

Response to the Jeremy Hunt, ‘Open letter to all those who work in fixed or mobile communications, television, radio, online publishing, video games, and other digital and creative content industries’ London, DCMS, 16th May 2011’ from the Campaign for Press and Broadcasting Freedom (CPBF)

Introduction

1. There is no doubt that the regulatory structure for the media in the UK is in need of change. The current regime is confused and driven by an over simplistic conception of the social and economic purposes of mass communications. The structures of regulation are profoundly undemocratic in constitution and the procedures adopted by the main media regulator, Ofcom, can fairly be characterised as more concerned with the commercial interests of the industry it regulates than with the wider interests of the public.

2. For this reason the CPBF welcomes the assertion by Jeremy Hunt that ‘the wider public interest will always underpin our approach to how any issues are addressed’. The ‘Open Letter’ clearly demonstrates that the government assumes that by prioritising commercial interests it can also promote the public interest. It states that ‘at this stage our intention is to keep an open mind about potential outcomes and also about the mechanisms we should use to deliver these outcomes’. We trust that the government will keep a genuinely open mind as we move into an all-digital environment’

3. The letter’s repeated stress on ‘deregulation’ and the need to overcome ‘barriers’ to more competition and innovation demonstrate perfectly clearly that the government considers deregulation is the best, and indeed the only, way to foster the growth of the communications industries. It cannot be stressed too strongly that the ‘deregulation’ of the broadcasting sector which has taken place since the early 1990s is in fact no such thing – it is a form of ‘re-regulation’ which has replaced regulations designed to protect and foster the public interest with regulations designed to further corporate interests. The fact that the concept of public service is raised in only one of the thirteen questions illustrates the extent to which this approach dominates communications policy. We argue that the government should not sideline the important principle of public service as an organising principle of communications.

4. In an age of media fragmentation and the intensified commodification of mass communications, processes greatly facilitated by the 1990 *Broadcasting Act* and the 2003 *Communications Act*, the concept of public service is more important than ever. The government should ensure that public service principles are at the centre of any legislation which emerges from this process.

5. Current media ownership rules do not adequately protect pluralism. That is the conclusion Ofcom reached in its review of the public interest considerations in the News Corporation/BSkyB merger. Arguing that once a merger is approved, ‘there is no subsequent opportunity or mechanism to address...plurality concerns that may emerge in future’, Ofcom recommended ‘that the Government consider undertaking a wider review of the statutory

framework to ensure sufficient plurality in the public interest'. We agree. Such a review should be undertaken so that its findings can inform proposals on ownership in the new Act. Under the original merger proposals, News Corp/BSkyB would increase its reach amongst regular news consumers to 51 per cent. That level of market concentration powerfully contradicts the presumption that media ownership rules can be relaxed due to naturally occurring digital diversity. Instead, a more complex environment exists with significant levels of concentration and gateway control across public media. That is why strong ex ante powers are required to prevent levels of concentration that stifle innovation, domestic production, and choice and quality for viewers and users.

6. There is now plenty of evidence to show that policy formation around the media is essentially the preserve of industry insiders, civil servants, think tanks and politicians. 'Regulatory capture' barely begins to describe the fundamentally anti-democratic nature of this process. Consultations are more about the management of public opinion than gleaning properly informed responses that will both challenge established ways of thinking and acting and genuinely influence the outcomes. We hope that the government will consult properly and demonstrate that it has an open mind by making public all the private and public representations it receives throughout this process and giving full, detailed reasons why it rejects suggestions that counter its established predispositions.

The questions

Q1. What could a healthier communications market look like? How can the right balance be achieved between investment, competition and services in a changing technological environment?

The way to ensure that there is a proper balance between competition and service in a communications environment is to maintain and extend properly accountable public service content providers such as the BBC, ITV and Channel 4. Properly funded these organisations can lead innovation in content and technology into the digital age. The overwhelming success of the BBC and Channel 4 as content providers is matched by the success of the 'I Player' and Freeview technologies. Competition needs to be tempered by the existence of organisations whose main purpose is the public interest, which is not synonymous with the interests of private shareholders. Any future Communications Act must provide a central, properly funded role for public service content providers.

Q2. What action can be taken to facilitate greater innovation and growth across the wider competition regime, and how can deregulation help achieve this?

This question clearly demonstrates that the government's mind is very far from 'open' when it comes to the matter of 'deregulation'. In fact, where the provision of content is concerned, the evidence shows that the more you increase competition and the more you de-regulate, the more provision drifts towards a medium range of material that can be guaranteed some kind of financial return, as the changes to ITV since the 1990 Broadcasting Act demonstrate. Innovation in content provision for mass audiences relies upon an environment which allows for experiment and has room for failure. The way therefore to 'facilitate greater innovation' is

to regulate to support public service content providers and to require other operators to meet high standards of content provision characterised by experiment and innovation.

Q3. Is regulatory convergence across different platforms desirable and, if so, what are the potential issues to implementation?

We do not have full regulatory convergence in the UK. The newspaper press and the internet do not fall under Ofcom. Ofcom has some powers over the BBC, designed to curtail the Corporation's ability to expand and develop services deemed to provide unfair competition for the private sector. In principle the centralised regulation of standards, ownership, and issues of redress across communications makes sense. In practice the principles underpinning the limited amount of regulatory convergence there has been, have been destructive of proper regulation. Ofcom has been required to drive forward deregulation in the areas for which it is responsible and consequently has not had a properly balanced approach to the needs of citizens, a concept with which it still seems distinctly uneasy. If converged regulation is placed in the hands of small groups of fundamentally unaccountable people selected because of their willingness to adhere to the idea that regulation is primarily about economic issues, then it cannot be judged a proper regulatory regime. The government would have to be prepared to have a much fuller sense of the purposes of regulation, purposes that would place a higher priority on the public interest, and a willingness to make the regulator more accountable to and properly representative of society as a whole, if it were to push ahead with more regulatory convergence.

Regulation in the digital age should also have the scope to enforce plurality of provision, especially the survival and protection of less 'popular' genres'. Where ownership is concerned plurality is threatened by the activities of powerful internationally-based owners, whose primary aim is to maximise their own profits and to control outlets on several different platforms, in particular newspapers, broadcasting and online. Regulation should therefore also enforce plurality of ownership.

Regulation should also include the provision of news and current affairs on different online platforms. These should be subject to the same requirements of impartiality as broadcast outlets.

Q4. What barriers can be removed to facilitate greater exports and inward investment and make the UK more globally competitive in digital communications?

In so far as this relates to issues surrounding public service content, then it is important that any measures taken to encourage 'inward investment' are not done at the expense of maintaining and developing a full range of such content across all available platforms.

It should be noted that high quality programmes made possible by non-commercial broadcasters, especially the BBC, are highly valued overseas -especially in the US- and that innovative formats, developed chiefly by BBC and C4 have also been sold across the world.

Q5. What further market and regulatory developments would lead to widespread take-up of superfast broadband? What regulatory action would government need to take to make superfast broadband more readily available in a) urban areas; and, b) rural areas?

The provision of broadband should not be left to private companies alone, but where necessary government should provide the infrastructure (as suggested in Digital Britain report). Net neutrality facilitates a relatively level playing field for people and groups wishing to use the internet. In the interests of ensuring fair and free access to the internet, rather than creating a two-tier system based on ability to pay, the government should support a policy of net neutrality. To do otherwise would be to acquiesce in the lobbying of commercially motivated special interest groups with the power and resources to bend the ears of civil servants and politicians. Income from spectrum leasing (see Q6) should be used to upgrade Britain's communications infrastructure, and to intervene to fill the gaps in the digital divide thereby ensuring that remote, rural and deprived urban areas can fully participate in the digital economy.

Q6. What are the competing demands for spectrum, how is the market changing and how can a regulatory framework best accommodate any rapidly changing demands on spectrum and market development?

The demands on spectrum space are increasing. The last Labour government made the fatal mistake of selling off chunks of the spectrum to the highest bidder. This meant that it could no longer adjust its income from this resource in line with changes in demand over time. It also meant that there was less opportunity for taking government led initiatives to promote innovation. To properly regulate competing and rapidly changing demands on spectrum, the government should halt all current and future sales. It should lease spectrum on terms that are favourable to the public interest, and use the money to fund innovation in content across all platforms. This would also relieve the BBC of the need to part finance roll out from licence fee money.

Q7. How should spectrum be managed to deliver our growth objectives whilst also meeting our policy objectives of furthering the interests of citizens and consumers in relation to communications matters?

Spectrum should be managed along the principles set out in answer to Question 6. The allocation of spectrum and the allocation of the revenues from spectrum leasing should be overseen by an independent organisation, representative of interests in the industry, the workforce and the public at large.

Q8. How should the UK engage on an EU/International level in relation to spectrum?

The UK should press the case for the public use of spectrum to promote revenue and innovation at EU and international level. It should assert that spectrum is a natural resource

and one which, like the high seas, should be used for the benefit of all, not simply to promote corporate aggrandisement.

Q9. Is the current mix of regulation, competition and Government intervention right to stimulate investment in communications networks?

The failure of ITV to deliver on its public service obligations in the nations and regions, and the willingness of Ofcom to lean towards the industry in the way it approaches issues of regulation suggests there is something quite fundamentally wrong. This has been most sharply exemplified by the demise of UK-originated children's programming on ITV. The acceptance in policy circles, largely at the behest of industry lobbyists with privileged access to civil servants and government ministers, of the idea that the BBC should not be able to move into new areas without intrusive oversight by Ofcom and that it should withdraw from areas where it has established a strong presence, suggests also that the balance within the mix is wrong. It is weighted far too heavily in favour of corporate investors who are not likely to be UK based, and whose drive for global profitability suggests that the interests of UK citizens will not be paramount. The absurd principle which appears to have animated government thinking on these matters is that the BBC must be stopped at all costs from providing a public service in these areas just in case the corporate sector deigns to intervene in the interests of making a profit for its shareholders. However, all the evidence, which the government appears to ignore, suggests that the corporate sector will not step in make up for the BBC's enforced absence from any of these areas, thus leaving the public impoverished and bereft. The government should remember that the public as a whole should have access to the best that can be provided by properly focused public regulation and funding, and should organise the mix of its measures accordingly. To do otherwise will be to lead to the deterioration of the economic and cultural base that underpins public service content production in the UK.

Q10. Are there disproportionate regulatory barriers to investment in content? If so, what are they and how can increased investment in UK content production be encouraged?

In so far as this relates to public service content provision the way to increase investment is to [a] sustain and increase the licence fee [b] force commercial providers who achieve more than an specified degree of market share to contribute towards the funding of public service content [c] establish a tax regime that makes media corporations pay their fair share of the taxes on the income they generate in the UK and use this money to promote investment.

Q11. Should the core focus of public service broadcasting be on original UK content?

This is far too narrow a way of framing the issue, and again betrays the government's underlying attitude to public service in broadcasting, which is both negative and limited. The core focus of public service content providers should be servicing the cultural and social needs of UK citizens, responding fully to the diversity of interests and outlooks which go to make up the population. In order to achieve this all broadcasters who operate in the UK should be required to produce original content in the UK, with the main providers, the BBC,

ITV and Channel 4 having the heaviest obligations. BSkyB should be required to produce a proper proportion of EU-originated content; its activities massively impact on broadcasting in the UK and it should therefore be made to contribute its fair share of EU- originated content.

Detaching the issue of ‘original content’ from the purposes for which it is produced is reductionist and liable to lead to a further erosion of the purposes of public service in communications. For without the wider context the core focus of public service broadcasting could be the production of hour after hour of a very narrow range of content. A mix of types of funding and organisational structures has been the key to the success of UK broadcasting, and ways should be found of preserving this in the digital environment.

Q12. What barriers are there to innovation in new digital media sectors, including video games, telemedicine, local television and education?

The fundamental barrier to innovation in ‘local television and education’ is a lack of independent resources. This has been most graphically illustrated by the failure of the government’s attempts to initiate a ‘local’ television services. For genuine local media and educational initiatives to work, then money needs to be re-channelled from the highly profitable private sector (Google, Microsoft, ITV, and Sky) to fund new innovations. At the moment the policy of letting these organisations focus primarily on the interests of their shareholders is a major barrier to innovating socially desirable developments in the media.

Q13. Where has self- and co-regulation worked successfully and what can be learnt from specific approaches? Where specific approaches haven’t worked, how can the framework of content regulation be made sufficiently coherent and not create barriers to growth, but at the same time protect citizens and enable consumer confidence?

The 2003 *Communications Act* enshrined a system in which broadcasters, particularly those in the commercial sector, were allowed to regulate as much of their activities as possible. The decline of ITV as a public service broadcaster, and the retreat of commercial radio into a pop music format, with little news and regional or locally produced programming, has been the consequence. Where the government allowed the press to regulate itself, the repeated failure of the PCC to properly regulate its sector has been evidenced time and time again, most recently in its failure to investigate properly the ‘phone tapping’ scandal, and is now openly acknowledged by the government. The problem we have in the UK is the product of a way of thinking that is fundamentally flawed and which refuses to recognise its own ideological underpinnings, quite apart from the fact of the enormous damage which it has done to public service broadcasting. It may have seemed cutting edge in the 1980s and 1990s to argue that communications should be treated like markets in shoes, and as such be subject to the minimum of regulation, but the spectacular failures of successive attempts at re- regulation over the years suggest a different approach is urgently needed. We need a system of regulation that puts the public interest first, based on the assumption that developments within the private sector must take place within a framework of public responsibility and public interest. The media are public resources that lay claim to rights to freedom of expression on the grounds that they provide a genuine public service. The problem is that left to run largely as profit orientated organisations, media corporations service shareholder

dividend maximisation rather than the public interest. High-value consumer services should not be favoured to the detriment of public service obligations.

Regulation should therefore be re-constructed in order to promote public rather than private interests in communications in an all-digital environment. It should ensure:

- a) pluralism, accountability and diversity, with competition for quality as much as for income;
- b) the continued provision of news and current affairs programming which is reliable, independent and impartial;
- c) universal service provision and universal access;
- d) the clear enforcement of public service obligations and equal service quality.

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