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Dear Sirs,

Response to BBC Charter Review White Paper

The White Paper invites people to respond to its proposals.

My response concentrates on three areas:

1. A warm welcome for retaining the BBC Charter and maintaining the BBC as the main public service broadcaster, funding through the licence fee, for turning the governors into the Trust with greater separation between the governors/trustees and the BBC's management with the Trust having responsibility for regulating the BBC.
2. Concern over plans to make the BBC the lead player in achieving digital switchover and increasing the licence fee to meet the costs involved.
3. Very grave concern over the proposed WOCC and its likely effect on creativity, training and conditions of employment throughout the industry.

Before outlining these responses in more detail it may be helpful to explain that I am a licence fee payer living in a rural area where digital terrestrial reception is often difficult and access to cable services patchy. I am a writer and TV producer with many years of experience of making programmes for the BBC, ITV companies and broadcasters in other parts of the world. In the 1980s and early 1990s I led the independent producers team which negotiated the 25% independent production quota. I was Chairman of IPPA (now PACT) from 1989 to 1991. I have written a history of independent TV production from the 1960s until the present (published in 2004).

1. Governance, regulation and funding of BBC

The Government is to be applauded for resisting commercial pressure to curtail the role of the BBC, for maintaining the licence fee and ensuring that the BBC continues to be regulated by a regulator separate from Ofcom. The BBC's role is distinct from

the roles of other broadcasters and it is therefore appropriate that it should have its own regulator. Also the health of our democracy demands that in an area as influential as broadcasting there be more than a single body responsible for broadcasting regulation. Similarly, it is right that there be greater separation between the BBC Trustees and the BBC's management. For too long there has been a lack of clarity between the roles of the two which has from time to time resulted in failures in both regulation and management.

As the White Paper argues, it is important that the BBC continues to have a major role as a mainstream popular broadcaster and is not ghettoised into simply filling the gaps left by the commercial broadcasters. We have seen how in many other countries when what was once the main state broadcaster was reduced to the role of 'filling the gaps left by the commercial broadcasters', to supposedly making good the 'failures of the market', not only have once great broadcasting institutions been marginalised, they have been reduced to mere shadows of their former selves and their creative vigour lost. As a result they have often failed even in to adequately fulfil the role of making up for market failure.

It is an essential condition of the BBC's distinctiveness and for ensuring that those who manage and work for it concentrate single-mindedly on the BBC's mission to provide high quality programmes for all sections of the community in all genres, that the Corporation continues to enjoy its present method of funding neither by direct grant from government, and with no element of subscription, advertising or other form of commercial funding.

It is also important that the licence fee continues to be used solely for the BBC and that there is no so-called 'top slicing'. Top slicing would inevitably lead to some degree of competition between the BBC and other broadcasters for the funding of 'public service' programmes. Long years of experience and observation both as a programme maker and as an executive producer, not only in television but also in the theatre, has convinced me that competing for funds is to most genuinely creative people simply a distraction. While competition may stimulate innovation in the commercial field I have never seen any convincing evidence of it stimulating true creativity in the arts or programme making other than at the most superficial level. To quote Sir Jeremy Isaacs, the first Chief Executive of Channel 4 who by common consent unleashed a period of unparalleled creativity and innovation in television, "Voices with something to say deserve to be heard". No form of competition can create more "voices with something to say". Sir Jeremy's achievement was to recognise so many of the voices that deserved to be heard and provide them with the space and the means to get heard. He was able to do that, as he explains in his recently published memoirs, largely because Channel 4 did not have to concentrate on competing for funds or maximising its audiences. Today that situation has changed and Channel 4 sells its own advertising. While it undoubtedly still makes many good programmes and its audiences are generally rather larger, the diversity of its programmes has undoubtedly narrowed.

2. BBC's role in digital switchover

It is understandable that the government would wish to see the BBC take a lead role in achieving digital switchover. The BBC is a proven 'safe pair of hands' in such

technical areas and it has already done much to facilitate switchover through the introduction of Freeview. However serious concerns remain over switchover, particularly in areas, like the one where I live, where there are serious difficulties over reception – many viewers in this area cannot yet receive Channel 5 let alone DTT. Already there is evidence in areas like mine of resentment about part of the licence fee going to fund services that people can not receive. (A public meeting held in Bradford On Avon last year provided ample evidence of this and of serious public concerns over digital switchover, its cost and the availability of the signal. I sent a report of that meeting to Claire Vickers at the DCMS on 27.5.05). The level of the licence fee is already a sensitive issue with many members of the public. To increase the licence fee further to pay for digital switchover is quite likely to increase resentment, resentment directed at the BBC even though the money involved will not fund the BBC. This both unfair to the Corporation and it is potentially dangerous for its future. It also seems inequitable to increase the amount that the public has to pay for the BBC when the main financial beneficiary will be the Treasury when it receives the proceeds of being able to sell off the vacated analogue frequencies.

3. The Window of Creative Competition – WOCC

Of all the proposals in the White Paper the WOCC is potentially the most damaging, not only to the BBC as a source of original, high quality, risk-taking programmes, but to future creativity, training and on-going employment across the entire TV production industry.

It is hard to understand the logic of this proposal. The White Paper provides no evidence of research to justify setting the BBC's minimum in-house production guarantee at 50%. The decision seems particularly perverse at a time when ownership of content rights is becoming an ever more important element in the media economy. Why should the BBC be made to deprive itself of a huge lump of potentially valuable media content rights, handing them to outside competitors, at this crucial moment in the development of the media ecology?

Independent producers have long claimed that because they have a more direct personal financial interest in the value of the rights in the programmes they make than the broadcasters they will be better at exploiting those rights. I was making just such claims to Mrs Thatcher twenty years ago when advocating the independents original claim for a 25% production quota. Frankly, it was nonsense then, a good political line backed by no evidence. And it remains nonsense today. With the independent sector enjoying much greater volumes and value of production, there is still precious little solid evidence to support claims that the independents are better realising value from their content rights than the BBC. These claims seem to be advanced principally by a few large independents who appear to wield an undue amount of influence over the policies of PACT.

Independents frequently complain that in competing for the 75% of BBC programmes not guaranteed to them under the 25% quota they are not competing on a level playing field – that BBC commissioners unfairly favour in-house producers. However, as Dr Georgina Born showed in her 2004 book on the BBC, *Uncertain Vision*, the evidence contradicts their claim. Independents seem frequently to have been favoured over BBC in-house producers, especially in key areas such as drama and entertainment

where in some years independents have gained as much as 45% of programme commissions.

It is particularly important for future quality and creativity that in key genres such as drama, entertainment, documentary and arts programmes, there remain a large pool of talent and programme making that is completely free of commercial pressures and constraints. The BBC, with its large in-house production capacity and unique method of funding remains the one organisation free to invest its funding directly and single-mindedly into risk-taking and innovative programme making without commercial constraints. For it to continue to be able to do this successfully its pool of in-house talent and production expertise needs to remain large enough to sustain such activity in-depth. Real creativity and advance in the arts and entertainment cannot be ordered in advance. All one can do is to create the conditions and security in which this can happen. The pool of talent, time and space available have to be sufficient to absorb the inevitable failures along the way. For this a sufficiently diverse mass of talent has to be retained within the organisation. Proposals to cut this mass, such as those implicit in the WOCC, threaten to undermine the BBC's creative potential. The degree of threat to the BBC's on-going creativity implicit in the WOCC is underlined by recently published research in Ofcom's TV Production Sector Review. This suggests that in future a high proportion of the BBC's in-house production guarantee will be devoted to returning series and genres such as sport. In which case where will the new ideas and creative risk-taking come from in vital areas such as drama, documentary and the arts?

The independent sector is widely credited with being an unparalleled source of innovation, creativity and new programme ideas. The independent sector and its spokesmen, principally PACT, have done much to foster this belief. However most of the sector's reputation for innovation was established twenty years ago, during the first few years of Channel 4 when independents did, indeed, bring a wealth of new ideas and talent to the screen. Today there is mounting evidence that the independent sector is no longer the source of creativity, diversity and innovation that it once was. As Ofcom reported in its Review of the Production Sector earlier this year, consolidation in the independent sector, from a large number of small producers to a smaller number of big companies, often referred to as 'super-indies', is already well underway. As Ofcom noted (para 5.27) "There has recently been an unprecedented amount of consolidation activity in the sector", of companies amalgamating, floating on the Alternative Investment Market and private equity houses investing in larger independents.

In many industries one might expect that by combining into fewer, larger companies producers would enjoy advantages of scale and there is strong evidence to suggest that larger independents do enjoy greater access to commissions – many broadcasters only being willing to countenance dealing with a limited number of the larger companies, or 'preferred suppliers', rather than look wider for their programmes to the mass of smaller companies. However, as the Ofcom Production Sector Review shows (paras 5.40 – 5.45), in the production of television programmes there are generally no clear advantages of scale – small companies are likely to make programmes as cheaply as large ones.

Although larger producers inevitably have more actual money to invest in the

development of new programmes (a vital factor in innovation and the realisation of new ideas) Ofcom found that whereas the larger companies only devote 1% of their turnover to development the smallest companies devote 17%. Underlying this discrepancy there is a fundamental difference of attitude between small companies and large ones to the whole purpose of making TV programmes. To quote one highly regarded small independent producer which includes a recent Oscar nominee among its team: "The whole point of being an independent is, or was, that you could do the things you cared about." Contrast that with the words of the Chairman and Director of Programmes at RDF, one of the biggest companies, earlier known for ground breaking documentary programmes such as *Century of the Self* but today better known for reality shows such as *Wife Swap* and *Faking It*, "We are like a rights factory. Our production side creates products that we can sell. How and where we vend them is driven by what the markets are like at any time ... We are trying to create a company of value ... one that will either float or be bought." Recently RDF was indeed floated on AIM. But which of these two attitudes seems the more likely to produce risk-taking, original and innovative programme making rather than material that is safe and derivative?

A briefing document released by Numis Securities earlier this month suggested that recently floated independents are over-valued. It re-inforced existing evidence that by attracting outside investment and floating on the stock market independents will increase the financial pressure on themselves to concentrate on returning and long running series in genres targeted at the international market and exploitation in other media rather than on one-offs or programmes intended primarily for the UK domestic audience.

The Ofcom Production Sector Review also revealed a massive preponderance of 'external production companies' located in London. It showed that 85% of external production turnover is accounted for by companies whose main offices are in London. Such a concentration of independent production in London and the South East bodes ill for the representation of regional viewpoints, voices, insights and variety in the nation's television. It also seriously damages employment opportunities available to new and existing TV production workers in the nations and regions. The WOCC seems likely to exacerbate this situation, so further narrowing the range and creativity of programmes.

The WOCC also poses serious risks in the fields of training and employment. As the Ofcom Production Sector Review confirmed, independent production is "predominantly a freelance-based industry". The WOCC will throw a lot of highly skilled BBC technicians and programme makers, currently in secure, permanent employment, out of work, reducing them to lives of insecurity as freelances. While some creative people may thrive in this atmosphere, many do not because so much of their time and creative energy has to be expended on finding work rather than on inventing and developing new creative ideas. In recent years growing numbers of freelances have found themselves increasingly vulnerable to exploitation by unscrupulous employers. (I detailed examples in an article in *The Guardian* in September 2004).

On top of the potentially deleterious effect the introduction of the WOCC is likely to have on talent already in the BBC and the threat to jobs, there is a major threat to

training across the whole industry. For many years the BBC has undertaken a disproportionate amount of the training for the industry. ITV, the independent sector and the other broadcasters have benefited enormously from the supply of well trained technicians and programme makers that have come from the BBC. As a result of reducing its permanent workforce to facilitate introduction of the WOCC the BBC is likely to proportionately reduce the amount of training that it undertakes with knock on effects reaching far beyond the BBC.

In the last few years independent producers, some of the biggest and best known among them, have gained an unsavoury reputation for exploiting young workers and trainees. One widely practised scam sees independents classing a person working for them as undergoing training or "work experience" and then claiming exemption from employment law. Over the last eighteen months this issue has been repeatedly brought to the attention of Secretary of State, Tessa Jowell, and the DTI. A group of young TV workers, risking victimisation, has started a campaign, under the title TV Wrap, aimed at exposing such malpractices. Last year a group of technicians and programme makers, supported by the industry unions, handed in a petition to Number 10. As a result of these and other efforts the DTI recently ruled that anyone who is expected by an employer to "obey instructions" must be treated as an employee and paid the minimum wage. Failure to do so would risk the employer being reported to the Inland Revenue. However, far from coming out in support of this step to curb such exploitation by independent producers, PACT's Chief Executive reacted by complaining in public about the DTI's move, saying that it didn't "seem to make sense". This kind of exploitation might be curbed if it were made incumbent on BBC and other broadcasters to ensure that all the programmes they transmit, whether produced in or out of house, are made in accordance with employment and minimum wage regulations.

Neither industry unions nor young people undergoing recognised training courses object to undertaking unpaid work experience or on the job training as part of properly organised and supervised training programmes. However there continue to be many well attested cases of independent producers demanding of eager young technicians, many of whom have long completed their training and often have months or even years of work behind them, that as a condition of being taken on at all they agree to work "voluntarily" for no money or less than the statutory minimum. By its attitude PACT appears to be conniving at such practices, practices which amount to old fashioned exploitation. This kind of thing, together with the likelihood of the BBC reducing the amount of training that it undertakes, threatens the industry's capacity to develop and nurture new young talent from all sections of society and regions of the kingdom. Over time it is likely to mean that only the children of parents wealthy enough to support them financially for a considerable number of years after they have completed their graduate level training who will be able to afford to take up careers in TV production. The result will be a serious impoverishment of our TV culture.

Finally I believe that the Government could better achieve the goals it has set itself with the WOCC by dropping that idea and instead concentrating on modernising the independents' 25% quota. The 25% quota was originally introduced as a transitional measure to enable the independent sector to "get airborne" as a source of programmes, supplementing and competing with the broadcasters in-house production

arms. That goal has now been largely achieved. Independents now supply substantial volumes of programmes to the BBC and other broadcasters. The more pressing need now is to ensure that smaller and regional independents, less subject to the kind of financial pressures and imperatives affecting the choice of material increasingly developed and offered by larger independents, are enabled to compete on fair terms for the attention of the broadcast commissioners and that, as a result the public is able to enjoy an ever wider range of creative and original programmes. To this end the BBC Trust should be enjoined to set clear targets maximising the proportion of externally produced programmes under the 25% quota which come smaller companies and companies with their headquarters outside London and the South East. In addition the definition of an independent producer for the purposes of the 25% quota should be re-drawn to something closer to the definition applied in the early years of Channel 4, during the independent sector's most creative period. At that time an independent was defined as a producer 'not owned in whole or in part by a broadcaster', British or foreign. Such a definition would not preclude larger independents or those in which broadcasters have a financial interest or themselves own or part own a broadcaster from making programmes for the BBC as part of the 75% of programmes not covered by the 25% quota, but it would help to increase the range, variety and number of sources from which programme seen on BBC TV come.

Yours faithfully



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