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# Digital Britain

Assessing the policy framework for  
Public Service Rights

Scoping and Discussion Document

**PERSPECTIVE**

Part of the Ingenious Consulting Network

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## 1. Project scope

As part of the **Digital Britain** review, Perspective was asked to provide an initial assessment of the adequacy of the current policy framework covering the acquisition of rights in audiovisual content by commissioning Public Service Broadcasters (PSBs), and the sharing of value in their subsequent exploitation between the commissioned producers and the commissioning broadcasters.

We were also invited to consider whether there were broader issues in relation to the commissioning of digital content, and if so, to advise on how and where those issues might be addressed.

The primary purpose of this report is to scope out the potential issues and to serve as a discussion document to assist the Digital Britain team in determining where to focus its attention in relation to Action 15 in the interim report. This paper is therefore both fully independent of the Digital Britain report and intended to stimulate debate around the issues. The information is drawn from published sources, or material that has already been made available to the Digital Britain Steering Group.

The current policy framework was established in the 2003 Communications Act, which placed obligations on the PSBs to be transparent about the rights they wished to acquire and the prices they intended to pay. Importantly, these provisions only covered commissions made by PSBs: commissions for other broadcasters, and of other digital content, were not included in the regulatory framework.

Since 2003, however, the pace of change has accelerated: viewing has fragmented, with new platforms beginning to attract increasing levels of audience attention; advertising revenues have drifted away from broadcast services; and new technologies have developed that will erode the value of linear broadcast transmission.

This has led to increasing pressure, particularly on commercial public service broadcasters (ITV, Channel 4 and Five), who have found their traditional source of revenue eroded by competition – falling from roughly 80% of total advertising revenue in 2002 to two-thirds in 2007 – but who still face significant obligations to commission very high levels of original production. Overall, the PSBs still account for more than 90% of all UK television commissions. Securing a continuing high level of public service content is a key policy goal for government and regulator alike: and it is in this context that we have assessed whether the current policy framework has kept pace with change.

## 2. Key conclusions and challenges

Although we accept that the changing pattern of viewing may well lead to the value of PSB commissions being differently derived in future, with a shift away from ‘first viewing’ towards ‘first use’, we believe that broadcasters and producers should be able to negotiate effective arrangements which properly reflect this change without the need to change the current policy framework.

However, we recognise that this can only happen if the guidance with which the broadcaster codes must comply has kept pace with the developments of the market.

We also believe that consideration should be given to whether some aspects of the current policy framework could be applied to commissioning for purely on-line material.

And finally, we believe consideration should be given to whether there are other, copyright-related, sources of revenue that might be used to support the commissioning of high quality public service content.

From these conclusions, a number of challenges arise:

**Government** should:

- consider whether, and if so how, to encourage public bodies who commission public service content to develop their own codes of practice that reflect best practice in the commissioning of television content (*Section 10*); and
- determine how best to explore the scope and implications of new revenue streams that might derive from charges for ‘re-transmission’ and ‘re-use’ (*Section 9*).

**Ofcom** should:

- ensure their guidance is kept fully in step with market developments by committing to a regular review (*Sections 5 – 7*);
- support this with a more explicit analysis, perhaps contained within the annual Communications Market Survey, of rights acquisition and exploitation (*Sections 5 – 7*); and
- broaden the scope of their analysis, possibly by collaborating with Pact, to include consideration of non-PSB commissioning (*Section 8*).

The **BBC Trust** should:

- address the way the quota for commissions for *bbc.co.uk* is composed, and ensure that it meets fully the goals set out in the Graf review and accepted by the BBC Governors (*Section 10*);
- use that review to give consideration to the applicability of the WOCC to on-line as well as television commissioning (*Section 10*); and

- ensure that the role of syndication and other support and partnership for non-BBC services is one of the priorities for the BBC (*Section 10*).

**PSBs** should:

- operate with a presumption that they would apply the principles of their commissioning code to any demonstrably 'public service' content that they commission for their on-line services (*section 10*).

### 3. The 2003 intervention and its impact

Independent production has been an integral part of UK public service television since the creation of Channel 4. The independent production sector's role in supplying programmes for other channels was guaranteed by the statutory requirement, set out in the 1990 Broadcasting Act, that BBC and ITV should commission a minimum of 25% of their qualifying programmes<sup>1</sup> from independent producers. The grounds for this intervention were primarily to secure a diversity of programme sources with the goal of enriching the choice of programmes and editorial approaches available to UK audiences, as well as introducing a source of price competition to the incumbent broadcasters.

This policy was developed in the 2003 Communications Act, most significantly by the introduction of a set of provisions to regulate the way in which PSBs could acquire rights in the programmes they commissioned. This followed an investigation carried out by the Independent Television Commission, which noted several features of the UK programme market:

- On the demand side, in 2001 almost all investment in original programming (90%) came from the BBC, ITV, Channel 4 and Five. Total spending on programming on the network terrestrial channels had grown by over 6% per year on average since 1997 (a faster rate than the growth in revenues).
- On the supply side, the BBC accounted for about 35% of the market by turnover. Other broadcaster-related producers made up 30%; 50 medium-sized companies accounted for 25%; and around 500 small companies made up the remaining 10%.

The market therefore had two salient features from the independents' point of view: the highly concentrated buying power (or oligopsony) of the Public Service Broadcasters; and the diversely fragmented nature of the non-broadcaster supply side. As a result of this imbalance, the report concluded that most independents had no, or very limited, ability to borrow money to make programmes, and as a result were typically reliant on PSBs for providing the full funding of their productions. In return for this funding, the PSBs consequently tended to take all rights in the programmes they commissioned. As a result, the independents were generally left with no rights assets in their programmes and their dependent position was reinforced.

The principal concern of the ITC review was to look for ways to redress the market power imbalance, and through this to enable the independent production sector to become more self-sufficient (through the retention of rights assets) and to grow (through increased and potential revenues). The ITC considered that a threat to the standards, quality and diversity of content arose out of the unequal relationship between independent producers and the PSBs, rather than from the threat of a lack of PSB funding, which was not under the same pressure then that it is today. The regulators therefore focused on remedies to address the potentially anti-competitive relationship between broadcasters and independent producers, and the apparent market power of the PSBs.

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<sup>1</sup> Some categories of programmes, such as news programmes or acquired programmes, are excluded from the baseline calculation since they are not open to commission from external producers.

In the light of the ITC review, the 2003 Communications Act charged the new regulator, Ofcom, with requiring all PSB channels to put in place codes of practice setting out the principles which would be applied in commissioning independent productions. Among other less contentious requirements covering commissioning timetables and dispute resolution mechanism, the two key requirements in relation to the acquisition of rights were:

- that there should be clarity about the categories of rights being acquired under the commission and their periods of exclusivity; and
- that there should be sufficient transparency about the amounts to be paid in respect of each of those categories.

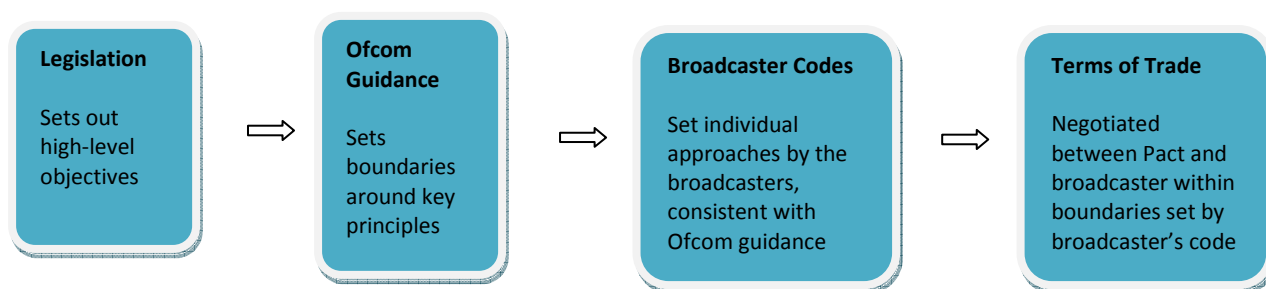
Ofcom was charged with putting in place its own guidance for the PSB channels which, while not required to set individual terms, were nevertheless to set out broad principles the channels would have to reflect in their codes. These included:

- that commissioning channels should set out prices for primary rights separately from other bundles; and
- that the indicative price ranges set out for these rights should generally cover the production cost of the programming concerned.

The guidance also defined ‘primary rights’ as those which were directly related to the initial broadcast on the commissioning PSB channel.

In line with Ofcom’s guidance, the PSBs each developed a Code of Practice covering the points required, and negotiated Terms of Trade, under which the commissions would generally be made, with the independent producers’ representative body, PACT.

The framework is described in the diagram below.



In 2006, Ofcom conducted its own review of the Television Production Sector<sup>2</sup>. While noting the strengthened position of the independent production sector as a result of the 2003 intervention, the review concluded that the level of regulatory intervention should, for the time being, remain at the status quo while independents continued to have limited routes to market through the PSBs. The review also pointed out, however, that new media and alternative distribution platforms would

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<sup>2</sup> [http://www.ofcom.org.uk/media/news/2006/01/nr\\_20060110a](http://www.ofcom.org.uk/media/news/2006/01/nr_20060110a)

become increasingly important as future distribution platforms. Ofcom set out possible options for integrating new media rights into the existing codes of practice, and encouraged producers and broadcasters to enter into discussions for the inclusion of some element of new media rights in the primary bundle. Further agreements between PACT and the PSBs were negotiated covering the inclusion of VoD rights in the primary package. These deals generally allocated 7-day catch-up rights (with longer windows for downloads) to the primary rights of the commissioning channels.

The current terms of trade agreements are summarised in the table below:

**PSB Broadcasters’ Terms of Trade for Various Rights**

<b>Revenue Streams</b>	<b>Rights Categories</b>	<b>Within License Period (Producer/Broadcaster)</b>	<b>Outside License Period (Producer/Broadcaster)</b>
<b>Primary Revenues</b>	Commissions	n/a	n/a
	Distribution Advance (pre-production)	n/a	n/a
<b>Secondary Revenues</b>	UK Secondary TV Sales	50/50 – 75/25	85/15
	Distribution Advance (post-production)	85/15	85/15
<b>Ancillary UK Revenues</b>	TV Phone Services	85/15	85/15
	DVD & Video Sales	85/15	85/15
	Publishing	85/15	85/15
	Mobile	85/15	85/15
	Video Games	85/15	85/15
	Library Sales	85/15	85/15
	Other Merchandising	85/15	85/15
<b>New Media Exploitation Revenues (UK and International)</b>	VoD (Free VoD)	50/50 – 75/25	85/15
	VoD (Subscription)	50/50 – 75/25	85/15
	PPV	?	?
	Download to Own	85/15	85/15
<b>International Revenues</b>	International finished programme sales	85/15	85/15
	Format Sales	85/15	85/15
	Ancillary Revenues	85/15	85/15

Source: PACT

The current regulatory framework within which Terms of Trade are now negotiated is credited with having achieved a significant impact on the commercial success of the independent production sector:

- No longer required routinely to assign the rights in perpetuity to the commissioning broadcaster, and always guaranteed that the rights will revert to them after their primary use, independent producers are now able to create more value in their companies through having assets they can show on their balance sheets. This has in itself contributed to the very significant level of consolidation in the independent market. The table below shows merger activity since 2006:

Holding Company	Production Companies
All3Media	South Pacific Pictures, North One TV, Lion TV, Lime Pictures, IDTV, Company Pictures, ARG TV, Cactus Films, All3Media International, Bentley Productions, Maverick Media, MME Movement
IMG	TWI, Tigress Productions, Tiger Aspect, Darlow Smithson Productions
RDF Media Group	Touchpaper Television, RDF Media, RDF International, Radar TV, IWC Media, The Comedy Unit, Presentable, Foundation TV Productions
Southern Star Group	Oxford Scientific Films, Darrell Macqueen, Carnival Films and Television
Tinopolis	Venner TV, Mentorn, Folio, Sunset & Vine Productions, Music Box, Tinopolis, Video Arts Group, APP Broadcast
Shed Productions Plc	Shed Productions, Ricochet, Outright Distribution, Twenty Twenty Vision, Wall to Wall
ITV Productions	12 Yard Productions
Endemol UK	Endemol, Cheetah, Initial, Zeppotron, Brighter Pictures, Showrunner, Hawkshead, Vicotira Real
Fremantle Media (RTL Group)	Fremantle Media, Talkback Thames, Grundy Productions, Regent Productions
DCD Media	Box TV, Done and Dusted, Iambic Productions, Prospect Pictures, Septemeber Films, West Park Pictures
Hit Entertainment	Hit Entertainment, Gullane Entertainment, Hit USA Production, Guinness World Records
Mediaset, de Mol	Endemol
Ten Alps Plc	Blakeway/3BM, Brook Lapping, Ten Alps TV, Production Co
The Zodiak Group	Bullseye TV, Diverse Productions UK and US
Two Way Traffic	Celador International
Shine	Shine, Firefly, Kudos, Princess

Source: Pact

- Rights retention may have helped in the 15% annual growth the independent production sector has seen since 2005. According to PACT’s industry survey, independents now make over 40% more on UK secondary rights than they did in 2005, and the figure for international rights has risen by nearly 50%.
- This growth has been experienced across the sector. The top 15 independents saw their revenues grow from £1.1bn in 2005 to £1.6bn in 2007. At the same time, smaller producers have also experienced growth, with non-top-15 revenues growing from £283m in 2005 to £569m by 2007.
- Producers have also been better able to retain more control in their own programming by borrowing money to bridge the gap in production costs left by the primary commission price, and taking responsibility for delivering the deficit financing themselves. Preliminary work by PACT suggests that gap financing at present stands at between £100m and £150m, largely in the form of distribution advances secured against the value of secondary and ancillary rights<sup>3</sup>.

Broadcasters have also had the opportunity to see some significant benefits as a result of the changes:

- By defining and paying only for primary rights, it appears that PSBs may have been better able to enjoy price flexibility. In formally restricting the broadcaster to paying for the primary rights bundle, the linkage between the value of those rights and the full cost of production has been weakened. This is evidenced by PACT figures for average cost-per-hour

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<sup>3</sup> Deficit financing by independent producers was a negligible part of the programme financing mix before the introduction of the 2003 terms of trade. Typically, the commissioning broadcaster’s distribution arm would make up this gap, contributing further commission funding in exchange for secondary and other rights.

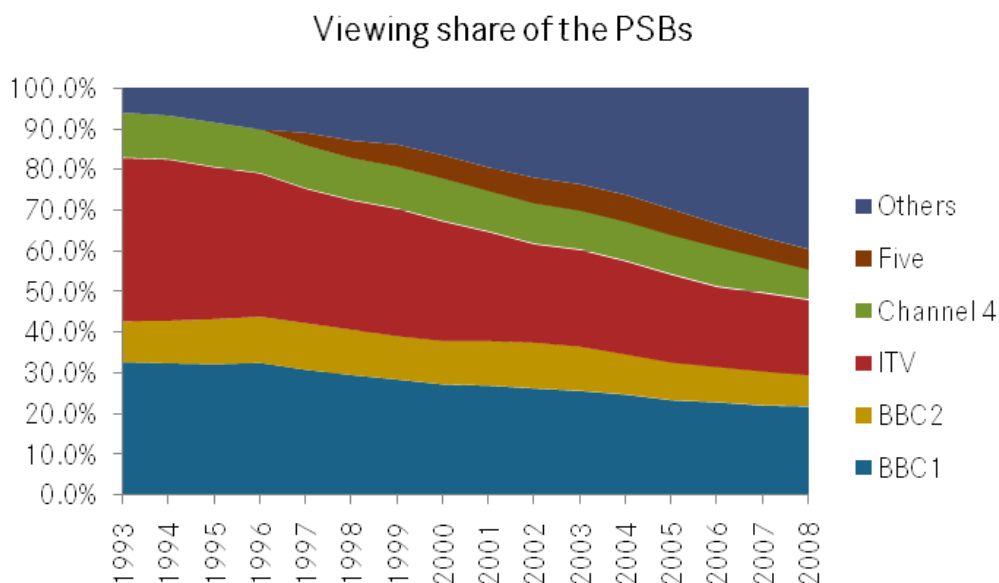
of originated programming on PSBs which show a fall of around 10% since the introduction of the new terms of trade.

- No longer having the guaranteed business from their related commissioning broadcasters, PSB-owned distributors may have been incentivised to become more competitive and efficient in order to win independent business. Although it is not possible to trace a direct link, it is nevertheless striking that BBC Worldwide has seen its operating margin increase year-on-year since 2004/05 (from 8.1% then, to 12.8% in 2007/08).

#### 4. Pressures on the current system

The context within which the PSBs operate has changed significantly since the 2003 Communications Act came into effect. There are two main drivers for the cyclical and structural change which has confronted the PSBs.

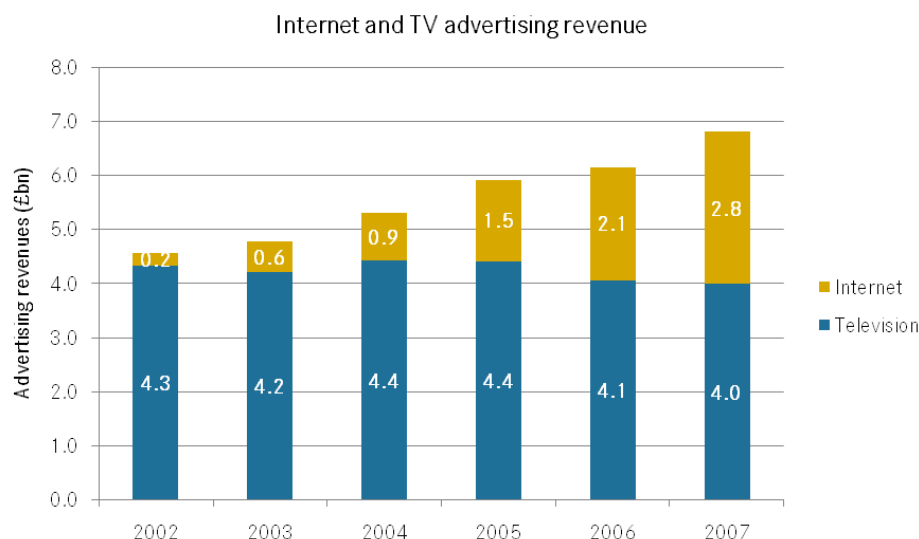
First, there has been significant erosion of their share of television viewing, driven by the increasingly widespread availability of multichannel TV:



This has driven a decline in their revenues: subscription revenues overtook advertising revenues in 2004, and the gap continues to widen. In the latest Ofcom annual Communication Market Survey, subscription now accounted for 38% of TV revenue, while advertising accounted for only 32%<sup>4</sup>.

Broadcaster revenues are further affected by the growth in the number of platforms. As time-shifted viewing options (catch-up, VOD, PVRs) develop and quality improves, there is likely to be shift of viewing away from linear broadcast. This is already shown in the growth of internet advertising revenue, and the corresponding fall in television advertising.

<sup>4</sup> <http://www.ofcom.org.uk/research/cm/cmr08/tv/tv.pdf> p147



The introduction of both catch-up and other VoD services by the PSBs<sup>5</sup> demonstrate their awareness of the need to keep pace with viewer behaviour; while the negotiation of a limited catch-up window into their primary rights in independent commissions, within the current framework of guidance, codes and terms of trade, shows that the industry collectively is looking for ways to accommodate these changes. However, it is inevitable that non-broadcast viewing will continue to provide consumers with new ways in which to view content, further moving people away from linear broadcasts.

It is against this background of very significant disruption that both government and Ofcom are looking for a durable settlement to preserve and maintain high quality public service content for UK viewers into the future. Achieving a sustainable rights settlement for both producers and broadcasters has inevitably been part of the focus of debate, with some of the PSBs suggesting that the regulatory framework itself limits their ability to generate sufficient value from their independent commissions.

One source of possible solutions might be to change the arrangements inherent in the commissioner-producer relationship, to bring more value back into the commissioning broadcaster. This could be achieved in three ways:

- The PSBs could seek produce more of their own programming which by definition would be fully owned and controlled by them in relation to subsequent exploitation;
- They could seek to own more rights in the programmes they commission – by ensuring that they secure more rights in the primary bundle;

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<sup>5</sup> Channel 4 introduced 4oD in 2006 with a download only version: BBC i-player was launched as download only in 2006 with a streaming based model added the following year: ITV re-launched its website in 2007 including access to streamed channels and some on-demand content. Having first launched an on-demand service, Five Download in 2006, Five re-launched Demand Five in 2008.

- They could seek to secure a more advantageous split of the back-end revenues brought in by commissioned content – either in relation to UK exploitation or non-UK exploitation.

In the next sections we assess each of these policy responses in detail.

## 5. Policy response A: Increased rights by bringing more production in-house

### Context

All four UK PSBs are required to commission a minimum of 25% of their qualifying programmes from independent producers<sup>6</sup>. The two publicly owned broadcasters, BBC and Channel 4, have additional obligations:

- Having been established as a publisher-broadcaster, to help the development and expansion of the UK's independent sector<sup>7</sup>, Channel 4 has regulatory restrictions on its ability to produce in-house, although this condition could be changed by order from the secretary of State, following a recommendation by Ofcom.
- The BBC is required under the current Charter and Agreement<sup>8</sup> to ensure that it only offers its own in-house production departments a guarantee of 50% of total production. The remaining 50% must be made up of the minimum quota of 25% independent productions, and programmes, either sourced from in-house or externally, which were genuinely open to competitive bidding. The effect of this policy (the Window of Creative Competition, or WOCC) has been to ensure that the 25% quota is genuinely seen as a floor not a ceiling.

The four PSB broadcasters currently spend a significantly higher proportion of their commissioning budget on independent and external commissions than the statutory minimum: BBC 39%; ITV 35%; Channel 4 87%; Five 96%.

To assess the impact of possible changes to the volume of production sourced from in-house production departments, we have made two assumptions:

- First, that the quality and secondary value of the programmes would be identical
- And second, that Channel 4 would have been granted the right to make a proportion of their own programmes.

On these assumptions, our analysis suggests that the PSBs could see a significant benefit:

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<sup>6</sup> Under the 1990 Broadcasting Act, only commissions from Qualifying Independents count towards the quota. These producers must not: a) be an employee of a broadcaster; b) have a shareholding greater than 25% in a broadcaster (unless the producer is based in the EEA and the broadcaster in which it has a shareholding is outside the EEA); c) be the subject of a shareholding by a single UK broadcaster of more than 25% or by several UK broadcasters of more than 50%; or d) be required by the contract to use the production facilities of the broadcaster or not to use the production facilities of some other broadcaster (BBC Commissioning website).

<sup>7</sup> Legislation disallowing the channel from involvement in programme making is continued in the Communications Act 2003 (s295).

<sup>8</sup> [http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/charter\\_agreement/bbcagreement\\_july06.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/bbcagreement_july06.pdf) p.29.

**Net increase in revenues from secondary revenues (£m)**

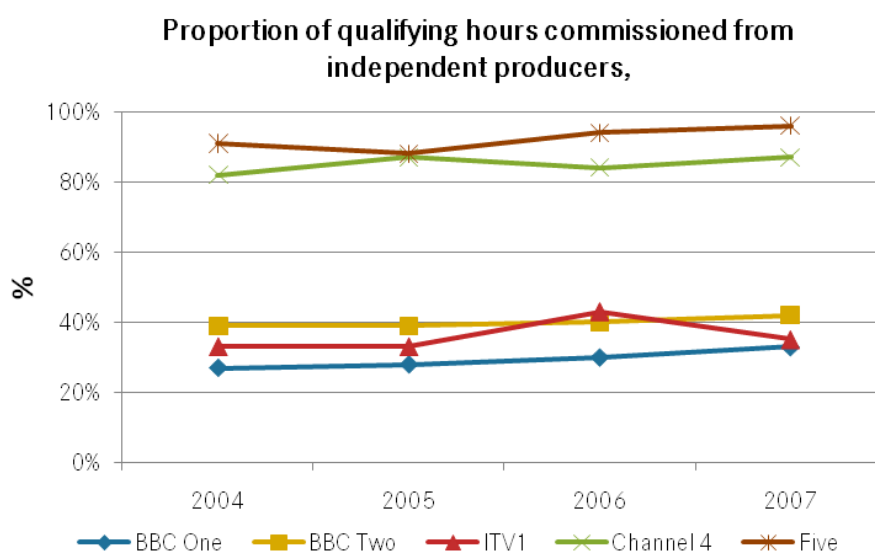
<b>New level of external commissioning</b>	<b>BBC</b>	<b>ITV</b>	<b>C4</b>	<b>Five</b>
<b>25%</b>	35.4	18.9	43.8	13.7
<b>50%</b>			26.1	8.9
<b>75%</b>			8.5	4.0

**Assessment**

The first observation to make is that, for both ITV and Five, there is no regulatory reason for them not to secure a higher level of in-house production. Indeed, ITV has recently sought to enhance its own position by acquiring independent production companies – presumably to acquire capacity quickly in areas where it was looking to gain a more advantageous position in relation to overall ownership of production and distribution rights.

Five, as a subsidiary of the international broadcaster, producer and rights-holder RTL, could have access to significant production facilities. It must therefore be assumed that the channel is already operating at its optimal mix between independently-produced and affiliate-produced content, and that any rights gains associated with lessening its independent commissions would not be seen as worthwhile, either for the channel or for the overall business.

Second, it is also apparent that, whatever benefits might accrue to PSBs from commissioning more of their own programming, and despite their growing awareness of the pressures they face in terms of funding and securing a position in future on-demand distribution, nevertheless the trend over the recent years towards an increased level of independent production has been marked and striking:



Third, the policy responses of the publicly owned broadcasters have been, if anything, away from seeking more in-house production: the BBC explicitly created the WOCC in advance of any legislative

or formal requirement to do so: and Channel 4 has never taken the formal step of asking either regulator or government to lift any part of the restriction on them owning their own means of production. Clearly, the BBC and Channel 4 are more susceptible to the charge that, as they are publicly owned channels, it is legitimate to extract greater obligations from them in relation to the independent production sector: but these have never been formally put forward or imposed by government.

While there are clearly revenues that could, in principle, be captured by the PSBs if they were to increase the level of in-house production, we can only conclude that the level of independent commissions is driven by more than simply regulatory fiat: the significant gap between the level of the quota and the actual delivery by the PSBs, in spite of the potential commercial advantage that could accrue from owning more of their own production, suggests that there are significant other benefits for PSBs:

- **Creatively:** access to a wider range of programme sources and ideas;
- **Culturally:** access to a range of different editorial approaches;
- **Organisationally:** competition with in-house producers on is an important way of ensuring both quality and value for money.

## 6. Policy response B: increased rights by augmenting the rights included in the primary window

### Context

The secondary revenues that accrue to broadcasters and producers have been split into four basic categories:

- **UK Secondary** – primarily consisting of the revenues derived from subsequent showings on other UK TV services – including channels owned by PSBs but not currently designated as PSB channels in the Communications Act;
- **UK Ancillary** – primarily consisting of other publishing and merchandising exploitation within the UK;
- **International** – primarily consisting of the sale of both formats and completed programmes to non-UK broadcasters, but also including other ancillary revenues derived from non-UK exploitation;
- **New Media** – typically consisting of VoD, mobile and other distribution associated with new distribution platforms.

In this section we look at the extent to which it would be consistent with the approach set out in Ofcom’s guidance that distinguishes between ‘primary’ and other rights to enlarge the definition of primary rights. At the outset, therefore, it is important to make an assessment of which of the four categories of rights could be legitimately included.

We take as our starting point that the justification for designating one set of rights as ‘primary’ is that they should be effectively the rights required for the public service exploitation of the content: i.e. those rights that ensure that the public have the appropriate opportunity to enjoy the programme, without unduly limiting the opportunity of the producer to benefit from subsequent exploitation. This would exclude rights for non-UK exploitation and other ancillary exploitation such as merchandising.

Accepting this principle, it also seems unlikely that secondary television exploitation would be included in the primary rights bundle, since by definition it involves exploitation on a non-PSB service. Clearly, however, any decision by government to extend the definition of public service channels or other services – for instance, to include some or all of Channel 4’s digital-only channels as PSB services and therefore give them the same status as Channel 4 itself – would lead to those channels and services being automatically included in the primary rights bundle.

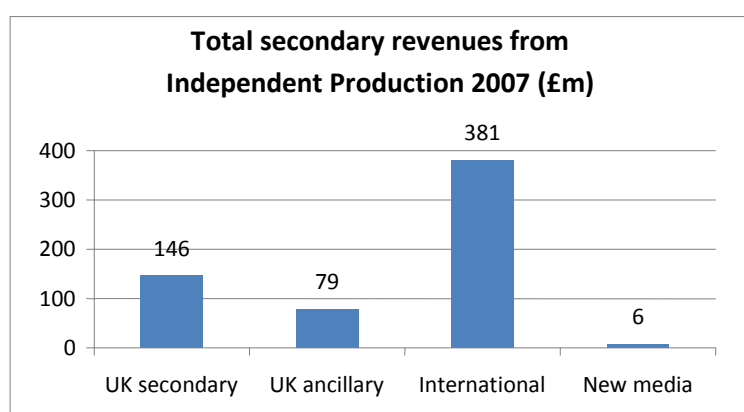
New media rights are the category most likely to be considered for inclusion within the primary bundle: and future viewing trends suggest that non-linear and ‘new-media’ viewing will become increasingly important, and that this may in time erode value in the initial broadcast transmission window.

## Assessment

As the return on the primary rights (viewers and advertising revenue) decreases, a way to address this is for the primary rights bundle to be redrawn to follow the change in viewing patterns, for example, to include a longer window for new media rights. This way the primary rights would still represent the primary method(s) of content's first use – with this use moving from broadcast consumption to on-demand consumption. Indeed, over time it may be better to move away from a 'windowing' approach to rights (built around first showing) to a 'first viewing' approach which would allow commissioning broadcasters to continue to capture the value necessary to continue to maintain their high levels of investment in original production

However, there are two key points to make about this.

First, as the following analysis of secondary revenues in 2007 derived from independent production shows, the revenue from new media is currently embryonic.



Any changes to the framework would therefore be in anticipation of future returns, rather than delivering substantial immediate benefit.

Second, it is not clear that any radical change would actually be necessary to the overall policy framework in order for it to be better able to reflect a shift in primary viewing patterns.

The current Ofcom guidance states:

*A broadcaster's Code of Practice should contain a clear statement of the primary rights that a PSB is proposing to acquire when it commissions an independent production. The Code should make a distinction between the rights required to be secured for linear TV broadcast services (e.g. first broadcast transmission together with simultaneous streaming over other distribution platforms such as the Internet or mobile devices plus a specified number of repeats) and other rights e.g. those for non-linear exploitation. The Code should also set out how those packages of rights are to be used and exploited. For instance, there might be expected to be an initial window of exploitation centred on the first transmission of an independent production on a licensed public service channel.<sup>9</sup>*

<sup>9</sup> <http://www.ofcom.org.uk/consult/condocs/cop/statement/statement.pdf> paragraph 19

This is a significant advance on the first guidance, issued in 2004, which required the primary rights to be restricted entirely to transmission on the PSB television channel. Under the original regulations, PSBs could only insist upon having the first UK broadcast rights in content that they commissioned for broadcast (plus a number of repeats). All other rights, while they might have been sold to the commissioning channel or elsewhere, rested initially with the copyright holder – the independent producer. The rights were therefore fixed at a number of transmissions, on a specific channel, over a specific period.

This concentration on broadcast television was relatively quickly perceived to be increasingly backwards-looking. It soon became evident that the delineation of primary rights did not reflect how the consumption of television and other audiovisual material was changing in the UK<sup>10</sup> and elsewhere, or the pace at which these are likely to change further over the next few years.

After Ofcom had issued its new Guidance in 2007, broadcasters and producers set about negotiating new Terms of Trade which recognised the emergence of on-demand viewing as a legitimate extension of the primary rights – primarily through catch-up services. Because of this, orientating primary rights towards other content-diffusion technologies offers the possibility to capture more of the content's value for PSB broadcasters –and the possibility to rebalance their revenues in line with the commissioning costs.

The existing framework has therefore already proved sufficiently flexible to accommodate the inclusion of some on-demand viewing within the primary rights package: and it is important to note that this was achieved without the need for regulatory intervention other than an authoritative review of the trends in the sector, and some important modifications to Ofcom's Guidance.

We therefore conclude that, while no change is need to the regulatory framework, it would be appropriate to ask Ofcom to keep the impact of changes in audience behaviour on the economics of programme commissioning under regular review. This could form a specific part of the Ofcom Communications Market Survey which is published annually, and to adjust its guidance as appropriate, to ensure that its definition of 'primary rights' remains consistent with the way the market is developing.

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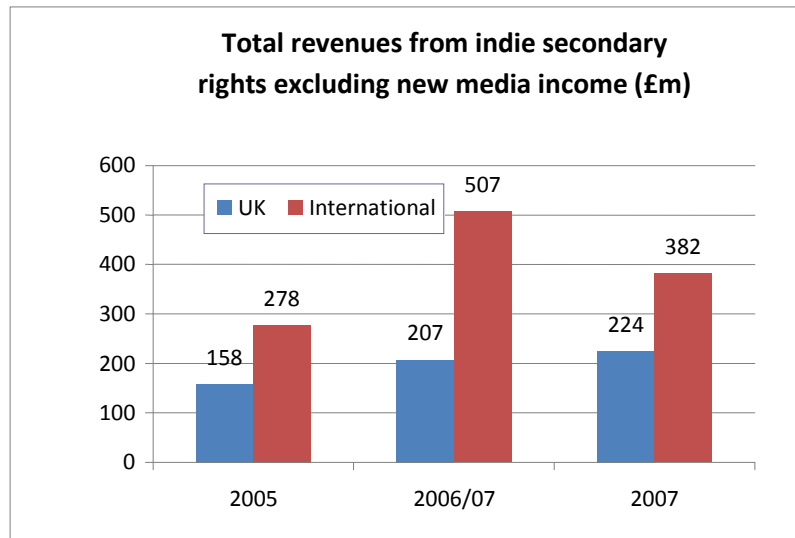
<sup>10</sup> For example, the BBC's iPlayer catch-up service was used to download and stream 271 million programmes in the UK in 2008, with 41 million of these occurring in December and 8 million of those in Christmas week: <http://www.guardian.co.uk/media/pda/2009/jan/06/bbc-iplayer>

## 7. Policy response C: adjusting the split of back-end rights

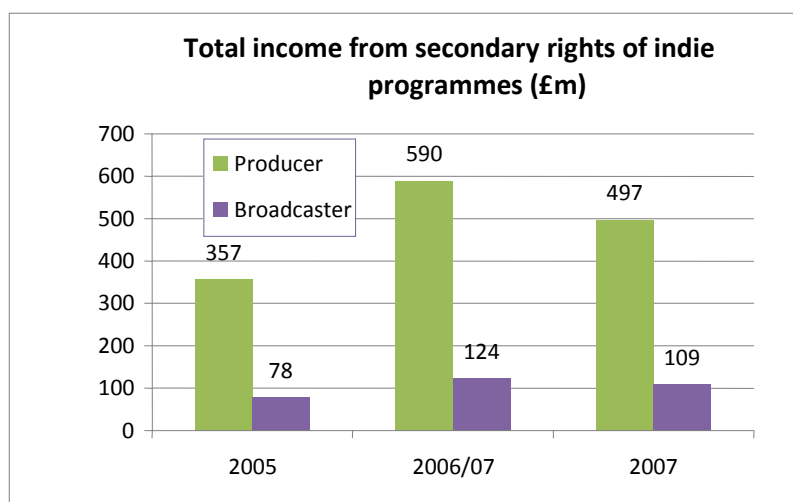
### Context

In recent years, the value generated by secondary rights has increased significantly. In 2007, broadcasters and producers earned £606m from their exploitation of secondary and ancillary rights in independently produced programmes.

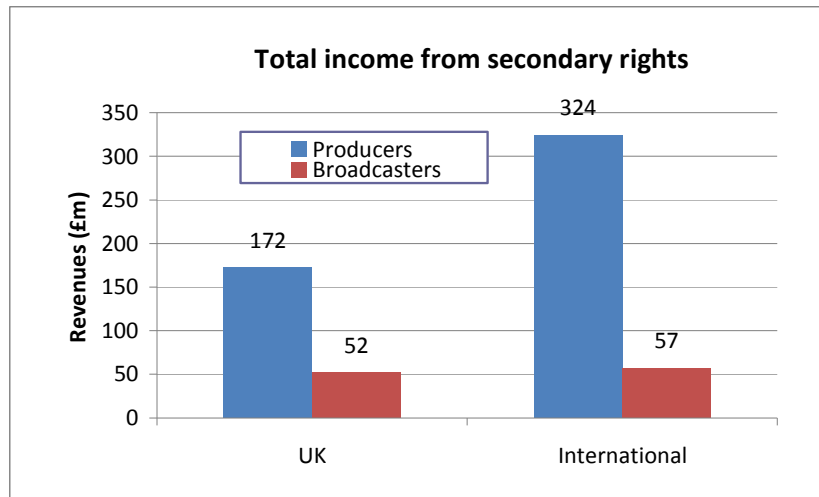
From this, independents captured nearly two-thirds of the overall secondary revenues.



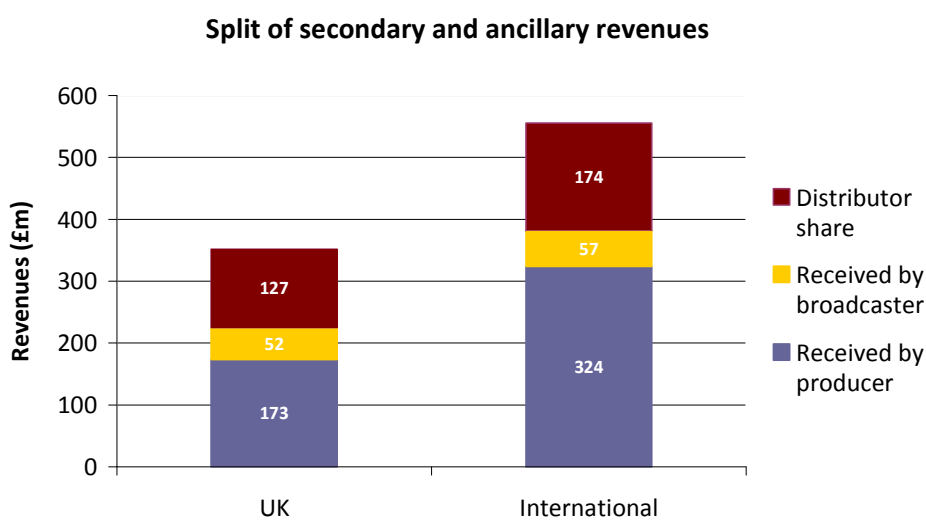
Broadcasters' secondary revenue shares from independent production come fairly evenly from UK and international exploitation.



The sharpest disparity is in the balance of revenues derived from UK and international distribution. Broadcasters received roughly comparable revenues through their share of independent programme in the UK and internationally, while independent producers benefitted proportionately more. This is explained by the fact that, not only is the absolute revenue greater in international exploitation, but also the independents typically receive a higher split of back end revenues (85%).



The current terms of trade typically split UK secondary revenues 50:50 between producer and commissioner while the programme is within the licence term (normally five years), after the costs of distribution have been recouped. Broadcasters have also developed policies whereby programmes can be released fully into the secondary market before the end of the licence term with slightly reduced payment to the producer. When the programme’s licence has expired, the split of revenues typically revert to 85:15 in favour of the independent producer.



We have modelled the possible effects of a change in the UK secondary revenue splits. Increasing the current 50% taken by broadcasters within the license period would have the following effects:

	<b>Net increase in UK secondary revenues (£m)</b>			
	<b>BBC</b>	<b>C4</b>	<b>Five</b>	<b>ITV</b>
70%	3.4	1.9	0.6	3.2
85%	5.9	3.3	1.0	5.5

Outside the license period, the broadcasters typically receive only a 15% split of revenues. Increasing the amount gives the following results:

	<b>Net increase in UK secondary revenues (£m)</b>			
	<b>BBC</b>	<b>C4</b>	<b>Five</b>	<b>ITV</b>
30%	8.4	4.7	1.5	7.8
50%	19.4	10.9	3.4	18.1

We have also modelled the possible effects of a change in the international secondary revenue splits. Increasing the current 15% share that broadcasters take has the following effects:

	<b>Net increase in international secondary revenues (£m)</b>			
	<b>BBC</b>	<b>C4</b>	<b>Five</b>	<b>ITV</b>
30%	16.6	11.5	3.1	19.3
50%	38.8	26.9	7.2	45.1

### **Assessment**

Altering the proportions of revenue in favour of the broadcaster would clearly make significant improvements to their secondary revenues. However, to use regulation to achieve this would be a very significant intervention that would go well beyond the scope of the existing framework.

The original intervention, in 2003, was designed to adjust the balance in relation to the rights that could be acquired, and for how long. As a corollary to this, Ofcom was required to ensure that the broadcasters could not deliberately undervalue the rights associated with the initial public service broadcast, thus making it more likely that they would be able to acquire the secondary rights.

Ofcom's current Guidance on secondary rights states that "[s]pecific negotiations can discuss the value from exploitation of secondary rights. Revenue sharing between producer and broadcaster

may be appropriate in such cases.” Clearly, therefore, it is already intended that any change in the back-end split desired by broadcasters should be sought through negotiation. However, going further than this would almost certainly be inconsistent with the relevant legislation.

Section 285 of the Act requires Ofcom to issue Guidance to assist PSBs in drawing up their Codes of Practice. However, the Act requires the Guidance to be “general guidance” and that it should not “specify particular terms to be included in the agreements to which the Guidance relates.” Setting individual percentages would be likely to be classed as “particular terms”, and would therefore require a change to primary legislation.

To justify such a change, there would need to be some clear evidence that the current arrangements for individual negotiations had proved unworkable. However, it would appear that, while independents are now in a stronger negotiating position than before the passage of the Communications Act in 2003, it is nevertheless still the case that broadcasters have powerful levers available to them: not only the decision to commission in the first place, but also the decision whether or not to relax the hold-back<sup>11</sup> during the licence period in return for a better share of revenue – essentially trading off exclusivity for revenue.

The evidence suggests that the regulatory regime involving Ofcom Guidance, broadcasters’ Codes and individual Terms of Trade has worked well to build and grow a market. It has shown itself adaptable to changing patterns of consumption and their likely impact on how value is attributed across the life-cycle of broadcast content. And both producers and broadcasters have shown themselves capable of negotiating acceptable outcomes.

The thrust of the current regulatory regime is to set a framework within which the market can operate most effectively. While we believe it is appropriate for the regulator to exercise judgement about the bundles of rights that constitute the primary licence, we believe that intervening to set the terms of revenue negotiations is a significantly greater, and unjustifiable, intrusion. Were there evidence that negotiation was not working, or that one party to the negotiation was seriously disadvantaged, it might be easier to contemplate such intervention. We do not believe, on the evidence we have seen, that these conditions apply now.

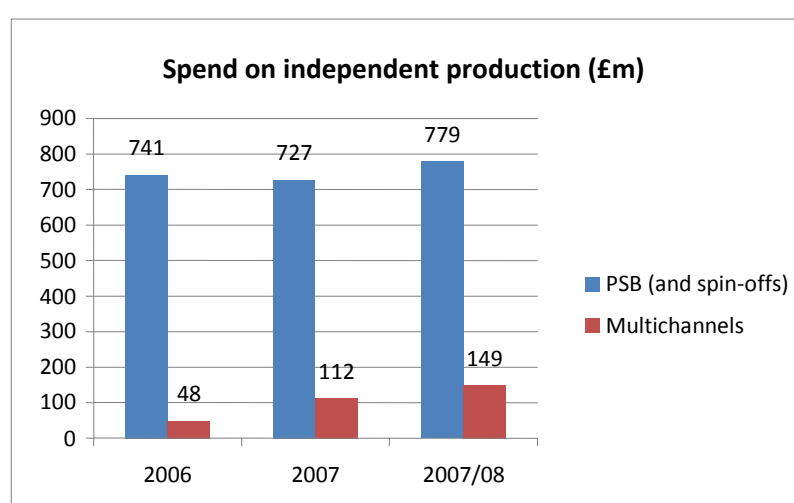
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<sup>11</sup> Licence terms typically run for 5 years, often with an automatic option to renew. However, within the license period, broadcasters may waive the “hold-back” – the bar on exploitation by others – in return for safeguards about scheduling or other impacts. Typically, where the hold-back is waived, broadcasters will negotiate a more advantageous split of revenue with the producer.

## 8. Non-PSB Commissions

Given the challenges faced by the PSBs, and the latter's special role in delivering public policy goals in relation to the continued provision of high quality content, the previous sections have focused on ways in which the balance of benefit might be shifted in favour of the PSBs. Our conclusions are that, while there may indeed be a case for PSBs altering the balance of rights they acquire and shares of revenue they receive, these can be achieved within the existing policy framework.

However, while PSBs channels account for the majority of audiovisual commissions in the UK, there is a growing role for non-PSB broadcasters as well.



At present, independent producers commissioned by non-PSB services do not enjoy the same protection for their underlying rights, since the Communications Act only applies regulation in this area to PSBs: no other channels are required to operate under codes that have been agreed with the regulator and which are consistent with the guidance in force at the time. As a result, there is no legislative or regulatory provision to prevent non-PSB broadcasters being able to exercise greater power in the negotiation over the rights to be acquired at the point of commission. It is therefore legitimate to ask whether it would be appropriate to extend the regulatory regime to non-PSB broadcasters as well.

On balance, we do not believe that intervention is justified for two key reasons;

- first, there is every reason to suppose that the growth and increased commercial health of the independent sector overall will increase their negotiating power in relation to non-PSB broadcasters
- second, such purchasing power as might exist in the multi-channel world is likely to be significantly qualified by the existence of a regulated PSB market for independent commissions. Except in the case of material for which there is no market among PSB

commissioners, the availability of 'better' terms from the PSB should be a significant factor in the negotiation.

It is also true, however, that PSB commissions will account for a reducing proportion of content commissions in future. This will result from reduced commissioning for the main channels as their budgets are squeezed –as we are already seeing: but there will also be an impact if channels that are currently PSBs relinquish their PSB status in future, and therefore escape regulation in this area.

In this context, it will be important for Ofcom to understand whether the changes in market structure are having an impact on the ability of independent producers to secure value in their programmes – or whether the buying power that distorted the market between independents and PSBs before the 2003 changes is in danger of being replicated.

We therefore suggest that this be included as an element of Ofcom's regular review of the production sector, so that Ofcom can anticipate any adverse changes and advise government of any change to the regulatory regime it thought desirable.

## 9. Exploring new copyright related sources of funding for PSB commissions

Bringing content production in-house, re-allocating new media rights between commissioners and producers, and adjusting the split of back-end rights are essentially zero-sum solutions: while they may give more value back to producers to enable them to continue investing in independent original content, they do so by redistributing the existing value in the product.

It is therefore important to consider also whether there may be additional or untapped revenue streams that would also help to secure the long term health of public service content – especially where those revenues are directly related to the fragmentation of viewing and erosion of underlying revenues that form the basis of the challenges facing the PSBs, as set out earlier in our report.

### Revenue from platforms

Within broadcast viewing itself, pay-TV platforms continue to build subscriber numbers, with estimates of pay-TV penetration at 60% of households by 2013<sup>12</sup>. A significant amount of viewing on pay-TV platforms is of PSB channels: Ofcom's most recent Communications Market report (August 2008) reports that viewing of the PSB channels now accounts for just over 60% of viewing in multi-channel homes, with an additional 10% share for the additional channels supplied by ITV, Channel 4 and Five<sup>13</sup>. The PSB channels therefore form part of the platforms' overall appeal as a channel aggregator, as well as providing much of the audience movement to other channels on the platform.

However, the pay-TV platforms have always received these PSB channels for free. Regardless of 'must-carry' obligations concerning PSB channels on cable in the UK,<sup>14</sup> it has always been the case that the pay-TV platform operators benefit significantly from the PSB channels' presence while making no contribution to the content they carry. It is also likely that the commercial attractiveness of pay-TV platforms would be reduced if they did not include the PSB channels. There may therefore be significant potential value captured by pay-TV platforms that is attributable to UK PSB content but which does not accrue to that content's originators or rights-holders.

This arrangement is, in part at least, the result of s.73 of the amended Copyright, Designs and Patents Act 1988, under which simultaneous retransmission on cable or satellite is exempted from any charge. European countries<sup>15</sup> generally levy charges on pay-TV retransmissions of their PSB

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<sup>12</sup> Oliver & Ohlbaum, presentation to the Digital Steering Group, February 2009.

<sup>13</sup> <http://www.ofcom.org.uk/research/cm/cmr08/tv/tv.pdf> section 3.3.7

<sup>14</sup> Under its General Interest objective, and using European Directive 2002/22/EC, Ofcom imposes a 'must carry' obligation on digital cable and satellite platforms in the UK. Under this, the platforms must broadcast all PSB channels.

<sup>15</sup> It is unclear whether any other EU countries have such an opt-out for their cab/sat platforms. Oliver & Ohlbaum research states that "EU pay platforms pay royalties to copyright owners". It is possible that, in having a rights system based on the idea of 'copyright' in an author's work itself, as opposed to the idea of the author's 'moral right' in the work applying in civil law countries (France, Germany, Italy etc.), the UK could more easily opt out in this way than many other European countries.

channels, and this carve-out for pay-TV platforms in the UK could be seen as an anomaly. The charges revert mostly to the owners of the copyright in the programmes broadcast (with an amount going to “general cultural funds” for under-supplied PSB content such as children’s programming) and have previously amounted to around €100 million per year across the EU<sup>16</sup>.

Were UK legislation to be brought in line with other European countries, the result might be the recouping some of the revenues generated by the PSB channels on the pay-TV platforms the payment of retransmission fees (the simplest method would be on a flat per-subscriber basis), and the establishment of an organisation to collect and distribute these fees appropriately to the rights-holders or broadcasters – possibly a task for the Rights Agency, an organisation envisaged in another part of the **Digital Britain** report. Industry estimates for possible revenues from this source could be as much as £83 million per year in 2012, rising to £90 million by 2015<sup>17</sup>.

### Revenue from re-use

As we have already explored in the sections above, while overall audiovisual consumption is growing, there is nonetheless a displacement of linear broadcast viewing by time-shifted viewing. This is demonstrated in the rapid rise in use of the BBC’s iPlayer<sup>18</sup> and the proliferation of PVR ownership<sup>19</sup>.

Time-shifted viewing will replace a significant amount of broadcast viewing as first experience of content. Where primary viewing replaces primary showing, revenue may be lost, through non-monetised consumption, advertisement skipping and repeated primary viewing.

- **Non-monetised consumption:** While internet advertising continues to grow, to a large extent at the expense of television advertising, there has yet to be a successful business model for capturing the value of online PSB content consumption in the UK. If more and more viewing of audiovisual content is to be undertaken over new media, content producers must establish a way to recoup compensation for their output over these media.
- **Advertisement skipping:** The digital electronics industry makes significant profits from the sale of storage devices such as PVRs, as these replace videos (and even, to an extent, DVD recorders) in UK homes. Use of these devices allows viewers to ignore surrounding advertising, another contributory factor to the fall in broadcast advertising revenues. In Ofcom research, hours of viewing of recorded television programmes account for around 14% of all viewing in homes with a PVR, and 88% of PVR owners surveyed claimed to use their devices to fast forward through advertisements.<sup>20</sup>

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<sup>16</sup> Figure from Oliver & Ohlbaum.

<sup>17</sup> Estimates by Oliver & Ohlbaum.

<sup>18</sup> The iPlayer was used to download and stream 271 million programmes in the UK in 2008.

<sup>19</sup> According to Oliver & Ohlbaum, 20% of households had a PVR in 2008, forecast to rise to 75% by 2013.

<sup>20</sup> Ofcom Communications Market Report, p12.

- **Repeated primary viewing:** Increasing amounts of viewing of broadcast content is taking place as a result of download onto audiovisual storage devices. In future, there will also be increasing amounts of consumption via VoD. In addition to affecting advertising revenue, this viewing will also affect the value of viewing of the content on secondary channels, as well as sales of it on home-use media such as DVDs. This can be classed as re-use of broadcast programming, for which no copyright payment is made to the content's rights-holder.

It is increasingly clear that these two modes of consuming PSB content will have an increasing impact on the potential revenues for the commissioning broadcasters. If it is accepted that the broadcast of content is made exploiting the primary rights in that content, then any subsequent viewing of it could be seen as outside those rights and therefore liable to a charge. It is therefore relevant to consider whether there are already ways in which this type of consumption is captured in other legislative or regulatory approaches.

Originally arising out of home-copying of broadcast programmes, the idea of charging for the re-use of broadcast material has in fact been long established in Europe. In at least 20 European countries (including France, Germany, Italy, Spain, Sweden and Switzerland<sup>21</sup>) charges are made on storage media: since tracking individual incidences of usage is impractical, the levy is made on equipment – devices and storage media. The charges range from less than a euro on CD-r, DVD-r and DVD+, to between 2 and 20 euros on MP3 players (per 256 MB) and DVD recorders (per 80 GB). Some countries even tax memory cards, with between 0.1 and 11 euros levied per GB.

Re-use levies totalled almost €600 million in Europe in 2004: France and Germany collected €168 million and €146 million respectively<sup>22</sup> in the same period. The potential for significant compensation for primary broadcast PSB content is clear (although, as was the case with retransmission levies, there may be considerable resistance from industry). Oliver & Ohlbaum estimate that re-use payments in the UK could be as much as £176 million per year.

## Assessment

It is clear that both these potential sources of funding are far removed from the existing regulatory framework with regard to rights acquisition and exploitation among PSBs. It is also clear that any decision to pursue such options would be highly contentious: and the transfer of a charge imposed in one area might lead to adjustments in charges to other parties – consumers, or content providers – which might undermine such benefits as might have accrued.

However, the focus of our report is the adequacy of the rights regime to continue to fund high quality PSB content. With the structural shift away from linear broadcasting, and with the growing importance of multi-platform distribution, all content creators will be looking for the appropriate mechanisms to monetise the use of their content. We therefore think it appropriate for government

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<sup>21</sup> According to one study undertaken for the European Parliament, private copy levy schemes were applied in 19 out of 25 Member States in 2006 ([http://www.europarl.europa.eu/comparl/juri/study/rights\\_en.pdf](http://www.europarl.europa.eu/comparl/juri/study/rights_en.pdf), p68), the exceptions being Cyprus, Ireland, Luxembourg and the UK.

<sup>22</sup> Figures from Oliver & Ohlbaum.

to give full consideration to the potential of other revenue sources that are linked to the exploitation of copyright, which might be used to support future provision.

## 10. Further issues for securing on-line public service content

The focus of our report thus far has been on ensuring that the relationship between broadcasters and producers is sufficiently aligned to the changing pattern of consumption of *television* content, such that broadcasters can continue to secure sufficient value to be able to continue high levels of quality broadcast content.

However, it is also clear that a thriving digital future will increasingly see the creation of content that is designed not for broadcast, but specifically for on-line delivery.

There are three issues that emerge from this:

- The degree of protection afforded to producers of publicly funded on-line content – and whether there should be a similar arrangement to that afforded to producers of PSB content;
- The extent to which the quota operated under the terms of the BBC's Charter and Agreement is fully meeting its goals; and
- How best to secure support for new public services as well as programme related content.

### **Mirroring the television arrangements in on-line public service content**

The recent MTM report<sup>23</sup> commissioned by Ofcom as part of their PSB Review suggested that the public sector was responsible for some £600m investment in public service content during 2006 – 7. The most significant single source of investment was the BBC, who spent £116m on [bbc.co.uk](http://bbc.co.uk) and a further £38m on BBC Jam (a service which has since been discontinued).

Other initiatives, including those outlined elsewhere in the **Digital Britain** report to ensure that all UK citizens will be able to take advantage of public services delivered on-line, will undoubtedly justify even higher levels of investment in public service content.

However, the experience of the television industry suggests that, without some form of protection in relation to the retention by the original creators of the underlying copyright in their work, it may be difficult for them to grow to scale. Experience suggests that the ownership of assets, even those that do not yet represent significant lines of revenue, contributes to the overall value of the company and gives it a springboard from which to grow.

As the first part of our report suggests, regulatory intervention in the PSB commissioning market has been widely successful in underpinning creative plurality and diversity with a stronger, more financially secure, production sector, genuinely independent from the broadcasters who commission material from it.

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<sup>23</sup> [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/annex8.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/annex8.pdf)

However, the disparate nature of the bodies commissioning on-line public service content, and the fact that they are not covered by a single piece of legislation (unlike the PSBs) means that there is no convenient vehicle for constraining the behaviour of commissioners who hold the balance of power in most negotiations.

We believe it would be appropriate for the government to consider how best to take forward issues concerning the commissioning relationship between on-line producers and publicly funded commissioners, and to assess whether an intervention similar to that established in the television market is appropriate or proportionate.

Regardless of any such review, we believe it would be appropriate for government to encourage publicly funded commissioners of content to have regard to the regulatory framework established for television production, and to set their own terms of trade in ways that are designed to achieve the same overall policy goals.

We further believe that, where the commissioning of on-line content is made by a PSB, the presumption should be that the principles and spirit of the Code of Practice currently in force in relation to the commissioning of television programmes should, with suitable adaptation to reflect the different media involved, be applied to on-line production.

### **The operation of the BBC quota**

In 2004 the government conducted a review<sup>24</sup> of the BBC's on-line activity. Among other recommendations, the independent reviewer, Phillip Graf, recommended that the BBC should impose a 25% quota of externally supplied content. The report suggested that "if the BBC is to be more mindful of its role in the wider market or aim to more explicitly assist the development of the competitive sector, it must take a more open and radical approach". The creation of a sustainable competitive sector was therefore clearly part of the reasoning behind the recommendation.

In their response<sup>25</sup>, the BBC Governors (at that time the governing body of the BBC) accepted the recommendation, and explicitly stated that the purposes of such a commitment included a contribution to "the development of the wider new media production sector".

The BBC Governors also made some important qualifications, in recognition of the very different development of the online production sector, and the differences nature of its production process.

In determining what kinds of contribution could be included as "eligible content", the BBC defined both "distinct editorial propositions" commissioned in their entirety from external suppliers; and "creative inputs to the production of web products and services, including editorial content, design and technical effort".

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<sup>24</sup> <http://www.culture.gov.uk/images/publications/BBCOnlineReview.pdf>

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[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/service\\_reviews/governors\\_response\\_graf.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/service_reviews/governors_response_graf.pdf)

They also pointed out that the bulk of spend on the on-line service went on technical services, and should therefore be excluded from any baseline for the quota.

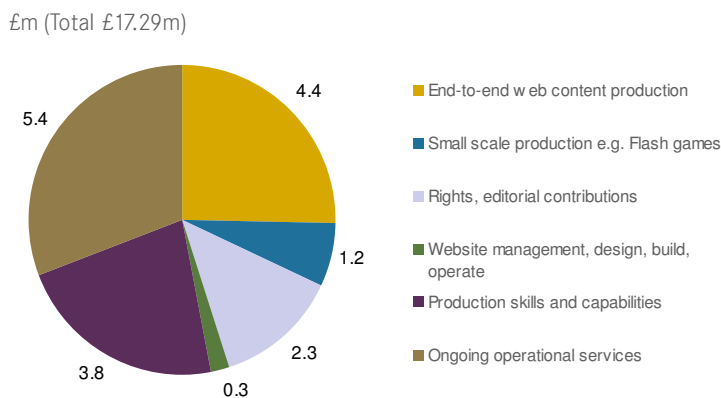
However, there may be a lack of clarity about the distinction between content and services. While committing to setting “a clear target for the commissioning of content and services for the internet”, the 25% target itself is applied to “eligible online content” in the BBC Governors’ response to the Graf Review. In the current service licence set by the BBC Trust,<sup>26</sup> however, the quota is described as follows:

*“distinctive and original content and services from external suppliers. These commissions should enable bbc.co.uk to draw on a wider range of creative and technical talent, help establish a baseline for efficiency within the BBC and contribute to the development of the wider new media sector.”*

We note that the most recent reported performance, given in the BBC’s Annual Report and Accounts for 2007-8, is of 31% of eligible content being sourced from external suppliers. Although this is not broken down by category, we note that Pact’s response to the BBC Trust’s consultation on bbc.co.uk in December 2007 reflected unease in the production sector about the way in which the quota performance was being assessed (in 2006-7, the figures that the Pact response investigates, the BBC reported a 30% external spend).

Commenting on a breakdown supplied by the BBC, Pact noted that the largest single element (£5.354m) making up the level of external spend was “ongoing operational services”. By contrast, the amount spent on “end to end production” was £4.36m.

The full breakdown is given below.



The BBC Trust, in their response to the consultation, noted that the external quota was outside the terms of the service review, but that they intended to review the composition of the quota in 2008.

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[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/online/online\\_servic\\_licences/bbc\\_co\\_uk\\_servicellicence\\_30apr2007.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/online/online_servic_licences/bbc_co_uk_servicellicence_30apr2007.pdf)

In the context of this review, we believe it would be very helpful for the BBC Trust to give greater clarity to how it defines “content” and “services”, and the extent to which both are reflected in the operation of the quota. In the absence of such a clear statement, there could be continued anxiety in the production community that the stated goal of the Graf review, accepted by the BBC Governors, to support the creation of a sustainable competitive production sector, is not being whole-heartedly pursued.

For similar reasons, we believe this review of how the quota is defined might also be an appropriate opportunity to explore the applicability of the WOCC to on-line commissions. The voluntary creation of the WOCC, before it became enshrined in the BBC Charter and Agreement, was an important signal of BBC intent to ensure that the quota was a minimum guarantee to the independent sector, rather than a limit. A similar act of intent on the BBC’s part in relation to on-line would be a further significant contribution to the development of a thriving on-line production sector.

### **Supporting non-programme related services**

**Digital Britain** recognises that one of the main factors driving broadband take-up will be the availability of content and services that are of direct value to the public. While this will clearly involve the on-line availability of high quality ‘broadcast’ content (which has occupied previous sections of this report), it could also involve services offered by public broadcasters but which have no relation to their broadcast output.

Examples of the sorts of service that might fall in this category can be found in the 4IP service. In its *Next on 4* strategy statement in March 2008, Channel 4 committed to spending £20million to invest in a range of services that were deliberately conceived not to replicate, or directly support, existing television services or programmes. Examples of the type of service the fund was intended to support include a site designed to provide citizens with information about their elected representatives, a site where creative designers can be put directly in touch with people with a project that requires creative input, and a site designed to connect social entrepreneurs.<sup>27</sup>

Earlier, proposals put forward by Ofcom in its first PSB Review (2004) for a new commissioning body – known as the “Public Service Publisher” – also drew their inspiration from a belief that new, purely digitally conceived services could form an appropriate part of the publicly funded content of the future.

Given the dominance of BBC commissioning on-line, and the relative fragility of Channel 4’s commitment in this area, the question has been posed as to the role the BBC might play in supporting services or activity that are not extensions of existing BBC programmes or services.

The BBC Trust’s recent review of [bbc.co.uk](http://bbc.co.uk)<sup>28</sup> made it clear that the service should be structured around 6 key areas (News; Sport; Nations and Local; Formal Learning; Audio and Music; and Vision).

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<sup>27</sup> A full range of examples can be found at <http://www.4ip.org.uk/inspiration>.

<sup>28</sup> [http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/service\\_reviews/report\\_bbc.co.uk\\_review.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/service_reviews/report_bbc.co.uk_review.pdf)

However, in setting priorities for future investment in the same review, the BBC Trust noted the plans by the BBC management to provide enhanced syndication of BBC product for other service providers.

This seems consistent with the obligation, set out in the current Service Licence for [bbc.co.uk](http://bbc.co.uk), that the service should be more active in supporting

*the UK new media sector by forming partnerships which deliver greater public value to licence fee payers by ensuring wider access to BBC content, connecting BBC audiences to a wider range of UK talent and creativity, and by supporting innovation and growth in the UK online market. It should link to content from other providers and aim to increase the volume of click-throughs to external sites from all parts of the service.*

The context for this requirement is spelt out in the review of [bbc.co.uk](http://bbc.co.uk) carried out last year by the BBC Trust, which explicitly recognised the need for the service to be more active in the way it linked through to other sites:

*We believe that effective external linking is a key way in which the BBC can manage the risk of becoming a ‘dominant gateway service’ identified in the Graf review. We believe this risk is still very much alive, as [bbc.co.uk](http://bbc.co.uk) remains the leading online service in many sectors such as news, sport, weather and radio. We also believe that the BBC has a role in linking users of [bbc.co.uk](http://bbc.co.uk) to external sites which provide content and services which contribute to the BBC’s public purposes. We are therefore asking BBC management to bring to the Trust its plans for improving linking and other functions which help users navigate beyond [bbc.co.uk](http://bbc.co.uk). We will expect click-through measurement to be a part of [bbc.co.uk](http://bbc.co.uk)’s regular performance reporting to the Trust.*

However, we also note that, in the recent letter from the Chairman of the BBC Trust to the Director General<sup>29</sup>, approving the increase in [bbc.co.uk](http://bbc.co.uk)’s budget, there is no reference to improved syndication in the “high priority areas” for future investment.

As an outcome of the **Digital Britain** process, we believe the BBC Trust might be invited to ensure that syndication, and other ways of securing BBC support for non-BBC on-line services, remains part of integral to the future plans for [bbc.co.uk](http://bbc.co.uk).

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<sup>29</sup>[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/service\\_licences/service\\_reviews/bbc\\_co\\_uk\\_letter.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/service_reviews/bbc_co_uk_letter.pdf)