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Dear Paddy

### **ITV's Response to the Independent Review of the BBC's New Digital Television Services**

This response is made on behalf of the owners of the ITV1 regional licences – ITV plc, Ulster, SMG and Channel. ITV plc also owns the entertainment channel ITV2 and the ITV News Channel.

As per our discussions the response is not as detailed or extensive as we would wish it to have been had the consultation period been longer and had there not been so many other consultation processes running in parallel. Nonetheless we hope that you find it a useful contribution.

#### **Introduction**

The purpose of the 1999 licence fee settlement was to enable the BBC to develop an attractive digital family of channels that would both help drive digital take-up and help to sustain the BBC's impact in a rapidly fragmenting digital world. Five years on and the BBC has successfully established a suite of digital channels.

To date, the contribution of the BBC's digital channels to driving digital take-up has been essentially unquantifiable. Oliver & Ohlbaum suggest that, "*the BBC services may have added 1 million homes to overall digital take-up*"<sup>1</sup>, although this does not appear to be based on any statistical evidence.

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<sup>1</sup> An Assessment of the Market Impact of the BBC's Digital TV Services, March 2004



Certainly digital take-up in the UK has been rapid, and the BBC's multichannel development and cross promotional activity has undoubtedly increased the attractiveness of converting to digital and specifically of adopting Freeview. However, there are many commercial digital channels that make digital television in the UK an attractive proposition. ITV2, which is available across all platforms, has proved far more popular with viewers than any of the BBC digital channels, and can therefore be seen as a major driver of Freeview take-up. In pay television homes, UK Gold and Sky One are similarly more popular than any of the BBC's channels. Therefore the contribution of the BBC channels to driving take-up must not be overstated.

### **Funding**

The UK broadcasting industry is in the very fortunate position of being funded from three roughly balanced sources: the BBC licence fee, advertising and subscription. The loss of any one of these funding streams would not be replaced by a significant increase in either of the others, resulting in a huge net loss to the industry. For this reason, the licence fee remains the best way of securing investment in the BBC's digital channels with minimal effect on the commercial sector.

Over the longer term, subscription might provide a more acceptable alternative funding model for the BBC as a whole. However, this will not become practically possible until digital switchover at the very earliest. There have been suggestions that in the meantime the BBC's digital-only channels should become subscription funded. We believe this would threaten the public service content of these channels. BBC digital channels forced to earn their keep in the marketplace would very quickly seek to replicate the commercial offerings that are more successful in ratings terms.

Also, given the close programming and scheduling strategies adopted by BBC1 and BBC3 and BBC2 and BBC4 there would be a significant risk that the licence fee funded services would end up cross subsidising the output on the BBC's subscription channels and that the more commercial approach that would have to be adopted by the subscription channels would further skew the public service approach of the BBC's main channels.

### **Remits**

The industry and the Secretary of State were meticulous in their consideration of the remits of the BBC digital channels in advance of their approval. That work has paid off. The model of clear remits coupled with annual statements of programme policy is one we favour. It enables easy external scrutiny and provides a degree of certainty about what to expect on each channel, thereby assisting commercial operators in planning their own output. ITV supports a similar model of tighter remits being applied to BBC One and BBC Two.

## Foreign Acquisitions

The BBC has a recent record of acquiring a number of foreign (primarily American) programmes, for which other commercial broadcasters have been bidding. Because the well-funded BBC is not subject to the same commercial constraints as other broadcasters, if it wants to win such an auction it usually can. There can be little justification for this aggressive commercial behaviour that results in licence fee money being wasted on overpaying for material that would otherwise be commercially available.

If commercial broadcasters are bidding for acquired material, the BBC should not be able to enter that auction. Instead, they should spend that money on UK-produced original productions. Specific examples of this inappropriately aggressive behaviour are cited below.

## Specific Issues

### CBeebies and CBBC

#### *Distinctive Programming*

We welcome the BBC's acceptance that, "*higher than expected costs of co-production have made it difficult for the [CBBC] channel to meet the commitment to requiring that the channel exploit opportunities for co-production and third party investment*". This is a shortcoming that needs to be rectified urgently. CBBC needs to make a commissioning commitment to invest in the UK production market not simply pre-buying animation or co-producing, both of which result in CBBC acquiring independently funded programmes which other channels would also negotiate for and represent a very low level of investment in the UK production sector.

Currently CBBC and CBeebies are heavily reliant upon acquired animation, for example *Bob The Builder*, *The Mummy*, *Taz-Mania*, *Cramp Twins*, *Stuart Little* and *Scooby Doo*. The DGA Analysis quoted in the Oliver and Ohlbaum report shows that 70% of animation on the CBBC channel is imported<sup>2</sup>. Furthermore, the classification of some CBBC animation as 'commissioned' when they have acquired the programme early on in the production process is misleading. CBBC is yet to make a financial commitment to any animated series higher than that of an acquisition licence fee.

Taking two co-production examples from CBeebies, *Bill and Ben* and *Little Robots*, the financial investment from BBC broadcast is only at a licence fee/acquisition rate. The additional funding and investment comes from BBC Worldwide (in return for additional rights) not from broadcasting budgets. This is therefore a commercial transaction, not a public service commission. BBC broadcasting, not BBC Worldwide, should commission animation for CBeebies and CBBC from the UK production sector instead of pre-buying and acquiring animation for which there is already a commercial market.

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<sup>2</sup> O&O Report, page 44



The problem of the BBC acquiring commercially available material is particularly acute on CBBC, many of whose shows including *The Cramp Twins* (Cartoon Network), *Mona the Vampire* (Nickelodeon), *Taz* (Cartoon Network), *Tom and Jerry Kids* (Cartoon Network), *Looney Tunes* (Cartoon Network) and *Arthur* (Nickelodeon) are available on other channels. This is wasteful of licence fee money, diminishes the distinctiveness of the CBBC offering and diverts money that could be used to create original UK animation.

It is the responsibility of the BBC, across all its output, to stimulate creativity and diversity in the UK production sector. In the case of the children's channels this has not happened. The Governors need to make a specific commitment for these channels to invest in UK animation specifically created for the CBeebies and CBBC audience.

#### *Acquisition of Exclusive Rights*

The BBC is in a uniquely powerful position in the children's television market. It can provide universal access to its children's content via its terrestrial analogue channels (BBC1 and BBC2) and supplementary access in the multichannel market via its dedicated digital channels Cbeebies and CBBC.

From this powerful position the BBC is able to demand exclusive rights to programmes to be shown across its channels. Unfortunately instead of exploiting this unique position to invest in original UK productions which wouldn't otherwise be made, the BBC has tended to acquire exclusive rights from large US studios for productions that have already been funded and are commercially attractive to other operators. Examples of this include *Stuart Little* and *Astro Boy* from Columbia Tristar.

Although CBBC does exceed its quota for originations, there is certainly room for the BBC to use its leverage to provide more support to the UK production sector.

#### *Competitive Scheduling*

ITV1's children's weekday output is broadcast at a fixed time every afternoon (1515-1700). The explosion of competition that has accompanied multichannel growth means this is an increasingly vulnerable area of the ITV1 schedule. Between 1998 and 2003 ITV1's audience share in this slot has dropped to 8% from 18%.

The problem of competing with more and more channels in more and more homes has been exacerbated by the scheduling and commissioning policies adopted by the BBC during this time slot.

CiTV's public service output consists of at least 391 hours (440 in 2003) of original commissioned material specifically for the CiTV audience. This is UK-made and is divided between the drama, information and pre-school genres.



Whereas one might have assumed that, given its public service status, the BBC would seek to broadcast a similar breadth of PSB content to compete with that on CiTV it has, in fact, taken the opportunity to behave in a commercially aggressive manner, consistently scheduling a high concentration of animation across BBC1, CBBC and CBeebies against CiTV's high quality and diverse public service output.

Instead of exploiting the fact that there is an increased quantity and range of children's programming available to it since the launch of its digital children's channels to offer a complementary schedule to viewers, the BBC has opted for popular, often imported programming at this time.

Current schedules on BBC1 at 3.45pm often include three American animated series back to back: *The Cramp Twins* and *The Wild Thornberries* (both also broadcast on commercial networks in the UK) followed by either *The Mummy* (a spin-off from the film of the same name that was acquired in competition from other networks in the UK) or *Lizzie McGuire* (US sitcom also broadcast on the Disney Channel). This is interspersed with frequent cross promotion to the digital channels, with CBBC showing the *Animadness* block of often imported animation.

The undermining of CiTV's public service schedule with imported commercial programming on the BBC services does not serve the viewer. The BBC should screen more public service content and a greater range of content across its services at this time instead of pushing it to the margins of the schedule.

### BBC3

The work that was put into establishing a clear and detailed remit for BBC3 has ensured that much of its output is distinctive from the other digital entertainment channels targeting the same audience. However, both the Governors' and Oliver and Ohlbaum's reports have accepted that the channel's factual entertainment output is dominated by celebrity, relationship and lifestyle content that is not sufficiently distinct from competitors. The Governors have also accepted that the channel is over-reliant on *EastEnders* for attracting audiences to the channel. We will be looking for specific ways in which the Governors and the channel controller will be rectifying this.

The BBC's profligate acquisition of foreign programming and films has also been conspicuous on BBC3. BBC3's entry into the market for shows such as *Kingdom Hospital*, *Taken* and *24* inflated the market price, thereby not serving the best interests of the viewer. Similarly, the policy of BBC3 bidding against commercial UK broadcasters for sports rights is hard to justify, especially when sport does not feature in the channel's remit.

Furthermore it is clear that BBC3 is relying on the cynical use of sport and film to boost its ratings, rather than focusing on the delivery of a truly distinctive public service channel. The list of the highest rating shows on BBC3 in the



first five months of 2004 shows that the only seven entries into the top 35 that are not *EastEnders* are football and the American films *Total Recall*, *Top Gun*, *Speed* and *Rambo*. These 1980s and 1990s films starring established Hollywood actors Arnold Schwarzenegger, Tom Cruise, Sylvester Stallone and Keanu Reeves do not fulfil the conditions the Secretary of State's placed on the channel that, "*acquired programmes will concentrate on bringing new material and talent to the screen and not on competing for well established programmes.*" The tendency to schedule these programmes at peak hours (11% of peak hours are acquired, sport or religious programmes compared to just 7% across all hours<sup>3</sup>) is also inappropriate.

I hope that you find these remarks helpful in your consideration of the performance of the BBC's digital channels. If you have any further questions regarding the content please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Nick Toon". The signature is written in a cursive, slightly informal style.

Nick Toon  
Controller of Public Affairs

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<sup>3</sup> page 8, Review of BBC Three Against Consents