



**Department for
Culture, Media and
Sport**

**Review of the BBC's Royal
Charter**

An IPA response

May 2005

Management Summary

1. The IPA welcomes the broad proposals contained in the Green Paper *as far as they go*.
2. We applaud attempts to curb the commercial tendencies of the BBC via tighter definitions of its purpose and programming characteristics but believe these will only be successful if the Corporation is held strictly to account against these criteria - and penalised if it fails to meet them. This should apply to all BBC output, including TV, radio, online and new media services and should be extended to feature controls on the blatant and aggressive cross-promotion of the Corporation's services.
3. While we feel the BBC should be encouraged to pioneer and champion new technology, we believe appropriate safeguards must be in place to ensure this is never to the detriment of existing commercial operators.
4. Although we accept the licence fee is currently the "least worst" option for financing the BBC, we believe that the new digital landscape post 2012 will fundamentally challenge this approach. In these circumstances, we believe it imperative that a fundamental re-examination of alternative funding mechanisms takes place well ahead of the end of the next Charter period and as soon as the implications of digital transfer start to become clear (ie probably by mid-way through the Charter c. 2010/2011).
5. We remain to be convinced that the new BBC Trust will be truly independent of the Corporation and seek guarantees not only to ensure such independence but to make certain its membership includes individuals with the right business and economic expertise to carry out the technical aspects of its role objectively. (In this context, we also believe there needs to be far greater clarity with regard to the methodology for evaluating public value vs economic impact, and in particular a more clearly defined role for Ofcom, giving it pro-active powers.)
6. In sum, while we feel the Green Paper is to be applauded - it is with reservations. The cyclical attitude of the BBC toward its public service responsibilities and its ability to distort

practically every medium in the UK mean - we believe
- that it needs to be strictly regulated if it is not
to return to its old, commercially aggressive ways.
The Green Paper has made a start in this area but
there is still some way to go.

Review of the BBC's Royal Charter

The IPA welcomes the opportunity to submit views on the above.

1 About the IPA

1.1 The Institute of Practitioners in Advertising is the trade body and professional institute for UK advertising, media and marketing communications agencies. Our 231 corporate members, who are based throughout the country, handle over 80% of the UK's advertising agency business with an estimated value of £9 billion in 2003, on behalf of many tens of thousands of their client companies and organisations worldwide.

1.2 Since its inception, the IPA's consistent objective has been to secure for British business cost-effective media for promoting their products at all levels, with the end-benefit of extending consumer choice and generating economic growth.

1.3 We believe the BBC, the nature of its programming and how it schedules and promotes its output, have a fundamental impact on this objective, with the very presence of the Corporation pushing up the cost of commercial TV airtime in the UK significantly higher than elsewhere in Europe. It is against this background that our present comments are made.

2 Scope of the IPA's response

2.1 As the trade body for marketing communications agencies, our response has been constructed from our members' commercial viewpoint versus that of the ordinary citizen - although, as will be apparent, these will frequently coincide.

2.2 Inevitably our submission will repeat much of our earlier statements with regard to the public service broadcasting and the BBC - however, since our views on the area remain unchanged, it will reflect our on-going concerns.

3 General reactions to the Green Paper

3.1 In overall terms, the IPA applauds the direction and content of the Green Paper, albeit with some reservations on its effectiveness pending further detail on how its proposals will actually work.

3.2 The Institute has campaigned consistently:

- that the BBC should be required to operate to a tighter, more strictly defined remit centered on public service.
- that its programming should innovate, challenge and provoke rather than seek to maximise ratings via formats more suited to (and already available in) the commercial sector.
- that it should not enter new market sectors unless it could bring something genuinely fresh and innovative to those areas not currently supplied by existing commercial operators - and that it should certainly not use its strength elsewhere to cross-promote these initiatives to the detriment of these operators.
- that it should be effectively regulated to these ends via an external body to replace the old Board of Governors.

3.3 Given that the Green Paper addresses each of these concerns, we are pleased with the proposals *as far as they go*. However, we retain specific operational concerns - as our answers to the individual questions in the Review itself will reveal.

4 Specifics

Role of the BBC

Question 1: Definition of the BBC's purposes in the Green Paper

As indicated above, the IPA has been pressing for the last 20 years for a clear definition of the purpose of the BBC, which goes beyond the Reithian

mantra that it should "inform, educate and entertain".

The suggested proposals, we believe, will help achieve this - provided they are followed and rigorously policed.

Question 2: Are these the right purposes?

From the IPA's standpoint, these proposals meet our views re the broader role of the nation's principal public service broadcaster to promote democracy, education, creativity, and cultural diversity. Likewise, we should support a requirement that the Corporation maintain high quality domestic and international news reporting both for UK and overseas consumption.

Question 3: Programming Characteristics

The IPA has consistently called on the BBC management (and the DCMS) to return the Corporation to the principles of public service programming outlined in its 1992 paper "Extending Choice" - and away from the aggressively commercial approach operated during recent years.

The characteristics laid down in the Green Paper that the Corporation's programmes should be:

- Of high quality
- Challenging
- Original
- Innovative
- Engaging

mark a return to these principles and are therefore applauded. However, we are mindful that to be effective - and to prevent "drift", the BBC Trust will need to monitor these characteristics closely within the Corporation's output. For these reasons, then, we would support the BBC concept - endorsed in the Green Paper - of Service Licences with specific and measurable remits for each of its channels or services across all its various media - but would like to see spelt out a range of sanctions/penalties to counter potential abuse and/ or failure to comply.

In addition, we should also note the need not only to ensure that the Corporation ceases to "me-to" the programming of the commercial sector, but also that it does not indulge in the sort of aggressive head-to-head competitive scheduling and cross-promotion of services which characterised BBC activity during Greg Dyke's period in office. If the BBC is truthful in its more recent assertions that its role is to extend reach (vs battling for ratings) - there should be no need and no excuse for such a policy.

It has often been noted - indeed once memorably by the current Director General of the BBC himself - that the Corporation's management tends adopt a cyclical approach in terms of its adherence to Public Service Broadcasting - discovering its core purpose at times of Charter renewal and licence fee reviews. In as far as the definitions contained in the Green Paper on the purposes of the BBC and the nature of its programming ensure the Corporation is not tempted to wander beyond its remit into the territories of commercial broadcasters, they are welcomed, but they will need to be rigorously enforced.

Digital Britain

Question 4: Do you agree that the BBC should be at the forefront of developments in technology, including digital television?

From the IPA's point of view, we would encourage the BBC to pioneer and champion new technology, *providing that it does so without jeopardising the existence of incumbent commercial operators.*

For this reason, we believe that the Ofcom assessment of the economic impact of BBC initiatives is vital. (NB In this context, we are concerned exactly how "economic impact" will be balanced against "public value" by the BBC Trust and what methods of appeal might exist for commercial operators who suffer as a result of any such decision).

Funding

Question 5: Do you support the proposal for a further review of alternative funding methods before the end of the next Charter period?

While the licence fee is clearly not a perfect means of supporting the BBC within a multi-channel environment, the IPA continues to believe that, *for the time-being at least*, it remains the fairest method and that least open to adverse political or commercial pressures.

For this reason, then, we support the Green Paper's proposal for extending the licence fee.

Having said this, however, we recognise that the digital landscape post 2012 will pose significant issues in this area, which will fundamentally challenge the viability of the current funding model.

In these circumstances, we therefore believe it vital that funding alternatives should be explored well before the end of the next Charter period - and as soon as the implications of digital switch-over become apparent (ie in or around 2010-11).

Question 6: Views on licence concessions, collection and enforcement

Although we recognise the costs and unpopularity of enforcing the current licence arrangements - as long as this method of funding the BBC continues to operate, we believe the process of enforcement is an unfortunate necessity.

Clearly we should support concessions for those, who for age or other reasons, find the cost of the licence fee a barrier to accessing the Corporation's output. Likewise, it is taken as read that collection methods should be as clean, comprehensive and efficient as possible.

Governance and regulation

Questions 7-10: Relating to the remit and operation of the BBC Trust

As noted above, the IPA has consistently pressed for the abolition of the old system of the BBC Governors in favour of more effective regulation of the activities of the Corporation.

In this context, we have historically argued that this task should fall to Ofcom since it is already charged with regulating certain aspects of the BBC as well as commercial broadcasting, has a duty to conduct public service reviews on the impact of the Corporation and holds concurrent competition powers.

Failing this, we favoured another suitably qualified *outside* regulator.

Thus, while we welcome the break up of the old BBC Governors proposed in the Green Paper, we remain unsure that the BBC Trust, headed by the current Chairman of the Corporation will necessarily meet the independent and objective criteria we seek for an effective regulator - and are very concerned that it should not simply reconstitute the old governors under a new name.

Clearly this worry has been echoed elsewhere. Daniel Sandelson, the head of media practice at Clifford Chance (*The Lawyer* 2 May 2005), has noted "since we do not know the legal status of the Trust, it must be questionable whether it is truly independent of the BBC."

Likewise concerns have been expressed on the Trust's remit, with Howard Davies and others commenting on the apparent anomaly that it will appoint the BBC's Executive Board, thereby breaking a fundamental tenet that the regulator should not appoint those it regulates.

Faced with these issues - while we are *broadly* reassured by the processes and protocols proposed between the Trust and its Executive Board - we believe it essential that *clear guarantees* are given that the Trust will police the Corporation vigorously and independently, especially where matters relate to potentially destructive competition with the commercial broadcasters. (See below for comments on changes to the BBC's services and the Trust's relationship with Ofcom.)

Membership of the Trust

Questions 11-13: Make up of the Trust

As the trade body for advertising agencies, the IPA is concerned less than others with communities and interest groups - but rather that the Trust should have the *professional* skills to be able to operate effectively as a regulator.

It was a criticism of the old Board of Governors that as a patrician body, comprising representatives from the regions, social groups and the "great and the good," it could not hope to understand the potentially enormous economic implications of sanctioning activities by the UK's largest single broadcaster, standing as it did at the centre point of the nations' entire political/media/communications structure.

Equally, it was noted that even at the relatively mundane level of operations, none of the pre-Hutton governors had "any close knowledge of the world of non media - the payment for sports rights, the scheduling of entertainment or the development of reality shows" (*Independent* 12 Feb 2004).

Clearly this situation must be avoided with the new Trust. If it is to regulate effectively, the new body must not only be small enough to take decisions, but professionally skilled enough to be able to evaluate economic assessments, programming and all its other duties objectively. Given the critical importance of decisions in this area, we are adamant that such matters cannot be left to recommendations from the Trust's secretariat or to the vagaries of well-meaning, but essentially unqualified amateurs.

Organisation and infrastructure

Questions 14 and 15

No comment

Questions 16 and 17: Changes to BBC services and how these are handled.

Clearly we believe that the BBC should be able to change its range of services over the years in order that it continues to remain relevant. However, it is vital that such changes should be subject to detailed scrutiny before they go ahead.

We therefore applaud the Green Paper when it states that an extension of services should be permitted "only where the public value of a change outweighs any adverse market impact".

In this context, we welcome the involvement of Ofcom in carrying out such economic assessments.

Having said this, we are concerned that the methodology for evaluating public value and economic impact should as rigorous as possible and (as noted above) that the professional capabilities of those taking the decision should be up to the task.

As has been pointed out, Ofcom originally sought not only to carry out impact assessments on new services proposed by the BBC but also that it should regulate competition issues across the sector, with the Corporation subject to the same ex-ante rules as commercial broadcasters.

In the event Ofcom will carry out the first of these but a decision on the second is still pending. Given that there is a lack of clarity as to the extent the BBC is subject to the same competition law regulation as its commercial rivals, this is important.

We remain to be convinced that in the event of a disagreement between Ofcom and the Trust, "public value" recommendations will not always prevail over more difficult economic concepts.

Leaving aside the discrepancy between Page 7 (Bullet Point 2) in the Green Paper where the executive decision on such matters appears to rest with the Trust and Page 73 (last Bullet Point) where the Trust submits "recommendations to Government for a final sign-off" - it is vital that such judgements are made objectively and transparently by persons properly qualified for the task - and equally that there should be some form of appeal for those likely to suffer as a result of these decisions.

Beyond the BBC

Question 20: Do you agree that the case for a plurality of publicly funded broadcasters should be kept under review?

The IPA agrees with Ofcom's conclusion that, in a digital world, without some form of positive action, the BBC would be likely to become the only broadcaster with sufficient non-market income to provide mass public service broadcasting - and that this would be to the detriment of public service broadcasting in the UK as a whole.

Given this, we therefore agree that the case for a plurality of publicly funded broadcasters should be kept under review.

For further comment and information, please contact:

Jim Marshall	Chairman, IPA Media Futures Group	jmarsall@uk.starcomww.com
Tom George	IPA Media Futures Group member with special responsibility for TV trading	Tom.George@zenithoptimedia.co.uk
Chris Shaw	IPA Media Futures Group member with special responsibility for future of TV	chris_shaw@universalmccann.com
Geoff Russell	Director for Media Affairs	geoff@ipa.co.uk



Institute of Practitioners in Advertising
44 Belgrave Square, London SW1X 8QS
telephone: 020-7235 7020 *fax:*
020-7245 9904