

Campaign for Press and Broadcasting Freedom – Response to Ofcom’s Second Public Service Broadcasting Review. Phase One: The Digital Opportunity (London, CPBF, June 2008)

1. Introduction. The CPBF is the UK’s leading independent organisation campaigning for a more democratic, accountable and plural media. We have been in existence since 1979 and have campaigned consistently in favour of media freedom, for public service broadcasting and for greater equality of representation in, and accountability of, the mass media. We are the only organisation that brings together members of the public and people working within the industry in an ongoing dialogue about the media and its role in society.

The Ofcom Review.

2. We welcome the opportunity to respond to the Ofcom document. In particular we are pleased that Ofcom has recognised that there is a case for continued and increased public intervention to sustain and develop public service content across existing and developing forms of delivery. This is a position that the Campaign has argued for many years.

3. We also welcome the fact that Ofcom has published evidence of substantial public support for public service broadcasting. For example Ofcom’s research shows that the public is willing to pay up to £20 per year above the current licence fee to support public service content<sup>1</sup>. In addition it has shown that public service broadcasting channels have sustained a high level of support in an age of intense competition. We consider that this support will continue in the future given appropriate government intervention.

4. Our comments and recommendations are designed to provide support for the strengthening and extension of public service content on existing and new media platforms, and to enhance structures of accountability within communications.

Ofcom and Public Service Broadcasting

5. We consider it important to look at the review in the wider context of Ofcom’s policies. In particular, Ofcom’s aim to ‘drive forward a market-based approach to spectrum’<sup>2</sup> is in contradiction to the requirement to support public service in broadcasting. Ofcom have recognised that a gifting of the analogue spectrum has made an important contribution to the public service system as it evolved across the 20<sup>th</sup> century and it should therefore consider using the spectrum to enable a wide range of broadcasters to be part of a future public service system, rather than planning, as it does, to auction spectrum in the near future.

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<sup>1</sup> Ofcom, (2008) to Ofcom’s Second Public Service Broadcasting Review. Phase One: The Digital Opportunity (London, CPBF, May) paras. 3.44-3.45

<sup>2</sup> Ofcom, (2008) Annual Plan 2008-9 (London, Ofcom)

6. Although not explicit in the document, there is a continuing danger that, because of reductions in the licence fee and other pressures, the BBC may be expected to concentrate on its 'core purposes' as a 'psb' broadcaster at the expense of its wider remit to 'educate, inform and entertain'. This approach is encouraged by a narrow definition of 'public service' in broadcasting. In defining 'public service' by aims and purposes Ofcom has tried to avoid narrow 'box ticking' but has too often found itself discussing 'public service content' and 'public service programmes', for example in Figure 39 in the Review document.

[a] While Ofcom has stated that 'public service should also be driven by the need to appeal and be understood', it fails to properly include the key element of entertainment<sup>3</sup> (6.3). There is a strong sense that certain types of programming should be left to the market and that so-called 'public service' is needed because of 'market failure'. The interaction between styles and genres is not recognised.

[b] In researching the production and reception of 'public service programmes' the document is forced to identify particular genres as being public service genres. This overlooks the ability of programme makers to work across genres, to introduce 'entertainment' elements into 'informational' programmes and to evolve new, hitherto unclassified, genres.<sup>4</sup> The classification by topic overlooks the range of different styles (some more serious than others) in which a topic may be explored across the television channels, and the ways on which topics are combined.

[c] The artificial narrowness of this definition not only puts pressure on the BBC but also has led to the tortuous classification of ITV as composed of some public service and some non public service programmes. We would argue that the unity of ITV's output, across all genres, is what makes it a public service broadcaster. The public's identification with ITV is arguably not based on hair splitting about what is public service and what is not. But by using its selective and narrow definition of public service Ofcom has positioned ITV so that it can have its cake and eat it. It can ditch costly, and in its view, unprofitable elements of its output, which are public service, according to Ofcom, and retain the profitable elements, whilst still clinging to the financial benefits and status that go with public service classification. A more expansive and realistic definition of public service broadcasting would recognise the way in which channels work across genres to build audience experience and loyalty to draw them into a range of content through a variety of devices and would not have sanctioned ITV's retreat from regional news and non news programmes and children's programmes.

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<sup>3</sup> Ofcom (2008) *Review* para.6.3.

<sup>4</sup> Yet, in the discussions conducted by Ofcom about the current affairs genre, *Jamie's School Dinners* was quoted as a contribution.

7. In discussing convergence and ‘delivering public service value’ in the digital age<sup>5</sup>, the document frequently overlooks the difference between the media. Linear television, which is not predominantly interactive, can offer enjoyment through narrative, character, time-based structures, and visual spectacle. Although they can be accessed online, the ‘public service value’ of these formats is different from the pleasures and uses of interactive, online formats. The two media models complement rather than replace each other, and support for one aspect of public service provision in these areas should not be done at the expense of the other.

8. The report frequently stresses that the ‘needs’ of audiences are paramount. There are two points to be made about this.

[a] The need to address the audience as citizens is hardly mentioned. As citizens, even small audiences count. In its early days, Channel Four was able to value small audiences. This is possible in a new way when online services are considered.

[b] The importance of producers and creative television programmes makers is downgraded. Their work is not necessarily driven by audience ‘needs’ in a clear-cut or obvious way. The report recognises the contribution that television has made to British culture. To continue to achieve this, circumstances must be sustained in which talented and creative individuals can have a degree of space and freedom. They also need job security. Too often, these days, writers, directors and others are subject to pressures based on commercial judgements, preconceptions about audience maximisation and the need to attract advertisers. Without input driven by creativity, the popular programmes –from *EastEnders* to *Who do you think you are?* - would not exist, and valuable programmes which are not ‘popular’ would disappear.

9. The document mentions newspapers in passing, as contributors to ‘national, regional and local provision’. <sup>6</sup> It does not discuss the increasing presence of television-style news on the internet, produced by politically-driven newspapers which are not subject to impartiality regulation. There is a need to ensure that in the future the impartiality rules are maintained for all broadcasters and extended to online TV news providers.

### The BBC

10. The Review document is clear about the important and continuing role of the BBC in the provision of public service content across a range of platforms.

11. The BBC’s licence fee should be increased in real terms at regular intervals to ensure that it can deliver new content across a range of platforms. The constraint imposed by the 2006 licence fee formula, under which the fee will be flat or go into decline after 2010, should be removed.<sup>7</sup> The BBC should be allowed to retain the element of the licence fee which is being

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<sup>5</sup> Ofcom, (2008) *Review* para.6.8

<sup>6</sup> *ibid*, para. 1.44

<sup>7</sup> *Ibid*, para.5.16

used to fund digital switchover and this should be used to support new developments and, in particular, content which represents the diversity of UK cultures in the regions and devolved nations.

12. The Ofcom Review sets out reasons why the licence fee should not be ‘top-sliced’<sup>8</sup>. We agree with the arguments put forward in this paragraph. For the BBC to be successful in pursuing public service goals it needs both security and growth in income. Top slicing will, inevitably, undermine this by opening the door for the future undermining of the licence fee.

13. Ofcom does not mention the extent to which the BBC has been selling off sections of its resources since the late 1990s. The BBC should retain as much production capacity in house as is economically viable, and that there should be an immediate halt to further privatisations. The selling off of sections of the Corporation amounts to a sale of publicly owned resources that have been built up over time. If the BBC becomes just a commissioning organisation the benefits that go with continuity of employment, the provision of training and the sustenance, in conditions of relative stability, of cultures of risk and innovation are likely to disappear.

14. The BBC should be more accountable to the public. This means organising a more democratic system of appointing people to the BBC Trust, and using a combination of nominated organisations and appointments by the devolved institutions. Additionally the BBC, like other broadcasters, should be subject to scrutiny by regionally and locally democratically appointed bodies.

15. Ofcom’s powers over the BBC on matters of quotas, and market testing and complaints should be withdrawn. Ofcom is a commercially focused organisation, biased towards using the market as the main tool for regulating communications. It should have no role in the governance of a non-commercial body like the BBC. Where the BBC has commercial activities these should be subject to normal competition laws and oversight.

16. The BBC does not exist in a vacuum. It is central to the system of public service broadcasting but cannot be left as the only provider. Plurality is essential in all genres on television and that is why sustaining commercial public service broadcasting in a manner which is not at the expense of the BBC is so important. In news and current affairs it is vital that the BBC faces well funded, vibrant competition at a UK, national, and regional level.

### ITV

17. The Review has taken the view that ITV1 may not be able, in the immediate and medium term future, to continue with its non-news programming in the nations and regions. Ofcom is consulting on whether ITV should be allowed to reduce its spending on regional news.

18. The decline in ITV regional non-news and news programming has been sanctioned by Ofcom. This situation has rested on the acceptance by Ofcom of ITV’s argument that it is

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<sup>8</sup> Ibid, paras.7.8

just not economically viable to sustain such programming in an age of increased competition. But whereas ITV pleads poverty to Ofcom in other public statements it is not so pessimistic.

‘Michael Grade, the chairman of ITV, came out fighting yesterday after a testing first year in which profits and the share price at the commercial broadcaster plunged and an on-screen revival failed to materialize.

Pre-tax profits fell 35 per cent to £188 million in Mr. Grade's first year at the helm, and 2008 has begun with ITV1 ratings slipping 2.5 per cent despite the return of News at Ten and the introduction of a string of more ambitious dramas at 9 pm.

However, Mr. Grade picked on other data to show that when ITV's digital channels are included, the broadcaster's overall audience had increased for the first time since at least 1994 - from 23.1 per cent in 2006 to 23.2 per cent in 2007- a trend that continued into 2008. ‘<sup>9</sup>

19. ITV has a strong brand, an enviable position in terms of audience share in the digital world and a huge backlog of publically funded archive material. In addition its regional licenses allow it to target advertising at below the national level, something which other digital commercial services as yet cannot do. In fact public service broadcasters, including ITV have done remarkably well in maintaining 2/3<sup>10</sup> of all TV viewing and its brand identity as a high quality broadcaster will as Ofcom points out mean that ITV, like other public service broadcasters will be ‘well placed to exploit the opportunities given the strength of their brands’<sup>11</sup> as the digital future unravels.

20. ITV has also cut back on its production of children’s programmes. This is in part a direct consequence of a weakness in the 2003 Communications Act. The Act allows public service channels to take responsibility for the delivery of ‘tier 3’ level programming, such as arts, drama, religious and children’s programmes. Ofcom has powers under ‘tier 2’ programming (news, current affairs etc) to set quotas. It has not got this power for ‘tier 3’ programs. An immediate remedy, for the duration of the ITV licenses, would be for the government to amend the 2003 Act and give Ofcom the power to set quotas for these programmes on commercial public service broadcasters and powers to extend ITV’s public service obligations to its other digital channels.

21. Ofcom fears that ITV might walk away from its licenses if it has to provide the full range of public service programmes. We do not think ITV will do this. Withdrawal would mean the loss of spectrum subsidy and of Electronic Programme Guide prominence. Its withdrawal from regional TV would open the door for the emergence of an alternative public service commercial provider, with public backing able to squeeze ITV plc’s margins over time. It is a little too easy to accept ITV’s pleas of poverty. From another perspective ITV looks like a public service broadcaster positioning itself to make a killing in the new post digital

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<sup>9</sup>Dan Sabbagh ‘Michael Grade defends record as ITV profits fall’ *The Times*, March 6, 2008

<sup>10</sup> Ofcom, 2008: para.1.11.

<sup>11</sup> Ibid, para.6.11

switchover world by reducing current costs but retaining the benefits of subsidy, profile and brand that go with its privileged position as a public service broadcaster.

## 22. Ofcom should

[a] negotiate with ITV about increasing its delivery of public service content, funded from ITV profits and, where appropriate through public subsidy and regulatory concessions designed to ensure it ups its commitment to public service programming in general, to news and non-news programming in the nations and regions and to children's programmes.;

[b] in the event of ITV not wishing to increase its delivery of public service content, Ofcom should give notice of its intention to terminate the ITV's public service licenses and re-advertise them as a series of regional commercial public service broadcasting licenses, funded by advertising, sponsorship and direct public subsidy, in terms of cash, tax relief and regulatory support. These stations would be allowed to network and occupy the position on spectrum and Electronic Programme Guides currently occupied by ITV. At a national level their operations would be subject to oversight by the devolved institutions. Employees made redundant by ITV's withdrawal from the licenses must be given first refusal on posts within the new regional stations. They should retain their salaries, conditions of service and pension rights as they should not be penalised for ITV's failure to deliver on its public service obligations.

[c] There is no problem about 'independence' where state funding for a new ITV, or any other system, is concerned. The BBC is supported by a state levied licence fee, ITV is state sponsored, UK newspapers receive subsidy in the form of VAT relief and advertisements from the government, and Channel 4 and S4C are in one way or another 'state' related. None of this has meant that these channels are the simple tools of governments. We consider that measures should be taken to bolster their editorial independence. Nonetheless creating a new regional, networked system of commercial public service broadcasting would allow for the increase in plurality that Ofcom is keen to promote. ITV would then be a purely commercial operator and could be left to sort out its position in the market.

[d] In addition Ofcom, or the DCMS, should conduct a study of the value of the ITV 'brand' and its archive and the extent to which that value has been generated by its privileged status over the last 53 years. Once this 'value' issue has been specified, then there should be negotiations, backed if necessary by legislation, to allow the public some financial return on its investment in the brand and the archive brand. This is all the more important given that we know that high profile established brands are more likely to have more initial success in the digital world than new ones. If ITV walks away from its licenses with this brand and archives, then the public will have, in effect, given away a valuable asset.

## Channel 4

23. Channel 4 must remain a key provider of public service content, in line with its distinctive remit. If this means using a range of state support and regulatory measures to sustain it in the future, then this support must be forthcoming, using a combination of the tools outlined in the Review<sup>12</sup> The channel's commitment to producing an increased amount of children's programmes is to be welcomed, as its expansion across a range of platforms.

## Nations and Regions

24. ITV's waning commitment to programming in the nations and regions raises acute problems. It undermines cultural diversity and choice and also causes problems of plurality, especially in Wales, which unlike Scotland, does not have a sufficient range of national media to ensure competition with the BBC.

25. The first step is to solve the ITV problem immediately, as suggested above. This will be painful and controversial. But ITV can, and should, choose between profit maximisation and its public service status and licenses. Ofcom should act on this swiftly.

26. In both Wales and Scotland there should be a new settlement around broadcasting regulation.

[a] The devolved assemblies should have the power to nominate members of the BBC Trust and Ofcom. The current situation in which London controls this is unacceptable by any democratic standards

[b] The BBC should have a head of Welsh and Scottish programming with a guaranteed and transparent budget for the production of programming about the cultures in those regions.

[c] Communication Committees should be established by each of the devolved institutions. These should be a combination of elected representatives and nominated individuals from a list of rotating civil society organisations.

[d] These committees should be charged with promoting the production of a wide range of material about and for their nations and conducting independent research on the communications industries in their areas.

[e] They should be charged with the task of drawing up, with the DCMS, a practical programme for devolving as much regulatory power as possible to the nations and regions where matters of communications policy are concerned.

## The Workforce

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<sup>12</sup> Ibid, paras 7.18-7.24

27. As we state above, Ofcom has little to say about the people who work in the media industries. Although some have gained considerable fortunes from the changes that have occurred since the early 1990s, many have experienced redundancy, insecurity and low pay. These are features which Ofcom seems to sanction, if only by its silence in this document.

28. If Ofcom is committed to ensuring that we have a creative, strong, innovative public service sector in the UK it must commit to establishing an industry that combines innovation with security of employment good pay and conditions and equal opportunities. It can make this contribution by not endorsing the slow privatisation of chunks of the sector and by ensuring that pay and working conditions across the sector are monitored and measures taken to outlaw bad practice. There can be little sustained innovation and risk taking if people are fearful of their employment situation. Just as science needs long term, secure patterns of investment to generate innovation, so too do the media industries.

### Public Service Content

29. There is clearly a case for providing new forms of public service content for the digital future. The BBC and Channel 4 are already pioneering developments in this area. ITV, if properly committed to its public service status, could take a stronger role in this area.

30. There is also a case for establishing a Public Service Media Fund, for promoting the development of different forms of public service content in addition to those provided by high profile established public service brands. Unlike Ofcom's suggestion for a Public Service Publisher, which the Campaign welcomed in principle but was highly critical of, the Public Service Media Fund would not be about redirecting notional sums of money from what it is assumed commercial public service broadcasters spend on public service broadcasting programming. ITV should be made to live up to its obligations or face the consequences we propose. Equally the PSMF should not be funded in any way from licence fee payments that should be going to the BBC.

31. Funding would come from a combination of the sources outlined in Section 7 of the review. One key area will be spectrum. The spectrum released by digital switchover should not be sold. It is a public asset that should be used to develop public service communications. This can be done by leasing some spectrum to companies for commercial purposes and using the revenues from this to fund public service content.

32. The role of the Public Service Media Fund would be to review the existing provision and target areas of provision and platforms where it considered developments needed to take place. It might even establish its own web based resource to distribute some of its product. Its main role would be to work with existing platforms to negotiate strands of innovative UK originated programming and online content to supplement existing provision and to experiment with new platforms.

33. Its management structure would have to be based on a system of appointments scrutinised by Parliament and, where appropriate, the devolved assemblies.

### Accountability

34. The whole structure of accountability in Broadcasting and media regulation is drawn too narrowly. Methods of appointments to the leading regulators are, in effect, kept within a very

narrow circle of people, most of whom represent, or are closely linked to, commercial interests. The balance needs to be redressed by developing a more open and democratic system of appointments.