences fragment. Recent empirical research conducted by Channel 4 found that EPG position remains highly important, even amongst young audiences, for example showing that the majority of viewers begin their television experiences by scrolling through the EPG and use it to inform their decision-making about what to watch. It is therefore important that this is maintained – and we believe it is vital that prominence should be considered entirely separately from those around platform fees.

Revisions are needed to the EPG Code for linear PSB channels, whilst prominence rules should be expanded to apply to new discovery tools, so that audiences can continue to find the PSB content that they value in the digital on-demand world. The majority of viewing of PSB content is still via linear channels, and it is important to ensure that Ofcom's EPG Code of Practice is fit-for-purpose. The Code has ensured that Channel 4's main channel is in the fourth position on all the main EPGs. However, Channel 4 believes that the current "appropriate prominence" wording in the Code is too vague, and allows too much room for manoeuvre in how it is interpreted by platform operators. This has already had important implications for the development of PSB services –the BBC's children's channels are not currently at the top of Sky's 'Children's' EPG category, for example, and local television operators have had similar difficulties in securing beneficial EPG positions across satellite and cable platforms.

The lack of robust legislation also presents challenges for the future. In this consultation, Ofcom raises the possibility of moving to a regulatory framework under which Channel 4, or other public service broadcasters, could become a PSB institution (see Q13). Such a move would raise a host of questions about the status of Channel 4's digital channels (such as E4 or More4), in particular in relation to universal access and prominence. As it stands, these channels are not always close to the top of the EPG as they do not currently count as PSB channels. If any of Channel 4's digital channels were, in the future, to be assigned some form of PSB status, recognising their contribution to Channel 4's PSB remit delivery, we do not believe that the EPG Code in its current form would benefit them in any way in practice. This provides insufficient incentives for PSBs to invest to upgrade their portfolio channels to PSB channel status as they would receive no EPG benefit. As such, we do not believe that the Code is fit-for-purpose in its current form and so needs to be materially strengthened in order to have more "teeth" in practice. We note that Ofcom are shortly planning to conduct a full review of the EPG Code in 2015, and Channel 4 looks forward to exploring in detail how the Code should be strengthened as part of this process.

Turning to the possible extension of prominence rules to on-demand content, we acknowledge that the PSBs' VOD services currently already typically sit at, or near, the top of the lists of VOD services in the apps stores on smart TVs and other connected devices. However, there is no guarantee that this will continue in the future. As Ofcom notes, platform operators' incentives to carry and give prominence to some PSB channels could diminish in the future if they stand to gain from discriminating in favour of non-PSB services. We are also aware that some providers, such as Netflix, have negotiated agreements with device manufacturers to give their services a prominent position (in Netflix's case, not only by sitting at the top of some VOD app stores, but also via a Netflix button on remote controls).

Channel 4 therefore strongly believes that as audiences increasingly use discovery tools beyond the linear EPG for non-linear or hybrid linear/non-linear services, the prominence Code should be expanded to apply to these tools, so that audiences can continue to find the PSB content that they value in the digital on-demand world. For app stores, we believe that the PSBs' VOD services should be afforded "prominence" (with appropriately robust wording in line with the revisions made to the linear EPG Code as above) to ensure the PSBs' VOD services lie at,

or very near, the top of any app stores offering VOD content. For search engines, programmes on the PSB channels should be presented ahead of programmes on other services in the lists of programmes that meet the search criteria. And for interfaces that include programme recommendations, programmes on PSB channels should receive an appropriate amount of profile within the recommendations, e.g. defined with respect to their viewing share on the platform.

Given the proliferation of devices and services offering TV programmes, we recognise that, as with the rules on universal access, it is challenging to devise a proportionate model that determines on which platforms prominence should be secured. However, we do not believe this will lead to additional regulatory complexity - the scope of rules on universal access and prominence should be aligned: for any platform on which universality rules are applied to PSB services, prominence should also be secured.

Finally, Channel 4 would like to reiterate that the rules on EPG prominence are, and must remain, a central part of the PSB compact. With the benefits of access to spectrum declining over time, EPG prominence has become the most significant benefit that licensed PSB channels receive. This is relevant to all the commercial PSBs, as their formal PSB licence obligations are determined in part through a process of balancing the costs and benefits of PSB status. As such, it is important that EPG prominence does not become a “bargaining chip” in the entirely separate issues around platform fees (see Q15).

Q13: Should we explore the possibility of giving greater flexibility to PSB institutions in how they deliver public service content, including examining the scope (in some or all cases) for regulating by institution not by channel?

Channel 4 welcomes the debate about whether public service broadcasters should have greater institutional flexibility in their PSB provision. We believe that such an approach would better reflect the reality of Channel 4’s delivery of its PSB remit across its services, and could help Channel 4 deliver its remit more effectively in the future. At the same time, given the wide range of regulations that would be affected, there are substantial risks involved, and any proposal raises significant technical issues that would need to be addressed carefully, as Ofcom acknowledges. In particular, an unbalanced package could easily lead to the exact opposite of the desired outcome by forcing Channel 4 to reduce its investment in public service content. Any solution would require a carefully calibrated package of benefits and obligations, all of which would need to be incorporated in order for the package to be potentially viable. Channel 4 is keen to progress discussions in this area with Ofcom, to explore what a new form of PSB compact could look like.

Channel 4 Corporation (C4C) is a Government-owned, not-for-profit organisation which is entirely focussed on delivering its unique remit in a commercially sustainable manner. This corporate structure gives Channel 4 the optimal incentives to invest in the delivery of public service content, as Ofcom recognises (see Q10).

C4C has always operated a cross-funding model, balancing the delivery of public service objectives with the need to be self-sustainable. Historically, this social enterprise model was realised through commercial programming cross-funding public service programming on a single channel (Channel 4). This model has evolved over time as C4C has established a successful suite of digital TV channels, which has affected the operating model in a number of ways. First, Channel 4 increasingly provides public value across its entire portfolio of digital TV channels and online services, both by offering further opportunities to catch up on its programmes, and also via original programming commissioned for the digital channels and on-line. So, while they are not licensed PSB services in the same way that the main channel is, the digital channels and online services play a critical role in contributing to the overall delivery of Channel 4’s remit – albeit not properly recognised in legislation (nor in the current approach to measurement metrics). Second, the cross-funding model has itself evolved: the digital channels in particular are financially successful, generating surpluses that can be invested in PSB content elsewhere. These surpluses are used to help cover the costs of the main channel, allowing C4C to maintain a breakeven position overall.

It follows that the regulation of C4C as a public service organisation, rather than the regulation of a single channel as a public service channel, would better reflect the full extent of C4C's public service provision across all of its channels and services. It would produce a number of benefits, both strategic and philosophical.

First, given that C4C is set up as a public service broadcaster, we believe it would be an important outcome in and of itself if its full public service role were formally recognised within the overall regulatory framework. It would also serve to legitimise Channel 4's public service delivery beyond the main channel.

The 2010 Digital Economy Act went part way to providing this recognition. But in so doing, it also introduced an inconsistency, in that it recognised Channel 4's delivery of its public service role across the portfolio, while the programming quotas continue to be defined specifically in terms of the main channel. A new PSB framework that re-categorises C4C as a public service organisation would finally resolve the inconsistencies in the current regulatory framework.

Second, as Ofcom itself notes, when assessing public service delivery in the PSB Review, or as part of its ongoing reviews of the PSB system, it is unhelpful to all parties that the regulatory framework effectively ignores, or discounts, crucial parts of Channel 4's public service provision. Not only does this paint an incomplete picture of PSB delivery overall, but it can also distort the policy decisions that flow from Ofcom's analysis.

And third, as Ofcom also argues, a more flexible approach might deliver positive outcomes by encouraging innovation on other (currently non-PSB) services in the future, and help PSBs better connect with their audiences. For example, at a time when PSB budgets are stretched, Ofcom emphasises that it would enable broadcasters to deliver more non-TV output (e.g. short-form online content, the production costs of which are typically lower than those of traditional TV programmes). Equally, greater flexibility may enable PSBs to more effectively target key segments of their audience in the long-term – for as young people's news consumption habits continue to migrate online, in the future it may be appropriate for broadcasters wanting to reach this audience to deliver a greater proportion of their news provision online. A more flexible approach would thus allow PSBs to better balance public service, audience engagement and commercial considerations across their portfolios.

This third factor could potentially lead to the most tangible benefits in the long-term (although we would note it would be unlikely to lead to significant changes in the schedule at present). It would enable C4C to align its activities across all channels and services with its core remit, and to deliver its public service objectives more efficiently via the most appropriate channel or service, in line with audience expectations. In practical terms, we believe that a key element to this would be to convert existing quotas from percentages of output on the main channel to absolute volumes of output across all services.

A calibrated package of benefits and obligations would also need to provide a clear position, for each channel and service in the portfolio, on rules covering universal access, prominence, spectrum pricing, COSTA (advertising minutage) and the application of quantitative PSB obligations. These would need to be carefully calibrated to ensure that the new PSB compact does not impose additional direct or indirect costs that would undermine C4C's overall ability to invest in public service content – such as new specific quotas for digital channels or restrictions on their commercial airtime – as this would be counterproductive. Channel 4 welcomes the opportunity to engage in discussions with Ofcom about the issues that are raised, and to explore possible solutions that would produce positive outcomes in terms of the overall PSB policy goals.

Q14: Do the current interventions in relation to the independent production sector need to change in light of industry developments?

Channel 4's role in nurturing and growing new ideas, formats, talent and businesses continues to be a critical part of the distinctive role it plays within the PSB system. We see Channel 4 as a creative greenhouse, bringing

creative innovations across TV, film and digital into the mainstream and helping them achieve national and international success.

To this end, our commitment to supporting the indigenous independent production sector, especially SME businesses in that sector, remains as strong as ever: we work with more indies and try more new programme ideas than any other PSB channel and this support is spread across the UK. More than 50% of hours of commissioned programmes for the main channel come from outside London, and our spend in the UK Nations continues to rise. Channel 4's new £20 million Growth Fund invests in small and medium-sized independents across the UK, to help develop the next generation of talent, and in recent years we have increased the proportion of spend on indies with a turnover of £25m or less, as well as increasing the proportion of our total commissioning budget that goes on original content, rather than acquisitions. The support we provide also enables successful formats to be sold globally, providing opportunities for indies to exploit international rights. In 2013 alone Channel 4 commissioned over a quarter of the British programme formats in the Top 100 in Europe and these formats grossed over \$0.5 billion dollars in estimated European broadcasting revenue. *Gogglebox* alone has been exported to 25 different territories.

Our commitment to the sector is reinforced in practical terms by the inextricable link between the health of Channel 4 and the health of the independent production sector. Channel 4 is stronger as a result of a vibrant and robust production sector, and the independent sector is enhanced by a strong Channel 4 – as the more revenue Channel 4 can generate, the more can be invested in original UK content (without funds being diverted to shareholders). C4's ability to invest in content is dependent entirely on the revenue generated across its business. This includes its share of commercial return from exploitation of successful programming it has developed, funded, marketed and promoted and the value generated by ensuring it has the relevant rights needed to deliver its PSB purposes. The healthier the sector, the better the ideas that Channel 4 can help develop and the more revenue we can generate to reinvest.

This relationship between Channel 4 and the independent production sector is unique within the PSB ecology, because Channel 4 is the only PSB without an in-house production arm. So any regime that determines the flow of value between PSBs and producers has a very particular impact on Channel 4.

Our over-riding consideration in answering Ofcom's question on this issue is therefore to ensure that any intervention is well-focussed both in terms of ensuring those indies who need support continue to benefit from Channel 4's 'greenhouse' investment and in terms of maximising the amount of revenue available to Channel 4 to reinvest in UK content.

We believe that the current intervention no longer strikes the right balance. Given the major changes that have taken place in the production sector over the last five years, as well as the continued shift in media consumption habits that is likely to take place in the future, a resetting of the regulation that underpins the commercial relationship between broadcasters and producers is necessary to ensure a stable Channel 4 *and* a healthy production sector. We believe these changes would help facilitate greater innovation and experimentation for PSBs across digital platforms, would allow C4 to reinvest in more UK PSB content and would enable C4 to further deliver its PSB purposes across its portfolio.

If the regime is not addressed, however, we are concerned that on balance our ability to maintain our current level of investment in original content is likely to be weakened. In the absence of a revised framework C4 would have to consider pursuing alternative business models, for example by no longer fully funding programmes or by seeking changes to enable the production of at least part of its content requirements in-house.

To deliver these benefits to Channel 4 and the sector as a whole, C4 believes that **as a minimum** there are specific aspects of the regulatory framework that need urgent change:

- Amending the definition of a production company that is eligible for terms of trade to apply to a smaller sub-set of the sector, thereby ensuring that the terms of trade are more targeted at supporting Small and Medium Sized Enterprises.
- Amending Ofcom's guidance for PSBs drawing up Codes of Practice to make clear that PSBs should be freer to negotiate a fairer deal over revenue split, a recalibrated set of digital rights, and greater control of UK secondary rights than is allowed within the Terms of Trade.

The broadcast landscape has changed radically since the introduction of the terms of trade in 2003 – and has even altered significantly since 2007, when Ofcom's guidance was last amended. While the 'benefits' of intervention as outlined in Ofcom's document clearly remain desirable, Channel 4 questions whether they are a direct result of the current regime and whether the interventions are needed in their current form. We outline this in more detail below, addressing each 'benefit' in turn.

- **Underpinning the PSB system** – Ofcom states that strengthening the independent sector ensures a wide range of quality output. However, Channel 4 notes that the combination of increased competition for ideas as a result of a wider pool of buyers, a diverse production sector made up of several hundred companies, PSBs with specific remits to invest in high-quality content, and a highly competitive market for viewers' attention should ensure that quality output exists without specific intervention on the commercial terms of suppliers.
- **Plurality of ideas** – Channel 4 agrees that a wide pool of suppliers is critical to delivering a range of creative voices – this is why under Channel 4's Creative Diversity strategy we have sought to diversify our supply base, working with more than 300 companies in 2013, more than any other channel. However from our experience in the market we question whether the intervention has necessarily delivered a situation where external producers "cater for a wider mix of genres". We have found that in some genres (current affairs, news) there is very little growth in external producers, whereas in others (entertainment) they are monopolised by the very few producers of scale.
- **Widening the geographic footprint** – Channel 4 agrees that intervention is likely to be necessary to ensure a wide geographical base – which is why it supported the introduction of a new Out of England quota as part of its recent renewed licence. However this objective is not delivered by the interventions within the scope of the PSB Review (namely the definition of independent producers and the terms of trade), but rather the regional production quotas in Channel 4 and ITV's licences. Channel 4 is not seeking to make amendments to these quotas.
- **Serving UK interests internationally** – While it is clear that UK television over the last ten years has been an outstanding success story for the creative industries and UK plc more generally, Channel 4 does not believe it is necessarily the case that without intervention this success would be wholly undermined. Indeed, the strategic emphasis of the BBC and ITV on international sales indicates a complete shift in approach from broadcasters in relation to international exports, and therefore it is unlikely that even in the complete absence of intervention that IP would not be exploited.
- **Vertical integration** – As a publisher broadcaster, Channel 4 does not have any in-house production and therefore interventions are not necessary to prohibit us from favouring companies that we own. (All investments made through the Growth Fund are based on a minority stake and all structures and governance have been specifically designed to ensure a separation between commissioning and investment). In addition, Channel 4 does not believe that vertical integration should be the determining factor in whether a company is eligible for protection under the terms of trade regime. We believe that size is the predominant factor influencing negotiating power, and therefore this dimension should be recognised by the regulation.
- **Stimulating growth of SMEs** – Channel 4 is committed to supporting the growth of Small and Medium sized Enterprises and sees this as a significant part of its role as a publisher broadcaster. Over the last 5

years, Channel 4 has deliberately sought to broaden its supply base to include more SMEs, setting up initiatives such as the Alpha Fund, aimed at identifying and supporting emerging talent and giving them their first commission. In 2014 we expanded this commitment to include investments in SMEs for the first time, through our innovative Growth Fund. However, C4 does not believe that the current interventions are appropriately tailored to deliver this policy, and therefore they should be amended in order to more effectively support SMEs.

- **Protection during commercial negotiation** – In Channel 4's view ensuring that producers received fair reward for their work when dealing with larger commercial entities who have greater negotiating power was the most important policy objective for the terms of trade. We believe this is the area where the sector has seen the most significant level of change. Today, Channel 4 is unlikely to be the sole long-term customer of many production companies, as the market for programme ideas is now global, rather than being limited to the few buyers in the UK. We note the recent comments from the Culture Media and Sport Committee that "*increased competition has meant that power has transferred from the broadcasters and channel owners to the content providers*".³ The relative positions of producer and Channel 4 have changed and Channel 4 does not have the same level of negotiating/buying power as it once did. Additionally, large producers supported by global parent companies and producers bringing key talent as part of their negotiation over terms, are likely to have equal, if not greater, negotiating power than Channel 4, and therefore arguably do not need regulatory protection in order to negotiate favourable commercial terms. For other indies, collective negotiation through PACT also strengthens their bargaining power. If this is the central objective of the terms of trade, it is therefore appropriate to ask whether these protections are still necessary.

Given these points, we believe it is reasonable for Ofcom to give a clear steer to the market that reform of the current framework is appropriate. We note that the Culture Media and Sport Select Committee recently came to a similar conclusion as part of their review of the BBC⁴ – recommending that Ofcom play a lead role in reviewing the terms of trade given the significant changes that have taken place in the market.

Challenges resulting from current interventions

Impact of the independent production quota:

The relationship between the definition of an indie and the quota requirement results in an arbitrary effect. This is more of a concern for other PSBs than C4 (providing C4 continues the publisher broadcaster model) but is nevertheless flawed⁵.

The arbitrariness is magnified by the definition determining whether terms of trade apply. As Ofcom itself notes, 'super-indies' such as Tinopolis, Zodiak and Fremantle, who all have turnovers of more than £100m, will remain within the definition and therefore eligible for terms of trade, whereas companies such as Shed Media Group (owned by Time Warner) which has a similar turnover, falls outside of it. While Channel 4 acknowledges that recent consolidation such as the merger of Endemol and Shine and the purchase of All3Media by Liberty Global and Discovery has meant that these particular companies will no longer qualify as independent productions, we do not believe this is proof that the regulation works effectively. These companies could easily have been purchased by a global corporation of the same size but *without* specific broadcast interests in the UK. They could also have been purchased by a global company within the communications sector, such as a telecoms operator. This would have meant they remained a qualifying company eligible for terms of trade, despite having sufficient strength and negotiating power to negotiate favourable terms with commercial public service broadcasters

³ House of Commons Culture Media and Sport Committee report into "Future of the BBC" p57

⁴ House of Commons Culture Media and Sport Committee report into "Future of the BBC" p59

⁵ The scale of this arbitrary impact will continue to grow with C4 likely to be commissioning circa 50% of its content from NQI's in 2015

without regulatory protection. Channel 4 therefore believes these are examples of the regulation working by accident rather than design.

In our view the impact of any intervention should be designed to fit a valid public policy aim – in this case to support SMEs as they build towards sustainability. Channel 4 therefore believes that a new category of “SME qualifying indies” should be introduced to the definition of independent producers, and that companies who fall outside of this category would not be eligible for negotiations under the terms of trade. This would ensure that the intervention is focused on providing regulatory protection to SMEs. We note that there is no standard UK definition of a Small and Medium Enterprises, and it would therefore be for policy-makers to agree the appropriate definition.

Impact of Ofcom’s guidance:

Since the creation of the Codes of Practice framework in 2003, Ofcom has updated them just once, in 2007. Beyond this, Channel 4 has agreed revisions to the Terms of Trade on two occasions – in 2007 and in 2012. We would note, though, that where terms have evolved they have done so in exchange for other commercial value – as the position set out by Ofcom/ITC in 2002 is perceived as representing a ‘base position’, and therefore revisions are made only in exchange for other value elsewhere in the overall package (increased payments, reduced licence periods/holdbacks etc.). We question in 2015 whether the ‘base position’ up to 2020 should still be set from a landscape of more than a decade ago – and therefore believe Ofcom need to provide a clear steer that change is needed.

Channel 4 also believes that the prescriptive nature of Ofcom’s Guidance around the creation of the Codes of Practice has a number of effects not set out in the statute. Most significantly, a single set of guidance for all PSBs, which informs Pact’s collective bargaining position, makes any material variation between broadcasters unlikely. This explains why all PSB’s have very similar Terms of Trade (for example over division of Net Receipts) despite the fundamental differences that clearly exist in their business models and practices. There is therefore no recognition, for example, of the fact that other commercial PSBs are negotiating with the motive of containing costs and driving profit, whereas C4 is aiming to invest back into the independent production sector as a whole. We would therefore encourage Ofcom, as the regulator capable of influencing the behaviour of the market, to consider the impact of the Codes of Practice on a PSB by PSB basis – recognising, for example, that Channel 4’s not-for-profit model, where any income received is reinvested back into more content and therefore the independent production sector, and publisher broadcaster status, where we have no in-house production to generate our own IP, means that we are uniquely impacted by the terms of trade intervention.

The cumulative effect of the guidance is disproportionately impactful on C4 on both (i) the level of investment in programming and (ii) its ability to innovate and evolve as a PSB.

Impact on investment

The current Terms of Trade agreed between Channel 4 and Pact determines that there should be an 85/15 revenue split in the favour of producers. This figure stems from the ITC’s Programme Supply Market review and is based on two questionable assumptions – (i) that ownership of secondary rights and unequal sharing of net revenue is essential to ensure motivation to exploit and realise value, and (ii) that the split is necessary to incentivise investment in content.

Given C4’s operating model, the unequal split of net serves only to reduce the investment that C4 can make in following years. It also has the unintended effect of separating commissioners from any potential commercial upside; meaning incentives between commissioners and producers are not aligned and could even potentially conflict. Channel 4 does not believe that the 85/15 split fairly reflects the investment from C4 in

funding/creative contribution/marketing of the programmes. This unfairness is magnified in circumstances of windfall profit.

Where C4 has an alternative split of net with producers (from programmes that fall outside of the current regulations, such as E4 commissions or deals with Non Qualifying Indies) there is no evidence that producers are less motivated to exploit or that insufficient margins are being made – the 85/15 split is not the main factor driving commercial success.

In respect of investment in content, C4 is unusual amongst other broadcasters in continuing to fully fund programmes – at point of commission C4 fully funded 89% of all programmes commissioned in 2014. The majority of the secondary value is therefore retained in the IP and not consumed by the production cost, meaning a ‘fair’ share between producer and broadcaster is still viable. We would also note that where there is any additional investment beyond the C4 tariff the amount required is limited, approximately 2.5% of production spend at greenlight, and of this we estimate that only 0.5% of this additional funding is from producers and is therefore a risk against future commercial return. The remainder of any funding comes primarily from distribution advances or co-pro/pre-sales (both the net split and allocation of secondary rights thus being irrelevant to the sourcing of this finance). The current share of net returns simply reduces the investment C4 can make in subsequent years and not addressing this imbalance could inevitably lead C4 to follow other broadcasters into effectively reducing investment through increasing deficit financing (requiring producers to take a funding risk off their greater share of potential returns).

It is therefore our view that Ofcom needs to send a clear signal of the kind issued by the ITC in 2002 that a fairer share of commercial upside should be the starting point for negotiations between producers and broadcasters. This will allow C4 to increase its investment into UK PSB content.

Barrier to innovation and PSB delivery

C4's terms of trade have evolved over the last 12 years at key moments but we believe it will be increasingly difficult for them to do so - to the detriment of innovation and PSB delivery. In particular, we are constrained by the distinction between primary and secondary rights within Ofcom's guidance. In an evolving market with platform convergence and growing means of consumer consumption of content, the line between primary and secondary rights is becoming increasingly blurred, but the current rights regime does not cater for this systematic change.

Particular issues in this area include:

- **VOD**: 30 day VOD catch-up viewing is now a fundamental part of how audiences consume television and a must-have offer from any PSB broadcaster. It is clear from Channel 4's experience, as well as Ofcom's own audience research, that the ability to catch up on a programme within a fixed timeframe after transmission is now part of the natural expectation of audiences. Channel 4 therefore believes that for a programme which the PSB has commissioned and funded, the associated catch-up rights should form part of C4's primary rights package paid for by its programme licence fee, rather than being rights for which producers must be paid additional compensation. We would welcome clarification from Ofcom on this issue.
- **Digital innovation**: The current binary division of rights makes it very difficult to agree a commercially sustainable framework for C4 exploitation of games, apps, and second screen activity. Channel 4 believes this type of digital activity will be key to its ability to continue to deliver its PSB purposes. Despite significant digital innovation, as outlined in other parts of this response, this has been a result of pursuing individual agreements with producers, and these projects have all been loss making for Channel 4 as rights sit with producers who place a premium value on them despite the high costs of producing quality digital products. Providing PSBs with a wider set of rights will lead to increased

creativity and innovation in the multiplatform space. Channel 4 has already proved itself to be an innovator in multiplatform content, and reforming the rights framework would allow us to develop even bolder and more expansive digital and multiplatform propositions, and receive returns on that investment - enhancing both our public service delivery and our revenues.

- **Sponsorship:** Sponsors increasingly seek 360 degree deals with programme brands – and so placing brand rights with producers can put traditional commercial sponsor revenues at risk. Looking ahead, the decoupling of rights, whereby broadcast rights are given to broadcaster and brand rights to producer will increasingly be unviable when commercial sponsors only seek to engage with programmes at a holistic level.
- **UK Secondary rights:** the market in the UK increasingly requires secondary activity to encompass multiple windows or categories of rights which Channel 4 is best placed to manage to maximise value given the blurring of primary and secondary rights. Combined with the additional leverage secured by C4's aggregation and brand of content against increasingly large and dominant buyers, this should ensure better terms and a return for both producers and C4. We therefore believe that Ofcom should recognise that the distinction and automatic separation of ownership between primary and secondary rights in the UK territory is outdated and contrary to the interests of all concerned.

We believe Ofcom should consider reassessing the rights granted to the PSB within its primary window, in line with the below:

- A revised suite of **Digital rights** including VOD to drive digital engagement around C4 programming
- Allocation of **distribution rights** in the UK market to grow revenues by allowing C4 to treat the portfolio as a whole in the UK market
- **Brand exploitation rights in UK** for on air and off air activity related to the programme to enable C4 to engage directly with sponsors more deeply with the programme

This reassessment of rights would be limited to Channel 4's core market, the UK, and therefore would not impact on the international distribution rights of a programme, which as Ofcom notes has been the main source of growth for the independent sector. Channel 4 envisages that under any revised framework international distribution rights would continue to sit with the supplier, who would also retain the copyright.

Within the changes proposed above, C4 believes that particular support should be given to SMEs. In looking at the fair share of commercial upside, Ofcom could consider whether signalling the need for a flexible arrangement would create the opportunity for a higher share to be given to SMEs (until a certain threshold of net revenue is reached and thereafter a fair share of revenue). This would allow for greater sustainability across the entire sector and could result in the majority of suppliers to C4 being better off than under the current framework.

We therefore do not believe that these proposals would damage or undermine the production sector in any way. Indeed, with intervention more focussed on supporting SMEs, as well as a commitment from C4 to provide particular support to these smaller companies, we believe that Ofcom can create a system whereby SMEs are advantaged.

C4 believes that if policy-makers were to start from scratch in developing the Codes of Practice and Terms of Trade framework, they would be highly unlikely to design them in their current form. We therefore welcome the opportunity to work with Ofcom on the modernisation of this framework, providing fair terms that would allow indies to continue to flourish but which also allows the maximum possible returns to be reinvested in the virtuous circle of more UK PSB content.

Q15: Have we identified the right options when considering potential new sources of funding, are there other sources of funding which should be considered, and which are most preferable?

Channel 4 welcomes the analysis contained in Ofcom's consultation document of potential new sources of funding to the PSB system. Exploring such possibilities is an important part of fulfilling Ofcom's duty to maintain and strengthen public service broadcasting, and Channel 4 believes that the options outlined are largely comprehensive.

We would, however, challenge the suggestion by Ofcom that the current debate around platform fees is considered solely within the context of "transferring funds from other parts of the industry into the PSB system". Channel 4 believes the underlying issue in relation to the platform fees debate is one of enabling PSBs to receive 'fair value' for its content, rather than merely mandating a value transfer. At present we believe that value is being leaked out of the PSB system, and therefore intervention is needed in order to restore it.

Of the specific options detailed by Ofcom, Channel 4's preferred solution is the introduction of a fair deal between PSBs and pay platforms, and we outline below what changes are needed from policy-makers in order to secure this. We also believe that there is merit in reviewing the TV advertising volume and scheduling rules so that public service channels are no longer at a disadvantage compared to non-public service channels. In relation to future AIP charges, Channel 4 continues to believe that PSBs should be exempt from any charges, as this would directly take money away from content investment.

Of the other options suggested in Ofcom's document, the introduction of additional tax breaks or contestable funding is less of a policy priority for Channel 4. As Ofcom note, tax breaks for high-end television, animation and live action children's content have proved very successful – with the most recent data from the BFI showing that more than 80 TV productions with a total spend of over £600m benefited from the UK's high-end TV tax break in 2014. While Channel 4 believes it may be desirable to support other specific genres that are challenging to fund (for example specialist factual or high end documentaries), we are conscious that these genres typically involve lower budgets and are more challenging to define than those captured by existing tax relief. Any new system would therefore need to be designed carefully to ensure that it is not subject to misuse and therefore potentially undermine the current regime of tax support.

Similarly, Channel 4 believes that the introduction of a system of contestable funding could risk upsetting the delicate balance of funding that exists in the PSB ecology. The current diversity in funding models, which includes publicly funded BBC and commercially funded Channel 4, ITV and Channel 5, has been an important feature of the success of the UK's PSB ecology. Even if additional funding was made available for PSB content, there are many other considerations to take into account that could impact on the PSBs – the level of accountability/scrutiny required by public funding for example, and the availability of appropriate slots/destinations for the content once it has been funded. Channel 4 believes the independence of our commercially-funded model is a better way to deliver our unique remit than by receiving public money, and therefore it is not seeking the introduction of contestable funding.

Platform fees

If the purpose of the PSB Review is to examine the current state of public service broadcasting in this country and look for ways to maintain and strengthen it then Channel 4 believes it is essential that Ofcom closely examines the relationship between platforms and PSBs. The existing system is leaking hundreds of millions of pounds from the PSB system and consequently from investment in original UK content. Examining ways to reverse this flow should be a matter of priority for Ofcom.

As Ofcom have reported, PSBs account for the vast majority of UK content investment. Spend on first-run UK original programmes from the seven PSB channels alone was £2.4bn in 2013, while spend by the multichannel sector and PSB portfolio channels combined (excluding sport but including channels such as Channel 4 Corporations' E4 and More4) was £345m. Meanwhile, Virgin Media's investment in content for 2013 stands at zero.

Channel 4 believes the current regulatory system which governs the relationship between platforms and PSBs needs urgent reform. At the moment, the system focusses solely on the benefits PSBs receive from access to these platforms and at no point seeks to recognise the value PSBs bring to platforms. This results in PSBs in some cases having to pay for access to these platforms - despite the main PSB channels representing around 50% of their viewing and the PSB portfolios representing over 60%.

Channel 4 believes that a fair deal between PSBs and pay platforms, which appropriately reflects the value PSBs bring, would result in payments to PSBs and consequently an increase in expenditure on UK originated content. However this fair deal is currently unachievable as a result of a combination of regulatory imbalance, market power and the importance of PSBs being widely available. As such Channel 4 believes Ofcom should set out recommendations on how the current system could be amended to ensure that fair negotiations can take place between PSBs and platforms which lead to a settlement which adequately reflects the value PSBs bring to those platforms.

Independent analysis commissioned by DCMS in 2012 suggested that a system based on a 'fair exchange' of values could lead to payments to the PSBs from platforms of up to £190m. Additional independent analysis recently conducted on behalf of Channel 4 suggests that if negotiations were conducted on even terms (e.g. without taking into account regulatory advantage or negotiating leverage) to truly reflect the value offered by both parties, platform fees could be worth in the region of £75m to Channel 4 alone. We have made clear that any payments to Channel 4 would be reinvested directly back into UK independently produced content, benefiting the sector and viewers.

In addition, it is instructive that many other major markets in the world, such as the USA, Germany and France, have regimes whereby pay platforms pay fees to the major broadcast networks. While, as Ofcom notes, these are based on very different market and regulatory systems and therefore are not directly applicable to the unique system in the UK, we do believe this demonstrates the widespread principle that platforms should recognise financially the value that free to air content brings to their commercial offering.

On cable: The first step is for the Government to remove the outdated regulation that prevents PSBs from even entering into a negotiation with cable platforms, namely Section 73 of the Copyright, Designs and Patents Act 1988. This regulation was brought in over 25 years ago to encourage the roll out of cable. Given that there is now a mature market and the cable network reaches over half the population it is clear that it has long since achieved its aim. Section 73, as a means of ensuring the provision of PSB content over cable, has also been superseded by "must offer" obligations which ensure PSBs must offer their content to all platforms of a significant size. As well as being a first step in setting up a system which delivers fair value to both parties, removing Section 73 will also prevent online streaming services from retransmitting our content without our permission. Section 73 provides a loophole which enables these services to make money from our content by placing unregulated adverts around it whilst investing nothing back into the system. This practice is leaking value from the PSB system every day and the removal of section 73 would put an immediate end to it.

Whilst we appreciate that it is not in Ofcom's gift to remove section 73 we do believe Ofcom has a role to play in providing an overview of the restrictions and limitations of the current system, and making recommendations accordingly.

On Satellite: Channels currently have to pay Sky for a number of services associated with carriage on the Sky platform under the Technical Platform Services (TPS) regime, including the costs of services such as EPG listing and even the marketing and subsidy of Sky's set top boxes.

The TPS regime is designed to ensure that (a) Sky is compensated for the cost to it of the satellite infrastructure that it has invested in and which the channel operator is benefitting from; and (b) that the

technical costs channels are exposed to by Sky are fairly assessed. (although we note that there is no transparency in how the rate card is calculated). However, the regulatory framework takes no account of the value that free-to-air channels, and particularly PSBs, bring to the Sky platform. Given the enormous value that PSB channels bring to the Sky platform it is this side of the equation that we believe now needs to be addressed.

Despite recent reports that Sky has reduced TPS fees to zero, Channel 4 has received confirmation from Sky that its TPS rate card remains unchanged and, as such, Channel 4 continues to pay TPS fees to Sky.

Must offer obligations: In addition to the regulatory restrictions laid out above, the Communications Act 2003 imposed provisions on PSBs whereby they “must offer” their channels to platforms with a “significant number of end users” (the Must Offer obligation). This obligation stems from a public policy objective to ensure that PSB channels are universally available to audiences. While Channel 4 supports this objective, it is important to recognise the inevitable impact it has on commercial negotiations. As Ofcom themselves note, the corresponding “must carry” obligation on platforms has never been implemented in the UK – and therefore the obligations are currently highly imbalanced in favour of platforms.

A new system:

Channel 4 therefore believes that there is a pressing need for a new, consistent regulatory framework across both cable and satellite which properly reflects the value flow between PSBs and platforms.

We believe that it is essential for this system to include a regulatory component. While we believe deregulation of specific outdated legislation like Section 73 of CPDA is both necessary and appropriate, we are not supportive of an overall system of deregulation which would be likely to have negative implications for PSBs and for viewers. PSBs must by their very nature reach as wide an audience as possible and therefore withdrawing access to their channels is unlikely to be a viable option. This however, undermines our ability to have a pure commercial negotiation as we cannot introduce any sense of jeopardy for the platforms. Therefore, even with the removal of the regulatory constraints noted above, PSBs will always be constrained in their ability to negotiate on a straight commercial basis. This is further exacerbated by the market dominance of a small number of pay platforms, which effectively act as the gate-keepers to over 13 million viewers. A deregulatory approach is therefore not only unlikely to lead to payments to PSBs, but will also lead to a reduction in investment in public service content and in the availability of that content on all platforms. Such an outcome would not be in the interests of viewers.

The difference in scale, objectives and incentives between PSBs and pay platforms means that, in order to resolve these issues, a system of commercial negotiations underpinned by a regulatory – but commercially-based – backstop solution which would kick in if negotiations between the two parties fail is required.

One mechanism, which Channel 4 believes is light touch and requires minimal involvement from the regulator, is final offer arbitration. The advantage of this system is that both parties are incentivised to reach an agreement and are forced to honestly evaluate and propose what they believe the fair value flow should be. It also ensures that an agreement will be reached and that PSBs will remain available to all. It is instructive to note that in the case of the terms of trade, which is also underpinned by an ‘arbitrator backstop’, parties have always reached an agreement and the arbitrator has yet to be called on.

Channel 4 believes that it is vital that Ofcom lay out clear recommendations which prevent the leaking of value caused by the current system and propose a new system which strengthens PSB.

Advertising minutage

Channel 4 does not believe it is right that rules are in place which directly disadvantages PSBs against non-PSBs, and as such Channel 4 believes that Ofcom should fully investigate whether advertising minutage rules should be harmonised with the aim of increasing investment in content.

Channel 4 accepts that this is a complex issue where outcomes rely on how the market might react to an increase or decrease in the number of advertising impacts available, but Channel 4's initial analysis suggests that harmonising minutage down to PSB levels could lead to a significant uplift in revenues for the commercial PSBs which, in Channel 4's case, would lead to greater investment in the delivery of its remit. Clearly harmonising minutage rules down to PSB levels would serve the best interests of viewers, not only by increasing investment in content but by also reducing the amount of advertising they have to watch. Decreasing the supply of advertising impacts would lead to an increase in demand, thereby raising the value of advertising and enabling PSBs to maximise their revenue and reinvest any increase in UK originated content.

Administered Incentive Pricing

As Channel 4 outlined in its response to Ofcom's 2013 consultation on spectrum pricing, we believe that applying AIP to broadcasting is not appropriate. The objective of administering AIP is to incentivise more efficient use of spectrum by broadcasters and multiplex operators, but given that PSBs are limited in their ability to sell spectrum or to roll out technologies which drive more efficient use the only effect of AIP would be to reduce the content budgets of PSBs and make the DTT platform less attractive. Channel 4 therefore believes that broadcasting should be exempt from AIP charges.

Further options

Channel 4 believes that Ofcom has identified several good options which would strengthen the public service broadcasting system. However as noted above, this list is by no means exhaustive and there are several other options Ofcom should also consider further. We have outlined our thoughts on these below.

Restrictions on Advertising

Channel 4 believes that placing restrictions on advertising can too often be seen as a quick and easy solution to broader social concerns - but these restrictions are not without wider consequences especially for those businesses funded primarily by advertising. The industry has been responsible in setting up a series of measures to help ensure that certain products are only shown to appropriate audiences and at appropriate times and this is regulated by the Advertising Standards Agency. Where there is clear evidence that these methods are not working, Channel 4 accepts that there is a case for further intervention but it is essential that any further restrictions are evidence based and do not unduly damage the revenues of broadcasters.

Ofcom has a role to play in advocating that any restrictions on advertising should be evidence based and clearly outlining the impact additional restrictions would have on the wider industry.

Cross promotion rules

Ofcom's Broadcasting Code currently contains rules on cross-promotion, which enables broadcasters to promote programmes, channels and other broadcasting-related services without these being considered advertising. While Channel 4 continues to believe that the principle underlying this regulation is appropriate, in our view it would be timely to review aspects of the code to foster and enable future innovation and ensure it is in line with current and future market developments.

For example, the rules limit the subject of cross-promotions to broadcasting related services. Channel 4 believes there would be benefit if this could also explicitly include a *broadcaster's film-related activities* – as at present Channel 4 is unable under these rules to promote the theatrical release of feature films that it has invested in

through its feature film arm Film4, despite the fact that “*the making of high quality films intended to be shown to the general public at the cinema*” is part of Channel 4’s statutory remit.

This issue is particularly relevant given the changes in distribution taking place in the film industry. In 2013 Film4’s pioneering film *A Field In England* became the first ever UK film released simultaneously in cinemas, on DVD and Blu-ray, on VOD and on Film4 – what is now known as a ‘day-and-date-release’. However, there was uncertainty as to whether Channel 4 promotions for this film would be at risk of breaching cross-promotion rules, as the film was available to consumers beyond ‘broadcasting-related services’ – and this uncertainty has meant that Film4 has been reluctant to experiment with other day-and-date releases of this kind since, thus hindering innovation. Given the importance of film to Channel 4’s remit, we believe that Ofcom should amend the cross-promotional code to include film, enabling us to innovate with new distribution models and more confidently promote Channel 4’s film content to new audiences, thereby strengthening delivery of this aspect of our remit.

In addition, Channel 4 believes that Ofcom should consider relaxing the rules which restrict PSBs from promoting free to air platforms such as Freeview and YouView. Ofcom should also consider exempting the promotion of such platforms from the advertising minutage of PSB channels.

Copyright legislation

An effective copyright system is crucial to Channel 4 and the rest of the creative industries - it rewards stakeholders for their investment in IP whilst allowing UK audiences access to high quality original content.

However, while Channel 4 believes that overall, the UK IP framework works effectively, we are concerned that there are some aspects of copyright legislation which are being exploited by emerging platforms in order to leak value from the PSB system. As we have noted above, S. 73 of the CDPA does not just prevent PSBs from negotiating platform fees with Virgin – it also provides a loophole for parasitic companies to live stream and monetise the content of PSBs without permission. In addition, Channel 4 is concerned that S. 70 of the same Act, which allows for private recordings (or ‘time-shifting’) of broadcasts, could be abused as technology develops. For example we understand that some platforms are now developing products that allow for non-stop recording of our entire schedules, which we believe falls outside of the intended scope of the legislation but which platforms are attempting to claim S.70 allows. We therefore think it is essential for policy-makers to ensure copyright legislation is fit for purpose and gives content providers the protection we need to maintain investment in content. This is particularly important within the context of the PSB Review, as free to air providers are disproportionately exposed to these loop-holes, given we have no ability to impose contractual restrictions as pay platforms can.

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