

BECTU'S RESPONSE TO THE OPEN LETTER ABOUT A
REPORT BY OFCOM TO THE SECRETARY OF STATE
UNDER S.229 OF THE COMMUNICATIONS ACT 2003
(4TH OCTOBER 2011)



ABOUT BECTU

BECTU is the trade union for creative, technical and administrative workers in the audiovisual and live entertainment sectors. With thousands of members working in the broadcast and independent production sectors, we have a close interest in this issue and made previous relevant submissions¹ to OfCOM and Digital Britain on the issues related to the funding of Public Service Broadcasting (PSB).

THE CONTEXT OF THESE QUESTIONS

These submissions include our responses to Digital Britain (Feb 2009) and the two phases of OfCOM's Public Service Broadcasting Review (June & December 2008) and the DCMS Consultation on News in the National, Locally and in the Regions (July 2009).

We will shortly be providing responses to the OfCOM consultation Measuring Media Plurality, and a wider set of responses to questions that will arise around the forthcoming Communications Bill.

At this point, we should place it on the record that we're not convinced that the questions asked in this consultation should be separated out from the wider cultural, democratic or economic / industry capacity questions.

BECTU'S RESPONSE

Taking the questions in order:

1. Taking into account the existing public service obligations placed on Channel 3 & Channel 5 licensees and the current regulatory assets associated with those licences,

a) please outline the level of public service obligations which you consider existing licensees will be able to provide in the next licence period on a commercially sustainable basis. Existing licensees should respond with particular reference to each licence that they currently hold and;

b) please explain how the levels of public service obligations set out in (a) above would differ from current obligations.

Given the current collapse in public confidence around print journalism, and the increasingly evident failure of online business models to fund high quality content, there is a strong case to be

made for creative approaches to *increase* the funding of a diverse Public Service Broadcasting ecology.

Much of the promise offered by new forms of direct funding from consumers or indirect ad-funded high-quality content arising out of innovative publishing business models have not appeared (and innovative media commentators are increasingly reaching the conclusion² that this will not change in the foreseeable future). It is time for policymakers to stop working on the assumption that it will.

As a starting point, **we are explicitly opposed to any watering down of the current PSB obligations upon Channel 3 & 5 companies.** However, we are no longer at a point where we should simply be arguing for maintenance levels of PSB content provision. The failure of the market to protect the provision of mass-consumption high-value content (both within and without PSB) – particularly at local and regional level - argues for more investment in Public Service Broadcasting. The collapse of Channel 3's regional capacity is a specific market failure that needs to be addressed here.

This is not just a cultural / democratic argument either. It also addresses the need to maintain a diverse range of capacity in the audiovisual industries – jobs, skills and experience.

In OfCOM's report to the Secretary of State³, the shift and narrowing of focus of investigative journalism onto lower-risk emergency-services focused content is noted (4.14) and the lower satisfaction levels relating to news coverage among viewers in the Nations and Regions is also noted (4.16).

In addition, we are seeing huge profits being accrued by commercial players who provide delivery of content or the platforms that such content is consumed on. In particular, BSkyB – the UK's most successful commercial broadcaster - makes a shamefully low contribution to the quality and quantity of original programming where they could be creating jobs and capacity, helping to build UK industries and export markets.

PSB content features as an important part of the value chain that boosts the demand met by these carriers, and by ISPs for faster unlimited broadband. High quality PSB content often drives the sales of TVs, Tablets, mp3 players, phones, gaming consoles and PCs. It's time that some of this value should be returned.

Though high-quality content providers make a huge contribution to the driving of these profits, a recent report by Vodafone (*The Economics of the Internet*⁴) illustrates the tiny revenues – around 2% - that rights-holders make from this burgeoning marketplace as well as showing the huge percentages of online traffic that are taken up by the streaming of high-quality content.

² Now Can We All Agree That The "High Quality Web Content" Experiment Has Failed?
<http://techcrunch.com/2011/08/27/who-wouldve-thought-it-figures/>

³ OfCOM – Licencing of Channel 3 and Channel 5 – Report from OfCOM to the Secretary of State for Culture, Olympics, Media & Sport (2nd September 2011)

⁴http://www.vodafone.com/content/dam/vodafone/about/public_policy/policy_papers/public_policy_series_11.pdf

In addition, we have seen huge illegal abuses of the traditional licencing of that content through file-sharing, copying, unlicensed republishing, time-shifting and advert-skipping. IPPR research in 2009⁵, commissioned by BECTU and the NUJ, illustrated that **a 1% levy on 'pay television' would yield an estimated £70m per annum and a similar levy on the five major mobile phone operators in the UK would yield an estimated £208m per annum.**

Since then, the Intellectual Property Office report on Private Copying and Fair Compensation⁶ has illustrated the degree to which the UK is almost alone within EU member states in not applying levies that could fund the production of high value content.

For the avoidance of doubt, we take the view that these levies should be used to raise funding exclusively for PSB content.

In a similar vein, we would also put on record our support for the BBC and ITV's position on *Retransmission Fees*. That BSkyB is allowed to carry BBC & ITV content without paying for it is dangerously close to Corporate Welfare. That they are actually *paid* to do so deepens this scandal.

This reflects the disturbing degree of lobbying muscle that BSkyB have in the UK. This situation should be reversed to bring the UK into line with other jurisdictions – most notably the US – where News Corp routinely pays broadcasters a share of the revenues they make as a carrier.

But perhaps the most outstanding anomaly here is the historical regulatory holiday that has been given to what is now the UK's most profitable commercial broadcaster – BSkyB – to sidestep EU content quotas⁷. BSkyB is now the UK's most successful UK Commercial Broadcaster.

This regulatory holiday that it has been given not only deprives the UK of huge sums in terms of investment in high quality drama and documentary. It also results in a *race to the bottom* that impact upon ITV and Channel 5 in the UK.

It is impossible to escape the *political* context of this anomaly. It is now time to review the regulatory relationship that Her Majesty's Government in general, and OfCOM in particular have with BSkyB as this would yield the kind of sums that are needed to finance a significant boost to Public Service Broadcasting quality news, drama and documentary coverage across all UK channels.

Finally, we would be concerned about the timing of the proposed licencing periods. As this marketplace is going through huge changes at the moment, we understand the attractiveness of a pragmatic approach to licence-periods. We can see why a wait-and-see approach could be considered resulting in a shorter licence period.

However, given the general state of economic uncertainty along with the particularly turbulent conditions within the market for the production of quality content, we would urge OfCOM to

⁵ <http://www.ippr.org/publications/55/1689/mind-the-funding-gapthe-potential-of-industry-levies-for-continued-funding-of-public-service-broadcasting>

⁶ <http://www.ipo.gov.uk/ipresearch-faircomp-201110.pdf>

⁷ 'Blockbusters and trade wars: popular culture in a globalized world' By Peter S. Grant, Chris Wood (Douglas & McIntyre Ltd 2004) pp205-208

recommend an automatic renewal of this licence for a further ten years after 2014– and not any shorter period.

This will give existing Channel 3 and 5 broadcasters more confidence to invest properly in technology and capacity. We understand why regulators would be tempted to see if there are potential new entrants into this market, but given the levels of investment required, we would suggest that this is a slim possibility and any policies predicated upon this possibility will reduce the confidence of broadcasters who have a track record of investing in this type of commitment.

In conclusion, our answer to this first question is that OfCOM and HMG have, at their disposal, ample means to raise very significant levels of funding to finance an increase in the quality and quantity of Public Service Broadcasting content as well as the means to give existing licensees the confidence to invest properly.

We note that many of these forms of funding (telecoms levies, hardware levies, a removal of BSkyB's inexcusable exception on EU content quota regulations) would recast the competitive framework that UK Broadcasters operate under, creating a 'race to the top' in terms of quality. They would also address historic injustices.

2. Please explain how you consider the level of obligations outlined in your response to question 1 would contribute to the fulfilment of the purposes of public service broadcasting set out in 264(4) of the Act.

The act – section 264 (4-D) is clear about OfCOM's role in maintaining the capacity not only for journalism but also for high production standards to be met. As an aside, we would note that there is an obvious threat to journalistic integrity when journalism & production are under-funded.

We are at a point of rapid change in content-production industries. In a climate of declining investment, Channel 3 and 5 PSBs are still managing to produce excellent high-quality local and regional PSB-quality news, documentary and drama programming.

The decline of advertising revenues presents a huge problem here, and any attempt to sidestep it will make this review meaningless. Our response to question one (above) has set out ways that the regulator can help to improve the sustainability of Channel 3 and 5 companies. As long as alternative funding streams for these channels can be found, our position is that **the current PSB content obligations should be continued as a bare minimum**, though OfCOM also **need to bear in mind the role that these channels can play in addressing the market failure that has resulted in declining journalistic and documentary-making capacity in the UK.**

3. Please explain what effect, if any, you consider other factors could have on the value of regulatory assets associated with Channel 3 and Channel 5 licences. Your response should take account of, but not be limited to:

- a) the proposed introduction of Administered Incentive Pricing ('AIP');*
- b) the prominence which public service channels receive on electronic programme guides under current legislation;*
- c) capacity reserved for public service channels on DTT multiplexes; and*

d) any other intangible assets including brand benefits deriving from PSB status.

BECTU do not have access to information about the potential revenues that **Administered Incentive Pricing** may yield, but we would urge OfCOM to adopt the following approach to this income:

- Any fees paid to meet AIP licences will **directly reduce programming budgets**. We note that Channel 3 and Channel 5 broadcasters are already commercially struggling to meet PSB obligations, and if public service-quality content is to be maintained in the UK, that new forms of funding are needed.
- To impose these fees on PSBs will reduce the quality and quantity of PSB content at a time at which investment is needed.
- We have already commented on the anomaly that PSBs struggle to meet PSB content obligations while other broadcasters who benefit from these regulatory assets create very little reinvestment. If the revenues raised from AIP do not get reinvested in Public Service Broadcasting quality content, this will be a missed opportunity to create a funding ecology that can safeguard public service broadcasting in the long term.

We therefore propose that funds raised from the imposition of AIP should be placed into a ring-fenced budget (similar to the one that was proposed with the Independently Funded News Consortia) that can be drawn upon by broadcasters with Public Service Broadcasting obligations.

In addition, we would point out that – while some parts of the spectrum can have charges similar to AIP applied to them, others don't. In particular, without levies being applied to normal internet connectivity, AIP may ultimately devalue this spectrum – killing an important revenue source. One of the key functions of AIP is to promote efficient network use. This is another argument in favour of a levy on broadband providers.

The spectrum for DTT is universally available and free at the point of consumption. The value of this spectrum is effectively enhanced by the good PSB content that it carries. Introducing AIP to public service broadcasters, thereby reducing investment in programmes, will make this universally available and free channel commercially unattractive to other broadcasters as it will reduce the attractiveness of the 'carrot' of high quality PSB programmes.

If PSBs are driven onto alternative platforms, increasing the Video On Demand consumption, thereby putting a strain on the capacity of those networks, this will introduce new costs to consumers that don't result in further investment into content. This could even add to the threats to Net Neutrality.

On the question of the **Electronic Programme Guide (EPG)** and the existing **allocations of capacity on the DTT Multiplexes**, again, we would argue that regulators must continue to do anything they can to encourage broadcasters to accept public service obligations. Any negative changes to the prominence that PSBs have on EPGs or the amount of capacity allocated to them would be a mistake that would damage the public interest.

Again, we would maintain our general position here. Space on these multiplexes must be treated as a regulatory asset that can raise funding which can be recycled into the production of quality PSB content.

As a final observation, PSBs on the DTT Multiplexes are, for the foreseeable future, severely restricted in the number of HD Services that they can offer. This limitation is due to the allocation of one MUX (of the six that are available) to HD in each transmission area - a limitation that we note may be relieved either by conversion of more existing MUXes to HD standards, or use of released spectrum in the 600mhz band to increase the number of MUXes available to DTT.

For further information on BECTU's policies or for queries relating to this response, please contact Paul Evans at BECTU by email at pevans@bectu.org.uk