

The Satellite and Cable Broadcasters' Group
Submission to the Digital Britain Review

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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 Government's move to take an integrated, holistic approach to its review of the UK content landscape. We feel that the future of UK content depends on all its providers – PSBs, multichannel operators, online and mobile content providers. We are keen to be involved in plans to ensure a high standard of UK-originated content in the future.

The current market situation has affected every area of the creative industries. The Digital Britain Review is an opportunity to break down the conventional barriers that have existed between PSBs and other broadcasters/content providers and think clearly about what the best possible market to provide the best possible service to viewers should be in economically challenging times.

This response focuses on two main areas of interest for SCBG members:

- Actions 14 –16, creating a 2nd PSB institution in the UK from Channel 4 and protecting investment in UK originated content. The SCBG believes that these are creditable public policy objectives but has significant concerns that short to medium term defence of the status quo is not necessarily the best course of action and may cause significant damage to the development of the wider commercial market.
- Actions 11, 12 and 13, designed to address copyright theft. The protection of pay-TV revenue streams is vital to the health of SCBG Members' businesses, particularly at a time when they are facing significant declines in advertising revenues, and we welcome the steps proposed by the Government as far as they go. Most SCBG members – but not all¹ – believe that an effective strategy will need an effective deterrent at its heart, in the form of technical measures by ISPs against persistent offenders..

Part 1: Investment in content: original UK content Actions 14, 15 & 16

SCBG Contribution to UK content – Facts and Figures

SCBG agrees that the new digital world has vastly increased the amount of content and applications available to consumers, much of which was previously considered the exclusive preserve of the PSBs. Innovative, thematic programming in areas such as the arts, news and science and nature produced by SCBG members has changed the face of the UK broadcast market for the better.

SCBG members provide a wide range of high-quality programmes across most digital platforms, including Freeview and online, and increasing levels of pay-TV subscription mean that more viewers than ever have access to this content.

Results from the latest OFCOM report on the market² estimate that:

- Somewhere in the region of 46% of UK homes subscribe either to pay satellite or cable services.

¹ BSkyB and Virgin Media do not support this approach, and outline their views in their own submissions.

² Communications Market: Digital Progress Report Digital TV, Q3 2008

- The overall growth rate of take-up in Q3 across all pay-TV platforms was reported as 1.7%, with a steady growth pattern of around 1% per quarter.

According to research commissioned by SCBG³:

- Content spend by SCBG members in 2007 was over £400m⁴, of which £119m was on UK-originated content and most spent with independent UK content producers.
- Almost 94 000 hours of factual programming were broadcast in 2007 from a range of SCBG members including Discovery, The History Channel, National Geographic and UKTV.
- Programmes such as the 2008 MTV European Music Awards in Liverpool, broadcast live on MTV in November 2008, the History Channel's "*50 Things You Need to Know about British History*", and Discovery's "*The Big Experiment*", which taught children from an underperforming school science in an engaging way and helped them gain a GCSE in science are all examples of how commercial broadcasters produce UK content which contributes towards a wider public service content provision and acts as a spur to encourage PSBs to produce an even broader range of content.
- SCBG members also work with PSBs on co-productions such as Five/The History Channel's "*Brits Who Changed The Modern World*", "*Peppa Pig*" on Five which is a co-production with Nickelodeon, and Discovery Channel/BBC co-productions such as "*Blue Planet*". Shows such as the "*Walking with Dinosaurs*" (another BBC/Discovery co-production) would never have been made without the contribution of SCBG members.
- Co-productions often debut on a PSB channel, and are shown later on the commercial partner's service, which prevents the credit being shared equally between both partners. Therefore the actual figures for investment in public service content by multichannel operators are likely to be higher than the official figures state.
- SCBG members also purchase substantial amounts of UK "secondary" content that has already been seen on the PSB channels. This provides revenue to UK independent producers (who control the exploitation of many of these programmes); to the distribution companies that broker these deals; and also to the broadcasters that originally commissioned the programmes. In addition to the financial benefits of this activity, it also serves to bring new audiences to PSB content.

Based on industry data from BARB:⁵

- SCBG member channels represented 19% of all television viewing during 2008;
- They represented 21% of all multichannel TV viewing during 2008 (i.e. viewing in households with with any form of digital television);
- They represented 30% of all pay-TV viewing during 2008;
- The average weekly reach of the SCBG channels in 2008 was 35.56 million individuals. Some 70% of the UK population watched a channel from an SCBG member during the average week.

Of course, these statistics do not include the millions of viewers in continental Europe who are watching a channel operated by an SCBG member under an Ofcom licence.

³ "The Satellite and Cable Broadcasters' Economic Impact" – Deloitte 2008

⁴ This figure does not include spend on news and sports as these figures are not included in Ofcom's estimates

⁵ Research from BARB Full Year 2008 Figures – Individuals 4+

Seize The Opportunity – a Chance to Create a Strong Future for the UK Content Market

The SCBG favours the taking of a holistic view of the market, with multichannel broadcasters considered as an integral part of it and as a potential part of the solution to the problems of ensuring the continued provision of high-quality public service content to British viewers. There are a number of potential solutions to the current crisis for broadcasters:

- *Encourage continued investment from across the sector*

The UK is viewed as an international hub for the creative industries. In order for this to continue to be the case policy-makers must take a forward-looking stance on what they want the media industry as a whole to look like in ten or twenty years' time. The Review gives the ideal opportunity to put conditions in place which would 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. The SCBG believes strongly that its members have a significant role to play in the provision of high quality public service content to viewers and looks forward to seeing an imaginative government strategy which will reflect the contribution that all content providers can make to UK public service content.

The creation of market conditions which would encourage more co-productions across a number of areas and a number of platforms would allow PSBs the chance to produce large-budget crowd pleasers such as "*Blue Planet*" in conjunction with a wide range of broadcasters and producers, whilst focusing more of their own budgets on content the market will not provide. A step further might even involve 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.

An example of an opportunity potentially missed was the Government's decision to reject the possibility given to it by the AVMS Directive to allow product placement. As the content market continues to evolve it is important not to restrict one section of it with rules which do not apply across the board.

- *Ensure a Clear Remit for PSBs*

The provision of content that the rest of market is unable to provide should be the primary focus of the BBC and other commercial PSBs. This includes local/regional news and current affairs, regional programming, and content for older children and teenagers, as identified in the latest PSB Review from Ofcom. Having a clear remit on where to focus finances will help PSBs prioritise their spending. It will also help other content providers by giving more certainty to them on what the activities of the PSBs will be, thus leaving them free to develop programming and business models that will complement the work of the PSBs and add to the viewer experience.

- *Review the Terms of Trade*

SCBG welcomes the proposal in the Digital Britain Interim Report to review the existing Terms of Trade between independent producers and broadcasters.

The public service broadcasters – including the BBC – still retain control over considerable secondary value in UK programming through their application of "holdbacks" over content. Programmes that could be sold by broadcasters and producers into the secondary market, raising revenue that could be reinvested in original content, do not easily find their way to cable

and satellite channels that would like to buy them, and could bring them to the attention of new audiences. Channel 4 also maintains an unreasonably tight grip on its programming, through similar arrangements.

Programmes originally commissioned for a PSB channel should be made available more quickly to the rest of the market than is currently the case, and on much fairer terms. In particular, the BBC continues to make unreasonable demands over the scheduling, branding and promotion of content that it originally commissioned when it appears on other non-BBC channels. These rules must be reviewed in order to enhance the flow of rights across the whole market.

Removing these bottlenecks could result in substantial new investment in content from the secondary market.

- *Reject Calls for Levies*

There has been a significant amount of debate recently on the issue of levies to be paid by other sections of the creative economy and consumers to fund PSB content. This is a flawed argument for a number of reasons:

The concept of a levy on consumer recording equipment will not be a popular one. While it is true that this method has existed in some EU States for some time, it is also true that in Member States such as Spain where the idea has been mooted it has been hugely unpopular, sparking Facebook protests and email campaigns by consumers.

Furthermore, in France where the idea of levies to support public service content is being piloted a number of issues have emerged. Firstly the trade-off in France for PSBs to access levy funding has been that they may not advertise at all between 8pm and 6am, something the SCBG is sure would not appeal to commercial PSBs in the UK. Secondly, the downturn in the advertising market means that commercial broadcasters are left doubly disadvantaged because they are losing advertising revenue and still paying a levy. SCBG argues that this is a lose/lose situation and could serve to undermine the capacity of broadcasters to invest in new content, thus depriving producers of the income they need.

- *Avoid Short-Term Solutions*

In order to continue to offer audiences a choice of high-quality content across a number of different platforms, multichannel broadcasters need to be confident that they are competing on fair and level terms with the BBC and other commercial PSB broadcasters.

All broadcasters are faced with a deteriorating advertising market. Although not all broadcasters enjoy the power of ITV and C4 to negotiate favourable deals with advertisers, all of us have difficult business choices to make.

SCBG members are concerned that short-term action by Government to shore up the financial models of the commercial PSBs will cause long-term damage.

In the main, the competition for advertising revenue is a zero-sum game. There is very limited elasticity of demand for advertising and so more revenues for one or two of the broadcasters inevitably means less revenue for others⁶.

We note that all of the various options being explored for Channel 4 are designed to enhance its ability to generate advertising revenue in some form or another. The position of C4 in the market is already extremely strong – it commands a much larger share of net advertising revenue than its share of viewing would suggest. If C4 were expanded, underpinned or enhanced in a way that increases that strength even further, that would result in a deterioration in the position of the rest of the market. This would starve multichannel competitors of much of their revenues, and much of their incentive to continue investing in high quality content.

The issue is not just about leverage in the advertising market. Were C4 to be granted the ability to cross-promote its services more widely (such as through arrangements with other joint-venture or third party channels) this would result in a similar diminution of competition. Equally, any revision to the Terms of Trade that grants C4 greater control over rights, and enhances its already substantial power to manipulate the flow of its programming into the secondary market, would also result in damage to its competitors.

Aside from the concentration of C4's power in the market for advertising and rights, we are also concerned that any further implicit or explicit support for C4 could result in a transfer of funding from the commercial sector to the public sector, and could therefore constitute State Aid.

Any intervention in the market to protect the positions of the current PSB institutions must therefore be undertaken with extreme caution, giving due consideration for competition law and for the EU rules relating to state aid to broadcasters.

We would also point out that there are two policy discussions underway that could affect the distribution of advertising revenues between different parts of the market. Ofcom is reviewing its rules on the amount and placement of advertising on television. The SCBG submitted a position paper which gave very clear evidence that even slight relaxations of the stricter rules for PSBs would have a catastrophic effect on the rest of the broadcast market. The Office of Fair Trading is also currently investigating whether it should lift the controls on the way ITV sells its advertising (the Contract Rights Renewal remedy). Neither investigation has reported back as yet, but significant changes in either area, coupled with a strengthening of Channel 4's position could distort the broadcast advertising market beyond all recognition. Care must be taken that what might be a short-term fix does not undermine the market as a whole.

Investment in content: rights and distribution Actions 14, 15 & 16

SCBG welcomes the Government's recognition that copyright is vital for the UK's content and communications industries and its aim of ensuring that the copyright framework is effective and enforceable nationally and across borders⁷.

Broadcasters, as well as film and music rights holders, suffer from significant revenue losses as a result of illegal file-sharing and other forms of piracy, and believe that an effective structure is

⁶ For more information on the market for television advertising please see the impact assessment in Ofcom's 'Review of Television advertising and Teleshopping Regulation' consultation paper.

⁷ BSkyB and Virgin Media do not share the SCBG position on many of these issues. Please refer to their individual submissions for their positions on the Rights Agency and enforcement matters.

required within the UK to ensure that consumers are properly educated about, and deterred from, the illegal viewing of copyrighted content online.

Whilst we also welcome the Government's support for investment in Next Generation Networks to ensure equal access to audio-visual content files it must be recognised that access to higher download speeds facilitates illegal as well as legal access, and underscores the importance of an effective deterrence and enforcement regime.

SCBG recognises the Government's view that there has been a fundamental change in consumer expectations that content can be found and shared for free, and a corresponding resistance to paying for that content. The illegal sharing of music files has contributed significantly to this change in attitudes in the last decade, particularly among the younger sections of the population, and as download speeds increase these expectations are likely to deepen further in relation to all audio-visual content and other services.

We also understand a view exists that content providers must respond to "*consumer desires to access content in a time and manner they want, allowing them to use it how they want, and at a price that they are willing to pay*". The reality, however, is that consumers want increasingly to consume content for free and immediately post-release across all digital distribution platforms and devices, and no matter what content providers do to address this demand they will always find it impossible to compete with their own content offered illegally for free.

"Competing with free" is completely incompatible with the economic realities of the content production and distribution business. Companies rely on an income stream that maximises the value of their initial investment across a period of time, and without this revenue stream content production will be seriously impacted. This is even more important at a time when advertising spend is in decline, and broadcasters and content producers are coming to rely more heavily on pay-TV revenues.

While broadcasters and other content providers will continue to develop ways of making their content available to consumers across as many platforms as possible, at a price which they are willing to pay and at times when they want to see it, this can only be as a result of commercial negotiation. Many SCBG members already make their programming available online through a variety of services, such as *iTunes* and their own VOD sites, but ultimately they will always need to strike a balance between availability and price which maximises revenues.

For this reason SCBG welcomes the Government's proposal to explore the potential for a Rights Agency bringing together all interested parties, including broadcasters. To deliver an effective and meaningful contribution in the fight against piracy, the Agency must be given a clear set of objectives building on the principles enshrined in the recent MoU between ISPs and rights holders, and the accompanying Government objective of reducing illegal file-sharing by 70-80% within 2-3 years.

Agency objectives could be achieved through a mix of new education initiatives building on the significant levels of activity already under way through FACT and the Industry Trust for IP Awareness, as well as further exploration of technical solutions to discourage illegal file-sharing.

To avoid becoming an ineffective talking shop, the Agency must be empowered to act effectively to ensure that its objectives are delivered, or at a minimum have its work underpinned through a co-regulatory arrangement with Ofcom.

SCBG also believes that the Agency could provide a forum for discussion on the development of business models that reduce the incentives on people to file-share illegally, but as noted by the Government this must be strictly within the boundaries of competition law. As stated above, any discussion on this issue should only be as background to the free development of business models by rights holders themselves, in negotiation with platform providers, and there should be no decision making or enforcement role for the Agency or Government in this area.

Most, but not all, SCBG members welcome the proposal to legislate to require ISPs to notify alleged infringers of rights that their conduct is unlawful, and to collect anonymised information on repeat infringers.

Our concern here is, however, that the legislative proposal does not go far enough, and fails to allow for an effective technical measure to be used with persistent infringers to prevent them from continuing their illegal activities. The most effective graduated response system is one that carries credibility with the infringer, and without proportionate technical measures being a possibility (such as suspension of an account for a period of time) it is less likely that their behaviour will cease.

It is also disappointing that the Government sees legal action against identified infringers as the only proportionate measure that can be threatened through the graduated response process. As the Government itself notes, seeking to tackle infringement through individual civil court actions can be costly and time consuming for rights holders and is perceived to be disproportionate by consumers. The impact of such actions on the level of file-sharing is also uncertain, given the relatively low number of cases that can be brought set against the millions of individuals who watch content illegally.

Conclusion

SCBG members believe that the key to ensuring the continued high quality of the UK broadcast market is using the talents and strengths of all broadcasters and content providers to complement the work of the BBC and other PSBs. The contribution non-PSB broadcasters and other commercial content providers can make to the public service landscape should not be underestimated as it so often has in the past. Putting in the place the legislation and policy approaches which will encourage more investment will be crucial to ensuring the UK's strong reputation for great content continues.

Hand in hand with the need for ensuring investment is the need to ensure that those who invest in high-quality content can protect their intellectual property rights in it. The SCBG welcomes government initiatives to get all the relevant parts of the industry to discuss potential solutions and looks forward to continued efforts in this area.