

FOX KIDS EUROPE LIMITED

Pablo Palao,
Public Service Broadcasting Policy Branch,
Room 410,
Department for Culture, Media and Sport,
2-4 Cockspur Street,
London,
SW1Y 5DH

28 February 2001

PRIVATE AND CONFIDENTIAL

Dear Sir,

New Dedicated BBC Digital Services aimed at Children

Fox Kids Europe Limited is glad to have the opportunity to put forward its comments to the Secretary of State on the BBC's proposals for two new dedicated children's services as part of the procedure for assessing whether such proposals should be approved. In a research note written around the time of Fox Kids Europe NV's IPO, a leading investment bank identified "competition from new children's channels such as one planned by the BBC in the UK" as a principle risk for our channels business. We believe, however, that these new channels would also have a wider negative impact on the market for children's programming services in the UK as a whole. The purpose of this letter, therefore, is to explain our view that the BBC's proposals do not present a justifiable case that the value to the public of these new services would be proportionate to the likely impact on the market. This is one of the main concerns for the Secretary of State in considering whether these new services should be approved as set out in the "BBC Public Services: Approvals" document issued by the DCMS Broadcasting Policy Division in November 2000.

Market Impact

Fox Kids Europe NV and its UK affiliates' children's entertainment businesses in the UK currently comprise a number of different business strands including channels, consumer products and online and interactive employing approximately 160 staff. The two new dedicated children's services proposed by the BBC would jeopardize all of the revenue streams which currently support these businesses: channel distribution revenues; advertising revenues; licensing and merchandising revenues; and online and interactive revenues. It would also impact on the market for (and the cost of) the acquisition of programming and other content.

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Distribution

Even though the proposed BBC services would be accessible to all digital households without the need to subscribe, they would present a considerable threat to our UK channel distribution revenues for a number of reasons.

Subscribers usually pay distributors such as digital cable and satellite platforms for a "package" of channels which includes a variety of genres of channels. The distributor usually pays each channel included in the package a fee which will be determined by the subscription revenues received by the distributor for the package and the value of the channel within that package. The price of digital television to the consumer has not markedly increased versus analogue services, although the number and variety of channels on offer has expanded from under 40, to more than 200. The consequence is that there is increasingly less subscription revenue available per channel and the average rates paid to channels are, therefore, reducing. Distribution deal terms usually range between 3 and 10 years and even in the absence of the new BBC channels it is hard to envisage a situation where any channel in our market will manage to increase rates versus current subscriber payments. However, the introduction of two more dedicated BBC children's services is likely to mean that children's pay-tv channels will be particularly badly effected by this reduction as opposed to any other genre of channel. Even though the BBC channels would be free to subscribers, their entry into the market would increase the number of children's channels in the market which would reduce the value of the pay-tv children's services to distributors as a simple function of supply and demand.

Furthermore, the introduction of two more children's channels into an already very competitive market may mean that pay-tv channels like Fox Kids will lose distribution, and therefore revenues, altogether. Unlike the new BBC channels which would be guaranteed distribution on all digital platforms by law as "must carry" channels, commercial channels such as Fox Kids have to compete for distribution. Although, technically, it is now possible for digital distributors to offer many more channels to subscribers, there is still a limit to the number of children's channels that distributors will include in their packages. In the children's marketplace, where there are already 14 dedicated services as well as 9 part-time (dayparted) channels, it is increasingly difficult to justify that platforms need to carry one particular channel versus another and the addition of two more BBC children's channels will make this even more difficult.

The packages offered by digital platforms currently usually contain a range of different genres of channels which are "bundled" together by the distributor. It is likely, however, that digital packaging will rapidly evolve to a point where less services are bundled and the consumer has more choice on which services they wish to pay for. It may be, for example, that digital cable operators in the UK will adopt the same packaging offers as other digital cable operators elsewhere in Europe where subscribers are given a choice of selecting a certain number of channels from a range of available channels. In this kind of environment, subscribers may feel that, because they have two dedicated BBC children's services for which they do not have to pay, they will choose another genre of dedicated service which is not being provided for free by the BBC instead of a children's channel. The BBC do not intend to provide "free-to-air must carry" sports or movie channel offerings so these commercial channel genres will always be able to command reasonable levels of subscription revenues. However, the entry of such "free-to-air must carry" competitors into the children's market, which is already very well served by the commercial players, further reduces potential "per subscriber" revenues, since consumers are unlikely to opt to buy additional children's channels, when they receive so many for free.

The designation of the BBC's dedicated children's services as "must carry" channels which subscribers must receive by law would, therefore, create a distortion in the market for children's programming services. Not only are subscribers more likely to choose a service which is free as against one which they have to pay for, but they will not even be given the choice. Subscribers will be forced to take the BBC services whether they want them or not so their choice of children's services will be prejudiced from the start. Commercial pay-tv children's channels would find it increasingly difficult to compete with the BBC channels on this hugely uneven playing field. To create such a distortion in the market would be a very bad policy for the government to adopt, not only because it will be damaging for the businesses of the commercial children's services who cannot compete on a level playing field, but also because it will be damaging for consumer choice in the long run.

In 1998, the ITC prohibited "minimum carriage requirements" for pay-tv channels i.e. agreements between programme channel providers and distributors guaranteeing the channel carriage to a specified percentage of subscribers. This has effectively meant that digital cable operators are free to package channels as they wish rather than having to guarantee channels distribution in particular packages and this was seen by the ITC as being good for viewer choice. Designating the BBC children's services as "must carry" channels is effectively imposing a legislative form of "minimum carriage requirement" on distributors while their commercial competitors are prohibited from this. This will inevitably create an anti-competitive market distortion to the detriment of all of the commercial pay-tv children's channels and to the detriment of viewer choice.

Advertising

The two proposed BBC children's services would not carry advertising. However they would still have a negative impact on the advertising revenues of commercial channels. The amount of money spent on advertising to children in the UK is widely accepted as having been in slow decline for years. Consolidation and M&As amongst the major toy companies have resulted in fewer players spending less money. At the same time, an explosion in the number of dedicated channels and blocks serving this audience in a digital market has sliced the cake thinner still. The effect of these factors has, like all markets where there is an excess of supply over demand, driven the children's advertising sales market towards discount trading with narrowing margins.

The key driver of advertising revenue is "eyeballs" (ratings) and the more services that are competing for audience ratings, the lower the relative audiences will be for each service competing for them. As a result, these commercial pressures have led the dedicated channels who operate in the multi-channel market increasingly to provide niche services, which deliver a unique audience and can therefore co-exist. The proposed entry of the BBC, with such broad-based proposals covering 0-13 year olds will affect all players in this market, as it will reduce both the number of viewers to each channel and the amount of time they spend watching them.

Advertising revenue for dedicated children's services is bound to suffer as it becomes harder for advertisers to buy effective coverage with very low rating channels. This would drive money back towards the national free-to-air commercial players. Subscription revenues currently account for approximately 75% of our channel revenues. If these revenues are threatened by the entry of the new BBC children's channels into the market for the reasons described in the preceding section, this will force our UK channel business to rely on advertising revenues. If advertising revenues are also likely to be negatively effected, however, this would have a particularly serious impact on our business. Furthermore, the

potential threat of an EU-wide prohibition on advertising aimed at children could threaten to jeopardise these revenues entirely.

Licensing and Merchandising

TV exposure drives sales of merchandising product based on television brands and the market for toys and other children's products based on television brands in the UK is a large and profitable one, in which BBC Worldwide, the BBC's commercial arm, is a major player. BBC Worldwide's Annual Review 1999/2000 confirms this where it states that "At over £70 million, no UK company sells more children's media-based products globally". The Annual Review also shows that BBC Worldwide's brands are particularly strong in the pre-school market as brands such as "Teletubbies" delivered revenues of £32 million in 1999/2000 and "Tweenies" generated more than £40 million in retail since their UK debut the previous September.

The new BBC children's services, and particularly the service dedicated to the under 6's, with their distribution to 100% of digital households guaranteed by law, would give a big commercial advantage for BBC Worldwide as the BBC proposals make it clear that they will carry BBC Worldwide brands such as "Teletubbies" and "Tweenies". The channels are also likely directly to promote BBC Worldwide products such as magazines, books and videos on air. Because no other advertising will be carried, BBC Worldwide will gain an additional advantage by effectively being the exclusive "advertiser" on the channels as no competing brands will be promoted or advertised. The BBC channels would also not be regulated by the same ITC rules as the commercial channels with regard to commercial influence.

The competitive advantage that exposure on the two "free-to-air, must carry" dedicated children's services could provide for its brands would greatly benefit BBC Worldwide's licensing and merchandising operations against other commercial competitors in the market. In addition to benefiting BBC-owned brands this will also benefit brands where the BBC has acted as a co-producer or commercial partner and where BBC Worldwide has acquired specific rights such as video, multimedia or publishing rights. The additional resources that the new channels would bring would also add to BBC Worldwide's capability in preparing, competing and pitching for rights.

Furthermore, the guaranteed exposure that BBC Worldwide would be able to offer through two new "free-to-air, must carry" channels would mean that retailers would be likely to give priority to their products thus reducing the shelf space available for competitor's products.

The combined effect of the commercial advantages that the new children's services would bring BBC Worldwide would inevitably have an adverse effect on the revenues of competing licensing and merchandising businesses like Saban Consumer Products, Fox Kids licensing and merchandising business which licenses children's brands and properties including those carried on the Fox Kids UK channel. Unlike the BBC children's channels, however, the Fox Kids channel has to compete in the market for distribution and, to date, has not been able to secure carriage on digital terrestrial television or on 100% of UK cable systems which the BBC channels will be guaranteed by law. Not only would Saban Consumer Products be at a competitive disadvantage in pitching for rights against BBC Worldwide, but it would also be at a competitive disadvantage in making joint television production and licensing proposals to producers or co-productions. Less productions or co-productions means less rights to exploit and therefore less revenues.

Online and Interactive

Fox Kids' online revenues in the UK currently come almost entirely from advertising and, as with television advertising, the creation of websites to support the new BBC channels is likely to draw traffic away from websites like the Fox Kids sites. The overall effect of this will be to make the commercial on-line kids market a less valuable audience for advertisers and will result in them taking their budgets to other, bigger markets consequently reducing our online and interactive advertising revenues.

Advertising revenues are largely determined by "page impressions" from visitors to the site. A major driver of traffic to our websites is promotion on the Fox Kids channels and the BBC proposals make it clear that this is likely to be the same for the BBC websites. However, having guaranteed distribution to 100% of homes without charge would give the BBC a disproportionately large "shop window" from which to drive traffic to its websites compared to other sites. The strong market position that the publicly funded BBC websites would be in as a result of this has been acknowledged by the BBC itself, when it states in its proposals that "Innovative production techniques, an extensive integrated online offering and emphasis on live programming and presentation will encourage children to participate in the channel's output far more than the BBC's competitors can hope to achieve commercially..."

The fact that new publicly funded BBC websites would be operating with an unfair advantage commercially cannot be justified by the "public service" argument that the BBC are providing services which the commercial sector is otherwise failing to provide. Several commercial businesses including Fox Kids are providing responsible online communities for children which are accessible free of charge.

The BBC's proposals for the online and interactive services which would also be provided by them alongside the new children's channels are very vague and give no real idea as to what the BBC's intentions are in this regard. Very little detail is given about the proposed form or content of any of these online services and in particular whether they would be purely supporting the content of the new television services or whether they would be offering additional content which would go far beyond channel support. With the advancing convergence of new technology, online and interactive services are likely to be the services of the future. It is difficult to predict now exactly how these services will evolve but in the long run these online services could be more important than the new channels themselves.

These proposals must, therefore, be described by the BBC in detail including full details of exactly what websites, "web-based communities" and other online services such as e-mail and SMS messaging are being proposed and exactly what content they will carry. For example, the BBC refer to online and interactive services featuring webcams, video streaming, and animation engines (which could presumably include games) in relation to the 6 to 13 channel. Services such as this could potentially go far beyond supporting channel content and could constitute distinct interactive business propositions in their own right. In effect, therefore, these interactive services could potentially constitute the equivalent of new "channels".

Furthermore, the BBC's proposals do not explain whether their additional online and interactive services will be used for any commercial purpose such as gathering data for marketing purposes, or marketing and promoting BBC Worldwide products, although it seems likely that they would be.

The BBC's proposals for online and interactive services could potentially be far more significant than their proposals for new channel services. In the same way as they have a duty

to describe their proposals for the new channels, therefore, the BBC must produce a detailed description of these online and interactive services before they can be assessed. Until this is provided the BBC cannot be said to have fully consulted the public on their proposals for new services or to have provided enough published information for the Secretary of State or the BBC Board of Governors to consider whether or not such services should be approved. Furthermore, without more information about what is actually being proposed, is hard to ascertain whether the BBC would be acting within the scope of its authority under the BBC's Royal Charter and Agreement in providing these additional services.

Programming

The proposed BBC channels would also have an impact on the market for children's programming. Both BBC children's channels will acquire programming, thus increasing demand, and the cost of programming is likely to increase proportionately. Furthermore, the BBC will not have the same commercial constraints as commercial channels in setting budgets for the acquisition of programming as they will be financed publicly. Also, because the new BBC children's channels would be "free-to-air, must carry" channels they will have an advantage over other channels in acquiring programming because they will be able to offer producers an attractive opportunity for related licensing and merchandising deals which other commercial broadcasters with less distribution could not compete with.

The BBC proposals state that "Children want a rich and varied diet of programmes and the young particularly seek out high quality UK-produced material of the sort provided by the BBC. However, there is simply not enough of such material in a market dominated by American commercial children's channels and by animation". We presume that this reference to the "American commercial children's channels" may refer to channels such as Fox Kids, although the Fox Kids UK channel is entirely operated, broadcast from and licensed in the UK and a large proportion of the channel's output is non-American programming including British produced programming. Notwithstanding this, it is absurd to suggest that channels like Fox Kids dominate the market for children's programming. Even in multichannel homes the combined audience share of Fox Kids, Cartoon Network, The Disney Channel, Nickelodeon and their related channels amongst children 4 to 15 is smaller than the BBC's and less than half that of all of the terrestrial networks combined. In fact, the market for UK produced children's programming is largely dominated by the terrestrial networks and commercial pay-tv channels like Fox Kids often find it hard to compete with them in acquiring quality UK children's programming product.

Value to the Public

Contrary to the BBC's claim, the BBC has not fulfilled its obligation to consult with licence fee payers on its proposals for new children's services and has also not demonstrated significant public demand or support for these services. This is clear from the findings of the recent research carried out by MORI on the BBC's public consultation, which we understand may have been submitted to the Secretary of State as part of the consultation procedure and which we support.

It is also not clear from the BBC's proposals that the new children's channels would provide more choice, particularly in quality British programming, for digital households who do not wish, or cannot afford, to subscribe to pay-tv services. Firstly it is wrong to suggest that digital households who do not wish, or cannot afford, to subscribe to pay-tv will be under-served with high quality British programming. Households who do not subscribe to pay-tv channels are already well provided for with the dedicated children's programming blocks on BBC1 and

BBC2 as well as on the commercial terrestrial channels: ITV; Channel 4/S4C; and Channel 5, all of which include a high proportion of quality British product.

Secondly, it is not clear from the BBC's proposals exactly how much duplication there will be between the programming output of the new channels and the dedicated children's strands on BBC1 and BBC2. The BBC describe Annex 2 of their proposals as being a detailed description of the new services but more information is needed on a number of important issues in order to properly assess the proposals. In particular, Annex 2 provides that at least 90% of the under 6 channel and 75% of the 6 to 13 channel will be British programming which will include new material (which may also be aired on BBC1 and BBC2) and CBBC output and library material. It is not clear exactly how much duplication of this output there will be although it seems that for the 6 to 13 channel at least half of the schedule will be material from BBC1 and BBC2 and the CBBC archive. It is essential to know this in order to consider how distinctive the new services will be from existing services and how much additional choice is actually being offered to viewers.

Not only is it unclear from the BBC's proposals how much duplication of output there will be between the BBC services, but they also do not provide any evidence to show that the output of the new children's services would be distinct from the output of the other commercial services in the market. The proposals describe the existing commercial channels as offering a service "based largely on imported material, archive programmes and cartoons" and suggest that the BBC channels will be distinct from this by offering viewers "the choice of more UK made programmes". However, not only does Annex 2 of the BBC's proposals fail to show that the new channels will contain proportionately more British product than the existing dedicated children's blocks on the commercial terrestrial channels which are available to digital homes without the need for subscription, but they also confirm that a proportion of both of the new channel's output (25% of the 6 to 13 channel's and 10% of the Under 6 channel's) will be "imported" non-British programming.

Expressed as a percentage of programme output, these amounts may seem relatively small. Annex 2, however, seems to suggest that the 6-13 channel will actually carry more non-British programming than new productions: New productions will comprise roughly 18% of the channel's output (a quarter of the three quarters of the channel's British programming output) while non-British programming will comprise around 25% of the channels output. Furthermore, the true significance of this non-British programming depends on where it is scheduled and, again, the BBC's proposals give no information on this. If such programming is scheduled in prime-time hours, the significance is far greater than in non prime-time hours.

In any event, if the intention of the new channels is to be distinct from commercial services by offering more UK programming to viewers then why are the channels acquiring non-UK imported product at all? Could it be that this imported product will be selected to compete with the output of the commercial channels? If so, this will certainly have the effect of making them less distinct from the commercial channels. We also note that the BBC proposals point out that commercial channels carry "cartoons" but it is not clear whether this reference to "cartoons" actually means animation. It is certainly true that the BBC currently carry a large amount of animation, but are the BBC's proposals suggesting that the new BBC channels will be distinct because they would not carry animation, whether British or imported? Without more information from the BBC it is impossible to answer these questions and therefore to assess whether the proposed new channels will be distinctive from the commercial channels already in the market. As it is, Annex 2 seems to suggest that the output of the proposed new channels will not be significantly different from the output of the existing commercial channels.

The BBC's proposals also claim that creation of two new dedicated children's services will act as an encouragement for viewers to switch from analogue to digital services. This is unlikely, however. According to BARB/Sky statistics, 41.5% of all digital households in the UK have children as against the total number of television households with children in the UK which is approximately 28%. If the BBC wanted to drive digital take up they should provide services aimed at audiences who are unlikely to take up digital services, and those are far more likely to be households without children. Also, the BBC's proposals make it clear that programming produced for the two new digital services may also be carried in analogue on BBC1 and BBC2 which will be no incentive at all to switch to digital.

The BBC's proposals for the two new children's services partly rely for their public appeal on a misconception that the channels will be entirely free from commercial influence because they will not carry advertising. In view of the benefits that the new channels would exclusively provide to BBC Worldwide from the creation and carriage of its hugely commercially successful brands such as Teletubbies and Tweenies, and from their promotion of BBC Worldwide products on air, this misconception cannot be allowed to continue. The BBC and BBC Worldwide should clarify fully and transparently exactly what the potential financial benefits of these proposed channels will be for them and the potential influence that these benefits will have on the output of the two proposed children's channels. Until they have done this, the BBC cannot be said to have consulted fully with the public as to their proposals.

Conclusion

The entry into the market of the proposed BBC children's services would have a negative impact on our revenue streams as well as those of other commercial channels in the market. At the same time, the additional competition that these two publicly funded channels would bring in the market for acquired programming would be likely to increase our costs and make it harder for us to acquire quality UK produced programming. The resulting impact of this for the Fox Kids Europe group would be a reduction in profitability and thus potentially an adjustment to our long term investment plans, including plans for launching new UK services and commissioning original UK programming, both of which are likely to be jeopardized. This would be to the detriment of the UK children's programme production industry.


Furthermore, as "free-to-air, must carry" channels with distribution on all digital platforms to all homes without subscription, the two dedicated children's services would have a huge advantage over dedicated commercial channels such as Fox Kids which has to compete to secure distribution. This is likely to have a significant adverse impact on competition between the channels and will have a resulting negative impact on consumer choice. The market distortion that this will create will unfairly benefit BBC Worldwide to the detriment of its commercial competitors. Furthermore, the BBC have not given a detailed description of the online and interactive services that they intend to provide in addition to the new channels which could potentially be of very great significance.

The new BBC children's services would be unlikely to provide much additional value to the public. Although the BBC proposals are vague, it seems likely that the programming they will carry will be largely duplicated on the existing BBC1 and BBC 2 strands and the services will not be significantly different from the dedicated children's services and strands offered by the commercial channels to both multi-channel and non-multi-channel digital households. By dedicating these services to children the BBC are not assisting government policy in encouraging digital take up and are probably harming it by not allocating enough digital programming output to programming that would be of interest to households without children who make up a large proportion of the homes which are likely to resist digital take up.

The BBC's proposals with regard to the two additional children's services do not satisfy the majority of the Secretary of State's main concerns. In particular it is clear that the minimal value that these services would bring to a minority of viewing households (i.e. those with children under 6 and those with children between 6 and 13), would not be proportionate to the substantial negative impact that they would have on the market for children's television services in the UK. We, therefore, strongly recommend to the Secretary of State that these proposals should not be approved.

This letter is submitted to you on a confidential basis and we would be grateful if you would not publish or disclose its contents to third parties outside of the DCMS. However, if you feel that it would be useful to disclose it more widely as part of the consultation process, please let us know as we would be glad to consider any specific requests. Furthermore, we would be happy to answer questions or to provide further data or information as may be necessary to support or clarify any of the points made in this submission.

Yours faithfully,



Annie Miles

Managing Director UK Channels, Fox Kids Europe Limited





FOX KIDS UK

Right Honorable Tessa Jowell
Secretary of State
Department of Culture
Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

2nd July 2001

Dear Secretary of State,

Andrew Ramsey in your department has forwarded onto us a copy of a second document from the BBC, dated 7th June 2001, concerning their proposals to launch a series of new digital television and radio services. His letter also invited further comments from us but, having read through the paper and compared it to the original submission from the BBC dated 9th January 2001, our main observation must be that it contains very little extra information for us to comment upon.

A memorandum was sent previously to your department, attached to a letter addressed to your predecessor Chris Smith dated 28th February, signed by several commercial colleagues and ourselves. The memo listed the information that the group felt should be supplied by the BBC as part of the approvals and consultation process for new services. This memorandum (copy attached for your information) had been drawn up by the group in response to a request by Chris Smith made during a meeting held a week earlier. It is the firm belief of Fox Kids that without information of the extent and type described in this memo, no realistic assessment can be made of the extent of negative effects on either our UK businesses or on the commercial marketplace for children's broadcasting and production as a whole. This second submission from the BBC still does not supply this necessary information.

In our initial response to the BBC proposals, sent to your department on 28th February, we outlined our concerns about the negative impact these new services for children could have on the income and profitability of our television, licensing and on-line businesses in the UK. Without any more "hard" information from the BBC, we find ourselves unable to make further progress in this assessment with any degree of accuracy. So our concerns remain as before – that the launch of the BBC children's targeted channels, as outlined, would have a substantial effect on our UK businesses and thus inhibit profitability and impede our growth and expansion plans.

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Without robust forecasts of the effect on the commercial marketplace of the new digital services, Fox Kids believes it will be impossible to evaluate the BBC proposals against the Criteria for Approval, as set out in a statement from your department on 10th January 2001. In particular: -

- 1) that the proposed children's services are compatible with the BBC's primary public service role.
- 2) that the value of the new children's services will be proportionate to the impact they will have on the current market-place.

We therefore strongly urge that your department presses the BBC to provide further details on its proposals to the extent that enables a sound evaluation to take place. Until that information is forthcoming, we recommend that the new services proposals, in their current form, be rejected.

Before ending this letter however, there are two additional points that we would like to make about the arguments made by the BBC in their submission concerning the take-up of digital television in general. Despite the fact that encouraging migration to digital television was not included in the Criteria for Approval for new services laid down by your department, this argument is used as a major support for the BBC new services. The thinking seems to be that by offering further, substantially original, UK produced programming the remaining rejecters of digital TV will be persuaded to convert. This logic pre-supposes that their resistance to digital TV is based on a rejection of the programming content currently available, whereby the addition of further free (BBC) content would therefore provoke a change of attitude and behaviour. However, there is no evidence provided to directly support this assumption.

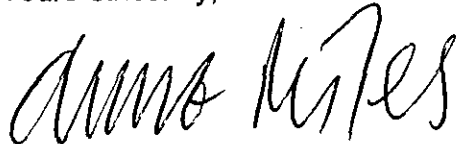
In the recent report, commissioned by your department from MORI (Digital Television 2001, Final Report, June 2001), the key reasons quoted by non-digital individuals for not switching are (1) that the equipment is too expensive; and (2) that they are happy with current TV. Equally, when existing digital individuals were asked how satisfied they were with the quality of content of existing digital channels, 75% replied that they were "fairly satisfied" or "very satisfied". Both of these research results argue against further free content becoming a key influence on future migration. The survey indicates clearly that the decisive factors are (1) the next date of television set replacement and (2) a better understanding of the choice and therefore range of cost of digital conversion boxes.

Also in this same report, the profile of individuals who are least likely to get digital television is described as "*...female, in older age groups, in social class C2DE and to not have children in the household*". So, even if it is agreed that the new BBC digital services should also provide an incentive to convert, then Fox Kids fails to see the logic of devoting the majority of broadcast hours on *two* of the proposed channels to the child demographic, when the majority of digital rejecters do not have children in their households. As we outlined in greater detail in our initial letter to your department, we believe that this unbalanced focus on the child audience is governed more by a commercial intent (i.e. to support the licensing campaigns for the programming brands operated by BBC Worldwide) than it is driven by a public service ethic.

We believe that the motivations and justifications of the BBC in this particular area requires closer examination and would urge your department to review this issue as part of the ongoing evaluation of the proposals.

We thank you for giving us the opportunity to make a contribution to the consultation process and we will be happy to provide any further information that may be needed to substantiate any of the points made in this, or our previous, submission. We also have no objection to our submissions being made public.

Yours Sincerely,



Annie Miles
Managing Director, Fox Kids Channels UK

cc: Andrew Ramsay, DCMS
bcc: Rupert Lewin-Smith
Kate Trinder
Marc-Antoine d'Halluin
Martin Weigold
Shari Donnenfeld
Ian Finnegan

**APPROVING NEW OR ALTERED BBC SERVICES:
INFORMATION REQUIRED TO ENABLE ASSESSMENT**

A memorandum from commercial broadcasters

Introduction

This memorandum has been prepared at the request of the Secretary of State for Culture, Media and Sport in response to concerns expressed by a large number of UK commercial broadcasters. The signatories to the memorandum represent the great majority of services in the commercial satellite, cable and radio sector, which has been the active force behind the recent rapid development of digital broadcasting.

In the last two years this sector of the UK economy has created not only new channels and programmes but also new jobs and businesses, and new customers for digital and interactive services, throughout Britain. In doing so we have risked and continue to risk private capital in pursuit of a goal important to the government, and are contributing strongly to the vitality of UK Plc at no cost to the taxpayer. The vast range of commercial services we provide, some of them including BBC programmes, are liked and approved strongly by those who choose to pay for them - now approaching a third of all homes across all social classes.

Competition within this dynamic sector has all the characteristics of other thriving UK consumer markets in the communications field like publishing or cinema or telephony. In none of those does the State intervene with new tax-funded competitive businesses of its own, providing books or films or phones ostensibly "free". So it is inevitable that when the BBC licence fee may be used to finance such new competitors in the broadcasting sector, we look for effective, transparent and rigorous assessment of their purpose and value, before any such potentially damaging intervention is permitted.

The Secretary of State's criteria

The Secretary of State has recognised already that proposals for new or altered BBC digital services need special and extensive scrutiny. The commercial sector planned and developed its services in relation to the present extensive channels and output of the BBC, including its digital channels, which already dominate television and radio expenditure in the UK. The introduction of new BBC services with even greater financial resources may do serious damage to commercial activities that are themselves in the public interest, and will undoubtedly hinder the development of others.

Therefore we endorse the Secretary of State's development of appropriate criteria and procedures for assessing any proposed new BBC service, and the inclusion of principles such as:

- That the proposed service is compatible with the BBC's primary public service rôle
- That the value of the service should be proportionate to the impact on the market

- That the service will be universally accessible within a reasonable period of time
- That the service is financially prudent

Cost-benefit analysis

These and other criteria comprise a necessary cost-benefit analysis of the proposed new services. They provide a framework to assess their benefit, if any, to consumers and to the government's objectives, and to set that benefit against the cost to the viewer, to the licence-payer, to the commercial sector and to the economy.

Unless this cost-benefit analysis is carried out openly, to the standards prevalent in the private sector in assessing investment opportunities and in the public sector in determining, for example, ITC public service licence applications or bids for Lottery funding, its outcome will not carry the confidence and support of the public, consumer groups or the communications industry.

The appropriate standards include:

- Full disclosure of all relevant financial information, in detail;
- Transparency of any related transactions;
- Explicit, detailed information about the content of the service to be provided;
- Explicit, detailed information on its objectives;
- Authoritative research demonstrating the value or appeal to licence payers;
- Measurable standards by which performance, including financial performance, is to be judged against these objectives;
- Examination of viable alternatives.

On the basis of information so far provided, none of the BBC's proposals can be assessed to these standards against the Secretary of State's criteria

INFORMATION REQUIRED TO ENABLE ASSESSMENT: KEY QUESTIONS

In order to make an evaluation to these standards against all the criteria including, crucially, the impact of any new BBC channel on the present and likely future market, the Secretary of State, the OFT and the commercial sector will, as a minimum, need to have the answers to these key questions:

- 1. What are the objectives of the service as a whole, and also individual parts of its content, in terms of target audience profile (including age, sex, and availability via digital transmission)?**
- 2. What are the objectives and projections for audience reach, audience share and audience ratings over specified periods of time (e.g. 1,3 and 5 years) in relation to target audiences?**
- 3. What evidence is there that these objectives can be achieved (for example by reference to commercial digital channels and to the BBC's existing channels)?**

4. ***What is the BBC's assumption – and supporting evidence – about the impact of the new service upon other existing or potential services, including the BBC's?***
5. ***What is the content of the service in precise terms, with types and genres of programme including named and fully described programmes, and full details of planned interactivity?***
6. ***What proportion of these different types and genres of programmes will be included each day and each week and, if at all, how will this pattern vary across the year?***
7. ***Where will these different types and genres of programmes be scheduled, by hour across the day and by day across the week?***
8. ***How will this pattern vary across the year and over time?***

Note: In relation to 5-8 above, applicants for ITC public service licences have been required to present detailed programme information including typical hourly schedules, which are made publicly available for comment.

9. ***How will these programmes and schedules vary from those already provided on existing BBC services (e.g. BBC 1 and 2, and BBC Choice and Knowledge and radio services)?***
10. ***Will the content and schedules of existing BBC services change if the new channel is permitted? How will they change?***
11. ***What are the sources of programmes?***
12. ***What proportion of programmes will come from each of these sources (e.g. BBC internal production, independent UK production, other UK sources, European sources, US and foreign sources, secondary use of programmes shown recently on other BBC services, BBC archives, BBC Worldwide)?***
13. ***How will this proportion be scheduled across the day, the week and the year?***
14. ***To what extent will the BBC be competing against commercial UK rivals for acquired programme rights, and for talent and other resources in original and commissioned programmes?***
15. ***How will the annual budgets for the services be spent - divided inter alia into programme expenditure on production and purchase of programmes, programme, staff and contract appointments and numbers, technical and transmission operations, marketing and promotion?***
16. ***What services will the new channel or station receive from or share with existing free-to-air services of the BBC or other departments of the BBC (e.g. programme supply, programme rights, marketing, cross-promotion on other BBC TV and radio services, technical resources, staff)?***
17. ***Will these services be provided free, bought in an internal BBC market, provided at a discount or at open market prices?***

18. *What level of promotion of the new channels on other BBC television and radio services is planned?*
19. *What marketing and promotion expenditure, in what media and over what period, is provided for in the channel budgets or other BBC budgets?*
20. *Will commissioning and purchase of programmes for services be carried out separately from commissions and purchases for BBC 1 and BBC2, Radio Five Live and Radio 4?*
21. *If not, how are the channel's costs and operations to be made separately transparent?*
22. *What are the budget allocations to each type and source of programme?*
23. *How will programmes appearing on more than one BBC service be charged to the channel?*

These questions have a bearing on all the Secretary of State's criteria, and especially on evaluating the impact of new services on the market. In addition, there are further questions that relate to the other three criteria mentioned above.

Compatibility with the BBC's public service role

BBC Choice and BBC Knowledge were established with specific remits that set out to meet the objectives of the BBC and the government. BBC Knowledge in particular had education as its central objective. As recently as 1999, the BBC announced that with additional funds BBC Knowledge would become "a fully interactive service to enhance lifetime learning opportunities for all".

24. *Since BBC Choice and BBC Knowledge are to be superseded, what elements of the BBC's and the government's commitments to education, to lifelong learning, and to multi-cultural provision will remain?*
25. *In what precise form (see questions 5-7 above) will these commitments be met?*
26. *How will each channel be evaluated and defined against these and other performance criteria?*
27. *What cost-effective alternatives to these channel proposals have the BBC and its Governors considered?*
28. *Did these alternatives include partnership with other channels, or continuing provision of BBC programming on existing commercial digital channels, in return for fair market rates? What was the reason for rejecting these proven successful strategies?*
29. *Did these alternatives include proposals for the use of digital channels previously made by the BBC itself? What was the reason for rejecting these proposals?*

Universal accessibility

According to the BBC, its new digital channels will be available to less than half of all licence-paying homes in the next five years.

30. Why does the BBC believe that "universal accessibility in a reasonable period of time" means "accessible to only a minority of licence-payers for many years"?

The BBC's application to DCMS gives "two specific reasons" for changing its digital offerings, the first of which is that the new channels will be "an incentive to analogue switch-off". Evidence to date shows that digital take-up has been driven entirely by the commercial digital operators' intensive marketing and equipment subsidies, and by the range of alternative programmes available on their services. The three existing BBC digital channels, although extensively marketed by the BBC as "free" channels, have played little or no part in persuading consumers to adopt digital services. A cost-benefit analysis should identify the number of analogue viewers converted to digital by the new channels, and the cost per viewer.

31. What evidence does the BBC have that their new channels will encourage take-up of digital television and be an incentive to analogue switch-off? What is the cost-benefit analysis of using the BBC to drive take-up?

The BBC's application to DCMS also states that its new digital channels will provide more choice "for those who cannot afford pay television but will be forced to go digital. However, its public consultation exercise did not address either the switchover incentive or those who may not be able to afford to go digital. (Since 43% of respondents replied via the Internet, to which a minority of the population have access, it is likely that this target group were actually under represented.)

32. How has the BBC identified its target audience of people who "cannot afford pay television"? What are their demographics, and how many of them are there?

33. What connection is there between the needs and wishes of these people who cannot afford pay television and the content of the BBC's proposed new channels?

The BBC proposals make it clear that "the commitment to children's programming on BBC 1 and BBC 2 will be enhanced", and that "the volume of Music and Arts on BBC1 and BBC2 will be unaffected". Most programmes cited as appearing on the new minority digital channels are the same as those currently appearing on the universally available BBC1 and BBC2: for example "news", "contemporary drama such as *This Life*" "light entertainment such as *Never Mind the Buzzcocks*" "new talent comedy shows such as *The League of Gentlemen*" "sports entertainment such as *They Think It's All Over*", "*The Proms*", "*Cardiff Singer of the World*", and "programmes deriving from the BBC's established partnerships".

34. If programmes on new digital channels are the same as those on the universally available BBC1 and BBC2, how can these channels be an incentive to analogue switch-off?

35. If not, what will replace these programmes on BBC1 and BBC2? Will these replacements have a competitive impact on the market?

Financial prudence and value for money

The total figures proposed to be spent on each new BBC channel far outweigh the costs of similar commercial channels that already exist. So it appears *prima facie* that the new channels cannot possibly represent financial prudence.

Prudence can also be judged in relation to past expenditure on other digital channels. None of the BBC's existing digital channels would be judged value for money against normal cost-benefit criteria, in relation to expenditure against consumer usage. Spending more on similar channels is not guaranteed to enhance their benefits commensurately with the increased cost to licence-payers. (It may be noted that in the MORI poll carried out for the Davies Panel, fewer than 50% of people believed that the BBC licence fee provided good value for money.)

Nor can it be regarded as prudent to have used licence-payers' money on these new channels in advance of the Secretary of State's approval decision. Yet large sums have already been spent on the proposed channels including programme commissioning, staff appointments and promotion and public relations.

- 36. *Why will the proposed BBC channels cost so much more than any commercial operator would spend on identical services?***
- 37. *What amounts have already been spent on the proposed new channels in advance of the Secretary of State's approval decision, and why?***
- 38. *What examination have the BBC Governors carried out, and what comparative cost evidence have they seen, to enable them to assert that the new channels are value for money?***

Commercial confidentiality

We endorse the view expressed by the Secretary of State that the concept of "commercial confidentiality" cannot be admitted as a reason for concealing details of BBC plans and expenditure in the present case. Commercial confidentiality must apply to the details of contracts with the BBC's commercial partners, but in no other respect should the questions set out above fail to be answered, since they refer to the proposed expenditure of very large amounts of public money.

Nor must "commercial confidentiality" be used as a synonym for "competitive secrecy" or "concealing excessive expenditure". It remains the view of the private sector that it can offer many of the services provided by the BBC more cost-effectively, and if transparency shows this to be true then it can only be in the public interest.

Conclusion

The signatories to this memorandum support the existence of a flourishing broadcasting sector in the UK in which publicly-funded services continue to play a vital role. However, in this rapidly-changing ecology of UK broadcasting, we cannot support the BBC's publicly-funded further expansion to compete with and damage

commercial digital services that exist, or are planned, or can be carried out more cost-effectively, by the private sector. For this reason we commend to the Secretary of State and the OFT the detailed scrutiny of BBC proposals that we outline in this Memorandum.

ENDS.