



The Satellite and Cable Broadcasters' Group

Submission to the Perspectives Paper on the Future of PSB

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The SCBG is the trade association for digital programme providers who are independent of one of the main terrestrial broadcasters. Its members are responsible for over 100 channels in the UK. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

According to recent Deloitte research, SCBG members made a total economic contribution to the UK economy in 2007 of over £2.2 billion and invested a total of £1.2 billion in programming, employing nearly 25 000 people in skilled jobs.

SCBG member channels provide citizens and consumers with programmes and services for a diverse range of audiences across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. Our member companies make and show programmes for children and young people, and for ethnic minorities in their own languages. SCBG members' channels can be found on all of the UK's major digital pay and free-to-air platforms, which are now available in nearly 90% of UK homes.

For a full list of members and more details about the SCBG please go to www.scbg.org.uk

Introduction

The SCBG welcomes the opportunity to comment on the Perspectives paper. Key points from this response are as follows.

- The Terms of Trade have played a vital role in the creation of an effective balance in the relationship between the incumbent PSBs and independent producers. These should not be rolled-back in order to provide additional funding for PSBs at the expense of independent producers.
- Non-PSB broadcasters should not, however, be subject to the Terms of Trade, nor is there is reason for Ofcom to keep this position under review. The purpose of the Terms of Trade has always been to enable independent producers to negotiate their rights deals fairly with the PSBs in spite of their dominant position in the market for UK original content – by definition, multichannel broadcasters each occupy a tiny fraction of this market, and have no market power leverage in commissioning negotiations.
- Whilst investment in UK originated production is an important public policy objective, SCBG is concerned that many of the solutions explored in the Perspectives paper do not consider the contribution made by the multi-channel sector and furthermore do not create genuinely new revenue streams for the market.
- A vibrant and sustainable UK content production sector depends on encouraging investment in UK content from all parts of the broadcasting sector, including from commercial broadcasters, rather than introducing compulsory levies on business innovation and risk-taking.
- Any solution to the perceived drop in investment in UK content should not rely on placing additional financial burdens on other commercial companies in the sector, including broadcasters, networks and technology providers. These companies all have an important role to play in the ecology of the UK communications sector, and the introduction of burdensome regulations which seek to transfer revenues from one part of the sector to another will distort investment incentives.
- Changing the Terms of trade in the manner suggested by the paper, or charging a levy on recording equipment and platforms, are all zero-sum games. They seek to bolster one part of the industry by penalising another without recognising that both parts of the industry are interconnected. This approach is, in the long-run, unlikely to provide a stable base of investment in UK originated content.
- The Government should instead introduce measures which encourage PSBs to look more actively to the commercial sector for programme funding, in return for access to secondary broadcast rights. While there are examples of co-production deals between PSBs and commercial companies, these are more the exception than the rule.
- PSBs should also be required to realise the value that is currently locked away in archived content, and reinvest this revenue in new UK productions.
- The length of the holdback that PSBs may apply to independent producers's secondary rights should be reduced, and preferably be removed entirely. This will enable

independent producers to exploit the value of their rights more effectively, and increase revenues that can be reinvested in their businesses.

Increasing investment in UK originated content

The UK is an international hub for the creative industries, and an attractive destination for media companies seeking to establish an international base. In order for this to continue to be the case, policy-makers must avoid regulation which acts as a disincentive on investment and which drives potential investors to other EU destinations or beyond.

The Digital Britain Review provides an ideal opportunity to put conditions in place which can ensure a comprehensive programme of regulatory reform and the creation of incentives to encourage a vibrant market where all players will invest in UK content.

In particular, instead of seeking to boost PSBs by diverting revenues from other commercial companies, the Government should instead examine ways in which PSBs can be encouraged to seek co-production funding from commercial partners. A number of such co-productions exist as examples of what can be achieved, for example between Discovery and the BBC and Nickelodeon and five, but are still more the exception than the norm.

PSBs could, for example, for every programme commission be required to examine the potential for partnership with the commercial sector, to ensure that no investment opportunities are overlooked, and direct PSB funding is the lowest that is necessary to achieve the programme objective. Historically there has been a tendency for PSBs to isolate themselves from the commercial world, in order to justify and protect their state-allocated privileges; at a time when these are diminishing in value, SCBG believes that it is time for them to reassess their relationship with the commercial sector, and see it as an opportunity rather than a threat.

A further step might also be the creation of incentives for joint ventures that would encourage co-productions on core PSB content. This could possibly come in the form of tax breaks similar to those already in place for the UK film industry or through a contestable funding pot which could be used to produce public service content.

The Terms of Trade

The Terms of Trade have played a vital role in the creation of an effective balance in the relationship between the incumbent PSBs and independent producers. These should not be rolled-back in order to provide additional funding for PSBs at the expense of independent producers. We therefore welcome the paper's rejection of the possible options of more PSB production, additional rights to be included in the primary packages, and a different split of backend revenues.

For both producers and broadcasters to make additional revenue from their rights there needs to be a greater volume of secondary content for sale on the open market. Currently, SCBG believes that there is significant warehoused value which could be made available to the wider market. Lengthy holdbacks and other onerous conditions attached to secondary content are limiting the potential market for this content in the UK, and blocking a potential revenue stream. For this reason the SCBG objects in the strongest possible terms to the suggestion made in the Perspectives paper that the primary window for online content should be extended further. Locking away even more rights than is currently the case is not the best way forward in our opinion.

The SCBG believes that the market should be reformed to limit the primary window, and remove some of the conditions attached to use of content by 3rd parties who purchase it. This would in turn create more revenue for the PSBs and the independent production sector and bring more content to the attention of a wider public when it is shown on satellite and cable channels.

At present it is unclear exactly what the potential value of this market may be. For this reason the SCBG has commissioned some research from Deloitte which will identify the value of secondary rights in the UK and how much more could be gained by producers and broadcasters if the market were reformed.

Non-PSB channels

The SCBG strongly disagrees with the contention put forward in the paper that Ofcom should now be monitoring whether or not it is necessary to put a terms of trade regime in place for non-PSB commissioning. PSBs are still the dominant force in commissioning, and as such it is appropriate that their relationships with producers are subject to rules which ensure fair rights negotiations.

Non-PSB broadcasters should not, however, be subject to the Terms of Trade, nor is there is reason for Ofcom to keep this position under review. The purpose of the Terms of Trade has always been to enable independent producers to negotiate their rights deals fairly with the PSBs in spite of their dominant position in the market for UK original content – by definition, multichannel broadcasters each occupy a tiny fraction of this market, and have no market power leverage in commissioning negotiations.

Within the 'non-PSB market', producers have a wide range of broadcasters with which to enter into a production deal, as well as the option of working with PSB commissioners. It is therefore difficult to see how there could be any need for rules on terms of trade with non-PSB broadcasters.

Furthermore, the business model for non-PSB channels is very different to that of PSBs. Multichannel broadcasters rely on numerous runs and rights on other platforms to generate a return on the production budget due to our smaller audiences. Restrictions on this would seriously undermine the current model.

Levies

The SCBG does not agree with the proposal for levies on platforms carrying PSB channels and on recording equipment. While it may be the case that other countries in the EU use this method to fund local content production, those countries do not have the same high licence fee as the UK or the funding in kind which is provided to PSBs via gifted spectrum.

There is no robust evidence to support an argument for levies to fund more PSB content. The figures put forward to justify levies come from a section of the industry which favours taking this approach and the potential financial benefit they estimate has not been corroborated by independent research.

Anecdotal evidence provided by countries where levies are proposed or in force suggests that their imposition is very unpopular with consumers and could be seen as an additional tax burden. In Spain earlier this year a substantial email and social networking campaign was

triggered when a levy on recording equipment was proposed. Furthermore, in France where the idea of levies to support PSB content is being piloted, the downturn in the advertising market has meant that the combination of falling ad sales and additional costs are having a significant impact on the broadcasters affected. SCBG argues that this is a lose/lose situation and could serve to undermine the capacity of non-PSB broadcasters to invest in new content at a time when their contribution to UK originated content is increasing.

Conclusion

The Perspectives paper raises some interesting points but takes a disappointingly familiar approach to addressing the problems faced by the broadcast market. In the SCBG's opinion there are two main issues surrounding the whole debate:

It is no longer the case that only PSBs are providing public service content. The market is changing and an increasing amount of content which is public service in its nature is being provided by multi-channel broadcasters and online players who would not have been considered to form part of the traditional broadcast market. For this reason any solution put forward to encourage the creation of more public service content should consider the whole market and not just PSBs.

The fundamental problem is lack of funding for programme creation. Rather than robbing Peter to pay Paul, it makes much more sense to search for a solution which amounts to a 'win/win' situation for PSBs and multi-channel operators alike. Penalising multi-channel broadcasters with levies will have a negative effect on their capacity to produce more content and does not recognise the part they play in the provision of public service content either via their own productions or via joint-ventures with PSBs. Taking a closer look at the true value of the secondary content market could help the Digital Britain Review team identify a source of funding which would benefit all the players in the broadcast market. The SCBG is producing some research into the true value of the market for secondary content and is happy to share that with the Review team.