



RESPONSE

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## CREATIVE ECONOMY PROGRAMME

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Consultation on Draft Working Group Reports, 9 August 2006

### Executive Summary

PPL and VPL<sup>1</sup> welcome this opportunity for business input to the Creative Economy Programme. The final Working Group Reports demonstrate a clear commitment by the public sector bodies to the creative industries and provide a basis for closer working between creative businesses and Government. The Creative Economy Programme should now turn its attention to the business in order to define Government's role in the creative industries.

The creative industries in the UK are already successful. The challenge is to maintain their competitiveness on the world stage. The Government role is supportive rather than interventionist<sup>2</sup>.

- **Copyright.** Clear rights giving ownership in creative product are the bedrock of the creative industries. Government must close any gaps in the rights (such as the shorter copyright term for the creators of the sound recordings) and ensure those rights are enforceable by public and private means.
- **Education.** With the UK's future being in the creative economy, creativity and copyright should be in the curriculum at every stage in education.
- **Business Environment.** Creative businesses and individuals are highly mobile and will gravitate towards the most conducive environment. Government has a vital role in ensuring that the UK remains an attractive place to do business, through a competitive tax regime, general business support and a recognition of the value of creative businesses to the economy and to society.

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<sup>1</sup> PPL and VPL are the UK collecting societies licensing on behalf of 40,000 performers, 3,000 record companies and 1,000 music video producers. See Appendix A.

<sup>2</sup> This is outlined in the AV presentation to the Music Summit, *A Creative Business*.

## A. BACKGROUND

1. It is important for Government to understand where the creative industries are now and the challenges and opportunities we face. We are rapidly moving towards an economy driven by value in intangible assets. The creative industries already represent 8% of Gross Value Added<sup>3</sup> and the creative economy is growing twice the rate of the rest of the economy. Other forms of IP are similarly valuable and even manufacturing in the UK is increasingly IP-based.
2. The creative industries, along with the financial sectors, are the key to economic prosperity in modern economies. As the knowledge economy becomes the main driver for growth and employment, it is the intangible assets which will underpin economic success in the future. This can be seen in the high productivity and value added of the creative industries delivering benefits for the rest of the economy.
3. As a source of repertoire globally, the UK is a world leader, second only to the USA. This puts the UK centre stage when it comes to music that the world wants to listen to – valuable positioning for UK as the world’s creative hub. The other contender is clearly the USA. Meanwhile, the emerging economies of China and India are showing increasing interest in the creative industries and the value they bring.
4. In the domestic market, the music industry is similarly strong as one of the UK’s economic successes. Domestic expenditure on music totals almost £5 billion<sup>4</sup> a year and music activities generate the equivalent of 126,000 full-time jobs in the UK. The UK is the third largest market in the world for sales of music, behind only the USA and Japan<sup>5</sup>. Sales in the UK amounted to 10.4% of all music sold globally in 2004.
5. Like the other creative industries, the music business is based on copyright. Copyright grants ownership which, in turn, creates value.
6. The assets that the UK music industry is built on are the recordings it has made over many years and the new recordings in which record companies continue to invest millions of pounds. The industry’s ability to continue to grow and invest in new recordings is underpinned by the protection of copyright law. In a converging world, it is IP rights which allow content to have value, an increasingly important factor for everyone in the value chain<sup>6</sup>. There is a direct correlation between the overall effectiveness of a country’s copyright regime and its success as a global producer of creative content.

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<sup>3</sup> *The Contribution of Copyright and Related Rights to the European Economy*, Turku School of Economics and Administration, 2003.

[http://ec.europa.eu/internal\\_market/copyright/docs/studies/etd2002b53001e34\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/etd2002b53001e34_en.pdf)

<sup>4</sup> *Counting the Notes*, National Music Council, 2002.

<sup>5</sup> It is interesting to note that although the USA and Japan have the largest domestic markets for music, their performance globally is very different. The USA, which has a favourable copyright regime, is the largest repertoire producer in the world. Japan, with a less favourable copyright regime, is less successful as a producer, even within the Asian market.

<sup>6</sup> See *Capitalising on Convergence*, Intellect Digital Convergence Council, July 2005.

7. PPL<sup>7</sup> and VPL<sup>8</sup> are playing a role in the move to the knowledge economy. Generating almost £100m in royalties for performers and record companies, we are growing to meet the proliferation of music use in public and the online demands. The collective licensing approach of PPL and VPL provides economic efficiencies to rightholders and music users alike, as well as a model for growth and competition in an economy based on intangibles<sup>9</sup>.

## **B. GOVERNMENT ROLE**

8. With the UK's creative sector, and the music industry in particular, so successful on a global scale, it begs the question as to what role the Government can and should play. Creative businesses have proved themselves adaptable, flexible, entrepreneurial and ready to meet new challenges. Throughout the digital revolution, the UK music industry has increased its market share, both domestically and globally. But music companies cannot close the gaps in copyright legislation, cannot enforce general law, cannot be expected to compete successfully on an unlevel playing field and cannot raise finance in an environment that does not value intangibles.
9. This is where Government has a role, by providing complete copyright legislation, properly enforced, by making the value of creativity a naturally understood part of society through education, and by establishing a favourable business environment for creative companies and individuals.
10. In order to do this, Government must understand what makes creative businesses survive and thrive so that legislation, regulation and public services can be tailored appropriately.
11. The Working Group Reports have attempted to map out a role for Government from the perspective of the public sector bodies. Our response tests those against the clear role outlined above. However, having had the public sector input, it would be most productive for the remainder of the Creative Economy Programme to take a business perspective to Government's role through working directly with the creative sector.

## **C. WORKING GROUP REPORTS**

12. With two notable exceptions, the analysis within the seven Reports is broadly accurate, albeit from a public sector perspective. The exceptions are the Competition & IP and the Evidence & Analysis Reports.
13. The Competition & IP Report seems to be based on the premise that there is an endemic problem with trading in copyrights and that the solution is to weaken

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<sup>7</sup> PPL is the UK collecting society licensing on behalf of 40,000 performers and 3,000 record companies. See Appendix B for more details.

<sup>8</sup> VPL is the UK collecting society licensing on behalf of 1,000 music video producers. See Appendix B for more details.

<sup>9</sup> See *Music Collecting Societies*, PwC, June 2005

copyright and insert public sector intermediaries into the process. That is not evidenced in the music industry (nor indeed in other creative industries). There is a huge amount of trading in copyrights, both in volume and in value. Furthermore, far from encouraging trade, any weakening of copyright legislation (for example by expanding exceptions) leads to less trade in copyright, not more.

14. The Evidence & Analysis Report similarly reveals a lack of understanding of the sector. Statements such as ‘...individually the sectors are unlikely to be ... important...’, ‘...it seems likely that it is efficient for firms at the top of the supply chain to remain small...’ and ‘...growth of individual SMEs is not a practical policy aim...’ simply do not stack up against the evidence of the music industry.
15. The Working Group Final Reports contain a large number of recommendations, priorities for action and statements of intent. Others will no doubt comment in more detail. We will simply identify below those which are likely to make a difference, as well as those which could be damaging to creative businesses.

#### **D. GOVERNMENT ROLE – COPYRIGHT**

16. In our introduction, we outlined three areas where Government has a role in relation to the creative industries – copyright, education and business environment. In the next three sections we identify those recommendations which would, either as they stand or after amendment, contribute to the growth of creative businesses and the sector, responding to the question in the consultation ‘*Could these recommendations be a key driver to generate more productivity in the Creative Industries?*’
17. Unfortunately, there are no recommendations in the Working Group Reports relating to copyright which would assist the creative industries.

#### **E. GOVERNMENT ROLE – EDUCATION**

18. Turning to education, there are a few recommendations which could be helpful. The first concerns secondary level education, the review of GCSE and GCE AS/A Level Subject Criteria and the development of the new Creative and Media Diploma for 14 to 19-year olds.

*Employers in the creative Industries, trade unions and all relevant public agencies and educational institutions should be involved at different levels – curriculum consultation, delivery and implementation - of the 14 – 19 Creative and Media Diploma and the current review of the GCSE and GCE AS/A Level Subject Criteria in relation to wider curriculum delivery and progression routes to FE/HE. (Education & Skills Group)*

19. Just as the economy is shifting from a physical base to an IP base, so education is changing to prepare young people for the new environment. This is a significant change which affects not just the subject matter, but also the learning and teaching styles. The creative sector is structured differently from traditional industries. There are more freelancers and even employees are expected to show more self-reliance in managing a portfolio career. The learning style for young people wanting to work within the creative economy should reflect that environment,

particularly in the later stages of education and training. Industry input to the curriculum can assist in that process, as envisaged by this recommendation.

20. Likewise, the notion of partnerships between FE/HE institutions and creative businesses is to be welcomed.

*Current models of effective partnerships between FE/HE and the creative industry businesses should be built upon and disseminated across the creative industries and education sectors. These include: education institutions that develop their curriculum in partnership with industry, e.g. industry recognised 'centres of excellence' and other good models of provision; Higher Education Institutions (HEIs) that engage in research based knowledge exchange with industry for the purposes of sustaining innovation in the Creative Industries via existing and new appropriate knowledge transfer support models e.g. Knowledge Transfer Partnerships, Knowledge Catalyst and Knowledge Transfer or Research Networks; considering the creation of MBAs in the creative industries after having assessed the applicability of current provision. (Education & Skills Group)*

21. The Education & Skills Group also identified a lack of coordination between DCMS and the education sector. This is symptomatic of a wider problem, which we address later in this response. However, this recommendation would certainly help the education sector in the shift towards addressing the new creative economic environment.

*DCMS establish a senior department lead to oversee and liaise on Education and Skills in order to reach a more coherent and strategic approach across its divisions that relate to the creative industries and to facilitate better cross departmental links. Closer liaison is required between Sector Skills Councils and the strategic alignment of priorities and resources for DCMS supported Non-Departmental Public Bodies, and other public sector sponsored organisations and councils towards supporting and sharing joined-up best practice. (Education & Skills Group)*

## **F. GOVERNMENT ROLE – BUSINESS ENVIRONMENT**

22. The third of the three core roles for Government concerns the business environment. This encompasses everything from basic business support services to a competitive tax regime. These items will be covered in more detail by others in the music industry, but a few observations may be helpful.
23. Business support was addressed by several of the Working Groups, with slightly differing results. The key to business support services is the link with the industry. Business support services are generally staffed by people with little or no direct experience of the creative industries. This is perhaps unsurprising given that those working in creative businesses are devoting their time and energy to economic and creative activity with limited time available for advising others. Whilst there are many within the music industry who do in fact make time to offer advice to others, that resource is necessarily limited and should be used wisely.
24. The Access to Finance and Business Support Group adopted the idea of channelling industry input directly through to a network of business support services. They recommended:

*The establishment of a standing body for the creative industries in order to ensure greater coordination across the various sectors and to act as a focal point for creative businesses seeking information, with representation from industry, a range of Central Government Departments, Non-Departmental Public Bodies, sectoral trade associations and other key organisations and networks in the creative industries. (Access to Finance and Business Support Group)*

25. The Technology Group has an alternative solution to the same issue.

*The creation of a “business support” internet portal providing summary information for creative industries participants covering relevant creative industries legislation, funding sources, government contacts, a creative industries directory and other information. This portal would be managed by the creative industries and provide a front door access point to existing information relevant to the creative industries at both a national and regional level. (Technology Group)*

26. The Competition & IP Group covers the same issue from a different angle and recommends:

*A complete re-assessment of business education in the creative sector, from college to practitioner courses is a competitive necessity. Business courses should be tailored to the needs and motivations of creative businesses. Networks that permit the sharing of information and best practice must be fostered by means of an infrastructure fund for sustaining Creative Business Networks at local level – principally membership secretariat and venue management that can be shared across many groups. Fiscal incentives should be introduced for investment in management development. (Competition & IP Group)*

27. Adopting yet another approach, the Education & Skills Group recommends:

*Advice and guidance provision and services to the Creative Industries workforce should be informed by the industry and incorporate industry input, sector intelligence, business skills and intellectual property awareness; funding should be made available for industry practitioners to be trained and work as specialist advisors. (Education & Skills Group)*

28. These recommendations presuppose that the various business support services are coordinated and work closely with trade bodies so that industry input can be utilised effectively. This concept is welcomed but clearly more thought needs to go into how it can be achieved.

29. The Access to Finance and Business Support Group picked up on the exclusion of IP-based businesses from incentive schemes such as the Enterprise Investment Scheme.

*It is also essential for the creative industries that there should be a review of qualifying trades for Enterprise Investment Scheme (EIS), Small Firm Loan Guarantee Scheme and Venture Capital Trusts, so that IP/royalty-based businesses are eligible. (Access to Finance and Business Support Group)*

30. Omitted from this list is the R&D Tax Credit scheme which benefits technology companies but does not incentivise investment in creativity. The Treasury should review this and other anomalies to ensure that the tax regime for creative businesses in the UK is competitive vis-à-vis other major economies.

31. Looking overseas, the Government has a role in export promotion, handled well in recent years by UK Trade & Investment. The key here has been close working with the industry, including an industry executive working within the UKTI team. For example, a UKTI trade mission and industry seminar in India facilitated the signing of a bilateral agreement between PPL in the UK and PPL India. This bilateral agreement exchanges repertoire rights between the two licensing societies so that PPL India can license UK repertoire in India and PPL (UK) can license Indian repertoire in the UK. This agreement is one of a network of over twenty bilaterals enabling UK independent record companies and performers to receive airplay royalties from around the world.
32. The Competition & IP Group touch on the importance of UK creative exports in their report. While leading creatives may not always be the best ambassadors, the notion of promoting UK creative talent is to be welcomed. They recommended that:

*Leading creatives for the UK abroad should be identified and appointed as UK Creative Ambassadors. They would be involved in Government-led promotion of UK creative expertise in their country; and in feeding knowledge back to the UK through lecturing and speaking to creative businesses and students when they visited. (Competition & IP Group)*
33. The Infrastructure Group also address the export agenda with their proposal for a World Creative Economy Forum. There is little detail in the Report, but this does sound like an idea worth pursuing as a way of developing the UK's position as the world's creative hub.

## **G. POLICY-MAKING FOR THE CREATIVE SECTOR**

34. In order for Government to fulfil its role in copyright, education and business environment, two things are essential. They are an understanding of the economic drivers of the business, through valid statistical analysis, and informed policy-making across departments and agencies.
35. The Evidence & Analysis Group rightly concluded that:

*In the longer-term, Government needs to develop a much broader evidence base. Further work should be undertaken to develop a prioritized research plan and how more accurate economic estimates can be produced. Evidence should not focus purely on the economic contribution creative industries make to the economy. This is important and refining the use of official statistics is important, however it won't help Government decide whether it should intervene or how it should intervene. Greater effort should be put into understanding the sectors in more detail, monitoring trends and establishing the case for (or against) Government intervention. (Evidence & Analysis Group)*
36. The Treasury is the obvious department to integrate statistical and economic analysis of the creative sector in relation to the economy as a whole.
37. Understanding the creative industries and using that to inform policy-making is perhaps a bigger challenge for Government. At the moment, this function is split across different departments with varying levels of engagement with and

understanding of the sector. The music industry has direct experience of this, engaging in dialogue with many different sections of Government with the frustration that there is little cumulation of knowledge. This problem is highlighted by the Evidence & Analysis Group:

*Creative industries policy development needs to be coordinated across Government. For example, DCMS' role may be to ensure creative talent is developed, networks are supported and sufficient evidence is collected. However, the success of the creative industries will be driven by other Government policies such as tax, regulation, competition and planning. One Government Department should take responsibility for collecting data, and providing a cross sector view on the impact of different Government policies. This needs to be viewed from an international perspective.* (Evidence & Analysis Group)

38. Copyright legislation is so fundamental to the creative industries (and so valuable to UK plc) that this area warrants dedicated attention by Government. At the moment, copyright policy is an adjunct to the Patent Office, an operational agency based in Newport<sup>10</sup>. One solution may be a Copyright Office within Government with the express aim of safeguarding and growing the UK's copyright assets and interests. This would help inform other Government departments and the wider business sector of the value of copyright to the UK. It could also be the trigger for the UK to resume its position as a lead player in international discussions and negotiations on copyright.
39. A Copyright Office would need to be closely linked to the creative industries and be an integral part of Government's overall functions in relation to the creative sector. This too needs addressing so there is clear focus, together with responsibility and accountability for the creative industries within Whitehall. This would assist in framing general policy-making (for example planning or education) with the creative sector in mind. It would also provide a clear direction for export policy and international trade negotiations, now so critical to creative businesses.

## **H. NEGATIVE IMPACT OF RECOMMENDATIONS**

40. As well as asking which recommendations would help drive growth, the consultation invites responses on the impact of the Working Groups' proposals – '*If implemented what impact would any of these recommendations have on you or your business, or businesses in the sector you represent? Could they be altered in any way to improve impact?*'. In this section, we highlight those recommendations which would, if implemented, have a detrimental effect on the creative sector.
41. As noted above, the Competition & IP Group's analysis seemed to be based on some false assumptions and these lead to some potentially damaging recommendations. The Group states for example that there is an endemic problem with trading in copyrights. They go on to claim that the copyright libraries currently perform a function as third party mediators for ownership, trading and access of copyright. These statements are not true for the music industry, nor indeed for the other successful creative industries. There is a huge amount of

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<sup>10</sup> The Patent Office is an agency responsible for registering patents, designs and trade marks. It is not entirely clear that it has a policy-making function. In this year's Patent Office Annual Review (a 70-page document), there is nothing about the Patent Office's copyright activities.

trading in copyrights, both in volume and in value, and the copyright libraries have no role in this activity.

42. It is hardly surprising then that some of their conclusions would not help the creative industries. They conclude for example that public sector intermediaries should have a brokerage role in trading digital assets. Of most concern is their proposal to weaken copyright (for example by extending exceptions), which would simply lead to less trade and a devaluing of the UK's digital assets.

43. The recommendations based on these incorrect conclusions are:

*A new clear, understandable framework for the standards for the terminology, management and trading of IP assets is vital for the creative industries. In the light of the rapid progress of digitalisation and based on the experience of copyright, it is clear that a liquid market for digital IP requires trusted third parties mediating ownership, trading and access. This has been the task of the copyright libraries. Such a framework could well create a significant competitive advantage for the creative industries. (Competition & IP Group)*

*Standards should be developed for the terminology, management and trading of IP assets (similar to the Spectrum standard for museum artefacts or Copyright law for printed assets). (Competition & IP Group)*

*Create trusted third parties in digital IP ownership and trading to improve liquidity in the markets for digital IP (as has emerged in artefacts and print). (Competition & IP Group)*

*There is clearly a role for Government in developed, well balanced and targeted intellectual property rights policy. Government needs to keep a watching brief on technological and international changes to inform its policy debate, and respond quickly to the changing environment. (Competition & IP Group)*

44. If there is any intention for DCMS to adopt these or similar recommendations, we would be willing to elaborate on their consequences.

45. One recommendation from this Group warrants particular comment. That is:

*The establishment of a programme to digitally link all publicly owned audio, and audiovisual archives, databases and collections, in order to provide: (i) A source of creative inspiration and reference for the creative industries; and (ii) Public value to UK citizens who will be better able to access publicly owned assets and data and collections. (Competition & IP Group)*

46. At first sight this might sound like an attractive proposition – more material, more available, all for free. Therein lies the Trojan horse. The publicly owned audio and audiovisual archives, databases and collections are one segment of a market. Traditionally, these archives have been just that – archives where a single or limited number of copies are retained as a record of our society's heritage. Once these archives are distributed and made available, they enter the creative industries' market. If they undercut that market (for example by providing free product), they will reduce supply from other sources and, in some cases, foreclose a market entirely. Furthermore, these effects are multiplied. As private supply reduces and the public sector assumes a greater role, the costs to the public sector increase as the economic and tax benefits from the private sector diminish.

47. Solutions have been found. For example, the Ordnance Survey is a public body with a valuable and unique body of assets. There is public demand for their information as well as opportunities for economic activity based on their core data. To address this, the Ordnance Survey has been given a commercial objective. The results speak for themselves. They offer the general public specific pieces of information free to download (eg a map of their area), similar to the way many commercial companies offer limited product free to consumers. Businesses can access more data and use that to add value and develop their own products on payment of a licence fee. This facility has spawned a myriad of business opportunities which have added value to the Ordnance Survey's core data. As a final benefit, the Ordnance Survey costs the taxpayer nothing. In fact, it returns a surplus to the Exchequer which reduces the overall tax burden.
48. In our submission to DCMS on the BBC White Paper, we proposed a simple rule of thumb which would help manage the making available of public archives within the market context. We suggested that if the market is charging for a particular service or online product, then public sector bodies should adopt a similar charging policy. That would facilitate retaining overall plurality of supply, citizen access and business opportunities. It would also reduce the cost of providing these public services and, in the case of valuable assets (such as the BBC archive), would generate a surplus for the public good.

## **I. CONCLUSION**

49. There are a number of recommendations in the Working Groups' Reports which, if developed, would assist the creative industries. Equally, there are a few which would be detrimental and these should not be pursued. In this submission, we have identified some omissions which should form part of the Creative Economy Programme.
50. In general, it is encouraging that the public sectors, through the Working Groups, have demonstrated an eagerness to engage with the creative industries and that they clearly want to find a role for the public bodies in the growth of the creative sector. That role, and the wider policy-making strategy for Government is best determined in conjunction with industry. We propose therefore that the final phase of the Creative Economy Programme concentrates on defining creative industries policy with industry.

**PPL/VPL**  
**September 2006**

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## Briefing note on PPL and VPL

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### PPL Facts and Figures

- Licenses on behalf of 3,000 record companies and 40,000 performers.
- Licenses 200 TV channels and 300 radio stations broadcasting recorded music, as well as over 200,000 pubs, nightclubs, restaurants, shops and other places playing recorded music in public.
- Has negotiated bilateral agreements with 20 other collecting societies to collect overseas airplay royalties.
- Collected £86.5m in airplay royalties for performers and record companies in 2005.
- Distributes revenue using a comprehensive track-based system – analysing over 17m uses of recorded music reported by TV and radio stations, background music suppliers and venues playing recorded music in public. All track plays are matched to PPL's repertoire database CatCo, containing information on 7m tracks.
- Distributes to all the performers – featured artists, session musicians and backing vocalists – as well as the record companies that create the sound recordings that are played.
- Is the largest performer/producer licensing society in the world.

### PPL Recent Achievements

- In 2005, achieved a 5.4% growth in net revenue for the rightholders.
- In the last five years, has increased net revenue by nearly 40%, generating an additional £20m payable to record companies and performers, and almost halved the cost/revenue ratio.
- In 2005, PPL's CatCo was selected as the database underpinning the official combined download and singles chart.
- Signed the IFPI Simulcast Agreement in 2002 and the Webcast Agreement in 2003 paving the way for multi-territorial licences.

## **PPL and Performers**

- In 2001, set up the Performers Forum with AURA, Equity, MPG, MU and PAMRA.
- Located several thousand artists due royalties as a result of the joint RoyaltiesReunited campaign.
- In 2003, signed two Memorandums of Understanding laying down the principles for closer cooperation and collection of overseas airplay royalties.
- In 2006, obtained clearance from the OFT to merge performer operations and amended PPL's Articles of Association to create a new structure for PPL, integrating collection and distribution of UK and overseas royalties for all performers. The new structure provides four Performer Director positions and creates a Performer Board to oversee performer business.

## **VPL Facts and Figures**

- Represents 1,000 music video producers.
- Licenses 60 TV channels broadcasting music videos, including 25 specialist music channels.
- Licenses around 2,000 pubs, nightclubs and other places playing music videos in public.
- Collected £12.8m in airplay royalties for music video producers in 2005.
- Analyses usage information from TV stations and background music services for distribution to rightholders.
- Offers a sourcing service, Music Mall, for back catalogue video clips and other footage.
- Is the largest music video licensing society in the world.

## **VPL Recent Achievements**

- Recently concluded a licence with MTV on behalf of independent companies throughout Europe.
- Concluded licence arrangements for new video on demand services, such as Home Choice, NTL and Telewest, and the new store forward and narrowcast services.
- Announced a video digitisation project to provide online delivery of music videos to users.

## **September 2006**