

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.

Scottish Screen welcomes this opportunity to comment upon Phase One of Ofcom's second Public Service Broadcasting (PSB) Review. We agree with Ofcom that PSB in Scotland faces some distinctive challenges and welcome its recognition that 'one size does not fit all' in relation to PSB in the Nations and regions.

Our response is organised around answering the consultation questions which we believe to be most relevant to PSB in Scotland (see below). However, we also wish to signal up front the importance of one issue which is not specifically raised as a question by Ofcom, namely the close relationship between the PSB Review and the Digital Dividend Review. Ofcom's recommendations regarding access to High Definition services by the current PSBs and its adoption of a purely market led approach to the release of new spectrum are two examples of the way in which the Digital Dividend Review methodology and timetable run a real risk of precluding an innovative approach to PSB in Scotland.

For example, we would wish to see more detailed and informed consideration given to the feasibility of a dedicated Scottish MUX, which would presumably require access to cleared as well as geographical interleaved spectrum.

Question 3: How well are the public service broadcasters delivering public purposes?

i) Do you agree with Ofcom's assessment that television continues to have an essential role in delivering the purposes of public service broadcasting?

While viewing habits are undoubtedly changing and television audiences are fragmenting, television is still the dominant medium in people's lives¹, particularly for news provision – perhaps surprisingly, even among the 16 to 24 year old age group.² However, this is unlikely to be a long term phenomenon and it is important that we keep abreast of increasing internet penetration and usage and other relevant trends. Being a PSB (or perhaps more accurately, a public service content provider) will necessarily demand a wider definition – if we settle for digital content for digital platforms as a definition, for the sake of argument, this does not just

¹ Television viewing per head of population was 3.36 hours in 2006, little changed from 2002 (and indeed little changed from 1993); see Ofcom's Communications Market Report 2007, p. 101, par. 2.1.1 at <http://www.ofcom.org.uk/research/cm/cmr07/tv/tv.pdf>.

² See *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, April 2008, pp.29-30, Figures 5 and 6, at http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf

embrace the new media world, but also film and the unique role that the PSBs have in nurturing, developing, producing and broadcasting UK (and Scotland) originated content including feature films, telling distinctive stories for a mass audience.

Indeed, any approach to developing the sector must embrace and address the interconnectivity and interdependence of both production talent and companies across that digital world.

ii) Do you agree that UK-originated output is fundamental to the delivery of public service broadcasting purposes?

Leaving aside for the moment the *economic* importance of UK-originated production and, in particular, its importance as a key driver of the creative economy, it is surely undeniable that authentic *cultural* representation (both internally and externally) is impossible without a very substantial element of home-based programme production. This connection between place and production is also evident at the level of Nations and regions, where a cultural, rather than an economic rationale has always provided the basis for Ofcom's own justification of its market interventions to support programme production in the Nations and regions.

Turning to the core question of how well the public service broadcasters are delivering public purposes, however, there is much evidence to suggest that, so far as Scotland is concerned, the answer is "Very poorly." (This is not to suggest that *all* the responsibility for this failure rests solely with the PSBs.) It is not surprising that Ofcom's own research found such a highly negative gap between Scottish viewers' perception of the importance of seeing their nation portrayed at network level and their satisfaction with current provision: -40%, compared with -27% on a UK-wide basis.³

In its interim report on the Cultural Phase of its investigations⁴, the Scottish Broadcasting Commission includes the following key concerns, inter alia:

- "Scottish programmes currently constitute only about 5% of the schedules of BBC1 and 2 in Scotland and there does seem to be appetite and scope for an expansion of such content to reflect the vitality of modern Scotland.
- Concerns were expressed by several contributors and commentators at an insufficient level of ambition in the commissioning and production of BBC Scotland programmes.
- The Commission is deeply concerned that Scotland's main commercial broadcaster [stv] is not able to commit to being more ambitious in its programme aspirations for the services to Scottish audiences.
- There are also serious concerns about the implications for Scottish viewers of the proposed merger of the news services of Border Television and Tyne Tees.
- There is a clear demand for a review of the list of "protected" sporting events, which must be shown on free-to-air television rather than pay services, in light of different priorities across the UK in relation to national and international sport. In research undertaken for the Commission in Scotland, 84% of people surveyed

³ See *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, April 2008, p.47, par. 3.86, at http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf

⁴ Scottish Broadcasting Commission, *Interim Report on Cultural Phase*, March 2008, pp.2-4, at <http://www.scottishbroadcastingcommission.gov.uk/Resource/Doc/4/0000359.pdf>.

said that competitive matches played by Scotland's national football team should be shown live on free terrestrial television.

- There is some concern that the new Gaelic Digital Service will be reviewed and its future decided at too early a stage in its development – probably some 18 months after it is launched.
- The Commission heard a great deal of criticism of the limited range of cultural content on television, with a strong sense in the evidence that audiences were missing out on opportunities to see the full range of Scottish talent and creativity applied to national and international subjects.
- Organisers of key cultural events felt the need for a stronger sense of partnership with broadcasters, recognising that television is the main vehicle for reflecting and celebrating the best of national life.
- Major concerns in the evidence included: populism and ratings pressures reducing diversity and ambition; broadcasters doing 'more of the same' and failing to surprise audiences; and Scotland's considerable writing talent not being adequately harnessed.
- Our research on public attitudes to broadcasting found 84% of those surveyed thought it was important that television should "inform and teach you about Scotland", but a third of respondents were dissatisfied with how programmes meet this responsibility.
- The biggest gap seemed to be in history and heritage programmes, where a majority of respondents (56%) thought there was too little coverage of the Scottish dimension. 51% thought there was not enough coverage of Scottish material in factual and documentary programmes. "

In our view, however, it is impossible to segregate the cultural and economic aspects of PSB. The significance of the linkage between place and production means that achievement of the cultural benefits of PSB is dependent upon sustaining a critical mass of programme production in Scotland. It is therefore also relevant to refer to the deficiencies identified by the Scottish Broadcasting Commission in its interim report on the Economic Phase of its activities⁵:

- "Network production in Scotland declined from 6% of the UK total in 2004, to only 3% in 2006, according to the regulator Ofcom.
- A number of factors have been suggested to explain this decline, including a lack of engagement with the Scottish sector by London-based commissioning editors.
- There has been no discernible overarching strategy for the sector in Scotland, with key stakeholders in broadcasting, production and the support agencies unclear about any shared objectives or sense of direction.
- All of the network broadcasters who gave evidence spoke of the need to strengthen and diversify the supply base in Scotland, to overcome their concerns

⁵ Scottish Broadcasting Commission, *Interim Report on Economic Phase*, January 2008, pp.1-3, at <http://www.scottishbroadcastingcommission.gov.uk/Resource/Doc/4/0000314.pdf> .

particularly in relation to the high-value genres of Drama, Comedy and Entertainment.

- The Director General of the BBC said that delivery of a 9% target for network commissions from Scotland was his personal responsibility and more details would be available in February 2008. He also noted it was important for them to consider having network commissioning editors based in Scotland.
- The Chairman of the BBC Trust said the BBC budget would not be approved until the Trust was satisfied on the detail of the delivery plan for the devolved nations. He spoke of “a recognition that aspiration is not enough”.
- Channel 4 stressed their desire and intention to commission more programmes from Scotland and we expect to see specific commitments in their new vision for the channel, to be published in the first quarter of this year.
- The ITV Executive Chairman spoke of a “talent exit problem” from Scotland, but said the channel acknowledged the Ofcom target of increasing commissions from the devolved nations to 8% of the UK total.
- We heard many comments about network programmes being labelled as “Scottish” for reporting purposes, while in fact having very little financial or creative connection with Scotland. We have urged both the BBC and Ofcom to secure greater transparency and consistency on this issue and have sought information from them on how this will be progressed.
- The heavily centralised nature of broadcasting in the UK is the most frequently-mentioned challenge. All of the network channels and all of the key decision-makers are based in London, and geographical distance from the power base is an issue for Scottish producers.
- Scotland needs to develop companies of scale and to focus on returning series if it is to succeed in the high-value programme genres particularly.
- Independent production companies find it difficult to attract and retain the best talent, and to fund sustained research and development.
- Evidence suggested that neither Scottish Enterprise nor Scottish Screen had developed or implemented an overarching strategy for growing the television production sector.
- There is a clear demand for leadership in the industry and for clarity in the roles and responsibilities of the main public support bodies, including the proposed Creative Scotland agency. "

The Commission’s recently published interim report on the Democratic phase of its investigations⁶, and now the King report for the BBC Trust⁷, both provide convincing

⁶ Scottish Broadcasting Commission, *Interim Report on Democratic Phase*, May 2008, at <http://www.scottishbroadcastingcommission.gov.uk/Resource/Doc/4/0000393.pdf>.

⁷ BBC Trust, *The BBC Trust Impartiality Report: BBC NETWORK NEWS AND CURRENT AFFAIRS COVERAGE OF THE FOUR UK NATIONS*, June 2008, at http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/impartiality/uk_nations_impactuality.pdf.

evidence of the failure of PSB to keep pace with the realities of a devolved Scotland. Consistent with the findings of these reports, separate research for the Scottish Government found that 54 per cent of respondents in an extensive survey conducted to assist the work of the Commission stated that they "sometimes" or "rarely" found it clear in UK news programmes whether or not a news item applied to Scotland.⁸

In summary, there is an overwhelming body of evidence to suggest that significant remedial action is required if PSB in Scotland is to fulfil its public purposes.

Question 4: The changing market environment

i) Do you agree with Ofcom's conclusions about the way that other digital channels and interactive media contribute towards the public purposes?

We agree with Ofcom that the contribution of non-PSB channels to public purposes remains very limited, particularly with respect to UK origination and genre diversity.

The growth of the internet and interactive media in providing content which delivers public purposes is a significant development, but is primarily complementary to PSB television and unlikely to provide a feasible substitute for PSB in the foreseeable future.

Question 5: Prospects for the future delivery of public service content

ii) Do you agree with Ofcom's analysis of the costs and benefits of PSB status?

We continue to hold the view that the methodology employed in Ofcom's analyses understate the net benefits of PSB status to ITV, and remain unconvinced of the robustness of the opportunity cost analyses which has been used in the past.

The driving principle in imposing public service obligations on commercial broadcasters should be to ensure an appropriate balance between the scale of the obligations and the value of the benefits enjoyed by the broadcasters, such as access to scarce spectrum. And while the decline of analogue viewing and the greater efficiencies of digital clearly exert downward pressure on the value of spectrum, that does not mean that PSB status ceases to have any economic value for broadcasters. The combination of the continuing importance of the aerial as a means of television reception in the UK after Digital Switch Over (DSO), the increasing demand for access to DTT (exacerbated by the success of HDTV), the current capacity limitations of the internet (particularly outside major conurbations), the continuation of subsidised spectrum pricing for PSBs post DSO, the increasing value of high Electronic Programme Guide positions and the continuing USP characteristics of rapid mass market advertising reach all combine to suggest that there should continue to be scope to compensate for the cost of PSB obligations in the post DSO world.

It is therefore not unreasonable to expect the commercial PSBs to maintain an appropriate level of PSB obligation in exchange for the continuing benefits derived. An opportunity cost approach can play a role in guiding the appropriate balance in these matters, but caution needs to be exercised, for example in the identification and exclusion of self fulfilling prophecies regarding the 'failure' of non network programming.

Question 6: Meeting audience needs in a digital age

i) Do you agree with Ofcom's vision for public service content?

⁸ The Scottish Government, *Public Attitudes to Broadcasting in Scotland*, 2008, at <http://www.scotland.gov.uk/Resource/Doc/222294/0059796.pdf>.

We agree with the characteristics of public service content incorporated in Ofcom's vision as far as it goes, namely that it:

- “delivers high levels of new UK content meeting the purposes of public service broadcasting – increasing our understanding of the world through news and analysis, stimulating knowledge and learning, reflecting UK cultural identity and making us aware of different cultures and alternative viewpoints;
- provides public service content which is innovative, original, challenging, engaging and of consistently high quality;
- is available in a form, and on a range of platforms to achieve maximum reach and impact;
- ensures competition for the BBC in each public purpose with sufficient scale to achieve reach and impact;
- exploits the distinctive benefits of different delivery platforms; and
- supplies diverse content which meets the needs of all communities within the UK.”⁹

We would also add the following important features, however: (1) the characteristics of UK content which Ofcom deems to be important are equally applicable to Scottish content; (2) diversity of programme/content genres should remain an important feature; and (3) the continued existence of a thriving independent – as well as in-house - production sector is also an essential component of PSB competition.

We further agree that the existing model for public service provision is struggling to cope. More specifically, we agree that: "In practice, flexibility in tier 3 has tended to result in declining provision in many of these areas [arts, children's programmes, religious programmes, drama and so on] since 2003", but are somewhat surprised by Ofcom's ancillary statement: "...but no mechanisms exist to address deficits if they emerge."¹⁰ Ofcom's track record in relation to ITV's PSB obligations (see 5. above for example) does little to suggest that the regulator has been committed to strengthening Tier 3 regulation. The need for effective regulatory sanctions is more important than ever.

ii) How important are plurality and competition for quality in delivering the purposes of public service broadcasting, and in what areas?

Plurality is essential. The damaging effect of lack of effective plurality is evident within Scotland, where the decline of stv and the marginal roles of Channel 4 and Five in Scottish PSB have resulted in a lack of competition for quality for BBC Scotland. According to one journalist, with a distinguished track record presenting BBC Scotland political programmes, "There is a quality to BBC Scotland output that says 'second-rate.'" Examples include Jeremy Paxman repeatedly crashing the junction between the UK Newsnight and its Scottish "opt-out;" and the BBC deliberately making programmes from the Scottish parliament to an inferior standard to those from Westminster. He alleges that "This air of cynical resignation is prevalent throughout BBC Scotland, and is getting worse."¹¹ Similar issues also affect drama; despite the best endeavours of all involved, the lack of resources for *River City* in comparison with network soaps is all too apparent on screen. These examples are also

⁹ Ofcom's Second Public Service Broadcasting Review Phase One: *The Digital Opportunity*, April 2008, p. 74, par. 6.3, at http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf.

¹⁰ Ofcom's Second Public Service Broadcasting Review Phase One: *The Digital Opportunity*, April 2008, p. 86, par. 6.57, at http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf.

¹¹ MacWhirter, Iain, *BBC's second-rate Jockvision is not worth the licence fee*, Sunday Herald, 4 May 2008.

indicators of the significance of the linkages between the economic and cultural aspects of PSB.

iii) In maximising reach and impact of public service content in the future, what roles can different platforms and services play?

All platforms – satellite, cable and (increasingly) broadband, as well as DTT – are critical to the future success of PSB provision.

However, given the limitations on broadband capacity in many parts of Scotland and the favoured status of Freeview as a digital delivery platform, carriage on Freeview is imperative for the GDS. It is essential that the GDS is available on Freeview as soon as possible, preferably with but if not, then without BBC Trust approval.

However, as the Scottish Broadcasting Commission has noted (see 3. above), there is concern that the new service will be reviewed and its future decided at too early a stage in its development – probably some 18 months after it is launched.

Question 7: Future models for funding and providing public service content

iii) Of the four possible models for long term delivery of public service content, which, if any, do you consider the most appropriate and why? Are there any alternative models, or combination of models that could be more appropriate, and why?

As stated above, the scale of change in the PSB environment envisaged by Ofcom would leave an evolutionary approach (Model 1) struggling to cope, while leaving the BBC as the sole significant UK-wide PSB (Model 2) would make it very difficult to achieve the plurality of PSB supply which Ofcom stresses as a key feature throughout the report (particularly so in Scotland).¹² We also have concerns over the advisability of a continuing pivotal role for ITV as a PSB in this model (see 8. below).

We therefore believe that Ofcom's proposed Model 3 (BBC/C4 plus limited competitive funding) and Model 4 (Broad competitive funding) are the leading candidates from Ofcom's four models. Our main focus, however, is on ensuring the most appropriate model for Scotland and our preference would be for Channel 4 to supplement its important supply side work in Scotland with a significant and clearly-defined set of responsibilities in commissioning content within Scotland.

Scottish Screen has a well established and successful record of working with BBC Scotland, SMG and C4; examples include Tartan Shorts, Singles, New Found Land, New Found Films, This Scotland, Pilot, 4IP, feature film financing (*Last King of Scotland*, *Hallam Foe*, *Red Road*, *Sweet Sixteen*, and many others). We would expect an even greater level of partnership working in the future in terms of progressing the wider PSB responsibilities – skills and talent development, production company development, content development and production, advocacy, etc.

Question 8: Options for the commercial PSBs

ii) Which of the options set out for the commercial PSBs do you favour?

¹² Notwithstanding the remedial attempted measures suggested by Ofcom, such as greater separation of different BBC commissioning teams and independent production quotas by genre - see *Ofcom's Second Public Service Broadcasting Review Phase One: The Digital Opportunity*, April 2008, p.98, pars. 7.45 - 7.47, at http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf.

Particularly in a world where a commercial TV franchise is no longer a "licence to print money," in the much quoted words of Roy Thomson of Scottish Television, it seems inevitable that ITV's/stv's 'for-profit' status will put the current PSB model under continual and increasing pressure, even if a revised set of benefits and obligations is agreed. It seems likely that ITV and stv will continually see PSB as a set of obligations either to be negotiated downwards or to be exchanged for ever increasing compensation in cash or in kind.

PSB is essentially holistic in nature and, as we have seen with Ofcom's Cost Benefit Analysis of ITV1's PSB obligations, it is likely to be eroded by continual, incremental questioning of obligations. A new approach is needed sooner rather than later, based on some measure of competitive funding.

Question 9: Scenarios for the UK's nations, regions and localities

ii) Which model(s) do you think will be most appropriate in each of the nations and in the English regions in the long term, and why?

Understandably, our focus is on PSB in Scotland, where we have a preference for Model 3, provided that an appropriate set of Scottish responsibilities for Channel 4 can be agreed (see above).

The suggested option of running English language programmes on the GDS does not immediately appeal to us, as it appears to be attempting to impose a ready-made 'solution' without appropriate analysis of the 'problem' it is attempting to resolve. Both Gaelic and English language broadcasting in Scotland deserve better.

iii) What are your views on short/medium-term issues referred to, including the out-of-London network production quotas?

Scotland-specific quotas need to be introduced as soon as possible, as is evident from the continuing lack of action from Ofcom in the face of ITV's blatant contempt for Ofcom's call for it to make the modest step of moving towards sourcing eight per cent of its network production from the devolved Nations.

Ofcom also need to be vigilant in monitoring and enforcing quotas, in the light of the Scottish Broadcasting Commission's reporting of comments about network programmes being labelled as "Scottish" for reporting purposes, while in fact having very little financial or creative connection with Scotland. We note that the Commission have urged both the BBC and Ofcom to secure greater transparency and consistency on this issue and have sought information from them on how this will be progressed.

iv) What are your initial views on the preliminary options set out relating to ITV plc's regional news proposal? (Please note that Ofcom will put forward firm options on these issues, and consult also on ITV plc's regional news proposal, in phase 2 of this Review.)

As the Scottish Broadcasting Commission have noted, there are serious concerns about the implications for Scottish viewers of the proposed merger of the news services of Border Television and Tyne Tees. It would clearly be totally unacceptable for Border viewers living in Scotland to be denied access to Scottish news - perhaps an early redrawing of the ITV 'map' would be appropriate.

Question 10: Prospects for children's programming

i) Do you agree with our assessment of the possible short term options available relating to children's programming; are there any other options available?

We agree that children's programming is a major concern and will need clearly allocated support.

Question 11: Timetable for implementing a new model

i) Do you agree that new legislation will need to be in place by 2011 in order to ensure continued delivery of the public purposes in the medium and long term?

New legislation will certainly be required, although that is not to say that important measures should not be implemented as soon as possible – such as remedial action to address the recent woeful record of PSB commissioning from Scotland.

A further, major timetable concern is the apparent lack of synchronisation of the PSB timetable with the timetable for DSO and its associated spectrum auctions. The significance and longevity of these spectrum decisions does not yet appear to be on the radar in Scotland. Are Ofcom content that their timetable allows sufficient time for potential players to develop consortia, business plans, finances, etc., to ensure spectrum access?

We are also concerned over the continuing lack of 'use it or lose it' measures, as a disincentive to purely speculative acquisition of spectrum.

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