

1. Background

Scottish Screen is the national government-backed agency responsible for developing all aspects of screen industry and culture across Scotland, focusing on the following five priority objectives:

1. **Education** – to ensure that people of all ages and backgrounds are inspired and equipped to analyse, appreciate, explore, create and share screen media;
2. **Enterprise and Skills** - to ensure that there are appropriate levels of skilled individuals and viable companies to sustain all aspects of the screen industries across Scotland;
3. **Inward Investment** - to promote Scotland as a dynamic, competitive and successful screen production hub;
4. **Market Development** - to ensure that the widest range of screen product reaches and is appreciated by a diversity of audiences;
5. **Talent and Creativity** - to identify nurture, develop, support and progress Scotland's screen talent and screen production companies.

Having responded to Ofcom's earlier consultation on Phase One of its Public Service Broadcasting (PSB) Review¹, Scottish Screen now welcomes this opportunity to comment upon Ofcom's Phase Two document. Our response is focused on those issues which are most pertinent to the future success and sustainability of Scotland's screen industries and culture. In taking this approach, we have chosen to address seven key questions for Scotland which were raised by Stewart Purvis, Ofcom's Partner for Content and Standards, at a PSB consultation event at the Royal Society of Edinburgh on 9 October this year, namely:

- How should Scotland's TV borders be established?
- Should stv receive funding for news in the short term?
- How else can Scottish news be funded – other than by stv?
- Longer term, should there be a Channel 3 licence – and what kind of licence?
- How does this fit with the Scottish Broadcasting Commission's (SBC's) recommendations?
- Should Out of London (OOL) quotas disappear? and
- Should Channel 4 have greater responsibilities for broadcasting to the Nations - assuming their funding issues can be solved?

We have also raised three further issues which we believe are critical to ensuring a successful outcome for Scotland's screen industries:

- How can we ensure PSB in Scotland is sustainable?
- How should PSB support Scottish (and UK) film - and the broader Creative Industries? and
- What are the implications of the PSB Review for Ofcom's Digital Dividend Review (the DDR)?

The key points which we wish to raise in this paper are highlighted below in bold.

¹ *Scottish Screen Response to Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity, April 2008*, at http://www.ofcom.org.uk/consult/condocs/psb2_1/responses/ss.pdf.

2. How should Scotland's TV borders be established?

Scottish Screen shares the view of Ofcom and most respondents to the Phase One consultation on the significance of plurality in PSB provision:

"The importance to viewers of public service broadcasting and UK originated content was widely accepted by respondents to our consultation. Audiences value the BBC very highly, but virtually nobody favoured it becoming the only provider of public service content."²

The significance of plurality is also evident in the impact of the decline of stv and of the marginal roles of Channel 4 and Five in Scottish PSB, which have resulted in a lack of competition for quality for BBC Scotland. **Our key message is that we agree that plurality of PSB provision is important, and that plurality also needs to be ensured within Scotland.**

We fully support the recommendations of the SBC³, including the establishment of a Scottish digital network. However, plurality will require more than one alternative PSB supplier to BBC Scotland. For this reason, **we are attracted by Ofcom's suggestion of an all-Scotland Channel 3 licence.** This would also address the current unsatisfactory position of Scottish viewers of Border TV receiving their local ITV news from Newcastle; the option of Borders local TV certainly warrants further evaluation as a supplementary measure

We also believe that Gaelic language PSB should be available to *all* viewers in Scotland. Although BBC ALBA is at an early stage of its development, viewing figures for some programmes of ten times the total number of Gaelic speakers indicate the potential appeal. **It is therefore essential that BBC ALBA should be available on Freeview across all of Scotland as soon as possible.**

3. Should stv receive funding for news in the short term?

We note Ofcom's stance that the market will make a growing contribution to PSB, but is unlikely to meet all needs:

"Viewers have access to a wider range of content than ever before, on digital TV and online. Multichannel broadcasters now make a significant contribution to public service content, particularly in sport, entertainment, archive and acquired programming, and in one case, news. But they provide very little original programming in the genres under most pressure on commercial public service channels – current affairs, nations and regions programming, challenging UK drama, UK scripted comedy, and UK drama and factual programming for children. This is unlikely to change as provision on the commercial PSBs declines, because most multichannels do not reach the audiences required to justify large and risky investments in these areas and will themselves face increasing economic pressure.

² Ofcom's *Second Public Service Broadcasting Review Phase Two Preparing for the digital future*, September 2008, p.1, at http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf.

³ Scottish Broadcasting Commission, *Platform for Success: Final Report of the Scottish Broadcasting Commission*, September 2008, at <http://www.scottishbroadcastingcommission.gov.uk/Resource/Doc/4/0000481.pdf>.

....Given the speed of ongoing change, the evolution of the market is particularly uncertain. It may come to meet more of audiences' needs in future. We therefore need a more flexible model of intervention that focuses public funding on areas in which the market cannot deliver and recognises these may change over time."⁴

We agree with Ofcom's assessment of the limitations of the contribution of non-PSB channels to public purposes. However, we are concerned that Ofcom's rationale for intervention appears to be limited to addressing market failure, with the implicit suggestion that the need for such intervention may eventually disappear. The BBC provides an excellent example of the enormous public value - including very significant externality and spillover benefits - which can be generated through Interventions in PSB and which extend far beyond addressing market failure.

This emphasis on market failure also has the effect of leading Ofcom down a route which attempts to quantify the unquantifiable and, in doing so, to adopt a consumer-driven evaluation of individual PSB genres in isolation. Our view is that PSB is essentially a holistic offering which places citizenship - in the broadest sense - to the fore.

We therefore remain unconvinced by the methodology employed to support Ofcom's conclusion that the cost of providing news alone will exceed the value of stv's PSB obligations by next year, as we indicated in our earlier response to Phase One⁵. Ofcom's approach has the net result of understating the true value of the range of Channel 3's PSB benefits.

We do not doubt that stv and ITV plc face increasing competitive pressure, but would also urge the need to distinguish market-driven from specific business-related issues.

And while we agree that ensuring plurality of Scottish news is important, we would stress the need for Ofcom to ensure that the PSB outcome for Scotland takes a broad view, taking full regard of the recommendations of the Scottish Broadcasting Commission and of Ofcom's own Digital Dividend Review. Indeed, stv's currently stated strategy is fundamentally different from itv's. Our understanding is that stv wishes to continue to position itself as one of the main PSB broadcasters for Scotland, with a range of programming targeted at Scotland (as well as programmes for the UK networks) which extend well beyond news provision alone.

Longer term, we are not convinced that the current Channel 3 PSB model is sustainable. This is not primarily because of the changing balance of costs and benefits, although this is clearly a factor to some extent, but rather because we believe that – in contrast with the days when ITV franchises could be described as 'licences to print money' – the increasingly competitive market environment and the (legitimate) supremacy of shareholders' interests makes it inevitable that 'for profit' organisations will continually seek to reduce their PSB obligations, rather than viewing PSB as the core of their raison d'être. Further, as recent history illustrates, the practice of quantifying the costs and benefits of PSB for 'for profit' organisations tends to lead down a counterproductive, diminishing, genre-driven definition of PSB itself. And of course stv's stated commitment to Scottish PSB broadcasting may be revised in the event of a change of ownership or management. Any PSB settlement incorporating stv would therefore have to have guarantees of commitment.

⁴ *Ofcom's Second Public Service Broadcasting Review Phase Two Preparing for the digital future*, September 2008, p.2, at http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf.

⁵ *Scottish Screen Response to Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, April 2008, at http://www.ofcom.org.uk/consult/condocs/psb2_1/responses/ss.pdf.

In the short term, however, we appreciate that there is a need for a more pragmatic solution to ensure continuing PSB competition for BBC Scotland. We would certainly favour the continuation of stv as a genuinely Scottish PSB. For this reason, we believe that it is essential that Ofcom ensures that stv receives equitable treatment in its dealings with ITV plc.

4. How else can Scottish news be funded – other than by stv?

The cost to the public purse of funding an alternative Scottish news to the BBC's would presumably continue to exist, whether in the form of explicit cash funding or implicitly through the value of PSB benefits to the news provider.

Scottish Screen believes that Ofcom's suggestion (apparently supported by Michael Grade) of the option of regional/national contracts with 3rd party news supplier(s) warrants further consideration, as well as the option of continuing Scottish news from stv .

5. Longer term, should there be a Channel 3 licence – and what kind of licence?

We note that Ofcom's view is that commercial public service broadcasting under the current system will not survive the transition to an all-digital world:

"Our analysis of the funding available to the commercial PSBs for public service content, reviewed for this phase, shows they will continue to deliver much UK public service content, often for commercial reasons. The regulatory assets identified in phase 1 used to fund provision of this content, such as access to reserved spectrum, will retain some value beyond the completion of digital switchover in 2012.

But this will not be enough to sustain the current level of provision by ITV1 and Channel 4 across a range of genres. The value of the ITV1 licences will fall below the cost of their current obligations before 2012, with the result that ITV plc may have incentives to surrender those licences. After 2012 the obligations linked to the licences will need to be very limited if no replacement funding is available. By 2012, we estimate that Channel 4 will need additional funding in the order of £60-100 million to sustain investment in public service content, excluding the cost of its ambitious Next on 4 proposals."⁶

Our position is that if the commercial PSBs (ITV1 and Five) are to continue to have a PSB role going forward, it would not be unreasonable to expect them to maintain an appropriate level of PSB obligation in exchange for the continuing benefits derived, as we believe the methodology employed in Ofcom's analyses understates the net benefits of PSB status to ITV (see above).⁷

⁶ *Ofcom's Second Public Service Broadcasting Review Phase Two Preparing for the digital future*, September 2008, p.2, at http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf .

⁷ See Holden Pearmain, *Assessing the value of public service programming on ITV1, Channel 4 and Five: Summary Report - Prepared for Ofcom*, September 2008, at http://www.ofcom.org.uk/consult/condocs/psb2_phase2/annex6.pdf .

As indicated above, Scottish Screen is attracted by Ofcom's suggestion of the reconfiguration of Channel 3 licences into a 'nations' basis – Scotland/England/Wales/N. Ireland. We are strongly opposed to the concept of a single UK licence, even with obligations to the devolved nations and English regions.

We also dispute Ofcom's conclusion that there is little demand for England-only content. Our view is that any apparent lack of demand for England-only content reflects the current domination of the UK-wide PSB networks by content which defaults to England-only in the vast majority of cases where such content does not have genuine UK-wide relevance. The King Report for the BBC Trust provides strong support for this hypothesis:

"During the four weeks that were monitored during October and November, the Cardiff team identified 136 stories on the BBC network that dealt with education and health: that is, with arguably the two most important policy fields that are largely devolved to Scotland, Wales and Northern Ireland. Of the 136 stories, all 136 dealt with England alone. None dealt with education or health in one of the devolved nations."⁸

The high level of public dissatisfaction - shared by the UK Government - with the recent situation where coverage of an England football World Cup qualifying game was not available on any PSB channel, would also suggest that demand for England-only PSB content should certainly not be underestimated.

We agree with Ofcom's decision to reject the BBC-only future PSB model and note the refinements made to the other three models:

"An enhanced Evolution model

If audiences' needs change relatively little over the next few years, and the existing broadcasters remain best placed to meet those needs, an enhanced Evolution model has advantages.

In this model the main commercial PSBs would retain obligations. ITV1 could become a network of nations-based licences, or a single UK licence, with obligations only for UK origination, UK and international news, and potentially news for the devolved nations and the English regions, for which replacement funding is likely to be required.

Channel 4 would have an extended remit to innovate and provide distinctive public service content across platforms, with additional funding.

Five's role would focus on UK origination, in particular UK children's programming, and news.

Even under this evolution model, there might be no need to retain a public teletext licence, nor a Channel 3 breakfast-time licence.

⁸ See BBC Trust, The BBC Trust Impartiality Report: BBC NETWORK NEWS AND CURRENT AFFAIRS COVERAGE OF THE FOUR UK NATIONS, June 2008, page 30, at http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/impartiality/uk_nations_impairality.pdf.

A refined BBC/Channel 4 model

If ITV1's and Five's incentives are no longer credibly aligned with public service purposes, and not for profit institutions are chosen as the primary way of securing those purposes, a BBC/Channel 4 model offers benefits.

In this model the BBC and Channel 4 would be the main recipients of public funding and regulatory assets. Channel 3 and Channel 5's licences would be auctioned or the spectrum rights and other regulatory assets transferred directly to Channel 4 and the BBC to enhance their public service propositions.

Competition for new funding could be introduced for nations, regions and potentially local news. Channel 3 licensees would have no ongoing public service benefits or obligations, but could compete for funding to provide nations and regions news, alongside others. Five would also lose public service status but could similarly bid.

A refined competitive funding model

If audiences turn rapidly to new platforms and forms of content, and competition for funding is deemed the best way to ensure the accountable and efficient use of public resources, a competitive funding model offers advantages.

In this model, the BBC would remain as the cornerstone of provision, but additional funding would be opened up to a wider pool of providers. Channel 4 could retain its PSB status along with its existing regulatory assets, but be required to bid for any additional funds alongside other providers. Current Channel 3 licensees and Five could also bid for funding, alongside others, if they wished to continue to contribute."⁹

Ofcom's refined BBC/Channel 4 model is premised upon ITV1's and Five's incentives no longer being credibly aligned with public service purposes, and thus not for profit institutions being chosen as the primary way of securing those purposes.

However, the implications of the various Scottish PSB scenarios for stv's production and broadcasting operations clearly need to be considered separately – and also in conjunction with the possible future of ITV plc's PSB status.

We feel there is an inevitability of ITV's 'for-profit' status putting the current PSB model under continual and increasing pressure, even if a revised set of benefits and obligations were to be agreed. This is one of the key drivers of our support for a new approach, based on some measure of competitive funding.

In supporting the introduction of a competitive funding element, however, we would not wish to see this result in an adverse impact on the BBC's ability to fulfil its Charter obligations in offering an appropriate range of services, programmes and content to audiences, particularly in Scotland.

⁹ Ofcom's Second Public Service Broadcasting Review Phase Two Preparing for the digital future, September 2008, pp.3-4, at http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf

A more immediate issue is that stv's ambitions as a television producer (as distinct from its role as a broadcaster) to increase the low level of programmes it currently makes for the ITV network will not be assisted by Ofcom's proposals to reduce quotas for ITV1's out-of-London production from 50% to 35%. Ofcom's recent threats to impose an 8% minimum quota on ITV1 for network production from Scotland, Wales and Northern Ireland also appear to have been dropped.

We also note that there appears to be a difference of opinion between (1) stv; and (2) ITV plc and Ofcom; on whether or not stv could survive as a PSB if ITV plc does surrender its PSB licences. ITV and Ofcom appear to believe stv could not survive in such a scenario. However, stv refute ITV plc's claim that they are heavily subsidised by ITV plc and claim that the reverse is actually the case. Resolution of this difference of view – or at least clarity over the differences - would be welcome.

6. How does this fit with the SBC's recommendations?

Probably the most significant event for the future of in Scottish PSB has been the work of the SBC, whose final report has gained all-party support from the Scottish Parliament. The SBC's most significant recommendation is the establishment of a new Scottish digital network. **We would have liked to have seen much more consideration of the analysis and recommendations of the SBC in Ofcom's Phase Two consultation, but appreciate that there was limited time between publication of the SBC's final report and publication of Ofcom's Phase Two consultation document.**

And while we do not necessarily endorse its conclusion that it would be impossible for any affiliate models to be sustainable in Scotland without significant direct or indirect public support, we do welcome Ofcom's commissioning from Oliver and Ohlbaum of an analysis of the potential for a Scottish TV service:¹⁰

"In phase 1, we proposed to explore the possibilities for new models of delivery post 2014, particularly affiliate models similar to those in the US. In an affiliate system, the network broadcaster would provide its network schedule at no cost to other nations, and sell advertising time throughout the UK within it. The nations licensees would sell airtime around their own output. Such an approach is supported by the Institute of Welsh Affairs."¹¹

As noted above, Scottish Screen strongly supports the SBC's recommendation for a new Scottish Digital Network. **It is essential that the new Scottish Network should be allocated full and adequate public funding as apart of the overall UK PSB settlement. There can be no UK PSB settlement without resolution of PSB in Scotland. Like S4C, it should not be subject to any competitive funding requirement. A detailed investigation into the Scottish network's feasibility and funding is required as a matter of some urgency, to include – but not be limited to – consideration of the "switchover surplus."**

We continue to find Ofcom's earlier suggested option of running English language programmes on the GDS unappealing as it would dilute the impact of both, inevitably putting pressure on the service to balance programming schedules across the two languages, resulting in an unsatisfactory compromise.

¹⁰ See *Ofcom's Second Public Service Broadcasting Review Phase Two Preparing for the digital future*, September 2008, pp. 73-76, at

http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf.

¹¹ *Ofcom's Second Public Service Broadcasting Review Phase Two Preparing for the digital future*, September 2008, p. 73, at http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf.

7. Should Out of London (OOL) quotas disappear?

Even with the hoped-for launch of a Scottish digital network, there will still be a need to increase network commissioning from the nations – particularly in view of the likely timescale for the network to fully operational. **Scotland-specific quotas for the BBC and Channel 4 are essential and should be set at 8.6% - as a floor, not a ceiling, to echo Mark Thompson's words. However, this needs to be in a much shorter time frame than currently proposed for the BBC – by 2012 at the latest, rather than by 2016.**

The volume *and* value of network production need to be specified and monitored in these quotas.

To achieve the desired sustainability of Scottish-based production, it is also essential that ultimate commissioning authority is located in Scotland.

8. Should Channel 4 have greater responsibilities for broadcasting to the Nations - assuming their funding issues can be solved?

We note that Ofcom has agreed that Channel 4 faces significant financial challenge going forward and will need additional funding support if it is to continue to fulfill its PSB remit. Scottish Screen's preferred model for PSB in Scotland envisages a much enhanced level of commissioning from Channel 4, at the very least in line with Scotland's share of the UK population. Indeed, the additional PSB needs of Scotland as a devolved Nation merit a significantly higher share.

These responsibilities need to be backed up by clear Scotland-specific quotas. In contrast to its excellent contributions on the supply side, Channel 4 has a very poor commissioning record from Scotland.

Scottish Screen fully supports the proposition that Channel 4 should have a significant presence in Scotland. Clearly, the full range of financing measures identified by Ofcom needs to be explored in order to ensure that Channel 4 is capable of funding its PSB obligations. We are also aware that the outlook for television advertising revenues has worsened very significantly over the last few months, accelerating the anticipated post DSO financial pressures. The original Ofcom analysis of Channel 4's financial position needs to be revisited as a matter of urgency because of the speed and scale of recent change, in order to ensure a continuing effective role in providing plurality of PSB.

We note that, although Ofcom have not explicitly addressed the privatisation of Channel 4 as a future PSB option, former Ofcom Chief Executive Stephen Carter, recently appointed as Minister for Communications, Technology & Broadcasting, has indicated that this option has not been ruled out. **In line with our above comments regarding the importance of the 'not for profit' motive in delivering PSB, we disagree with any plans to privatise Channel 4. This does not exclude further exploration of commercial funding options, however.**

9. How can we ensure PSB in Scotland is sustainable?

Achieving critical mass and sustainability of Scottish-based production is one of the key challenges for PSB in Scotland. Effective quotas clearly have a part to play. **We would also wish to see significant contributions in Scotland from:**

- **Channel 4, the BBC and stv in taking on broader responsibility for developing the industry, in key areas such as talent, training and skills development;**
- **BBC3 and BBC4 as ‘nursery slopes’ for developing talent, taking greater commissioning risks and being more open to new production companies;**
- **BBC Scotland in playing a greater role in sharing resources, including office and studio space and technology;**
- **PACT and other trade bodies and unions in providing dedicated support to the growth of the sector in Scotland;**
- **Skillset Scotland in leading on the strategic development of the industry skills agenda in Scotland;**
- **Scottish Enterprise and Highlands and Islands Enterprise in providing effective economic development support for the whole of the broadcast sector;**
- **Scottish Screen (and subsequently Creative Scotland) in taking the leadership role in bringing together broadcasters, production companies, economic development bodies, skills agencies and further and higher education to work collaboratively in delivering what is required to ensure a thriving creative content sector.**

We understand that the BBC is actively considering ways in which it can extend its partnership activities and look forward to hearing greater detail on its plans in the near future.

Sustainability will be dependent upon a significant increase in the current size of the independent production sector in Scotland – developing scale in terms of businesses, business activity and skills. We recommend that the proposed increased levels of commissioning from the BBC should be used to further develop the independent production sector in Scotland alongside any increase in in-house production.

10. How should PSB support Scottish (and UK) film - and the broader Creative Industries?

Broadcasting is widely recognised as one of – if not the – key driver of the broader Creative Industries. **Scottish Screen would like to see the BBC play a much more active role in supporting the Creative Industries in Scotland, and for this to be signalled as a major part of its PSB responsibilities.**

More specifically, it should be noted that the BBC and Channel 4 are both vitally important to Scottish – and UK – film production and appreciation. It is important that the level of investment in the development and production of film is maintained by both BBC and Channel 4 and that their investment in acquisition, particularly of British film, is developed further. Lastly, it is important that the scheduling of film on these channels is not confined to niche channels or to the margins of the schedule.

11. What are the implications of the PSB Review for Ofcom's Digital Dividend Review (the DDR)?

The importance of plurality and the need for competition for the BBC is a core element of the case for continuing PSB.

For this reason, we are concerned about the timing and direction of the DDR and the apparent lack of synchronisation with the PSB proposals – we fear that there may be insufficient spectrum available to ensure plurality in Scotland, given the rapid escalation in potential usage, from HDTV to local TV to mobile telephony.

We believe it is important for a clear and consistent timetable and associated milestones to be established *before* the Scottish digital network is up and running.

In the digital era, the issue is increasingly one of how best to deliver Public Service *Content* (or PSC) rather than traditional PSB. **The DDR therefore also needs to ensure there is sufficient space for trial and experiment to ensure success in the future world of PSB/PSC.** The 4iP initiative is a good example. Ofcom's earlier Public Service Publisher (PSP) proposition, although no longer on the agenda, could have played a role in delivering such space.

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