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Dear Mr Humphreys

## **DIGITAL CURRICULUM**

Thank you for your letter dated 23 May 2002 inviting us to comment on the BBC's proposal to launch a new licence fee funded digital curriculum service. Our comments are as follows.

### **Summary of our views**

1. We do not believe that the BBC's current proposal should be sanctioned.
2. Overall, our view is that the production of a significant level of subsidised material by the BBC would disrupt an existing market place that is already competitive and viable. The value to the public would not be proportionate to the likely impact on the market.
3. Approval is required under Article 3(b) of the Royal Charter for a new Ancillary Service that would not constitute the use of the licence for "for the purposes of the Home Services". Accordingly, there must be a compelling case for the new ancillary service because it means the BBC is branching out into an area that had not previously been envisaged.

We do not believe that the case for the proposed new Digital Curriculum is compelling for the one reason that other organisations either are or will ultimately produce material that covers the Digital Curriculum in any case. We refer to the PricewaterhouseCoopers comment at paragraph 8.14 of their report that "we expect that commercial suppliers will gradually cover a greater breadth and depth of subjects as the market grows while maintaining a strong focus on the core GCSE subject".

It should be self-evident that merely because the BBC *can* produce a service does not mean that it *should* so do. We do not doubt that the BBC is capable of producing the Digital Curriculum. The central theme of our comments is that it is not necessary or appropriate for the BBC to undertake this production.

4. The Secretary of State has been invited to use her power in clause 10.1(a) of the Agreement, that licence fee funding may be used for the funding of the proposed service.

Licence fees should *not* be used to fund such a service because the service is not compatible with the BBC's public service role. This is because public servants do not in general duplicate effort in areas that already or will be addressed by other organisations. The value to the public is proportionately lower than would be obtained by using the licence fee to address areas that are not otherwise being addressed.

PricewaterhouseCoopers note at paragraph 8.20 that, if the BBC produces a successful product then "through improving the understanding of teachers, and the usability and coverage of online provision, the "vicious" circle of low teacher acceptability, low demand, would be replaced by a "virtuous" circle of increased acceptability and increased demand. We find it surprising that any government would think it acceptable that the public have to turn to the BBC to correct such a "vicious" circle. Our experience at CALSC is that *training* in the use of digital resources is what is needed and not products that teachers have not been trained to use. Without training the "Failure" scenario contemplated by PricewaterhouseCoopers at paragraph 8.19 is more likely than the "success" scenario contemplated at paragraph 8.20.

Furthermore, in our view, it is not the responsibility of the wider television-using public to fund materials for the much narrower base of users currently in education. The funding of "school" education comes from Government borrowing and taxation, not users of televisions. We note that the proposed expenditure of £150m averages out at £5,000 for each of the 30,000 educational establishments in the UK. We question, in spite of the BBC's public consultation, whether licence payers really agree that this is how their licence fees should be spent. Critics might argue that sanctioning this level of expenditure by the BBC on schools is another example of back-door taxation by the Government.

5. The BBC's proposals would raise barriers to entry into the market for commercial suppliers of material in two particular ways.
  - The BBC would achieve a dominant position in the industry, even under the BBC's latest proposals to restrict the scope of material produced by it;
  - The free nature of the BBC's proposed product would make it harder for commercial organisations to produce equivalent or better material.

PricewaterhouseCoopers, in its Market Impact Assessment at paragraph 8.4, states that "the BBC could gain a significant market position (as defined) over time given the strength of its brand and the free and universal availability of the proposed Digital Curriculum service, although it is certainly not assured of success".

The benefits of a commercial marketplace are that the best material comes to the fore through a process of natural selection and commercial suppliers constantly try to find

ways to update their material. If commercial suppliers are prevented from entering the marketplace by a dominant non-commercial organisation these processes are restricted. There is a danger that new ideas will be less likely to emerge at all and, if they do, will be slower to do so.

This will ultimately lead to a reduction in choice for consumers of educational materials as fewer people with good ideas enter the market.

We do not understand PricewaterhouseCoopers' statement in paragraph 8.4 that "...increased government funding [will] make commercial products de facto free to schools thereby facilitating market entry and competition to the BBC." This proposition is reiterated at paragraph 8.29. The Secretary of State need only place herself in the position of a school budget holder, who will never have an unlimited budget. It will be natural, we suggest, to default to the BBC's free service and then consider other service offerings that come at a price. Thus, in its chosen areas, the BBC will not experience competition unless the quality of its product is so unacceptably low as to make it unusable.

Additionally, this would, we believe, indirectly discriminate against small groups of children. This is because the specialist companies who produce materials for children with dyslexia, language disorders, a variety of learning styles and memory difficulties might be dissuaded from entering or remaining in the market if the BBC provides a free product that does not discriminate sufficiently between these populations.

6. Outsourcing the production of 50% of the material may have short-term attractions to commercial suppliers but would weaken them in the long-term.

This is because once the project is complete the intellectual property and ability to accrue a commercial return has been removed from the commercial sector and placed with the BBC. Opportunities to update the material would be far lower than they would be to provide it in the first place and the commercial sector would, in our view, experience a short-term boom followed by job losses.

If the BBC does not provide the Digital Curriculum the material will be produced by the commercial sector, following the Government's Curriculum Online initiative, in a manner that secures long term opportunity and employment.

7. We note the response to the BBC's public consultation and that "ninety-one per cent of respondents thought that the proposed Digital Curriculum was a service that the BBC should introduce...". What is not clear to us is whether those people were in favour of a digital curriculum generally - whether or not produced by the BBC - or whether they wished it to be produced by the BBC. We are not surprised that there is an overwhelming majority in favour of a digital curriculum. This merely validates the view already taken by the commercial sector that this is an area worth developing.
8. We would not object to the BBC producing material in the following situations:
  - o Where the target audience is so small that no commercial organisation would address it;

- Where the risks associated with developing an innovative approach would be too great for a commercial organisation to bear but, if successful might produce a format that could be replicated by commercial organisations;
- Where the material might not be innovative but would serve as an *example* of best practice, following appropriate research.

In our view, these are situations in which the destructive impact on the commercial sector is likely to be small but the value to the public is likely to be large. As an example, we refer to the PricewaterhouseCoopers comment at paragraph 8.14 that “the incentive for commercial suppliers to provide minority subjects is less clear”. Thus work undertaken by the BBC in these situations would be compatible with its primary public service role, in our view, of producing educational materials that would not otherwise be produced.

These conclusions result from the discussion of several key questions as set out in the attached Appendix.

We also welcome the Online Curriculum. This will help the user-base to assess all the products available in the market place and the suppliers to assess the areas in which their expertise can be put to greatest use.

Our opening comments contain general conclusions about situations where it might be appropriate for the BBC to become involved. We do not believe that the production of the Digital Curriculum as proposed is one of them.

Yours sincerely,

John Needham

### Key Questions

- Question One** “Should there be produced a substantial set of free interactive online learning materials in support of the school curriculum? Effectively, a national database of educational material, even though it may not be comprehensive.”
- Question Two** “Should a charge of at least £150m be levied on users of televisions to produce such a national database?”
- Question Three** “Should the BBC be selected as the organisation that project manages the production and maintenance of the database?”
- Question Four** “Who should own the intellectual property in the materials produced?”
- Question Five** “What certainty is there that the material will be kept up-to-date as educational methods and delivery technologies evolve?”
- Question Six** “What will be the effect on existing commercial producers of material?”
- Question Seven** “What will be the effect on future commercial producers of material?”

### Question One: The production of a national database

The BBC has indicated that the material it proposes to produce will not be comprehensive in its coverage of the National Curriculum and other areas. Nonetheless, in our view, its proposal is still so far reaching that the material produced would amount to a national database.

At first sight, the production of a significant level of educational material for use by the public and paid for by the public is attractive. However, the following issues ought also to be taken into account.

- The danger of producing an inflexible one-size-fits-all base of material.
- The danger that the educational user-base defaults to the use of the National Database because it is easy to do so and no one can be blamed for using the accepted standard (for example in an Ofsted review). Hence there is inbuilt resistance to using other material that may be more effective.
- The danger that the free nature of the database further encourages the user-base to ignore other material that has been produced on a commercial basis and, therefore, costs money. Ultimately commercial producers may not produce material that is already addressed by the BBC, with the result that the user-base has no choice in certain areas – they must use the BBC material.
- The danger that such a large database becomes unwieldy, unable to respond quickly to changes in educational demands and subject to bureaucratic

inefficiencies. Hence changes in methods of using digital technology may not be taken up quickly leading to material that may be accurate but educationally out-of-date. The Secretary of State will be only too well aware that the capability and nature of digital technology changes on almost a monthly basis

An argument for producing a National Database might be that no other parties are producing material because it is commercially unviable to do so and therefore the task should fall to a non-commercial organisation. Many of the excellent television programmes produced by the BBC fall within this category. However, there is already a competitive and viable marketplace of commercial providers seeking to produce digital material and we suggest that this argument has no force.

In general non-digital educational material is produced by commercial suppliers in open competition with one another. We see no reason why the position should be any different for digital material.

### **Question Two: The levy of a charge on users of televisions**

In our view it is not the responsibility of the wider television-owning public to fund materials for the much narrower base of users currently in education. The funding of education comes from Government borrowing and taxation, not users of televisions.

The case for the existence of the BBC is that it levies a licence fee to produce material that, it could be said, the public wishes to view but would not otherwise be prepared to pay for on a commercial basis. The fact that the ITV companies do not produce some material similar to that produced by the BBC is an adequate demonstration of this. In other words, if the BBC did not produce it, no one would because the public would not be prepared to pay for it and advertising income, if advertising were to be permitted, would also be insufficient.

Digital educational material does not fall within this “desirable but commercially unviable” category. There are clearly commercial providers that wish to provide the material and, as the Government was partly elected on an education platform, it can be assumed that the public wishes to pay for the material through taxation and borrowing.

If the BBC is mandated to produce the Digital Curriculum the financial responsibility for its production is merely shifted from the taxpayer to users of televisions. We can see no justification for this.

### **Question Three: Use of the BBC as project manager**

If the Secretary of State is minded to accept that a free national database of educational material should be produced and paid for by the public, the remaining question is who should project manage its production (and indeed own the intellectual property).

Surely, under current best practice, such a project should be put out to tender. The assessment of proposals should be carried out by the Department for Education and not the Department for Culture, Media and Sport. It is assumed that it is not in question that the Department for Education ought to determine the educational effectiveness of any proposals.

CALSC has seen no real justification by the BBC of why it is the best organisation to produce the proposed Digital Curriculum (notwithstanding that the BBC may have had the idea in the first place). The Proof of Concept appears to indicate some enthusiasm for the pilot materials. However, as there has been no assessment of any other organisation's capability, it is not possible to conclude in favour of the BBC.

#### **Question Four: Ownership of intellectual property**

It is supposed that the BBC will own the intellectual property in the material produced. We see this will have the long-term effect of weakening the commercial sector.

The BBC, following initial consultation, has indicated in its latest proposal that it will outsource 50% of its production to commercial suppliers. It may even be the commercial suppliers that suggested that this would be acceptable. This suggestion has the short-term attraction of producing employment and profit for stakeholders in the commercial sector but, in our view, weakens the commercial sector in the long term.

The suggestion fundamentally changes the equation to one in which the commercial sector does not retain ownership of what it produces. Companies in the commercial sector merely become service providers. The lack of ownership of the intellectual property means that once the project is finished the commercial company has no value other than the profit for the job, which is distributed to stakeholders. The company has no intellectual property to develop and protect and the motivation to do so is lost.

We believe that good educational material, especially digital material, requires a medium term view that produces the first version of the product and, through a process of feedback and assessment, second and subsequent versions of the product. Outsourcing production by the BBC will produce the first iteration of a product but the chance of the product being further developed is reduced because of the commercial structure adopted.

In our view an outsourcing structure does not encourage the creation and maintenance of a sound *long term* community of educational suppliers. The transfer of ownership of intellectual property away from the producer ultimately weakens the sector in the long-term.

#### **Question Five: Keeping the material up-to-date**

We suggest that the only way, ultimately, to validate good material is to see whether schools and other users will pay for it when compared to other competing products. Payment will only be made, in most cases, if the prospective user judges that the product will provide value for the money spent. If other material is more up-to-date and available at a competitive price people will cease to use the original material. This forces the producer to keep the material up-to-date.

No such value judgement is required of a free product. Because the material is free the barriers to entry for a commercial supplier are that much higher and the free product is more likely to prevail. This barrier to entry distorts the market and the Secretary of State need only look at EU laws on competition and state subsidy to understand that subsidised products, in the long run, are thought to be undesirable.

The key consequence resulting from a subsidised product is that other products addressing the same area are less likely to be produced because of the existence of a free product. The resulting lack of competition in the market place means:

1. The free product survives for longer than it should and may become out of date.
2. The level of choice available to the user-base is reduced because fewer products are produced.

In our view it is not in the public interest to sanction the spending of public money on material that is given away free. This may indirectly result in the material becoming out of date and a reduced choice for the user-base.

### **Question Six: The effect on existing commercial producers of material**

In essence CALSC will not attempt to produce a product in competition with a product that is free and benefits from the BBC's valuable brand.

We assume that if the BBC decided to compete directly with a product already produced by CALSC that the BBC's massive marketing advantage would result in the CALSC product becoming redundant. The BBC state in the final paragraph of section 1.3 of their letter dated 3 May 2002 to the DCMS:

“The BBC would use its existing media to ensure that licence fee payers and their families were aware of the service the BBC was providing as part of the overall *Curriculum Online* provision.”

CALSC would be unable to compete with the BBC's network. We note that the BBC has not committed to avoid competing directly with an existing product.

### **Question Seven: The effect on future commercial producers of material**

CALSC operates in the Special Needs marketplace. We invite the Secretary of State to consider that this area is heavily populated by suppliers that have strong educational backgrounds and a burning desire to assist those with Special Educational Needs. This population has *already* developed excellent digital material. In the future, other dedicated teachers will come forward with their own contributions and ideas.

We have not seen any evidence that the BBC would provide material that can be distinguished from and would complement existing material in the market place. Section 1.3 of the BBC's document dated 3 May, seeking approval, includes some paragraphs on the production of a distinctive mix of content. We comment on these as follows.

- Breadth of coverage. Providing a large quantity of material for subjects covering three quarters of the curriculum does not *distinguish* the BBC's offering from that of other suppliers, it merely indicates that it will compete with other suppliers who also wish to produce materials for these subjects.
- Spread of coverage. It is accepted that the 40% of funding that is intended to cover areas other than “core” and “non-core” might address areas that are currently not catered for by commercial suppliers (although we do not believe that

Special Needs is one of them). We have stated already the acceptability of a non-commercial organisation addressing areas that would not be addressed by any commercial organisation because the material cannot be produced on a commercial basis.

- Range of materials. It is accepted that the BBC has vast multimedia experience. But other organisations also have the necessary experience. It is becoming easier by the day for individuals, let alone groups of professionals, to produce online digital material. What is important is the application of that experience. We remain unconvinced that the BBC has an *educational* approach, as opposed to knowledge of multimedia, that would *distinguish* its material in any compelling way from that produced by the commercial sector which already employs educationalists of the very highest calibre.
- Balance of investment. Covering up to 50% of the curricular learning outcomes for any one subject will not *distinguish* the BBC's material from that of other commercial suppliers.

Mention of any particular name would be a disservice to others in the marketplace. However, the Secretary of State need only review and investigate the list of companies exhibiting in the Special Needs section at BETT 2002 to see that the marketplace depends on the enthusiasm, innovation and dedication of small companies with specialist educational expertise to come up with great ideas to help children in this area.