

SUBMISSION FROM CHRISTOPHER HIRD, MANAGING DIRECTOR OF DARTMOUTH FILMS, TO OFCOM IN RESPONSE TO THEIR INVITATION FOR RESPONSES TO POSSIBLE CHANGES TO THE OFCOM CODE IN RELATION TO THE NON-BROADCASTER FUNDING OF PROGRAMMES.

## **INTRODUCTION**

I will respond to the particular questions posed by Ofcom later in this paper, but it may be useful to provide some background on myself and some relevant projects in which I have been involved. From 1986 to 2007 I was the founder and joint managing director of FulcrumTV, which made a wide range of factual programmes for all the main UK broadcasters, including some of the digital channels such as Discovery and UKTV. In January 2008 I established Dartmouth Films, to specialise in the production of independent documentaries. I am a trustee of the Grierson Trust, the Wincott Foundation and Index on Censorship and chair of the Channel Four BRITDOC Foundation. I have been the consultant to the Wellcome Trust on their broadcasting strategy and serve on the media committee of the Royal Academy of Engineering. All of these organisations have an interest in – or experience of – the non-broadcaster funding of programmes. I have also have direct experience in this area. I refer to three case studies here which I hope will assist Ofcom’s consideration of these issues.

## **CASE STUDIES**

### **THE END OF THE LINE.**

This is a feature length documentary which will be shown on More4 later this year. The film, based on the book by Charles Clover (who is one of the main characters in the film), reveals the threat to the world’s fish stocks as a result of over fishing and shows what can be done about this by consumers, governments and companies. The film premiered at the Sundance Film Festival in 2009 and has been released theatrically in the UK and the USA. The film has already had a measurable effect on consumer, government and corporate behaviour. As a result of seeing the film the Pret a Manger chain changed their fish purchasing policies, the sales of fish at Waitrose (one of the two supermarkets with the most sustainable fish purchasing policy) have risen by over 15% and the government has agreed to support moves to list the blue fin tuna as an endangered species.

The film was made by a specially established company, The Fish Film Company Limited, and is essentially a not-for-profit project. I am a director of the company and the film’s executive producer. Most of the budget for the film has come in grants or quasi-grants from private not-for-profit foundations. The “cornerstone” funding (i.e. the first funding, on which we were able to build) came from the Channel Four BRITDOC Foundation and the film has been made in compliance with English law and, although it was not made for or funded by a UK broadcaster, the OFCOM broadcasting code. None of the funders sought or exercised editorial control over the film, but several of them – and other NGOs and academics who supported the film’s general purpose – saw early cuts of the film and commented thereupon. Acceptance of any of the points was at my sole discretion. The completed film has received financial and in kind support from Waitrose and some private foundations, to ensure that it is widely distributed and disseminated. None of these organisations sought or received any influence over the film’s content. I view the funding arrangements as just that and not as a form of sponsorship or surreptitious advertising by any of the funders.

## **BLACK GOLD**

Black Gold is an independent documentary about the world coffee trade, which concentrates on the experience of the head of a coffee co-op in Ethiopia as he tries to get a fair price for the coffee produced by his co-op's farmers. Outside funding for the film came from the Ethiopian office of DFID, the Norwegian Churches, loans from private individuals and grants from the UK Film Council, Channel Four BRITDOC Foundation and the Sundance Film Foundation. None of these people influenced the editorial content of the film.

Work started on the film in 2003, the film was completed in 2005 and premiered at the Sundance Film Festival in 2006. It has subsequently been on general cinematic release in the UK, been broadcast by More4 and shown all over the world. The film was the idea of the film makers – Marc and Nick Francis – who started by funding the film themselves. The outside funding was raised over the period in which the film was made, with the funding from the Channel Four BRITDOC Foundation coming in once the film had been selected for Sundance, to pay for some of the post production costs.

## **PIG BUSINESS**

Pig Business is an independent documentary in which the main protagonist, campaigner the Marchioness of Worcester, investigates the impact of the industrialisation of pig production on the quality of our food, animal welfare, the environment and the pattern of the rural economy. The film was funded by the Marchioness and various private individuals and funds. When a rough cut was completed More4 acquired a licence to transmit the film and it was transmitted on More4 this year.

## **OVERALL RESPONSE TO OFCOM'S PROPOSALS.**

OFCOM's consultation document refers to "Public Information Programming (programming that seeks to educate or inform the audience on matters in the public interest) that is funded by non-commercial, not-for-profit entities and that may refer to the interests and/or activities of the funder." In 6.13 of your consultation paper you say "funded programming on matters in the public interest that refers to the interests or activities of the funder is currently viewed as sponsored programming"

I wish to make four comments on this. As I will argue later, I believe that the UK broadcasting and regulatory structure is robust enough to ensure that wherever the money comes from, it is possible to prevent the source of the money affecting the content of the programme. So, first, I think it is important that the view of current definition of sponsorship is re-examined. I would be concerned if the current approach could be interpreted to mean that a programme which receives funding from a not-for-profit foundation could fall foul of the sponsorship rules if it is deemed that it refers to the "interests" of the funder. For example, it seems unlikely – for example – that the RSPCA could be allowed to provide funding for a programme about cruelty to animals even though the programme did not promote a commercial interest, did not include representatives from the funder and complied fully with the obligation to provide alternative points of view. The consequence of this

interpretation is that British television is denied access to non-commercial funds which could help widen the scope of programming and viewer choice.

Second, I think it is important that the PIP definition is interpreted liberally to allow as full and wide a range of programmes as possible to receive non-broadcaster money. I believe this would serve the public interest and be of benefit to viewers, filmmakers and broadcasters. In further expansion of your definition of PIP, in setting out your rules in 6.33 you write: “Public Information Programming must be restricted **solely** to seeking to educate or inform the audience on matters in the public interest. Examples of matters in the public interest in this context include public health or safety, crime detection/prevention and education.” (your emphasis). I think it is unrealistic and unnecessarily restrictive to limit this with the qualification “solely”. Many of the best British television programmes both entertain and educate – the two most obvious examples of which are Jamie Oliver’s Ministry of Food and Channel Four’s Embarrassing Illnesses series. These are programmes which have a purpose in improving public health – and demonstrably had such an impact – but this was not their sole purpose. Indeed, if it had been, they would not have achieved that purpose so successfully. In future, with the squeeze on broadcasters’ revenues, these are the sorts of programme which could attract non-broadcast income. I would therefore argue for a more liberal definition of a PIP as a programme “which can demonstrate that it aims to educate and inform...”

Third, I think that those allowed to fund programmes should be cast as widely as possible. In the draft rules in 6.33, you propose that PIP is programming which will be funded by “*a non-commercial, not-for-profit entity that seeks to educate or inform the audience on matters in the public interest*” I don’t understand why such non-broadcaster funders need to be non-commercial and not-for-profit. There are many commercial organisations which have altruistic public interests and there are also some interests which have an indirect commercial benefit, but it is sufficiently indirect as to pose no threat to the editorial integrity of the programme. For example, both Waitrose and Birds Eye were willing to support The End of the Line because they want there to be a consuming public more concerned about the threat of over fishing. In this case their funds came after the film was completed and were to support the cinema release. But they would probably have been interested in providing funding at an earlier stage, if they had been given the opportunity. These are businesses balancing the need to survive commercially with a need to take a responsible attitude towards the world’s resources. An informed consumer is a help in achieving this. Not to recognise this complexity of for-profit organisations’ attitudes could deprive television of a source of unconditional funding which would be for the public good.

Of course, if the rule restricted non-broadcaster funding to not-for-profit entities, the rational thing for profit seeking organisations to do is to seek out, or set up, such entities. The danger in allowing this to happen is that it discourages transparency, encourages secret pressure and could even bring this source of funding into disrepute. So a way of maximising programme making independence and transparency is to allow funding from profit seeking non-broadcasters so long as it is channelled through established not-for-profits on the basis of clear rules.

Fourth, I think there needs to be a liberal attitude to the guidance you propose on what is an issue of public controversy. In 6.37 you say you would provide guidance on subjects which could not be covered in PIP because they involved “political, industrial or public controversy.” Many subjects can be argued as falling under this head – even urging healthier diets, or fishing more responsibly or being aware of the human cost of sweat shop labour or arguing for freedom of speech in a foreign land. And yet all these are subjects which are both educative and informative and also ones where both not-for-profit and for profit organisations could have an interest in funding. So I urge the use of

very narrow test in determining what is “political controversy”, otherwise many programmes will find they cannot have non-broadcaster funding in them.

### Stakeholder questions

6.45 Ofcom invites stakeholders' comments on these potential rules.

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- a) Would you consider that it appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so please explain why. If not, please explain why not.**

*I think it appropriate that Ofcom allows PIP programming and, as I have argued, that it should have a wide definition of such programming and any organisation should be eligible to provide funding. I think that the key safeguards that are needed are:*

- i. That all programmes are compliant with OFCOM rules and that to this end as a matter of contract, all such productions have a meeting with the broadcaster's lawyers before the commencement of production. My experience with the film Pig Business, which had many compliance issues which had to be addressed, demonstrated that the absolute requirement of OFCOM compliance is a guarantee against undue influence.*
- ii. The production of the programme should be in the hands of both a company and an executive with relevant editorial experience, such appointments to be formally approved by the broadcaster. It is important the makers of the programme have a thorough understanding of the editorial process and rules on balance and fairness. And it is also important that they do not come under pressure from the owners or managers of production companies whose first loyalty may be to please funders or increase profits rather than to maintain OFCOM compliance .*
- iii. Funders provide money on a completely unconditional basis. This rule may raise the question of whether any organisation will provide funds. I think that the examples I have given above suggest that they will. There are both for profit and not for profit organisations who have a general interest in promoting greater public understanding of some issues and provoking behaviour change. From my experience of helping the Wellcome Trust award grants towards television programmes – in particular The Great Sperm Race - I know that such organisations have a sophisticated and realistic attitude to such funding: they know that the key is choosing the right producer, who can be trusted to make a programme consistent with their general aims, and establishing a good relationship with the broadcaster who is commissioning the programme so that everyone understands the common ground. Such organisations do not expect to exert detailed editorial if they are confident their general objectives are going to be met.*

**b) If Ofcom were to introduce rules in relation to Public Information Programming:**

- i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details.**

*I believe that if the three above principles are observed, all programmes could comply.*

- ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on viewers, the television industry and any other parties?**

*I think that independence and transparency are the guarantors of quality and diversity of voice, so that allowing funding of this sort could increase the range and risk of what broadcasters do. No broadcaster is likely to commission a programme which does not help achieve its objectives, whether these be measured by viewing figures or keeping to public remits.*

*Elsewhere you have indicated that you would welcome views on whether opening up these sort of funds would lead to a reduction in spending on other media by these funders and a reduction in spending on these sorts of programmes by broadcasters, who would simply divert funds to other programmes, without leading to any increase in this type of programming. On the first of these, for most not for profit organisations this type of spending is so much in its infancy, my belief is that most of the money will be genuinely new money from organisations which have had no such policy before but realise that in terms of them achieving their objectives, this is money well spent. In terms of broadcasters, my perspective is that this is a way of accessing new funds to help support programmes which would otherwise not be made. Opening up this supply of funding would make it easier for OFCOM to insist on the maintenance of the quality of public service broadcasting.*

**iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why.**

*As explained above, I do believe that rules can be devised to achieve these ends.*

**iv. Do you consider that additional or alternative safeguards to those included in the draft potential rules are necessary? If so, please provide details.**

*I have outlined the three principles which I believe can provide the safeguards sought.*

**v. Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions?**

*I do not believe there should be any restriction.*

**vi. Do you consider it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.**

*It would be appropriate; indeed a continuing review, with guidance, could encourage this to be a dynamic process of increasing the supply of such funds.*