

Lord Stephen Carter of Barnes  
Minister for Communications, Technology and Broadcasting  
Department for Culture Media and Sport / Department for Business,  
Enterprise Regulatory & Reform (BERR)  
2-4 Cockspur Street  
London SW1Y 5DH

10 March 2009

Dear Lord Carter

## **DIGITAL BRITAIN INTERIM REPORT**

As you will be aware, Equity is a trade union representing 37,000 performers and creative personnel who work across the whole spectrum of entertainment in the UK. Our members work in a range of media and the creative industries including visual broadcasts, sound recordings and film, principally in drama, comedy or entertainment roles.

Any decisions regarding the future of digital information and communications sector will have a direct impact on the production, distribution and funding of our members work, as well as the creative process and the content of programmes in which they are involved.

This submission does not provide a response to all of the issues raised in the interim report, but seeks to address the matters most relevant to Equity's membership. These issues fall broadly into the categories of support for UK content and copyright matters relating to illegal file sharing.

## **SUPPORT FOR UK CONTENT**

1. Equity maintains a strong interest in the future of UK content and has made numerous submissions to Ofcom as part of its review of public service broadcasting. The most recent submission to Phase 2 of the Ofcom review is available at:  
[http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/responses/eq.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/responses/eq.pdf)
2. The Ofcom review identified particular challenges to the provision of original PSB programmes and the role of commercially funded PSB broadcasters (ITV, Channel 4 and Five). In recent years these channels

have seen advertising revenues fall, audiences fragment as digital channels and new media expand, and the value of their airwaves (spectrum) plummet. As a result Ofcom estimates that broadcasters will have a funding gap of £145m to £235m by 2012.

3. Consequently original production is declining in key genres like UK children's programming and local news, with ever greater pressure on the production of high quality drama. This is particularly evident from the recent announcements by ITV regarding job cuts and plans to reduce production and end making a number of key dramas.
4. Equity's position on these matters is guided by the need to ensure that both the BBC and commercial broadcasters can continue to contribute positively to producing original British programming as much as possible in the digital age. The broadest possible range of UK content provides competition for quality, is in the interests of audiences and the future of the broadcasting industry.
5. In particular the BBC plays a key role as the cornerstone of PSB, providing a broad range of programming for audiences and supporting the creative industries. The BBC is the biggest employer of performers in the UK and the main provider of education and training.
6. The role of the main broadcasters in original production is also vital because – despite the explosion of new channels – the vast majority of television production in the UK still comes from these main broadcasters. Only 10% of spending on UK production comes from other digital and satellite channels broadcasters. Instead these channels rely upon a combination of investment in sports rights, film rights and content produced originally by public service broadcasters, rather than putting anything back in terms of original content.
7. The decline in original production by the main broadcasters and the failure of digital and satellite channels broadcasters to invest in original content has created a crisis in British broadcasting – and consideration of new structures and models of funding.
8. Equity has commented on these issues at length as part of the Ofcom review, but essentially we would favour a much more detailed examination and consideration of industry levies to support original UK content. There are a number of potential forms for such a levy, including those on recording equipment/blank media; retransmissions; non-PSB broadcasters and new media.
9. Industry levies offer the opportunity to use significant new income streams to address the PSB funding gap. We urge you 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). Exploration of these options should not be prevented 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.

## **COPYRIGHT ISSUES/ FILESHARING**

10. The emphasis that the report places on helping those who develop and produce valuable and inspirational content to secure a return on the investments they make is an essential pre-requisite to a healthy creative sector in the long term, and we share your department's concern that this ability is being placed in jeopardy by rampant illegal peer to peer (P2P) file-sharing.
11. Equity approaches the problem, as one may expect, from the position of an organisation with a mandate to protect the jobs base in the industries we represent. Unnecessary barriers to cost recovery in the entertainment industries have already cost jobs in, for example, TV and film productions not made, but this problem will only get worse as technology advances.
12. You and your colleagues may have seen the media coverage just before Christmas of a report by Europe Economics that confirmed up to 800,000 jobs in the creative industries are under threat from challenges including illegal P2P<sup>1</sup>. This threat hovers like a menace over the investment decisions our members' employers make, and was, we presume, the driving force behind your predecessor's welcome commitment in July 2008 to seek a reduction in illegal P2P of the order of 75-80% within two or three years.
13. Not only are there significant numbers of jobs at stake among rights owning businesses in film, music and so on, as various analyses by Government departments have noted in recent years.<sup>2</sup> Workforce representatives within internet service providers share our concerns and are quite clear that job creation within the technology providers also stands to benefit from the elimination of illegal P2P.
14. There will be others in the public debate best placed to advise you on what precise mechanisms the Government should put in place in order to achieve that reduction. Notwithstanding that caveat, we feel obliged to register a serious concern about the public policy implications of the significant volumes of end-user litigation to which your current policy prescription will give rise.
15. You rightly consider the process of notice sending (which ISPs would be required by law to do) to be a useful means of whittling down the total number of illegal file-sharers, but in concluding that this would then render it possible for rights owners to 'pursue targeted legal action against repeat infringers' you ignore the fact that this would amount to hundreds of thousands of individual damages claims in the civil courts. Quite apart from the fact that this would take huge amounts of court time and public money

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<sup>1</sup> Europe Economics: *The UK film, TV, music and software sectors: their importance to employment and output*. 2008

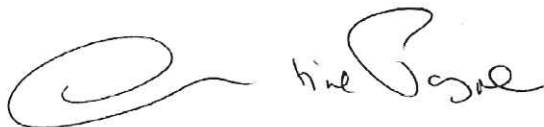
<sup>2</sup> DCMS/Work Foundation: *Staying Ahead, the economic performance of the UK creative industries*. 2007.

(since defendants would be entitled to legal aid), we think it would be a disproportionate response to a problem that could be resolved with measures that fall short of such severe legal action.

16. In the representations that others will make as part of the Digital Britain process, you will no doubt be told that it is impossible for ISPs to act to remove illegal/unlawful content from their networks. And yet, as you will no doubt know from your own experience as an internet user, ISPs already monitor the traffic on their networks, and remove all manner of content that damages consumers or infringes various laws: from their approach to blocking viruses and spyware right through to the way they trace child pornography and other digital contraband, ISPs long ago abandoned the pretence that because they were merely the conduit for packets of information for which they can take no responsibility.
17. It is for this reason that you should treat with some suspicion claims from the ISP lobby that there are civil liberties concerns in doing what the rights owners are suggesting by way of remedy for the current situation; that is to say, requiring ISPs to have in place measures that will effectively remove illegal P2P from their networks. Our view is that no such civil liberties concerns arise beyond that which exist already in ISPs' current modus operandi and, of course, no ISP is claiming that it should not act as it currently does.

As set out above, Equity stands ready to assist in the further stages of the Digital Britain review in any way we can.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Christine Payne', written in a cursive style.

**Christine Payne**  
**General Secretary**