



## UK Coalition for Cultural Diversity

### Response to OFCOM Report from Small Screen Big Debate Consultation

[https://www.smallscreenbigdebate.co.uk/\\_data/assets/pdf\\_file/0032/208769/consultation-future-of-public-service-media.pdf](https://www.smallscreenbigdebate.co.uk/_data/assets/pdf_file/0032/208769/consultation-future-of-public-service-media.pdf)

#### INTRODUCTORY POINTS

We welcome Ofcom's consultation report on the future of public service media. It recognises two key policy areas in the 2003 Communications Act which are in urgent need of updating: i) regulatory frameworks to deliver the PSB remits and meet audience expectations, and ii) public funding for the BBC through the licence fee., although funding for the BBC does not fall within OFCOM's remit.

However, given the centrality of BBC to the PSB landscape, significantly in setting standards for the delivery of quality, universality and diversity of genres, it is essential that OFCOM carry out impact studies for the BBC, as well as other existing providers, of any changes it is recommending.

Increasing the number of players in the PSM scenario will inevitably further fragment the market but it should not dilute the scope and depth of those institutions with a track record and experience in providing PSB.

We believe it is essential to consider the Ofcom proposals for the United Kingdom in the widest international context, so we have emphasised other international parallels where relevant throughout.

We note that OFCOM has not given any definition of what it terms PSM. We are concerned that in any legislation the new term, public service media, PSM, should fully incorporate and not invalidate legislative safeguards long established for public service broadcasting, (PSB). Whilst means of dissemination have changed substantially, the need to ensure the creative environment for locally made programming with a local focus, including news, children's programmes, documentary as well as drama and film production, remains the same.

An increase in investment will be essential both to maintain the quality and range of existing PSB production and service, and to finance new players in the field . UKCCD does not support the idea of contestable funding. We also note that historically, the separation of funding from the editorial delivery of the remit, as in the BBC and

Channel Four when it started, has best enabled the delivery of PSB remits. This should remain a fundamental principle going forward.

There is a predominance of examples used to support the arguments in the report drawn from statistics reflecting the tastes of 18-34 year olds. Whilst this youngest constituency is inevitably leading in the uptake in on-line services, this should be taken as a reflection of age and interests rather than a benchmark for declining interest in PSB. As 1.9 indicates 67% of all audiences are still engaged with PSB. The focus needs to be on resourcing the diversity of material to keep up with diverse audience tastes, in diverse local genres. This is in main part a question of funding - 1.18, and visibility & access to material on-line – 1.10 & 1.11 & 1.15, and is linked to the question of developing partnerships - 1.21 to provide and deliver material in association with on-line platforms.

For the delivery of PSB/PSM it is important to ensure the delivery of the current DTT (spell out first use platform) and the existing spectrum dedicated to free-to-air. This will provide the certainty for necessary structures to move forward.

This report and the changes it will set in motion are essentially a matter of cultural diversity of expression, cultural sovereignty and democracy. Audio-visual programmes carry meaning, values and affect our identity. Our varied stories up and down the land need telling on all our screens for us to understand one another and for our creators' work to be seen by everyone.

## **RESPONSE TO CONSULTATION QUESTIONS**

### **Question 1**

**Do you agree that a new regulatory framework for PSM delivery should support a more flexible 'service neutral' delivery approach that is more outcomes focused?**

The concept of "service neutral" is problematic. Public service broadcasting is delivered by institutions with long histories of investment in training, production, curation and exhibition across all genres with all sections of the population provided for, in particular by the BBC. The evolution of these institutions is central to their mission and distinct from the more limited aims of certain profit-oriented companies. In addition to this, these channels guarantee universality and bear the additional costs associated with it.

Anchorage of PSB in the existing companies should continue. Whilst additional investment in and delivery of public service media by other relevant satellite/cable channels and online streaming services may be welcome, it must be accomplished under existing and new regulation to ensure fairness, a more level playing field with existing players and cultural diversity.

Where there is a foreign interest e.g Channel 5 (subsidiary of Viacom, US mass media conglomerate), or Sky (subsidiary of US Media and Telecoms conglomerate), legislation should ensure the priority and independence of UK audience interests so that local interests are not affected by global business strategies.

Whilst UK benefits from a strong field of private investment, the report indicates that companies such as Netflix and Amazon only recently engaged in local UK production, make a relatively minimal contribution either to original production or tax revenues, whilst benefitting enormously from the international dissemination of production from the UK's creative sector (4.7, 4.11).

Regulation to address these issues is reasonable and already operates in other countries. Regulation in the EU has been updated with full input from the UK government as recently as 2018. Post Brexit, these regulations should now be legislated for in the UK and overseen by OFCOM.

In principle, all relevant online streaming services should be brought into the ecology of audio-visual regulation to ensure protection of minors and proportionate investment in and the promotion of local programming such as drama, film and documentary which reflects local, regional and national cultures.

If new players wish to be considered as PSB players they would need to invest more in local programming, particularly drama, film and documentary and have clear targets for increasing their PSB programming over time to the 51% target already identified in other EU countries.

The provisions of the 2018 EU AVMS Directive should be recognised in the UK to allow the 1000 or so television channels licensed in the UK to continue broadcasting without hindrance to the European Union.

## **Question 2: Do you agree with our proposals for a clear accountability framework?**

OFCOM should be the body that has oversight of the new regulatory proposals.

It is important to separate out the **regulation and the accountability of the BBC** as a unique public broadcaster, the most respected in the UK and across the world, paid for and owned by every citizen in the UK. Decisions on the licence fee, whether concerning its continuation or its amount, should therefore be politically neutral and independent of the government of the day. An independent organisation should be set up responsible for the oversight of the BBC remit and the financial resources needed to deliver this. Its specific mission should not only set out the financial needs of the BBC, but also act and regulate, on an annual basis, to ensure that public money is being invested in the right areas.

**Independent producers and role in PSB** - It is significant (3.22 ) that whereas PSB broadcasting producers allow rights to remain with independent producers, leading

to growth of UK's independent creative sector, this is not the case with commercial providers. Terms of trade with independents should be reviewed to reflect the rise of super-indies, often foreign owned, and offering less to the producers they work with.

**Transparency** - Just as current PSB providers share audience statistics and information on advertising revenues, through BARB and other means, new providers must do the same. Algorithms and patterns which these reflect should be shared with regard to PSM offering.

OFCOM should ensure safeguards to protect citizens and the market from the entry of vertically integrated companies, active in content production, distribution and hardware provision.

Given the escalation in companies harvesting of data, non-consensual data gathering should be checked. There should be regulation to ensure citizens' privacy with the possibility for them to opt out of data collection by commercial companies.

All public service broadcasters should have greater duties of diversity not just for their direct employees but in their freelance networks too (which are overwhelmingly white and male and middle-class). OFCOM should insist that all beneficiaries of the PSB/M system collect and share data, and provide a robust plan for monitoring and action to redress inequality.

The current Diamond diversity network does not go far enough in reaching the freelance sector which provides the bulk of the independent workforce.

### **QUESTION 3: What do you think should be included in the PSM offer ?**

The existing PSB obligations in the 2003 Communications Act should remain in place as far as is practicable.

**Investigative documentary**, labour intensive and expensive, is now rare even on traditional PSB channels. It should be accorded greater importance in the PSM offer as fundamental to our citizens' need to receive information that allows them to hold decision-makers in our society to account. This is essential in our democracy particularly in the age of fake news and conspiracy theories being spread by social media.

**Feature film and drama** - British film needs more investment and support, particularly since the UK has left Creative Europe. Budgets available to local independent film are meagre compared to Germany where one region receives as much as the BFI has to spend annually. The French equivalent of the BFI invests €650 million per annum in French film. We should seek to increase our investment in this respect. The BBC film budget stands at approximately £12 million. Other BBC equivalents spend in the region of £75 million per annum on feature co- production.

Existing PSB services, particularly BBC and Channel Four, should be adequately funded in order to invest more, with the production values which can compete. Particular attention should be paid to family films and younger audiences. Canal Plus, one of the most successful satellite channels invests over €200 million per annum in French/European film as a result of obligations placed upon it in audio-visual regulation.

**Far greater investment in those areas identified as market failures** – religion, arts and children’s programming. Children’s programming especially to include the original production of local children’s drama and local film should be part of updated regulation involving all relevant audio-visual players.

**Question 4: What options should we consider in terms of PSM availability ?**

According to existing law, local PSM content must be given due prominence in the search function of any platform. This must now be mandated in subscription and streaming service licences. There will need to be a definition of what constitutes public service media when it appears on a non-British streaming platform. There should also be a clear selection option for local content in all straplines.

All free to air public service broadcasting channels should be carried by all relevant subscription and online services.

In recognition of their access to our audio-visual market and the enhancement of PSB programmes/films to the profits of commercial subscription and streaming services, non-British multinational players should be mandated to pay appropriate sums for carrying PSB broadcasters’ content. This would rebalance the existing unlevel playing field, one consequence of which has been the migration of advertising revenues online so that Google/Facebook now control upwards of 75% of all online advertising.

**Recommendation algorithms** - The use of recommendation algorithms can be a threat to cultural diversity as filter bubbles can arise from their use. The filter bubble then has a negative impact because the user is not given the chance of finding something serendipitously, i.e. discovering a new type or genre of works that they might like even if they don’t match a priori their tastes hitherto.

Algorithms should be made transparent so that their impact on UK PSM material can be monitored and to enable assessment of whether they are driving largely non-British programme viewing options. Regulation based on monitoring could then enhance choice and cultural diversity of expression.

**Question 5: What are the options for future funding of PSM and are there lessons we can learn from other countries’ approaches ?**

To make existing funding contestable without adopting legislation to raise new funding would unfairly discriminate against existing PSB providers. It is widely

recognised that 'over the top' services have benefitted disproportionately in relation to local services whilst benefitting from access to the UK's audio-visual market/viewers without any demands/rules for appropriate investment/carriage and prominence of local programming on their platforms.

Non-British streaming platforms have been given entry both to our audio-visual market and millions of British viewers, with no appropriate obligations placed upon them. This is now in stark contrast to other comparable countries. Recognition of how VOD/OTT is undermining our PSB model has been flagged by senior broadcasting figures including BBC Director-General Tony Hall and Executive Chairman of ITV, Peter Bazalgette.

Distinguished UK film and television director, Peter Kosminsky and Sharon White<sup>1</sup>, former Head of Ofcom have rightly argued for a levy on video-on-demand providers to go to a PSM fund to ensure free-to-air drama can survive in the face of the formidable competition presented by the new non-British streaming services.

To support additional investment in British drama, film and documentary all UK channels should carry 51% local production outside of news, information and sport. Hitherto, it is only the designated PSBs that have met this quota but it should be applied equally to all relevant PSM providers, including those only available on cable and satellite. For channels unable to meet the 51% quota, proportionate investment obligations in local drama/film/documentary relative to turnover and viewing audience could be considered.

As in other countries mentioned in the report (5.12) - Germany, France and Canada - there should be **levies on non-British streaming platforms** as a percentage of turnover to be invested in a PSM fund. Streaming platforms are afforded access to our audio-visual market. Many countries emphasise in their legislation that this represents an enormous market privilege and that special measures are required in order to maintain local cultural diversity of expression. Additional examples are:

Belgium (French part): Support for audio-visual production: obligation to contribute to national programming/film fund extended to foreign publishers e.g. Netflix, Disney + or Amazon Prime, set at a maximum of 2.2% of a turnover of more than 20 million euros.

Italy: Contribution to national film/programme fund under discussion of 12,5% of annual net revenues in Italy by SVoDs.

Poland: As of July 2020 (adopted as part of COVID-19 emergency measures package), on-demand providers required to pay quarterly **1,5%** of their revenues generated in Poland from subscription or commercial communication, whichever is highest, to the Polish Film Institute.

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<sup>1</sup> The Times, 28.9.2019: Call for Drama Tax on Netflix and Amazon

Portugal: Contribution proposal to a national film fund from on-demand platforms targeting Portuguese market: **1%** of revenues generated in Portugal. (proposal not finalised).

We welcome UK government proposals for the Digital Service Tax in April 2020, raising 2% of revenues from search engines, social media and on-line markets, but this should now be extended to SVODs as well.

**Question 6: What do you think about the opportunities for collaboration we have referred to? Are there other opportunities or barriers we haven't identified?**

OFCOM needs to consider how the BFI work on behalf of British independent film can be strengthened. All players referred to in this submission should be mandated to invest far more in British independent film in conjunction with bodies like the BFI.

In the interests of cultural diversity Britain should look at working more with the Commonwealth and countries whose audio-visual output is under-represented on our screens. Co-productions with these countries would be of mutual self-interest economically, political and culturally.

The toolkit of policy options on Preferential Treatment, Article 16 of the 2005 UNESCO Convention should be referenced for policies to enhance collaboration.

**Viewing on other Platforms** - Whatever the opportunity for collaboration with platforms outside the PSB structure, creators/performers should be paid proportionately for the exploitation of their work online, for instance on platforms such as YouTube. This is necessary to ensure the viability of many British creators/performers. Regulation for this exists in the 2019 EU copyright law which the UK government previously signed up to. The relevant clauses of this legislation, even if not yet transposed into UK law, should be studied to see whether they could be adopted to strengthen the bargaining power of rights-holders with large internet platforms.

**Question 7: What are your views on the opportunities for new providers of PSM?**

This is a great opportunity for new providers to invest in high quality British drama/film and investigative documentary and to give this material high prominence on their platforms. This is to their long-term commercial advantage. However, as referred to above, concessions should not be made without addressing regulation to ensure a level playing field with existing local producers and fair remuneration for UK artists, authors and producers, particularly with regard to royalties and rights.

## **The significance of the BBC**

Whilst the BBC is not the subject of the Ofcom Consultation its future is absolutely central to any discussion of PSB, since the BBC is by far the largest provider with its standard-setting, international record. It has also led the way in adapting to and setting standards in the on-line environment.

Any change in regulation should provide adequate funding to sustain its centrality of place and its unique characteristics as UK's principal PSB provider. We note that critics of the BBC and existing PSB provision argue that this provision 'crowds out' commercial providers, though there is no hard evidence to make this case. Far from crowding out commercial broadcasters, we would argue that the BBC forces them to 'compete on quality', increasing their need to invest in content, especially first-run UK content, in order to attract viewers.

### **The BBC**

- Belongs to licence fee payers
- Grants universality of access
- Guarantees a common national conversation around news, information, drama, documentary
- Enhances the provision of impartial news and information so crucial in the age of fake news and echo chambers on social media
- Provides an essential dimension of equal citizenship
- Makes programmes and tells stories that address all British citizens within an international audio-visual environment
- Does not commission with advertisers in mind
- Contributes massively to the economy as the main trainer of those working in the audio-visual industry and investor of £2 billion in the audio-visual economy
- Is a benchmark for diversity, high quality training and programme making that puts citizens first

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