

# *Federation of Entertainment Unions*

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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

9 March 2009

Dear Lord Carter

## **DIGITAL BRITAIN INTERIM REPORT**

This note comprises the views of the Federation of Entertainment Unions in respect of the recommendations made in your interim report on Digital Britain in January 2009.

We are grateful for the opportunity to make these representations and would be happy to develop the ideas contained within in greater detail or in person at your officials' request. I have numerated the points I make only for ease of reference.

1. The FEU is a grouping of UK trades unions in the entertainment and media sectors – comprising Equity, the Musicians' Union, BECTU, the NUJ, the Writers' Guild, Unite and the PFA. It campaigns on issues of common concern across the sector. Among our recent campaigns have been initiatives on the Ofcom review of public service broadcasting, BBC Charter Renewal, British film production and on training and equality issues.
2. We noted with interest the publication of the interim Digital Britain report and our organisations share a number of concerns on the broad range of issues that are raised. In particular, in terms of public service broadcasting, the FEU unions recently submitted detailed responses to the latest Ofcom consultation. Links to these submissions are provided at Appendix A.
3. In addition, we cautiously welcome the proposed 'rights agency' to combat piracy and support innovations that allow legal content distribution. If it operates in the right way, such an agency could be beneficial to rights holders. We look forward to hearing more detail on this proposal and we would be happy to be consulted further as this idea develops.
4. 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 and online piracy.

5. The FEU 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 – our organisations represent 130,000+ members working in entertainment, in trades ranging from make-up and sound engineering to set design, music and acting. 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.
6. 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 internet piracy and 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.
7. 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 and of internet piracy.
8. 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.
9. 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 downloaders and 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 (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.
10. 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,

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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.

ISPs long ago abandoned the pretence that because they were merely the conduit for packets of information for which they can take no responsibility.

11. 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 and download sites 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.
12. We should also say that we have our doubts about whether simply naming and shaming web providers into taking down offensive material will be enough. Certainly, given the example of Pirate Bay in Sweden, where user numbers grew almost five-fold after it was closed down in 2006 and where downloads of a controversial childrens' autopsy pictures skyrocketed after the media furore, it appears evident that something more than just naming and shaming will be required.
13. Finally, we also have concerns about the proposals to free up more radio spectrum suitable for next generation mobile services by supporting a pan-European alignment of the Digital Dividend Review Spectrum (Channel 61-69 band), since this will impact on Programme Making and Special Events (PMSE). We would urge the Government to liaise closely with the PMSE community on this issue, perhaps through the form of a working party group. We would certainly be able to advise the Government on where the greatest financial costs are likely to be and where the potential solutions may lie.

In the interests of clarity, I should also make clear that since these issues are not party political in nature, and as part of our commitment to open and transparent policymaking, we are copying this note to the opposition frontbench, (who we know to be considering the same issues that your department is wrestling with), and to certain interested Parliamentarians with whom we maintain ongoing relations.

As I set out above, we stand ready to assist your project in any way we can.

Yours sincerely



**Jeremy Dear**  
**Chair**  
**Federation of Entertainment Unions**

## APPENDIX A: RESPONSES TO OFCOM PSB REVIEW – PHASE 2

[http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/responses/bectu.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/responses/bectu.pdf)

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