

Response of Channel 5 Broadcasting Ltd (Five) to the *Digital Britain* Interim Report

Five welcomes the opportunity to comment on the interim report of the Digital Britain project. It is an ambitious document addressing a range of interlocking issues; we are pleased the government has seized the initiative in trying to force the pace and remove some of the roadblocks in the way of achieving a digital future for the whole of the UK.

Five and our parent company RTL are already engaged in detailed discussions with government over the future delivery of public service content. We do not attempt to go over that ground in this response, but to look instead at other issues of concern to Five.

DIGITAL NETWORKS

Five recognises the strategic importance of developing next generation networks. Consumers are going to look increasingly to the internet as the source of audio-visual content: they will expect to find more content of a higher quality being delivered on-line. As consumer demand grows for on-line media, especially video on demand, so the pressure on existing networks will increase and with it the need for further investment.

We believe this is an important area for the government to keep under review and to provide strategic leadership. However, we do not believe at this stage that there is a case for public intervention in the form of financial subsidy. We believe the government should see how the market develops before considering any such step.

We recognise the importance of mobile wireless networks in delivering broadband access now and in the future, and support initiatives by the government and Ofcom to use spectrum allocated to mobile network operators more efficiently. Release of the DDR spectrum can make a major contribution to this process – but that spectrum release is dependent on the successful completion of digital switchover. We would be concerned at any proposal that may disrupt the switchover process or reduce viewers' confidence in it.

Action 7

Because Five recognises the importance of moving towards a fully broadband Britain, we welcome moves to provide a return path capability in digital receivers made available through the Switchover Help Scheme.

Action 8

Five has been a full and active member of Digital UK from the start, and we believe it has proved very effective at co-ordinating switchover activity and disseminating information about switchover. While we are sympathetic to the idea of using Digital UK communications to help publicise broader awareness of other digital technologies where appropriate, we feel strongly that this must be secondary to the provision of key switchover messages. The main purpose of Digital UK's communications work is to alert consumers to the imminent switch-off of analogue terrestrial transmissions and the consequent need to acquire digital television. We believe it would be very unwise for this message to be confused by suggestions that other technologies, not essential for the reception of linear television, should be acquired by consumers as part of the same process.

DIGITAL CONTENT

The Economics of Digital Content

We find the government's analysis of the economics of the digital era accurate and compelling. The increase in number of outlets and reduction in the costs of copying, storage and distribution are making it much harder to sustain viable business models that can invest in high quality content that has both reach and impact among audiences. The current unprecedented economic conditions have exacerbated the effects of such structural changes. Together, they make it more difficult to develop advertising-funded business models that are free to all and provide a range of high quality and challenging content.

But Five believes linear television will continue to form an important part of people's lives for many years to come, even while they supplement TV viewing with exploration of on-demand and on-line content. We have also argued consistently that the government should seek to maintain a system of public service broadcasting, even if on a more modest scale than in the past, as tried and trusted institutions that reach large audiences are more likely to be able to fulfil public policy goals than new, untried arrangements that lack widespread consumer loyalty. Therefore, we are pleased that in the final report of its Review of Public Service Broadcasting Ofcom recommended that Five should continue as a public service channel, albeit on a more modest scale than in the past.

Investment in Content: Rights and Distribution

Five believes it is vital in the digital world to create a legal framework that is both certain and capable of being enforced. Failure to ensure that copyright law matches these requirements is likely to undermine the whole future of the creation, protection and exploitation of digital content.

Rights owners need to be confident the law is sufficiently certain when legal action is deemed necessary; a lack of certainty can lead to unnecessary legal costs, which may make any enforcement of legal rights prohibitively expensive. Further, legal rights needs to be capable of being enforced not only against those in the UK but

also in other jurisdictions. The nature of digital content, particularly when it is distributed over the internet, means that infringers can locate themselves or their hardware in jurisdictions where it is difficult or impossible to enforce legal rights. Without enforcement, legal rights and proceedings are worthless.

Five believes that, wherever there is ambiguity in the law, the UK government should clarify the legal position and where appropriate change the law to ensure any uncertainty is not exploited, particularly where the technological environment has moved far beyond what was envisaged by previous legislators.

Five believes it would be wrong to leave rights' owners to take legal action alone to ensure that rights are not infringed and to protect the digital market. Five supports the Government's stated commitment to (1) civil enforcement; (2) in serious cases criminal action; and (3) consumer education into the legal and economic repercussions of copyright infringement. All three are vital elements for the creation and maintenance of a successful digital environment and for ensuring the UK is a key digital content creation and exploitation hub.

Action 11

In principle, Five understands the stated high level benefits of a proposed Rights Agency to bring together interested parties to protect the digital environment and prevent copyright infringement. However, given the disparate and sometimes competing interests that exist in the market, it is difficult to identify the parameters of the "industry" referred to and whether its interests are indeed common. A Rights Agency may well have a key role to play in spearheading change, but it cannot be a replacement for a legal framework that is certain, practical, affordable, enforceable and accessible to all interested parties.

Action 12

Five is concerned as to how any proposed contributions by rights' owners to a new civil enforcement fund would be used. Any additional financial burden on rights' owners in a market which is currently still fragmented and uncertain must result in demonstrable benefits to all those who contribute. Questions about who would contribute, on what basis, and how contributing parties would benefit must be investigated in detail as part of the consideration of this proposal. We do not believe it would be appropriate to put any such contributions on a statutory basis, and would favour a voluntary system.

Action 13

Like the government and other rights owners, Five is particularly concerned by the profusion of illegal file sharing. While we appreciate the stated concerns of the ISPs about their customers and their activities, we believe that, where demonstrable and material infringing activity is taking place, the ISPs must assume responsibility and take reasonable steps to prevent it. As long as customers are fully aware of their own legal obligations and those of the ISP, subsequent proportionate action by the ISPs against infringers would be fair. Five supports the proposal to legislate to ensure that ISPs provide information about infringers. However, this must be coupled

with appropriate privacy and human rights protection for customers and a fair and proportionate process for dealing with infringers. Action could also be taken to advise consumers of which works are out of copyright and therefore which ones they run no risk in downloading or sharing.

Investment in Content: Original UK Content

Five has consistently argued for the maintenance of a system of public service broadcasting as the most effective way of making a diverse range of high quality content available to all viewers. We believe that, given our position as the youngest and smallest of the PSBs, we have made an important and tangible contribution to public service broadcasting. Since our launch 12 years ago, we have spent over £1 billion commissioning over one thousand different production companies. We have a popular and accessible news programme that has frequently pioneered new approaches in television news. We broadcast 22 hours of children's programmes every week, the great majority of them UK-made, and our *Milkshake* strand is widely recognised as the main competition to the BBC's CBeebies. We broadcast a wide range of original factual programmes in peak time, including documentary, science, history and current affairs.

Even though current cyclical and structural changes are making it more difficult to fulfil the full range of our programming ambitions, we see Five continuing to play a role as a mainstream provider of a mixed genre schedule and to make a distinctive contribution to public service broadcasting in the UK.

Five is pleased at the government's recognition that a surplus of advertising impacts is one of the key features undermining the traditional model for funding free-to-air television. We argued strongly in our submissions to Ofcom's reviews of television advertising and teleshopping regulation that the regulator should take action to reduce the overall amount of allowable advertising minutage, in order to dampen the expansion of advertising impacts and hence strengthen the funding base for public service broadcasting. We would be interested in any further proposals as to how the advertiser-funded model can be strengthened.

Action 15

Five welcomes the proposed review of the terms of trade regime introduced by the Communications Act. It is the public service broadcasters that deliver over 90% of original UK production (excluding sport) – but it is only the public service broadcasters whose terms of trade are subject to regulation. We believe that, in order to retain a viable model for original UK production, commercial broadcasters need to develop value in increasingly important on-line platforms. The current terms of trade regime limits the ability, particularly of publisher/broadcasters like Five, to invest as significantly as they might in original UK production.

The crucial role of broadcasters to aggregate, market, promote and distribute content to large audiences needs to be part of any forward analysis - together with a recognition of their input in the creation and execution of innovative ideas. We believe regulation of the terms of trade should be revised to better reflect the

changing balance of risk and reward in broadcaster-funded content, and to ensure incentives for broadcasters and producers are aligned. We would also want to see a commitment to engage in and help fund the fight against piracy from producers who retain programme rights or to whom rights revert.

Action 16

Five, together with our parent company RTL, is actively engaged in detailed discussions with government over the creation of a second public service organisation. We believe there is real public benefit to be gained from a strategic partnership involving both Five and Channel 4, and we remain committed to continuing these discussions.

UNIVERSAL CONNECTIVITY

Five applauds the government's determination to make broadband universally available. Such an ambition will lay the basis for a fully digital world in which all citizens are able to benefit from the wider provision of digital content. In the future, having broadband should be as natural and obvious as having a telephone or television is today.

We also believe the government is right to place the emphasis equally on the provision of broadband capability and the take-up of broadband by consumers. It is not enough to bring broadband to the door; residents need to open the door and invite it in.

We believe lessons can be learnt from the way digital television developed over the last decade. It was the provision of new sources of content in the form of new channels that persuaded people to go out and purchase digital receivers, particularly after the launch of Freeview. People got digital because it offered them more than they had before (indeed, an early driver of Freeview was from people outside Five's analogue coverage areas who wanted to receive the channel).

Similarly, it is the provision of on-line content and services that people feel will be of benefit to them that will drive broadband penetration beyond current levels. We believe the development of on-demand catch-up television services such as the BBC iPlayer and Demand Five are already making a real contribution to broadband take-up. Current plans being developed under the auspices of the BBC's partnership programme, including Project Canvas and the Marquee proposals, can have a step-like influence on take-up of on-demand services.

We endorse the proposal for the BBC to play a leading role in the take-up of broadband. We believe the BBC enjoys considerable public trust and has already shown the sort of technical and imaginative leadership that can push forward new ideas and applications.

EQUIPPING EVERYONE TO BENEFIT FROM DIGITAL BRITAIN

People who make little or no use of digital media and services need to develop skills and confidence if Digital Britain is to become a reality. We believe this should be the emphasis of media literacy work, and we welcome the proposal to draw up a National Media Literacy Plan.

We recognise the importance of providing a safe on-line environment for children and young people, and welcome the establishment of the UK Council for Child Internet Safety. In developing our own on-line and on-demand services, we have sought to follow best practice, and this is reflected in our membership of the Association of Television on Demand (ATVOD) and our adherence to its Code.

Channel 5 Broadcasting Ltd

March 2009