



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

**Government Response to
The Culture, Media and Sport Select
Committee's Report On Channel 4's
Annual Report: Third Report of
Session 2009-10**

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
March 2010*

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Introduction

The Government welcomes the report and has considered very carefully the evidence presented to the Committee. The Government notes the conclusions and recommendations set out in the report and is pleased to be able to present its response.

Recommendations 4 and 7-12 are for Channel 4 and the BBC to consider and it would be inappropriate for the Government to comment, given the broadcasters' independence.

Response to conclusions and recommendations

Digital Economy Bill

1. The impact on markets in which a public service broadcaster operates can be both positive and negative. Much concern has been expressed – including by this Committee – about the negative impact of the BBC as it has expanded both its public service and commercial activities. The extension of Channel 4's primary functions beyond the core PSB television channel, along with the growth of its non-PSB activities, means the market impact this public organisation has might increase significantly, raising questions about how this impact should be monitored and controlled. We recommend that the Government consider and address these issues now, during the passage of the Digital Economy Bill. (Paragraph 17)

The Government notes the Committee's concerns about the potential market impact of extending the Channel 4 Corporation's (C4C's) functions in the Digital Economy Bill. We considered the market impact of the new C4C functions during the formulation of these provisions, as part of the wider impact assessment published alongside the Bill (updated following the House of Lords stages of the Bill: <http://www.bis.gov.uk/assets/biscore/corporate/docs/d/10-810-digital-economy-bill-impact-assessments>).

As noted in the impact assessment, C4C already have general powers to carry out activities appropriate to and connected with its primary functions. C4C's additional digital TV channels and current new media services have been introduced under these powers, without any dedicated market impact review framework and without giving rise to significant concerns about their market impact.

The Government considers that the fundamental differences between C4C and the BBC, in terms of source and scale of funding, mean that conclusions cannot necessarily be drawn about appropriate levels of control for C4C services on the basis of concerns about the market impact of BBC services. Unlike the BBC, C4C receive no public funding and must compete in the market for their revenue. The principle is well established that C4C should seek to maximise commercial revenue, including by the development of additional services, in order to support the delivery of their public functions.

The new C4C functions introduced by the Bill do not extend C4C's existing powers. Instead, they provide a focus for C4C's provision of media content, and flexibility for them to rebalance their public service delivery across all digital platforms. This will enable C4C to respond to technological developments and audience expectations and thus maximise the impact and reach of their public service content.

C4C are, and will continue to be, bound by the Schedule 9 arrangements in the Communications Act 2003. These provide for arrangements approved by Ofcom to be in place for ensuring that all significant risks that commercial activities may have an adverse impact on the carrying out of C4C's primary functions are identified, evaluated and properly managed. C4C's primary functions will include the new duties introduced by the Bill. The requirements of the Schedule are enforceable by Ofcom.

The Government does not therefore consider that there is a need for additional mechanisms to monitor and control the market impact of C4C's services.

2. We agree that any expansion of Channel 4's remit, and any extension of its statutory public service activities to services beyond its single traditional PSB service, the main Channel 4 television channel, requires provisions for monitoring and enforcing the new functions. It is far from clear, however, that the monitoring and enforcement provisions proposed will be the most appropriate and effective means for achieving this. (Paragraph 22)

As the Committee notes, the Digital Economy Bill includes accountability and enforcement arrangements to ensure delivery of C4C's new obligations. These are based on the statements of programme policy regime for licensed public service broadcasters, under the Communications Act 2003. Under the new arrangements, C4C will be required to prepare annual statements of media content policy, setting out how they propose to discharge their functions in the coming year and reporting on their performance against the previous statement across their activities. These requirements are additional to the public impact report introduced voluntarily by C4C in 2009 as part of their Annual Report and Accounts, detailing the way in which C4C have delivered their remit and containing statistical information about delivery and impact on the core channel and across their other services.

Ofcom will have enforcement powers in relation to C4C's fulfilment of their new duties. Ofcom will also have a duty to review and report on the fulfilment of C4C's new duties at the same time as their reviews of the fulfilment of the public service remit under section 264 of the Communications Act.

The Government believes these are robust, reasonable and proportionate measures to ensure the delivery of C4C's new functions.

3. Nor is it clear that the existing governance framework for Channel 4 is the most appropriate for its proposed new status. While the BBC and Channel 4 retain different funding models, the evolution of both as publicly-owned, not-for-profit multichannel, multiplatform public service broadcasters, benefiting from direct and/or indirect public funding, calls into question the rationale for maintaining dramatically different governance systems. (Paragraph 23)

The new C4C functions in the Digital Economy Bill will not affect the status of C4C's additional services (i.e. those beyond the licensed public service channel), nor will such services receive any public funding or regulatory privileges. In addition, as explained above in relation to Recommendation 1, the Government considers that the differences between C4C and the BBC, in terms of scale and source of funding, make it difficult to draw any simple parallels in relation to governance arrangements.

The C4C Board is responsible for ensuring that the Corporation fulfils its remit and for overseeing its fiduciary responsibilities. Channel 4's Chairman and Non-Executive Directors are appointed by the independent regulator Ofcom, and subject to approval by the Secretary of State. The Board agrees C4C strategy and oversees publication of the Annual Report and Accounts and the Public Impact Report. The Schedule 9 arrangements described above in relation to Recommendation 1 provide Ofcom with powers to ensure that C4C's activities are appropriate and consistent with the fulfilment of their public functions. C4C therefore already have appropriate regulatory and governance arrangements in place.

Accordingly, the Government does not consider that a structural separation between the C4C Board and Executive, on the lines of the BBC model, is either necessary or proportionate.

5. Moreover, we find this lack of transparency on its digital channels incompatible with Channel 4's ambitions for them to be part of a public service network, as proposed in the Digital Economy Bill. (Paragraph 40)

As explained above in relation to Recommendation 3, the new C4C functions introduced by the Bill will not change the status of C4C's additional services, nor will these receive any public service privileges of the kind enjoyed by the licensed public service channel. C4C's new functions will give the Corporation the flexibility to deliver public service content across a range of platforms where they can most effectively deliver public value, and will allow Ofcom to take into account the role that these services play in contributing to the delivery of C4C's overall public purposes. However, these services will operate on a commercially self-funded basis, competing for revenue in the market with, for example, other commercial digital channel providers.

The Government understands that C4C have indicated to the Committee their concerns about the publication of certain information relating to their additional digital channels, on the grounds of commercial sensitivity, but that this information has been provided to the Committee in confidence, while aggregated data on C4C's digital-only services is published in the C4C Annual Report and Accounts.

The new statements of media content policy that the Bill introduces, as well as C4C's existing reporting mechanisms through the Annual Report and Public Impact Report will ensure transparency as regards the delivery of C4C's new functions.

6. While in principle we support the inclusion of a public service broadcasting requirement relating to older children in a revised Channel 4 remit, it is clear that Channel 4 did not achieve its aims of demonstrating via a pilot fund its capability to commission engaging content that connects with its intended audience, or successfully demonstrate what it could do with further resources. (Paragraph 49)

The Government notes the Committee's comments on the gap between C4C's ambitions, as set out in 'Next on 4', and achievement in relation to the provision of children's content. The context for this was the unprecedented decline in the TV advertising market that followed the announcement of C4C's proposals.

However, the Government remains committed to supporting the provision of public service content for children. One of the purposes of the new C4C functions is to focus C4C's public service activities on areas of particular public value where commercial provision is under pressure. We are giving C4C a specific obligation, which they have not had previously but which builds on their strong connection with younger audiences, to provide content that appeals to the tastes and interests of older children and young adults.

It will be for the C4C Board to decide how this new duty can best be fulfilled, in the light of the financial challenges facing Channel 4 as a commercially-funded entity.



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