

Review of the BBC's Royal Charter

30 March 2004

Submission by Tim Lord, Media Consultant

Regulation and independence from political interference

The most important aspect of the BBC's governance is that it should remain politically independent of the Government of the day and that this independence is reinforced by the procedures and institutions both within the BBC and in Government.

The best way to maintain such independence is to (1) maintain and support the distinct cultural identity and history of the BBC, (2) appoint Governors from a varied political background and (3) not have the BBC subject to day to day pressure from the Government or its agents. This could be reinforced by limiting the Government's role in removing either directly or indirectly Governors or the Director-General from office.

The BBC performs a democratic and constitutional role that protects democratic freedoms through providing information and news to the electorate. The greatest risk to this process is not that the BBC makes an editorial error¹ but that the public no longer trust that the BBC remains independent of Government. The growth of cynicism and falling electoral participation is a result of the public's reduced faith in the media as a provider of unbiased information. Without access to trusted and impartial information voting becomes pointless. Unless the Government acts to ensure that it (the Government) is bound by limits on political interference with the BBC, voter apathy and cynicism will likely only increase further.

For example, the BBC should respond if the public object to a particular style of interviewing on the Today programme. However, the BBC should not respond to ministers' objections to a presenter or journalist no matter how tempting it might be to do so. Indeed ministers should be barred from making those objections (either directly or indirectly) while in office given that the BBC's funding remains subject ultimately to political control.

¹ the BBC and its employees have no systematic incentive to broadcast information they know to be false – it would be odd to create a regulatory system that assumes that they have such an incentive

These constitutional guarantees should be enshrined in a written constitution to protect the BBC's independence – not the Charter which can only govern the BBC's conduct not the Government's.

Increasing the role of Ofcom in the governance of the BBC is unlikely to increase independence for the reason that Ofcom has no institutional history of independence from Government. Indeed Ofcom senior staff have yet to make any public statement about Ofcom's independence from Government.

The regulation of the BBC is fundamentally different from the regulation of commercial operators which perfectly properly seek to maximise profits at the expense of the public if permitted either by lack of market forces or competition law. The BBC has no profits to maximise.

Accordingly, before proposing additional regulation on the BBC the Government should explain why the BBC Governors and senior management are likely to have any systematic bias or incentive that conflicts with the public interest. Only once such a bias has been convincingly identified should the Government act.

Technological Change

The consultation document talks at length about the transition to “digital.” Much of this discussion is confusing and is unhelpful. It would be better to distinguish between new functionality and the new technologies with deliver those new functions and not confuse the two.

For example

functionality	technology
multi-channel television (>40 channels)	analogue satellite, analogue cable, digital terrestrial
subscription TV	encryption, smart cards, broadcast of control messages
automated time shifting	hard disk recording, digitisation and transfer of EPG information
universal reception	analogue terrestrial broadcasting
improved sound and picture quality	digitisation
ceefax (text broadcasting)	digital broadcasting

It would be much more helpful, though maybe less elegant, to talk about the transition to “universal multi-channel television” rather than analogue switch off or conversion to digital. For example, we could have analogue terrestrial switch off if all households have access to multi-channel television through one of the three multi-channel distribution mechanisms - whether using digital encoding or not. The BBC has been broadcasting “digitally” since the advent of the Ceefax service. The use of the word “digital” is highly confusing

The consultation document ignores completely the impact of the growth of subscription television on the public interest.

This is odd given that:-

- (a) subscription is considered as an alternative funding mechanism for the BBC
- (b) the advent of subscription television has had a massive impact on television and its funding – a much greater impact than the transition to “digital”
- (c) the dominant provider of pay television today, BSkyB is bigger than the BBC in revenue terms i.e. the amount of money it takes from the public every year is greater than the licence fee
- (d) significant monopoly and vertical integration issues exist with BSkyB which remain unresolved
- (e) subscription transfers consumer surplus from the consumer to private profit whereas the BBC and other free to air broadcasters leave consumer surplus with the consumer, this important distributional effect is worthy of consideration and debate
- (f) subscription television may also restrict output leading to enormous inefficiencies in the delivery of broadcasting services and destruction of value for example in relation to the viewing of Premier League football matches
- (g) BSkyB remains the largest monopoly in the UK economy that faces no retail price regulation and it is unclear whether this is in the public interest

Why these issues are not examined is not clear but ultimately the Government's continued failure to examine them will not serve the public interest in reforming any part of the broadcasting ecology.

In stark contrast to its approach to the introduction of subscription television, the Government over emphasises the impact of technical changes on the economic rationale for free to air television provided by the BBC and other public service broadcasters, namely:-

- zero marginal cost of additional consumers, large fixed costs of television production
- broadcast goods are experience goods whose value can only be assessed after consumption
- the large network externalities from broadcasting

These factors are unaffected by the advent of multi-channel television, subscription or indeed "digital" and therefore the assumption that consideration of significant reform of the BBC or its funding is justified by technological change is at best questionable. Much more pressing is a long overdue assessment of subscription television and its effect on the public interest.

Alternative Funding

I believe that the licence fee should remain the main funding mechanism for the BBC. It is both efficient and minimises potential political interference with the BBC.

The Government should consider two alternative methods of additional funding of the BBC and public service broadcasting more generally.

The first would be a tax on all television advertising including that on cable and satellite channels to replace the current analogue spectrum payments. Channels that provide some public service component in their broadcasting could negotiate a lower tax payment.

Such an approach seems inevitable and necessary in order to treat ITV and Channel 5 consistently with, for example, Sky One.

The second would be a tax on television subscription revenues. Given that subscription is dominated by a single price setting firm which is already

setting retail prices (free from any regulation) to maximise profits a tax on subscription television revenues is unlikely to further increase retail prices.

In addition the amounts paid to independent channels in the Sky package is unlikely to be reduced any further as these payments are already set at a minimum as a result of Sky's market power in relation to independent channel providers.

Indeed the only likely outcome of such a tax is a reduction in the large and somewhat arbitrary amounts paid for key sports rights. Such a tax could be used to reduce the licence fee, (to the benefit of all members of the public) without any significant output effects and without any reduction in the funding of television production. Such a tax should obviously be considered.

Tim Lord
Media Consultant

- end -