

Ofcom's Second Public Service Broadcasting Review

Response by British Sky Broadcasting

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Summary

Sky welcomes the opportunity to contribute to Ofcom's second review of public service broadcasting (PSB).

We disagree fundamentally with the pessimistic diagnosis contained within the consultation document, which is at odds with the actual consumer experience of a competitive, dynamic marketplace delivering real benefits with ever more choice, innovation, value and plurality. Looked at from the perspective of the viewer there is an ever expanding array of content available that meets Ofcom's definition of public service purposes and characteristics, much of it provided without any public intervention. In short, there is no evidence of an impending crisis.

The debate on PSB in the UK has consistently failed to take into account the way in which multi-channel television and the internet have transformed how consumers experience and access content. This is the real challenge for the traditional PSB system, which no longer has a monopoly on the provision of public service content but continues to consume high levels of public subsidy.

The market is producing an increasing range, quality and diversity of such content without public subsidy or other forms of intervention. Its output includes a growing contribution from the multi-channel sector and a huge amount of content available online, whether provided by commercial organisations, charitable and educational bodies, central and local government and, of course, users themselves. In addition, the vast majority of programming on the commercial terrestrial networks should be regarded as a market outcome, as this content is provided for wholly commercial reasons and not as a result of public intervention.

It is disappointing that Ofcom's consultation document repeats the mistakes of past analyses. It underestimates the role of the market, overestimates the need for public intervention and relies on outdated assumptions about the way public service content is consumed:

- The contribution of the multi-channel sector is downplayed and the ability of subscription-funded business models to enhance quality and provide a significant amount of programming which meets public service purposes and characteristics is largely ignored;
- The fixation on measuring inputs (the amount of public subsidy going into the existing PSB system) rather than outputs means there is insufficient analysis of what programming which meets public service purposes and characteristics is actually available to viewers. It overlooks the increasing amount of public service content which is produced with no direct or indirect state support;

- Despite explicitly extending the scope of the review to cover the internet, Ofcom understates the contribution of online content. The amount of public service content on the internet is enormous and consumers are increasingly using it to supplement, and in some cases replace, what they consume through television.

Notwithstanding Ofcom's gloomy predictions, all the evidence suggests that the availability and plurality of public service content will continue to grow as the impact of new platforms and technologies dramatically lowers the costs of both content creation and distribution. In addition, subscription television and the internet will provide new and growing sources funds for public service content which will more than offset any decline in the direct or indirect subsidies available to terrestrial PSBs.

Changes in audience demands and behaviour will continue to create pressures for the institutions which form part of the existing PSB system. Instead of an automatic impulse to increase subsidy still further, the rational conclusion is that the level of state intervention should be reduced to take advantage of increasing market provision and to maintain incentives for commercial broadcasters to invest in quality content.

Any increase in the scope or scale of intervention risks damaging market provision of public service content by crowding out private investment and undermining new business models – particularly in areas such as new media. Such an approach would be counter-intuitive and counter-productive, with intervention creating the very failure in market provision it is intended to address. Instead, remaining intervention should be made more effective and directed to areas where the market is genuinely unable to deliver.

Sky believes that, instead of looking for new ways to intervene, government and regulators should remove outdated regulations, safeguard incentives for private investment, and step back and allow the market to deliver. Existing PSB institutions may be threatened by the pace of change, but it is viewers who are, and will continue to be the winners.

1. The market is providing ever more public service content

Ofcom has set out the purposes and characteristics that it believes defines public service broadcasting. Its broad definition clearly encompasses a vast amount of content provided – commercially – by the multi-channel sector and online, as well as much of the output of the traditional commercial PSB networks.

Unfortunately Ofcom continues to under-estimate the availability of public service content because it measures inputs, i.e. the amount of public subsidy (direct or indirect) that goes into PSB, rather than outputs, i.e. what is actually available to viewers. Little analysis is provided of the increasing availability of content that meets public service criteria produced by the market with no state support.

In fact, UK consumers have never had access to so much content with public service characteristics and have never had a greater choice of ways to consume it. As the Culture, Media and Sport Select Committee noted in their recent report on public service media content: *“there is currently an abundant supply of content that exhibits public service purposes and characteristics as defined by Ofcom”*¹ and that *“there are more providers and hours of this type of content available to consumers than ever before”*².

The contribution of the multi-channel sector

Although its contribution is down-played by Ofcom, the level of public service content provided by the multi-channel sector is significant and will increase in future. Viewers have far greater choice of public service programming today than ever before. On the Sky platform alone, there are 14 dedicated news channels, over 50 channels catering to foreign language or ethnic audiences, 15 channels dedicated to religion and faith, and 29 channels for children. Devotees of wildlife documentaries, gardening, history programmes, the arts and many other interest areas are similarly well-catered for.

Viewers agree with this conclusion and Ofcom’s research shows that *“the specialist multi-channel televisions, Discovery, UKTV History and Sky News, were more likely than the PSB channels to be rated positively in terms of encouraging their regular viewers’ interest in a subject”*³. Well-funded and well-produced high quality original content is available on a wide range of channels. Recent examples include: on the History Channel, *‘My Favourite Place’* in which stars tour their favourite English Heritage properties; on National Geographic, *‘Planet Mechanics’* where eco engineers journey across the UK and Europe on a mission to lower energy consumption, *‘Stonehenge Decoded’* which uses cutting edge CGI to tell the story of Stonehenge, and *‘Medics: Emergency Doctors’* about the East Anglia Air Ambulance; on UKTV Food, *‘New British Kitchen’* which is an exploration of multicultural British cooking; and on Animal Planet, *‘Mounted Branch’* looking at the role of the Greater Manchester Mounted Police.

Sky’s own channels make a significant contribution to programming which meets Ofcom’s public service purposes and characteristics. Sky News was the UK’s first 24

¹ Culture, Media and Sport Select Committee Report on Public Service Content, page 15

² Culture, Media and Sport Select Committee Report on Public Service Content, page 16

³ Ofcom’s Public Service Broadcasting Annual Report 2008, page 173

hour rolling news channel and has set the pace of innovation in television news ever since. Its independence and editorial integrity are highly valued by viewers and it has been named RTS News Channel of the Year for six out of the past seven years. Sky News makes a vital contribution to media plurality as the only British television news service which does not seek subsidy from the state.

Sky Arts provides unique coverage of opera, dance, literature and theatre. It is the UK's only channel dedicated to all areas of the arts, broadcasting 18 hours of high quality programming a day, much of it in high definition. Recent examples include daily coverage of the *'Hay Festival'*; a new specially commissioned series, *'The Art of Faith'*, examining the world's religious architecture and art; and *'Mostly Mozart'*, a series of five classic Mozart operas recorded in high definition in celebration of Mozart's 250th birthday. All of this is provided commercially, without public subsidy or regulatory intervention, because we recognize that audiences want and expect this sort of intelligent, in-depth arts programming. As in the case of Sky News, this is an example of the market responding to the failure of the PSB system to cater for audience demands for distinctive, quality programming.

Public service type content is also available on our flagship entertainment channel, Sky One, including the BAFTA award-winning *'Ross Kemp on Gangs'*, and the acclaimed follow up documentary *'Ross Kemp in Afghanistan'*. Sky One also commissions high quality original British drama including recent highlights such as *'Hogfather'* and *'The Colour of Magic'*, starring Sir David Jason, the first adaptations from Terry Pratchett's Discworld series of novels, and forthcoming productions such as the adaptation of the much admired children's book, *'Skellig'*. Other recent examples of investment in high quality family entertainment on Sky One include *'Gladiators'*, *'Noel's Christmas Presents'* and *'Are You Smarter than a Ten Year Old?'*

And, of course, Sky also makes a major investment in UK sport. In addition to covering popular events in football, rugby, cricket and golf, Sky Sports shows over one hundred different sports each year. This includes some sports where Britain is very successful internationally, such as curling, sailing, rowing, netball and archery, but which have rarely, if ever, been featured on the PSB networks. Viewers appreciate this diversity and the sports are able to build their audiences, popularity and participation on the back of Sky's coverage. Sky Sports has also been a pioneer of many innovations in television sports coverage which have now been widely adopted by other broadcasters in the UK and internationally. Examples include the clock and score on screen, super slow motion, virtual graphics, interactivity and most recently high definition.

This commitment to innovative and challenging content extends to Sky Movies channels. *'An Inconvenient Truth'*, Al Gore's Oscar winning documentary about global warming was premiered on Sky Movies, preceded by an exclusive studio interview with the former Vice President. Sky Movies also premieres a large number of 'British films' which are either produced in the UK, set in the UK or involve UK talent both on and off-screen. Recent examples include *'Atonement'*, *'Notes on a Scandal'* and *'Sweeney Todd'*, plus, of course, international blockbusters like the James Bond and Harry Potter franchises. Foreign language films are also well catered for, including a monthly *'World Showcase'* and the recent *'Cannes-Tastic'* season of classic international films on Sky Movies Indie.

It is not clear why Ofcom excludes sport and movie programming from its definition of public service content. Much of it is highly valued by viewers and contains high quality UK content which clearly reflects the purposes and characteristics of PSB. And it is wholly inconsistent that this is excluded from the definition and measure of PSB while the BBC uses public funds to acquire imported US programmes.

It is also worth noting that the multi-channel contribution may be further understated because Ofcom's focus on the amount of money spent on content doesn't account for the greater efficiency of many multi-channel television commissions and the co-production strategies commonly used between international partners in the sector (i.e. the financial contribution of the UK broadcaster may well be a poor proxy for the quality and value of the transmitted programme).

The contribution of commercial PSBs

Of course, the market does not just deliver public service content in the multi-channel sector. It is important to remember that most of the programmes on ITV, C4 and Five that reflect public service purposes and characteristics are created because there is enduring consumer demand for them. Much of this content makes a direct return from advertising and would be made regardless of intervention. Many other programmes are made because they enhance a broadcaster's brand and reputation, and thus support the wider commercial objectives of the business. As Michael Grade told the House of Lords Communications Committee in 2007, "*Having a quality, distinctive, impartial news service is one of the things that helps you to distinguish your network from other networks. So it is a very high priority for us.*"⁴ He went on to say that even if there were no regulatory requirement for ITV to provide a news service, it would still provide one.

Online contribution

Finally, there is the growing contribution from public service content on the internet, which is acknowledged by Ofcom and then largely discounted. Although the consultation document concedes that "*the internet is emerging as an important platform and the most important medium for younger people*"⁵, this observation does not yet appear to influence the proposed policy prescriptions. Yet technological advances such as broadband and the convergence of platforms means that a growing quantity of public service content is available to access online via computers, mobile phones and other devices. Content with PSB purposes and characteristics is available online from a huge array of sources including national and local newspapers, universities, museums and galleries, charities, government departments, and so on. The internet in general, and websites dedicated to user generated content in particular, such as YouTube or britfilms.tv, have revolutionised the ability of producers to distribute content and to reach large audiences. Services like AOL, Yahoo and MSN have made available a vast quantity of audiovisual content which is funded through new online business models including one-off payment, monthly subscription and targeted advertising. And, of course, the cost of creating much of this kind of content is often small compared to traditional television programming making input measurement even more misleading.

⁴ House of Lords Communications Committee, 28 November 2007, Q991, 992

⁵ PSB Review Phase 1: The Digital Opportunity, page 28

The internet has also fundamentally altered the economics of distribution, providing a new, cost effective channel for distributing content created for TV, cinema, radio and newspapers, as well as offering easy access to archive material and content from around the world. The internet thus helps to increase the reach and impact of existing public service programming, as well as offering new revenue generating opportunities and business models that will help fund new types of content in future.

2. The market will become more important in delivering public service content

Over time the multi-channel sector and the internet will become even more important in the provision of public service content, particularly as traditional free-to-air models come under increasing pressure. Linear TV advertising revenues are fragmenting and a universal, regressive licence fee will inevitably become harder to justify as people choose to spend more time watching alternatives to the BBC. The health of public service content is therefore going to become more dependent in future on subscription funding, which is growing steadily and is more responsive to changing tastes (if viewers don't like the content they stop subscribing).

In fact, through its mixture of funding from subscription and advertising, the multi-channel sector is better suited to the delivery of many elements of high quality public service programming than purely advertising funded broadcasters. For example, subscription funding allows pay television broadcasters to capture the 'disproportionate appreciation' of an audience for a particular programme or genre, turning the willingness of viewers to pay into revenue and thereby enabling the funding of a programme that would not have been produced by a traditional advertising-funded broadcaster seeking to maximize audience delivery. Many of the specialist and mainstream channels on Sky's platform fall into this category and attract a wide subscription base between them.

However, Ofcom appears to be arguing that this method of funding public service content should be discounted because only content that is made available "free-to-view" can be considered as PSB: "*core public service content should remain widely available, free-to-view, through provision on a range of platforms – at minimum, terrestrial and satellite*"⁶. This makes no sense. People are accustomed to paying for entertaining, informative and educational content in other areas and TV is no different. Newspapers, books, DVDs and downloads of films, TV content and music from the internet are all routinely paid for directly by consumers. Furthermore, content offered for "free" on the internet by the traditional PSBs – such as the BBC's iPlayer – is not really free since consumers have to pay a subscription to an ISP to get online. Conceptually, there is no difference with pay television, once a customer pays their subscription they are able to watch the channels within their package for "free".

Viewers are ahead of Ofcom in this regard and have increasingly moved on from relying on traditional free-to-air PSB networks for public service content. Ofcom's own research shows that the terrestrial channels are not the main source of information,

⁶ PSB Review Phase 1: The Digital Opportunity, para 6.34

education or understanding on most topics for a majority of the public⁷. None of this is surprising given that there has been a huge expansion in the access and reach of multi-channel television and the internet. Digital channels are now available in 22 million homes, 12 million subscribe to pay TV and broadband penetration now stands at around 60%. Consumers have been empowered by technology and expect to be able to exercise their choice of viewing across different platforms and from different providers, employing different payment models.

3. Existing public intervention should be more effective

As the market delivers more public service content, state intervention should be progressively scaled back (as it has been in other industries). This would help to create a virtuous circle of increased private sector investment, especially in areas where commercial operators have previously been crowded out by the public sector.

The starting point for any review of the PSB system should be how to get more from remaining intervention. All intervention, whether by the BBC, C4 or as a result of regulation of commercial broadcasters needs to be prioritised to focus on areas where there is a clearly identified deficiency in what the market delivers and where the programming provided has significant public service value.

It is particularly disappointing that Ofcom does not even include this as an option in its consultation document. After all, more effective intervention would appear to come closest to meeting its statutory duty under the Communications Act to maintain and strengthen the quality of public service broadcasting.⁸

BBC

The BBC receives a very large guaranteed income each year from the taxpayer and it has an over-riding duty to deploy this in a way that maximises public service delivery, in aggregate across the market. This means focusing first on those areas that the market is not serving well, where there is a real deficit in provision. The BBC should step back entirely from other areas. In particular, there is no justification at all for the BBC using public money to outbid commercial broadcasters for Hollywood films and US series. The fact that the BBC continues to spend a £100m a year on acquired programmes and appears to be increasingly aggressive in this area is a clear signal that its existing remit and governance structure is fundamentally flawed.

The BBC must focus its investment in areas where it delivers most public service value, not just where it ticks the box of a single PSB characteristic. The BBC needs to evaluate constantly the choices it makes and prioritise spending in areas where it can make the biggest difference. Inevitably, in such a dynamic and fast moving marketplace, this equation will change over time. In some cases that could mean the BBC stepping up its investment in certain areas (for example, regional programming in response to ITV doing less), but in most cases it is likely to mean the BBC pulling back as the market delivers more (and reducing the burden on the licence fee payer accordingly).

⁷ PSB Review Phase 1: The Digital Opportunity, fig 5

⁸ Section 264 (3) (b) Communications Act 2003

ITV and Five

There appears to be a widespread assumption that Ofcom will lose its ability to require PSB obligations of ITV and Five as the value of their implicit subsidies falls below the cost of their PSB obligations. This assumption needs to be examined more rigorously. After all, spectrum used for terrestrial television broadcasting – including gifted DTT capacity – is scarce and remains highly valuable, as Ofcom points out frequently in the context of the Digital Dividend Review. In addition, other PSB privileges such as due prominence in EPG listings, which form part of ITV’s and Five’s licences, also have a significant value. Ofcom must carry out a rigorous assessment of the financial value of these benefits, informed by the outcome of the DDR auction. Whatever the exact number, it is clear that Ofcom will be able to continue to require ITV and Five to make a significant contribution to the PSB system post digital switchover.

In determining what that contribution should be it is important for Ofcom to ensure that it is not simply a commitment to fund programming that these broadcasters would produce anyway for commercial reasons. ITV’s management, for example, has acknowledged publicly that it would continue to fund a high level of UK commissioning (including national news), irrespective of its licence commitments: *“We (ITV) spend £1 billion a year on programmes, with the vast bulk ploughed into commissions from UK producers up and down the country. That investment is not a function of any PSB obligation or licence requirement, but it is probably the most important public service ITV1 delivers.”*⁹

Channel 4

Channel 4 argues that without an injection of public subsidy, its current model is not sustainable. This proposition is open to challenge. After all, its revenues have continued to grow overall – by nearly 25% over the past 4 years – even as competition has increased. There is considerable scope for Channel 4 to address its situation through better prioritisation within the existing self-funding model. For instance, its spend on imported programming, mainly American drama, comedy and films, has continued to grow – to £150 million last year – and the promise to reduce that by 20% over the next five years will only take it back to the level it was at in 2006. If Channel 4, were to commit instead to reducing spend on acquired programmes by 50%, or even eliminating it altogether, it would free up considerable funds to invest in other areas with more obvious public service credentials. If Channel 4 has concerns about the ability of its mass advertising model to support certain kinds of programming, it should revisit options for developing subscription channels, thereby tapping into a new source of revenue growth.

⁹ Michael Grade at Ofcom’s Nations and Regions conference 2007

4. No justification for an increase in intervention

As set out above, with the market providing more public service content and with existing intervention used more effectively, there can be no justification for increasing public subsidy for PSB, either in scale or scope. Ofcom's argument that further intervention is required to support plurality is hard to justify when looked at from the perspective of viewers who have never had so much choice of what to watch and how to watch it. Indeed any new intervention risks damaging the growth of the market provision of content that meets PSB purposes and holding back the spread of new technologies and innovative programming that have contributed so much to the increase in plurality in recent years.

Even where there is evidence that the market is not currently delivering, it should not be assumed that right solution is further state intervention. In a rapidly changing marketplace, with the lower barriers to entry associated with digital technology, delivery of public service content is possible in areas where the economics have previously been challenging. For example, while Ofcom has identified that local news is important to large numbers of people, it is an area where new media is increasingly providing what people want. There has been huge growth in the amount of content for local communities available online from local newspapers, local government and user-created neighbourhood websites. The emergence of enterprises such as Channel M, providing local news and programming in the Manchester area via digital TV and broadband, demonstrates that innovative new models are emerging outside of the traditional PSB system. Further state intervention in this area risks stifling the growth of the very services that Ofcom wishes to encourage.

Any additional public subsidy for commercial broadcasters risks distorting competition through cross-subsidising commercial activities and may not be compatible with EU State Aid rules. These risks are inherent in all of the funding models proposed by Ofcom – direct government funding, 'top-slicing' the licence fee or an industry levy.