

Evidence submitted by the Campaign For Press and Broadcasting Freedom to the Ofcom, *Public Service Content in a Connected Society. Ofcom's third review of public service broadcasting. February 2015* (London, CPBF, 2015)

The Campaign for Press and Broadcasting Freedom is an independent organisation which has campaigned for more accountable, open and diverse media since its creation in 1979. Issues around which it has worked include, the statutory Right of Reply, ownership and control in the media, the nature of the internet and computer based communications, representation within the media of the diversity of groups in society, the accountability of regulator structures, the need for independent alternative media and the importance of sustaining and developing public service media.

Responses to consultation questions

Question 1: Do you agree with our assessment of the context in which the PSB system operates, and how the trends identified might affect the PSB system? In particular do you agree with our analysis of the independent production sector?

- [a] The factors identified in the review document (technological change, generational preferences, emergence of new platforms, increased competition) are relevant to any discussion of the PSB context. We note that in spite of the marketization of broadcasting since the 1990s that PSB remains popular, account for over 50% of all viewing [para.1.13] and that audiences continue to agree that 'it is important that television delivers the PSB purposes and characteristics' [para. 2.48] We are concerned that the audience share of the main PSB channels has fallen from 60.5% in 2008 to 51.1% in 2013,[Figure 18, pg.41] is a reflection of the long term impact of the regulatory changes of the 1990s and the 2003 Communications Act, which weakened the finances and autonomy of these channels, while allowing for the growth of under regulated competition.
- [b] The context offered by the review does not take into account, sufficiently, the regulatory context; that is the nature of Ofcom, its track record as a defender and promoter of PSB; the legal framework of copyright, competition and ownership; and the political pressures which continue to be exerted on broadcasters, and in particular the continuing attacks on the BBC's role as the major supplier of public service broadcasting. The review should therefore take these matters more fully into account when making both its projections as to the future of PSB and its recommendations.

Question 2: Have we identified the key differences in Northern Ireland, Scotland and Wales?

- [a] The statistical data illuminates key similarities and differences, although there is no data on the degree to which the public or politicians in these nations and regions support greater devolution of control to the Parliament and Assemblies over media policy.

- [b] The next stage of the review should consider the political and regulatory contexts in the nations and regions, and the views of those in these areas on questions of accountability and oversight of media policy.

Question 3: Do you agree with our assessment that the PSB system remains strong overall?

- [a] It is clear that PSB still occupies a strong position in the broadcast and online landscape. But the evidence adduced by Ofcom, as summarised is worrying:

‘The PSB system remains strong but there have been declines in spend, output and viewing. The overall amount of new UK programming remains high in absolute terms and output is actually up in peak time, although there has been an overall decline of 5% since 2008 in terms of output hours. However there has been a 17.3% real-terms decline in investment by the PSBs, with output in daytime falling in particular.’[pg.34]

- [b] Even assuming a stable regulatory environment, the advent of increasing levels of satellite, cable and online under regulated competition suggests that PSB is likely to decline on all these indices over the next five years.
- [c] In the next stage of its review, Ofcom should itemise measures to strengthen and extend PSB across all platforms in the next period. This should include:
- [i] Stricter obligations on the commercial PSB channels and their portfolio channels relating to levels of investment in first run programming and the nature and range of programming shown at peak viewing times;
 - [ii] imposing public service obligations on all providers of content once they reach a certain threshold of market share, in return for access to spectrum and licensing;
 - [iii] the removal of obligations on PSB channels to outsource work to ‘independent’ producers;
 - [iv] an increase in licence fee funding for the BBC, and a requirement that it strengthen its in-house production facilities across all platforms;
 - [vi] the removal of Ofcom oversight over BBC plans for new services.
 - [vii] impose industry levies on companies like Google and Microsoft, and satellite and cable providers not covered by PSB provisions, to fund public service content across all platforms.
 - [viii] change the law regulating ownership in the communications industries along the lines we lay out in answer to Question 12 below.

Question 4: Given the resources available, to what extent is the system meeting the needs of as wide a range of audiences as practicable.

- [a] The review makes it clear that there has been a decline in the amount of non-soap drama, a large drop in the spend and output of formal education, and, with the exception of the BBC, a fall in the output of children's programming
- [b] This situation reflects the on going impact of the failure to regulate new entrants into the market to ensure that PSB providers operate, as far as possible, on a level playing field.
- [c] The next phase of the review should look to measures, such as those outlined in response to Question 3, to rectify this situation; in addition Ofcom should press existing providers, as a condition of their licences, to deliver properly on all these fronts.

Question 5: Given the resources available, does the PSB system deliver the right balance of spend and output on programming specifically for audiences in Wales, Scotland and Northern Ireland and programmes reflecting those nations to a UK-wide audience?

- [a] The picture presented by the review is not positive. 'Spend on first-run originated nations' and regions' programming by the BBC, ITV, STV and UTV fell, in real terms, from £353m in 2008 to £263m in 2013, a decline of around 26%' [para.3.140] Also driven in part by Ofcom's decision to let ITV retreat from its obligations to provide local news, 'spend on nations and regions news has fallen from £227m in 2008 to £176m in 2013, a reduction of over 20%' [paras. 3.153, 3.154].
- [b] Given this, it is clear that the financial settlement across PSB since 2008, plus the regulatory interventions of Ofcom, have made the provision of programming that relates directly to the diverse needs of people in the nations and regions harder.
- [c] In the next stage of its review, after consulting with the Parliament and Assemblies of the nations and regions, Ofcom should make recommendations which will enhance the production of peak time programming and news programming in these areas over the next five years.
- [d] In addition, the forced merger of the BBC and S4C has clearly had an impact on this situation. There should be a swift review of the circumstances surrounding the merger and of the standard of financing and governance that ensued. This review should inform any recommendations for the future of S4C and BBC Wales.

Question 6: Is declining investment affecting the quality of PSB and is it a cause for concern?

- [a] The review makes it clear that declining investment seems to have led to audiences feeling that PSB providers are duplicating successful programme

formats rather than producing original, innovative and challenging programming [page 34]

[b] There is no doubt that ‘quality’ is a difficult term to pin down, given the wide variety of opinions on the subject. But in so far as the regulatory framework, by increasing competition and squeezing revenues for PSBs, impacts on the ability of those organisations to take risks, and invest in challenging new programming, the quality of material on offer to the public, and its diversity, must necessarily be affected.

[c] In the next phase of its review, Ofcom should investigate measures to ensure that commercial PSB providers use more of their income to fund quality peak time, diverse programming, and that they, and the BBC are enabled, through funding mechanisms and levies on non PSB companies, to have the resources to do so.

Question 7: Do you agree with Ofcom’s provisional findings in the Review of C4C’s delivery of its media content duties?

[a] It is well known that C4’s original remit to provide for tastes and interests not properly catered for by the other PSB channels, has been reinterpreted as the provision of new forms of light entertainment and life style programming. It is true it still maintains a high level commitment to news and current affairs and to certain kinds of documentary; but it is arguable that in seeking to compete with its commercial niche channel and online rivals in the same field, it has lost a clear sense of what makes the channel different from many of the others crowding the programme guide. In addition, the overall decline in production for older children, plus the decline in viewing of news and of the channel overall (page 34) indicate that Ofcom’s judgement that it is broadly delivering on its remit, is on the optimistic side.

[b] Channel 4 would benefit from measures which allowed it to produce programmes in an environment where its main commercial competitors had similar obligations, or were subject to levies which allowed it, by the transfer of those monies, to sustain and develop higher quality, more challenging and diverse programming.

Question 8: To what extent do you agree with our assessment of the degree to which the non-PSB services play a role in helping to deliver the public service obligations? In doing so please set out your views on the delivery by the PSB portfolio channels, other non PSB channels, on-demand and internet services and also radio services separately.

[a] There is a problem with this question. The review proceeds by listing data in increased production of UK content across all the platforms mentioned. It is

clear that in an environment where there is a massive increase in providers seeking to gain a share of some aspect of the UK market that there will be an increase in content addressed to UK audiences. But the enumeration of the increase in quantity says next to nothing about [a] the quality of this programming [b] the extent to which it collectively provides for high quality content that sets out to inform, entertain and educate the diverse cultures that inhabit the United Kingdom.

[b] PSB has traditionally had universal provision at its heart. Yet Ofcom in this report downplays this, extolling as it does the provision of this increase in content from non PSB providers, the bulk of which do not provide universal service but ‘are pay-tv channels and so not available to audiences without subscription’[page77]. The news provision on the internet, or social media, raises serious questions about just how ‘news’ based it is, in the traditional sense, and just how much of it seeks to be wide ranging, original and balanced in its output.

[c] Ofcom seems to be seeking to mitigate the negative impact of marketization of communications, and the subsequent damaging effect on PSB, by implying that the new commercial providers are, in some vague sense, doing what those channels providers with statutory and license based obligations are doing. It may be the case that some elements of this provision mirrors the output required by these obligations; but asserting its similarity to PSB provision is not the same as proving it.

[d] In the next phase of its review, if Ofcom wants to embrace the new under regulated providers into the fold of PSB, it should recommend statutory and regulatory measures which would require them to meet a range of challenging objectives relating to range, diversity, UK production, balance and innovation, as well as addressing the nations and regions. Once these measures were in place it will make sense to include their provision in a review that is meant to be focusing on the future of PSB.

Question 9: How likely are we to see steady evolution and have we identified all of the potential alternative scenarios and risks of the system?

[a] There is only likely to be a ‘steady evolution’ if nothing is done to prevent that. The ‘steady evolution’ outlined in this review, is one in which levels of investment and viewer reach decline as they have done since 2008. Thus the conditions under which this ‘steady evolution’ has taken place have to be remedied as far as possible.

[b] It is highly unlikely that there will not be an increase in competition from view on demand services, a further migration of advertising revenues to the fully commercial sector, and pressures from influential figures in the commercial industry, the free market think tanks and the UK press, to undermine the BBC

by either curtailing the licence fee's value further, and pressing for sections of that fee to be allocated to commercial providers – a further extension of the outsourcing that has been imposed on the BBC since the 1980s.

- [c] If PSB is to survive and thrive, then specific measures, such as the ones we have already described in this submission need to be taken. In addition to regulating major new commercial providers into the PSB system, and generating funds by levies on commercial media providers who are not PSB compliant, the BBC's Licence Fee settlement needs to be increased, and incentives given to existing commercial PSB providers to enhance the quality and range of the programming they will provide.

Question 10: How might incentives to invest change over time?

- [a] We are not in a position to predict in detail how incentives to invest might change. But in so far as PSB is a publicly regulated sphere of economic activity, the question of investment (by the BBC) or incentives to invest (for the commercial PSB sector) is a matter of public policy and state intervention.
- [b] The framework of future public policy relating to PSB should be premised on funding the expansion of PSB provision across all existing and emerging platforms, and establishing mechanisms of review and support which enable this to happen. The promotion of PSB values should become the foremost principle of communications policy, with market provision not allowed to impede that development.

Question 11 Have we identified all the relevant ways in which the PSB system might be maintained and strengthened?

[a] All of the 4 areas identified contain issues that need to be addressed. But they do not address two fundamental areas.

[i] The first is the need for an overhaul of the regulatory framework, to vest the regulator, Ofcom, or its successor, with the obligation to put the promotion of public service values first in its policy interventions across the communications sector, and to make that regulator more representative of the communities of interest in society that produce and use communications, not just those with close links to the senior levels of the industry.

[ii] The second is the need for legislation which radically limits market dominance. Firms with significant market share, PSB or not, should help ensure media plurality themselves by adhering to agreed standards, protecting journalistic independence and editorial output. There should be ownership caps across the total media market and markets for national and regional news in different media, set at 20 or 30 per cent maximum share. Any publisher with a 15 per cent share in a designated market should be subject to a Public Interest test in respect of any merger or takeover. Ownership concentration above the 15 per cent threshold may be permitted if publishers meet certain

obligations, such as investment in newsgathering or original programming, upholding codes of practice, and protecting editorial independence.

Question 12 Does universal availability and easy discoverability of PSB remain important how might it be secured in the future?

- [a] Universal availability for PSB content should be a key aim of policy. Of the three scenarios in the review, Option 1, due to its focus on reaching the main screen in a house is unworkable in a multi-platform environment. Option 2, falls foul to some extent of the same problem, for although it suggests extending universality to every individual's screen incrementally, it could prove slow and ineffective in a rapidly changing environment. Given this, Option 3 of ensuring that accessing PSB content is 'as easy and convenient as possible, through its presence on all user interfaces that enable AV consumption' [para. 6.10] is the one we favour. Although the review seems to favour not using legislation to effect this, we would favour legislation as providing a clear framework for the principles, direction and implementation of this policy.

Question 13 Should we explore the possibility of giving greater flexibility to PSB institutions in how they deliver public service content, including examining the scope (in some or all cases) for regulating by institution, not by channel?

- [a] There is no reason why PSB content, with certain regulatory benefits that come from it, should not extend across the non-linear channels of the commercial PSB providers. Within this though, the main channel should not be allowed to sacrifice reach of PSB content in return for increased revenues. To remove, as this would, PSB programming from peak time and relegate it to the outlands of a portfolio channel, or online presence, would defeat the purpose of having PSB obligations. As long as flexibility is predicated on evidence of increase reach and viewing of PSB content then it is a sensible way forward.

Question 13 Do the current interventions in relation to the independent production sector need to change in light of industry developments?

- [a] Independent production brought real benefits to producers and viewers, especially in the creativity that was exhibited in the early phases of the development of the industry.
- [b] But it came at a cost. The undermining of in-house production resources; the spread of poor terms of service; the unhealthy situation where senior figures

moved from in-house to independent production; the rise of consolidation in the industry at the expense of small and medium scale diversity.

- [c] There is a case now for removing the 25% quota and allowing PSB providers to decide for themselves whether they want to go out to tender or build internal capacity. There is also a case for limiting the tendering process to include only those firms which are genuinely independent, not part of conglomerates or vertically integrated companies, and which operate below a threshold of 5% of the market share, or a similar figure. The original thrust behind the Conservative government's sanctioning of quotas and independents was to foster competition; that has been undermined by the way the sector has developed, squeezing out small scale innovation. Major reform is needed.

Question 14 Have we identified the right options when considering potential new sources of funding, are there other sources of funding which should be considered and which are the most preferable.

- [a] The options we favour are as follows:

[i] Tightening advertising rules, to disallow product placement, and sponsorship of programmes, and to cut down the volume of advertising on PSB channels. Funding lost in this area, could where it was justified, be replaced by the income from levies.

[ii] Provision of tax breaks for commercial PSB providers designed to encourage the production of specific kinds of programming; high quality children's programming; challenging and diverse documentaries and drama; programmes that reflect global issues.

[iii] We agree that PSB providers should be exempt from all AIP (administrative incentive pricing) charges.

[iv] Contestable funding, whereby companies bid for access to licence fee revenues would simply undermine PSB provision. Contestable funding for revenue generated by levies might work, if properly regulated.

[v] Re-introduction of quotas, dropped in 2003, within a suitable funding framework which did not lead to decline in investment in other areas of PSB; news and current affairs in the nations and regions would be an obvious beneficiary.

[vi] The way forward for funding PSB content across platforms should be a mix of the licence fee, for the BBC, advertising and regulatory and tax breaks for commercial PSB, and the creation of an industry production fund based on levies on the income of all media operators in the UK market (print, television, radio, internet) who are above a certain share of the market. This money

would then be available for PSB operators to bid for to enhance their provision.

[v] There should be an independent review into the issue of what the commercial relationship between PSB providers and commercial platform providers, given the complexity of the issues touched on in this review. It should be speedy, but should be independent of Ofcom, and take evidence from the industry, the media trade unions and interested parties in civic society.

Ends