

**THE COMMUNICATIONS BILL, HOUSE OF LORDS 2ND READING
BRIEFING FROM THE SATELLITE AND CABLE BROADCASTERS' GROUP¹**

SUBTITLING, AUDIO-DESCRIPTION AND SIGNING

Clauses 298 – 302 of the draft Bill relate to 'Television services for the deaf and visually impaired'. Clause 298 imposes new requirements (which previously related only to digital terrestrial channels) on all cable and satellite channels to subtitle 80%, audio-describe 10% and sign 5% of all their programmes within 10 years of the coming into force of the Act. Provision also exists for OFCOM to set interim targets throughout the 10-year period, as well as to exempt some programmes and channels from the requirements.

In spite of the significant cost implications for its members, the SCBG is not arguing for the deletion of clauses 298 - 302. The Government's position, announced on 29th January 2001 (following a period of review and consultation) appears settled, and we do not believe that such a route would be constructive. Going forward, the SCBG intends to engage with OFCOM to ensure that the requirements are implemented fairly, with exemptions applying where appropriate.

Some have argued, however, that the requirements should go further. In particular that the audio-description requirement should be increased from 10% to 50% over 10 years, and that the implementation time for all three requirements should be cut from 10 to 5 years. Amendments seeking these changes were rejected by the Government during the Bill's Committee Stage. The SCBG also opposes them for the following reasons.

Increase in audio-description from 10% to 50%

Such an increase would add to the already considerable financial burden on individual cable and satellite channels from these requirements, and be quite disproportionate in relation to the number of people who would benefit from the service. The Government's own consultation, published January 2001, itself found that the 10% requirement for DTT, as applied to cable and satellite, should remain unchanged.

The 10% audio-description requirement in year 1 will cost the industry £3.8m, or £20,652 per channel, rising to £38.4m after year 10, or £208,696 per channel. **A five-fold increase in the requirement to 50% would mean total industry cost rising to £19m in year 1 (£103,000 per channel), and £192m after year 10 (£1.04m per channel).**

This huge additional cost must also be understood in the context of the smaller number of people who actually stand to benefit from audio-described programmes on cable and satellite channels, compared say to subtitling.

¹ This submission is a distillation of the views of the members of the Satellite and Cable Broadcasters' Group named in the Annex. While this paper represents a broad consensus about most issues, individual companies may have expanded on certain points in their own supplementary submissions.

There are approximately 2 million people in the UK who are sight-impaired, blind or partially sighted, and therefore potential beneficiaries of audio-description (RNIB website), compared to the 8.7 million deaf or hard of hearing who may benefit from subtitling (RNID website).

At the 10% quota, the average cost per potential user for audio-description is similar to that for subtitling at 80%. This reflects the fact that, while expenditure on subtitling is greater than for audio-description, it is divided across a much greater number of potential users. In other words, the cost-benefit ratio for both services (at different quota levels) is the same. **With a 50% audio-description quota, however, the average cost per potential user is approximately five times greater than for subtitling, reflecting an imbalance in the treatment of one service over another.**

Cut implementation period from ten to five years

The conclusions from the Government's own consultation on subtitling, audio-description and signing provision, published in January 2001, were that a ten-year implementation time-scale was appropriate for the identified requirements.

Cutting by half the period in which these quota requirements must be implemented will double the already huge expenditure expected from the industry each year up to year 5 (if, as currently for DTT, the requirements are to be phased in by equal amounts every year).

The total cost to industry of implementing the full requirements, for all three types of service, will be approximately £223 million each year, or £1.2million on average for each channel – in many cases this will be a significant proportion of their entire programming budget. Halving the amount of time for implementation will bring forward this huge cost by 5 years, with significant implications for channels' strategic planning processes and, indeed, survival in a difficult and uncertain market.

TRAINING REQUIREMENTS

Clause 330(3) requires all licensees to make arrangements as OFCOM sees fit for the training and retraining of their employees.

The SCGB does not believe that it is necessary or desirable to lay training related requirements in primary legislation. It is in the interests of every company to ensure that its workforce is well trained. These additional requirements would add an unnecessary burden in an area where most communications companies already perform to a high standard.

When this issue was raised during the Bill's Commons' Committee consideration, the Minister said that:

"The broadcasting industry has already recognised the benefits of promoting opportunities through its participation in voluntary initiatives, such as the cultural diversity network. However, without statutory requirements there is

a risk that the progress that has been made may not be maintained and built upon.²

Yet this entirely contradicts the Government's own Better Regulation Taskforce Principles that regulation should be proportionate, consistent and targeted only at cases where action is needed. **Subclause 330(3) should therefore be deleted.**

PROGRAMMING REQUIREMENTS FOR CABLE AND SATELLITE CHANNELS

Satellite and cable broadcasters differ in a number of fundamental ways from traditional public service broadcasters (PSBs). PSBs enjoy access to scarce spectrum allowing universal or near-universal coverage that brings with it the benefit of significant advertising revenues or public subsidy through the licence fee. In comparison satellite and cable broadcasters do not receive any government support or concessions and acquire viewers entirely through their own marketing efforts. Typically, they command tiny audience shares, and are targeted at niche interests.

Successive UK governments have acknowledged these differences in their approach to regulation, which has enabled the UK satellite and cable broadcasting sector to be the most dynamic in Europe, serving global as well as domestic audiences. The Bill currently reflects this approach.

All broadcasters are, for example, subject to the EU *Television Without Frontiers* Directive which requires them '*where practicable*' to broadcast a majority of European material. Satellite and cable broadcasters are constantly endeavouring to increase the proportion of EU (and UK) originated material they broadcast, but must continue to be allowed to aim to meet the targets progressively over time on the basis of the "where practicable" clause. **It is essential that OFCOM continues to implement this in the same pragmatic and supportive way as the Department of Culture, Media and Sport previously. Amendments to the contrary should be resisted.**

ELECTRONIC PROGRAMME GUIDES

Clause 304 sets out the duties of OFCOM in relation to the drawing up of 'a code giving guidance as to the practices to be followed in the provision of electronic programme guides', including the degree of prominence given to public service channels.

The definition of public service channels to which due prominence must be given (subclause 304(3)) includes all BBC channels both present and future, niche or mainstream. This goes way beyond the current Electronic Programme Guide Code – which limits the definition to BBC1 and BBC2 – and it is a change on which the Government never consulted.

² Hansard, Standing Committee E, 28th January 2003, 20th sitting, col. 816.

The SCBG is concerned that this wider definition of BBC channels will stack the odds in favour of the BBC by giving prominence to all its channels. This could seriously disadvantage commercial operators. For example, BBC4 and Artsworld are close competitors – if BBC4 were to leap-frog up the EPG this could have serious commercial implications for Artsworld. In any case the extension of due prominence to all the BBC’s digital channels is unnecessary – as the Bill gives the Secretary of State the authority to add new channels to the list by order after consultation with OFCOM if he/she feels it is necessary.

The SCBG would like to see clause 304 amended to include BBC1 and BBC2 only, as is currently the case. It should also require OFCOM, when reviewing or revising the code, to take into account the impact that any changes to the listing and/or promotion of the public service channels will have on commercial channels and consult with all interested parties.

RETENTION AND PRODUCTION OF RECORDINGS

Clause 327 imposes ‘a requirement in respect of every programme included in the service to retain a recording of the programme in a specified form and for a specified period after its inclusion’.

There are two issues of concern with this clause. The first is in relation to non-linear elements of broadcasts. Historically, there has always been a duty on broadcasters to retain a copy of their programming in a specified form to enable review at a later date should a viewer complain. However, in the digital world where programming has many elements other than a simple linear broadcast – for example interactivity – it would be very difficult and very expensive to record every possible combination of viewer experience as the current draft of the Bill arguably requires.

The obligation needs updating so that the obligation is to retain a recording of the linear programme in sound and vision and records (in whatever form appropriate) of all the other non-linear elements to enable broadcasters to reproduce elements of the viewer experience on demand.

The second issue of concern is the discrepancy between the length of time radio (42 days) and television (90 days) programme recordings must be kept. **The SCBG sees no justification for this discrepancy, and the 42-day requirement should apply to both.**

ANNEX – SCBG Respondents

BSkyB

The Chinese Channel

CNBC Europe

Discovery Networks Europe

Disney Channel UK

Flextech Television/Telewest Communications

Landmark Travel Channel

MTV Networks Europe

Music Choice

National Geographic Channel

Nickelodeon UK

Paramount Comedy Channel

QVC International

Turner Broadcasting System Europe

Universal Studios Networks UK Limited