

# **Channel 3 and Channel 5: proposed programming obligations**

**BFI response to Ofcom consultation**

**May 2013**

## Summary

1. The British Film Institute (BFI) strongly supports the objective of maintaining a strong and healthy PSB system with a plurality of providers. To this end, we would like to emphasise the following overarching points:
  - We welcome the overall thrust of the licence renewal process, which preserves the status of ITV and Channel 5 as licensed public service broadcasters, and ensures that the programming obligations in the new licences remain largely unchanged.
  - The inclusion of feature films in services form part of the definition of PSB in the 2003 Communications Act. The BFI believes it is very important that ITV and Channel 5 continue to show films – including British films – in their schedules. The BFI wishes to strengthen its relationships with broadcasters, and we look forward to engaging with them directly in the coming months.
  - The 2003 Communications Act requires Ofcom to determine a contribution to the costs of the National Television Archive – for which the BFI is responsible – from ITV, Channel 4 and Channel 5. It is vital that the broadcasters' Archive contributions are safeguarded at an appropriate level for the new licence periods. The BFI has developed a ten-year plan that includes new capital investment to upgrade the archiving infrastructure to a fully digital platform, allowing 100% capture of free-to-air broadcasts from contributing broadcasters, and easy access to all archived content for authorised users, including both the broadcasters' staff and public users via BFI Reuben Library and BFI Mediatheques. This planned investment will reduce net costs over this period. The BFI has encouraged Ofcom to secure a single long-term settlement that would enable the BFI to proceed with its upgrade plans, reducing the costs to all parties and avoiding the need for time-consuming annual negotiations.
  - New local TV channels will complement ITV's regional services, offering more localised news and other forms of programming, and enhancing plurality at the local/regional level. The BFI believes there to be exciting possibilities for collaboration with local TV providers, and we have begun to engage with them with the intention of exploring mutually beneficial partnerships.

## Introduction

2. The BFI is the lead organisation for film in the UK. Since 2011, it has combined a creative, cultural and industrial role as a Government arm's length body and distributor of National Lottery funds. Its key priorities are to support a vibrant UK film culture by investing in film education, audience access, filmmaking and film heritage. Founded in 1933, the BFI is a registered charity governed by Royal Charter.
3. In October 2012, the BFI published '*Film Forever, Supporting UK Film 2012-2017*', which set out its strategy for the next five years, following an

extensive industry consultation. It described the activities underpinning the BFI's three strategic priorities:

- Expanding education and learning opportunities and boosting audience choice across the UK
  - Supporting the future success of British film
  - Unlocking film heritage for everyone in the UK to enjoy.
4. The BFI welcomes the opportunity to respond to Ofcom's consultation on the proposed programming obligations for the new Channel 3 and Channel 5 licences. We strongly support the objective of maintaining a strong and healthy PSB system with a plurality of providers.
  5. Television is a key platform for films: BFI research shows that TV channels account for 80% of all "views" of films by UK audiences, and the public service broadcasters – including ITV and Channel 5 – play a particularly important role in making films available to all UK households, both on their core PSB channels and across their digital portfolios of free-to-air channels. The public service broadcasters' digital channel portfolios accounted for 73% of all viewing in 2011, according to Ofcom's 2012 PSB Annual Report. The main five network TV channels showed more than 2,200 feature films each year between them in 2011, almost 500 of which were British. The most popular UK film shown in 2011, *Harry Potter and the Goblet of Fire*, attracted an audience of 6.5 million viewers on ITV.
  6. In 'Film Forever' the BFI sets out its ambitions to strengthen its partnerships with broadcasters. Our ambitions include plans to help enhance audience engagement with films shown on TV in a number of ways, including a new app to enable audiences to better discover and contextualise their film viewing on television, and new collaborations linked to the BFI's UK Audience Network.

## Overarching points

7. The BFI has a number of overarching points to make in the context of the renewal of the Channel 3 and Channel 5 licences, which do not correspond to individual questions in the consultation document.
8. First, given our support for a strong and healthy PSB system with a plurality of providers, we welcome the overall thrust of the licence renewal process. Not only does it preserve the status of ITV and Channel 5 as licensed public service broadcasters – making vital contributions to overall PSB delivery and enhancing plurality of supply – but also the proposed programming obligations in the new licences remain largely unchanged from those that apply in the current licences.
9. Second, while the BFI appreciates that Channel 3 and 5 licensees do not have specific obligations related to film in their licences, feature films form part of the definition of PSB in s.264(6) of the 2003 Communications Act, and the BFI believes it is vital that these broadcasters continue to show films – including contemporary and archive British films – in their schedules across their channel portfolios. As noted above, the BFI wishes to strengthen its relationships with broadcasters regarding the showing and promotion of

films, and we look forward to engaging with them directly in the coming months.

10. Lord Smith's Film Policy Review, commissioned by the Government in 2011, also recognised the important role played by television in supporting film. In its final report<sup>1</sup>, Recommendation 32 stated:

“The Panel recommends that the Government initiates immediate discussions with each of the major broadcasters – the BBC, ITV, Channel 4, Channel 5 and BSkyB – with the aim of agreeing a Memorandum of Understanding with each broadcaster setting out its agreed commitments to support British film. Should this approach prove unproductive, then the Government should look at legislative solutions, including new film-related licence requirements to be implemented in the new Communications Act.”

11. In its response to the final report of the Film Policy Review, in May 2012, the Government responded to this recommendation as follows:<sup>2</sup>

“The Government welcomes the Panel's recommendation that major broadcasters should do more to support the screening, acquisition and production of independent British film.

“We want to see broadcasters like BSkyB, ITV and Channel 5 doing more to support the industry and this is something we intend to raise with them as a matter of priority. We welcome the recent press announcement from BSkyB in this context, and their plans for “a major new investment in feature-length British films for television”.”

The BFI's plans to develop closer collaborative relationships with the major UK broadcasters are intended to help advance this recommendation.

12. Third, the BFI is responsible for looking after the BFI National Archive, which is designated as the National Television Archive. The 2003 Communications Act requires Ofcom to determine a contribution to the costs of the Archive from ITV, Channel 4 and Channel 5. ITV and Channel 5's requirements to make a payment with respect to the Archive are included as “General Conditions” in their licences. Given the lack of any reference to the Archive contributions in the consultation document, the BFI infers that these requirements will be transposed in their current form in the new licences. It is very important to the BFI that the broadcasters' contributions to the National Television Archive are safeguarded at an appropriate level for the new licence periods.
13. The BFI has developed a ten-year plan that includes new capital investment to upgrade the archiving infrastructure to a fully digital platform, allowing 100% capture of free-to-air broadcasts from contributing broadcasters, and easy access to all archived content for authorised users, including both the broadcasters' staff and public users via the BFI Rueben Library and BFI Mediatheques. Once complete, this will allow the BFI to provide a more comprehensive service at a lower cost. This planned investment will pay for

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<sup>1</sup> “A Future for British Film”, Film Policy Review final report published by DCMS, January 2012

<sup>2</sup> See <http://www.official-documents.gov.uk/document/cm83/8355/8355.pdf>

itself over a ten-year period, reducing the overall net cost needed to operate the archive over this period. In recent dialogue, the BFI has encouraged Ofcom to secure an appropriation contribution from broadcasters over the full licence period. A single long-term settlement would enable the BFI to proceed with its upgrade plans, reducing the costs to all parties and avoiding the need for time-consuming year-by-year trilateral negotiations involving the BFI, Ofcom and each broadcaster. The BFI welcomes the statement made by Ofcom in its final Annual Plan 2013/14 that: “We will be taking forward work on the potential for a long term settlement with the BFI and broadcasters over the course of this year” (para A1.130). We look forward to bringing these discussions to a satisfactory conclusion that meets the needs of all parties.

14. And fourth, the main focus of the proposed changes to the programming obligations in Ofcom’s consultation document relate to ITV’s regional obligations. While we respond (briefly) to the specific questions below, the BFI also believes that the licensing of new local TV channels, which will be available on Freeview and other platforms, will play an important role as complements to ITV’s regional services, offering more localised news and other forms of programming, and enhancing plurality further. The BFI believes there to be exciting possibilities for collaboration with local TV providers, and we have begun to engage with them with the intention of exploring mutually beneficial partnerships.

## **Responses to individual questions**

*Q1 Do you agree that the existing obligations on Channel 3 and Channel 5 licensees in respect of national and international news and current affairs, original productions, and Out of London productions should be maintained at their current levels? If not, what levels do you consider appropriate, and why?*

15. The BFI recognises the need for Ofcom to maintain an appropriate balance between the benefits and obligations attached to PSB licences that reflects current and expected future market conditions over the licence periods. Given the increasing economic pressures on the commercially-funded public service broadcasters, and the reduced value of the benefits attached to PSB licences post digital switchover, we support maintaining the existing obligations covered in this question at their current levels: it helps to sustain PSB provision in the future, and provides an appropriate degree of stretch for the Channel 3 and 5 licensees.

*Q2- 11 on proposed changes to Channel 3 licensees’ nations and regions programming obligations*

16. The BFI appreciates the rationale for the proposed changes, and can see the merit of striking a new balance that provides a greater number of news regions, coupled with a reduction in overall news minutage. Even with the introduction of new local TV channels, under the proposed changes ITV will still cover larger geographical areas than the local TV stations, providing complementary approaches for viewers.
17. The BFI is not in a position to provide detailed comments on the specific proposed changes covered in the individual questions.

*Q12 What views do you have on the proposal by STV and UTV to extend peak time to 11pm, which would extend the window in which they could schedule regional content that must be shown in peak time?*

18. This question raises an important issue that goes beyond the specific point relating to the scheduling of regional TV programming by STV and UTV, as the proposed solution has the potential to affect PSB provision more widely across all the commercially-funded public service broadcasters. This is because any change to the definition of “peak” would impact on all public service programming quotas (not just regional ones) for all public service channels licensed by Ofcom (not just ITV and Channel 5) that are defined with respect to “peak”. This includes obligations relating to news, current affairs and original programming.

19. The BFI is not in a position to comment on the specific logistical issues raised by STV and UTV. However, we would be concerned by the change to the definition of peak-time that they propose, extending it from 10.30pm to 11pm. Ofcom argues that it should maintain a common definition of peak for all PSB broadcasters, and we note Ofcom’s concern that extending peak-time to 11pm across the board would have a range of wider repercussions. Ofcom gives the example that the proposed change would allow public service broadcasters to move their national peak-time news bulletins to 10.30pm, and warns that (para 5.12):

“It is possible that such changes could reduce the reach and impact of the programming which we regard as a key element of PSB provision. For example, on both occasions that a Channel 3 network news programme has moved from 10pm to later points in the schedule, the number of viewers watching that bulletin declined.”

20. Given these concerns, the BFI’s view is that any proposed changes to the definition of peak should be assessed by Ofcom in a context that gives due consideration to the broader PSB environment, such as Ofcom’s PSB Reviews, given the wider ramifications for PSB delivery.