

To: Digital Britain Team

From: Andy Egan (BECTU Research Officer)

Dear Colleagues

On behalf of BECTU, please note our comments below on some of the issues raised in the Interim Report.

ORIGINAL UK CONTENT

Please note the following extracts from our submission to the Ofcom PSB Review:

Funding Options

We accept that there is an impending shortfall in PSB funding against a background of the growth of digital multichannel broadcasting which does not itself replicate the amount, range or quality of existing PSB provision. We note Ofcom's estimate that the potential shortfall in commercial PSB provision could be £145m-235m by 2012 and £170m-280m by 2015 (6.18).

We note that Ofcom identifies 4 possible sources of funding:

- Regulatory assets
- The licence fee
- Industry levies
- Direct government funding

Our view is as expressed in Phase1. We favour regulatory assets and industry levies as sources of funding. We fundamentally oppose using licence fee and direct government funding.

In terms of **regulatory assets**, we note that these, according to Ofcom, encompass privileged access to spectrum; relaxation of PSB advertising minutage; EPG prominence; and must carry status.

In terms of **spectrum**:

- We support the continuation of gifted spectrum for commercial PSBs and note that this will be worth an estimated £120m by 2012/13 (6.27). We further note that this is easily enforceable and would be supported by audiences.
- By the same token, we would oppose any application of spectrum charges to the commercial PSBs under the proposed AIP system, noting that charges for the current spectrum allocation could be £16-34m (6.36).

- We advocate the reservation of spectrum for HD (high definition) PSB services on DTT, noting that the estimated benefits of such a policy would far outweigh the opportunity costs (as indicated in Indepen Consulting's review of Ofcom's impact assessment); and that without such a measure, Freeview's HD offering would be 'fossilised' at the level of 3 or at most 4 channels.
- In respect of PSB-HD we therefore call for an urgent review of Ofcom's market-based proposals for spectrum allocated by auction (and we have set out our arguments in more detail in our submissions to Ofcom's consultations on spectrum issues). Without such a reconsideration, Ofcom's proposals on spectrum will have pre-empted a key aspect of the PSB review.
- Furthermore, we believe that consideration should be given to allocating a suitable proportion of the proceeds of any spectrum auction (above and beyond that affecting PSB-HD) to bridging the funding gap for commercial PSB and providing vital resources for investment in digital programming.

We would also support proposals for increased advertising minutage (as allowed under the AVMS Directive), while accepting that any increased revenue is likely to be increasingly offset by the increased competition from digital channels.

Finally, we support EPG prominence and must carry rules but recognise their limited value. We recognise that the use of regulatory assets generally may not be sufficient to match the PSB funding gap without additional funding sources.

In respect of the **licence fee**, we are fundamentally opposed to opening up licence fee funding to other PSB providers. The BBC licence fee settlement is already inadequate - as evidenced by large consequent job losses at the Corporation - and in our view should be renegotiated upwards. It should not be reduced even further by siphoning off essential BBC resources to other institutions - especially when there are alternative means of providing funding for commercial PSBs.

Top-slicing the license fee will weaken the BBC (thereby running contrary to Ofcom's own view of the BBC as the cornerstone of our PSB system); redirect public resources to private profit (including the subsidisation of programmes that might have been made anyway); impose a chaotic and wasteful system of competitive funding with high transaction costs; and, we believe, lead to a net overall reduction in original PSB production.

The same arguments apply to top-slicing the so-called digital excess license fee. There is no excess in the system. Siphoning-off this amount to commercial PSBs would dilute the connection between licence fee payer and BBC; erode public support for the basic licence fee; and set a precedent for future top-slicing of the core license fee.

The proposal fails to acknowledge the BBC's vital and ongoing digital role, which will continue beyond 2012, and will be required in additional areas such as extending broadband connectedness and building the DAB network.

The loudest arguments for top-slicing the licence fee come from commercial interests and free market fundamentalists who are deeply opposed to such a successful non-commercial broadcaster. Ofcom should not collaborate with these views.

In contrast, we note that the BBC have set out a series of proposals for sharing ideas and expertise with other PSBs - as in the areas of digital technical standards, regional news, an enhanced Freeview platform, R&D and online availability of PSB. We believe, with Ofcom, that these partnership proposals should be explored further. We believe that constructive collaboration of this kind rather than top-slicing the licence fee is the best long-term model for relations between BBC and other PSBs. However, we believe **such proposals - which have resources implications for the BBC - are only feasible if the Corporation retains the licence fee in its entirety.**

In respect of **industry levies**, we strongly support the exploration of this significant potential funding source. We note, with Ofcom, that a principal justification would be 'that content distributors and aggregators were benefiting from access to high quality UK content for which they were not paying' (6.66). We believe this is indeed the case and is borne out by the pitifully low level of UK original content relative to overall revenue that characterises non-PSB content providers.

We note that Ofcom's own research indicates that viewers are favourable to this option and to the arguments that 'this would be a charge on those organisations benefiting from the charging marketplace' and 'would be a fair way to fund PSB by taking money from industry to reinvest into industry' (6.71).

Our sole proviso in advocating industry levies is that these should be new and additional funding streams - and should not cut across or compete with existing levy-based funding streams benefiting individual creators on the basis of their IP or neighbouring rights.

We note that there are a number of potential forms of levy, including those on recording equipment/blank media; retransmissions; non-PSB broadcasters and new media. We set out below some estimated revenue streams, based on research commissioned by BECTU/NUJ from IPPR (Institute for Public Policy Research).

In respect of recording equipment/blank media levies:

- We note that recording equipment can encompass VCRs; DVD players/recorders; digital TV decoders; audio equipment; computers.
- We further note that blank media can encompass audio media, DVDs and videocassettes.
- Levies/sales taxes on a number of such items have been introduced in a range of countries, including Belgium, Finland, Netherlands, Sweden and Canada. However, we note that such funds are often earmarked for copyright holders and potential revenues (eg from a 1% levy on the retail price) are relatively limited (especially if audio and computer items are excluded).

In respect of retransmission levies:

- We note that these are used in 30 European countries; that they apply to cable/satellite platforms broadcasting material for which no direct fee is paid to the original content provider; that the relevant international agency AGICOA collected 95 million euros in retransmission levies in 2007.
- Using BSkyB and Virgin Media as examples of such platforms in the UK, a £5 annual levy per subscriber could yield an estimated £63m (£45m from Sky and £18m from Virgin). This reflects such companies' growth in subscription income during a period when free-to-air PSB revenue streams have been in decline.
- We note, however, that the retransmission levy system in Europe is geared to compensating copyright-holders rather than investing in PSB.

In respect of levies on non-PSB broadcasters:

- We believe that such a levy system could apply to the same companies/platforms as would any retransmission levy, but would be based on company revenue rather than subscribers.
- Based on company annual reports for 2007, IPPR estimates that a 1% levy on broadcasting revenues would yield £45m from BSkyB and £25m from Virgin Media (consumer cable division). A 3.4% levy would in itself bridge Ofcom's entire estimated PSB funding gap of £235m.
- These figures are purely illustrative but they indicate that an eminently justified levy on non-PSB broadcasters (which produce negligible original UK content relative to revenue) could yield very significant resources with which to address the PSB funding gap.

In respect of new media levies:

- We note that this could encompass levies on internet service providers (in respect of the access to broadcast material via broadband internet) and telecom/mobile phone companies (in respect of access to video material over internet-enabled mobile phones).

- While not supporting the broader changes being introduced to the French PSB system, we note that such levies are due to be introduced in France (apparently at a level of 0.9% of relevant company revenue).
- For purely illustrative purposes, we note IPPR's estimate that a £5 per subscriber levy on households with broadband access could raise an annual yield of £71m (although our own preference would be for a levy geared to company revenues rather than subscribers).
- We further note that companies such as Google and You Tube derive large revenues from online advertising and that an online advertising sales tax would be another potential source of funding for original UK content.

We call on Ofcom to give detailed consideration to industry levies - especially those on non-PSB broadcasters and new media platforms (which do not compete with existing income streams to rights-holders). Ofcom should not be diverted from a detailed exploration of these options by the anticipated objections from non-PSB companies which are gaining immensely from the digital marketplace but which contribute a totally insignificant amount of original UK content. Nor, in the light of the European Commission's Protocol on PSB should Ofcom be dissuaded from this course by fear of potential EC state aid arguments.

Industry levies offer the opportunity to use significant new income streams to address the PSB funding gap. They are eminently justified. A regulator committed to maintaining and strengthening PSB is, in our view, duty bound to pursue these options.

In respect of **direct government funding**, we oppose this politically vulnerable method of finance, with its negative implications for editorial independence and creative freedom. This, in our view, would potentially be extremely unpopular with the public and would place PSB in competition with other calls on public funding. It should not be given further consideration.

In summary, we strongly favour exploring the options of industry levies (especially on non-PSB broadcasters and new media) and of regulatory assets (especially gifted spectrum for PSB-HD and possible auction proceeds). We completely oppose the use of licence fee income outside the BBC and we do not favour direct government funding.

Regional News

We note ITV's unilateral announcement of cuts of £40m in its regional news budget and its further proposals for cuts in other areas - with its consequence of reduced output, merged regions and severe proposed job losses. We note Ofcom's collaboration in this process by approving - with minimal amendments - this fait accompli.

BECTU's view, as already publicly expressed, is one of active opposition to these proposals which undermine ITV's previous PSB commitments and Ofcom's previous indication that it would not make further concessions to ITV in the current licence period.

This is a fundamental - potentially terminal - erosion of ITV's distinctive characteristic of a strong regional structure. It will result in a regional news structure which is meaningless to viewers (with regions extending, for example, from Penzance to Worcester and Dumfries to Yorkshire). It flies in the face of consistently and strongly expressed audience preferences - as indicated in Ofcom's own research - for a high value on regional news output and a plurality of supply of that output. In the long term, this 'encumbrance-free' model for ITV makes a takeover all the more likely - by new owners positively attracted to a stripping out of PSB obligations.

This whole process is ultimately a comment on Ofcom's failure to act as a strong regulator committed to 'maintaining and strengthening' PSB. **Ofcom facilitated the original creation of ITV plc and is now facilitating the erosion of its regional character. Light regulation has in effect become deregulation.**

There has been no attempt to hold ITV to its PSB commitments - pending the provision of additional funding from the sources outlined earlier in this paper. ITV is still fundamentally a profitable and viable company. We strongly believe that it should be required to maintain its existing regional commitments - with the promise of additional funding prior to any point at which its PSB licence is no longer commercially viable. That point has not yet been reached. The regional cuts are therefore in our view completely unjustified.

On a similar basis, we do not agree with the proposed permanent reduction in the programming obligations of STV and UTV. We accept these companies face an impending PSB funding gap. But this should be remedied by measures to provide funding not by the permanent weakening of PSB obligations. We note Ofcom's contrasting approach to Channel 4, where 'new long-term funding arrangements' are linked to an increase in C4's out-of-London production quota.

Channel 4

We recognise that Channel 4 faces a future funding gap and note Ofcom's analysis that by 2012 C4 could require additional funding of £60-£100m to deliver its existing remit, let alone any additions to this.

It follows from our views on the range of PSB funding models, that we do not favour a number of the listed potential approaches for funding C4. Specifically, and for the reasons set out above, we do not favour

direct government funding, top-slicing the licence fee or inheriting ITV/Five regulatory assets (ie in the event that they relinquish any PS role).

We favour, and again for the reasons set out above, use of an industry levy and indeed of regulatory assets such as privileged spectrum access and increased advertising minutage.

We favour some form of collaboration with BBC Worldwide but we are opposed to any partial or complete transfer of Worldwide ownership or profit from BBC to C4. Since Worldwide profits are an essential revenue stream which is redirected back into BBC programme production, such a transfer of BBC assets would be equivalent to top-slicing ie supporting C4 only at the direct expense of the BBC. For the reasons set out above, we would oppose this.

Instead, we believe C4 could benefit considerably from Worldwide's distribution resources and expertise (and possibly from commercial joint ventures). Indeed it is possible that other PSBs more generally could benefit from such a constructive collaboration with Worldwide - and additional resources generated in this way could be diverted back either directly (eg to C4) or indirectly via a trust accessible also to other PSBs.

Finally, we would support consideration of cross-promotion of C4 by the BBC - without at this stage directly supporting this proposal.

Independents' Terms of Trade

There is, however, a further regulatory asset which Ofcom consistently fails to mention. This is the position of independent producers - who hold a lucrative and privileged position as suppliers to PSB with fixed terms of trade (arguably heavily loaded in independents' favour) and a protected quota. Independent production has long ceased to be characterised by small, innovative, creative production houses and is now dominated by large highly profitable corporations. Most of the 'fat cats' of British broadcasting sit not in ITV but in the boardrooms of the large independents - and a number of whom have rewarded themselves with notoriously large levels of remuneration. Why has Ofcom failed to even consider intervention in this area?

Ofcom should take immediate action:

- **it should end its habitual reluctance to interfere with this over-privileged sector, which is parasitic on PSB.**
- it should use its influence to seek a renegotiation of the terms of trade and thereby to end the independents' practice of profiteering from PSB.
- failing this, it should actively consider a reduction in the broadcasters' independent quota obligations.

IPPR REPORT: FUNDING OPTIONS FOR PSB

As indicated above, in the extract from our Ofcom submission on funding options, BECTU and the NUJ have jointly commissioned a report from IPPR (Institute for Public Policy Research). This examines funding options for PSB. The following extract sets out indicative figures for revenue from levies on non-PSB media and new media (broadband internet, mobile phone providers). The full IPPR report is attached.

Direct media levies

Direct media levies are a tax charged on revenue from broadcasters, cinemas, video labels etc. This model is in place in France where CNC (broadly equivalent to our UK Film Council) is financed through levies of this kind. The system provides CNC with approx. 500million Euro a year to fund the production of French language film.

Such a levy system in the UK would work on the same justification of the retransmission levy system, but provide a tax on revenue rather than subscribers. The tax could apply to pay TV revenues for example.

In the UK, a 1% levy on pay TV broadcaster revenue would yield the following amounts based on assessments from the UK's two major pay TV broadcasters:

Table 1. Estimated yield from levies on broadcaster revenue

Broadcaster	2007 revenue (£m)	Estimated yeild from 1% levy (£m)
<i>Satellite/Cable:</i>		
BskyB	4,551	45
Virgin Media (consumer cable division)	2,486	25
TOTAL		70

New media levies

A similar system to the above could be applied to new media for example by applying a tax to ISPs, mobile phone operators so that an additional levy is paid alongside monthly subscription or as a percentage of revenue. Such levies are not in wide operation across the world, largely due to the relatively new nature of such technologies and the policy across nations of encouraging take up particularly of broadband.

But as digital media moves into maturity this may be an option which is reviewed more closely. For example, in France, President Sarkozy has announced the removal of advertising from France's public television channels. The revenue previously raised through ad revenue is to be replaced by taxes collected from internet, mobile phone and commercial broadcasting companies. Following the Cope Commission Report, Sarkozy has declared the levy on the revenues of telephone and Internet operators will be "0.9 %,

and 3 % for private channels”. The levy is expected to make up the shortfall of €800 million once advertising is phased out.

per-subscriber levies on broadband internet provision ONS figures from August 2008 suggest that around 14.2 million households now have broadband access in their homes¹. A £5 per year per subscriber flat-rate levy would raise £71 million based on these figure.

Per-subscriber levies on mobile phone internet usage The 2008 ‘Mobile Life’ report produced by Carphone Warehouse (researched by LSE) suggested that around 15 per cent of mobile phone users had used their phone to watch TV or download music or video clips from the internet. Given that around 95% of people in the UK (including children) own a mobile phone, and the current population of the UK is around 61 million², this suggests that a levy on mobile phones which are used to access music, video or TV of £5 per phone per year would raise around £43 million per year. However, given that usage of mobile phones to access the internet is increasing rapidly, the potential yield from a measure like this is likely to rise sharply over the next few years.

Levies on revenue of mobile phone providers

In the UK, a 1% levy on UK mobile operators would yield the following amounts:

Mobile Phone Operator	2007 revenue (£m)³	Estimated yield from 1% levy (£m)
02	£5789	£58
Orange	£4919	£49
T-Mobile	£3575	£36
Three	£1591	£16
Vodafone	£5124	£51
TOTAL		£210

Clearly, levies have the potential to fairly introduce extra funds into a system which is struggling, but valued by UK citizens, and which itself contributes to the economic success of the wider media ecosystem. While on first glance, they may not appear politically attractive, the UK would not be breaking new ground: levies exist in other countries across the world and are an established mechanism for funding content and media services.

Summary: plugging the PSB funding gap using levies

Table 2 below brings together the different funding mechanisms considered in this section of the report by taking the total PSB “funding gap” of £235m that

¹ <http://www.nma.co.uk/articles/39320/UK+broadband+penetration+stands+at+56+of+households.html>

² <http://www.statistics.gov.uk/cci/nugget.asp?id=6>

³ Annual revenue converted from Euro to GBP using approx. Jan 08 exchange rate of 0.743 euro to 1 GBP

Ofcom has predicted has emerged (and will emerge) between the introduction of the Communications Act in 2003 and 2012, and then working out what rate would be needed to plug the funding gap completely using each kind of levy. Of course, in practice a combination of levies could be used if the Government chose to follow this policy course.

Some caution should be exercised in interpreting these results as we have used data from the most recent available estimates of expenditure, revenue, number of subscribers etc. and not attempted forward extrapolation. This is particularly important in the case of the projected yield from a levy on audio or video media (which is likely to fall significantly by 2013, necessitating a higher percentage levy rate) and the yield from an annual levy on internet-enabled mobile phones (this is likely to increase sharply by 2013, which would mean the same revenue could be raised with a lower levy per subscriber.) Additionally, we have not allowed for any behavioural effects from the introduction of these levies. For example, if the increase in the price of audio or video recording equipment (as the result of introducing a levy) leads to a measurable decline in the quantity of equipment sold, this would reduce the yield from the levy. However, we have few reliable estimates of the response of quantity to price (the 'elasticity', to use the economists' technical term) for these goods), so have chosen to assume no behavioural effects as a first approximation.

Type of levy	Percentage / levy per subscriber required to raise £235m
Levy on audio/video recording equipment (under widest definition)	14.7%
Levy on audio/video media (all types)	9%
Annual retransmission levy on Sky/Virgin subscribers	£19 per subscriber
Direct media levy on satellite and cable broadcasters	3.4%
Direct media levy on mobile phone networks	1.1%
Annual levy on broadband ISP subscriptions	£16.50 per subscriber
Annual levy on mobile phone contracts with internet usage	£27 per subscriber

IP RIGHTS FOR DIGITAL CONTENT

Together with our fellow media unions, we are planning to make a joint submission via the FEU (Federation of Entertainment Unions).