

24 June 2013

Lord Inglewood
Chair, Lords Communications Committee
House of Lords
London
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Dear Lord Inglewood

The Lords Communications Committee's recent report *Media Convergence* published on 27 March contains a number of recommendations for Ofcom and comments on certain regulatory aspects. As the Committee highlights in its report, some of these questions are best resolved in the Government's Communications Review and by Parliament. In general terms, Ofcom agrees with many of the principles and much of the analysis set out in the report. In particular, we welcome the Committee's analysis of the effects of convergence on the content standards framework and the Committee's conclusion that the current legislation governing the ex ante competition regime for broadcasting should be clarified and should be more specific.

The remainder of this response is confined to those recommendations which are specific to Ofcom.

Content standards: The challenges ahead

203. Broadcast licences should be amended to ensure that standards similar to those set out in the Ofcom Broadcasting Code, amended for the relevant environment, would apply to any service using the same channel name or brand as a licensed broadcast service.

This is an interesting recommendation and worth further consideration. As we stated in our written evidence to the Committee, there does appear to be an audience expectation and desire for consistent regulatory standards to be applied for the same branded services across broadcast television, video on demand (VoD) and catch-up services. Research we conducted into public expectations for protection and how content should be regulated in the future¹ found that "expectations of catch-up services and VoD services previously aired by the main broadcasters were shaped by brand expectations and experience"².

We agree that we need to consider whether to develop our approach to co-regulation for VoD to offer greater assurance and to ensure there is public trust in the approach to regulation, as these services become more and more pervasive and significant.

¹ Protecting audiences in a converged world: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/946687/Protecting-audiences.pdf>

² Protecting audiences in a converged world: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/946687/Protecting-audiences.pdf>

However, any fundamental amendments to broadcast licences such as this will require changes to primary legislation. Therefore, this recommendation is a matter for Government.

204. Ofcom should investigate the option of non-broadcast providers of TV-like services, such as Netflix and the content providers mentioned in Box 1, being invited to comply with an appropriate set of standards (the Broadcasting Code suitably amended for their environment) in return for some form of public recognition or kitemark.

Kitemarks as an incentive for improving standards is an interesting mechanism, but is not something we have considered and tested in detail. Any mechanism that encourages non-broadcast providers of TV-like services to voluntarily comply with higher standards than those to which they are subject is welcome. We recognise and welcome the fact that there are specific incentives for certain providers and brands to adhere to high content standards.

There may be a number of practical considerations associated with the introduction of kitemarks. In particular, there is the question of whether there are sufficient incentives for industry as whole to achieve this in the absence of a legislative backstop. The central consideration in relation to a kitemarking system would be how far choosing whether to participate materially affected, positively or negatively, the content provider in question. If the kitemark was not meaningful and recognisable to people it is unlikely that it would be successful and hold smaller content providers to account.

Ultimately, the introduction of a kitemark system would need to be underpinned by an industry willingness to introduce such a system. The first step in any such process would be to engage with industry to ascertain whether there is sufficient appetite for this self-regulatory approach, which Ofcom could play a role in facilitating.

A key priority for us this year is to develop and deliver efficient, effective and future-proofed ways to ensure audience confidence in broadcast content. We will continue to review our wider regulatory approach to content regulation to ensure that it remains fit for purpose.

A New Content Standards Framework

205. The Government should introduce a new power in the next communications Bill for the Secretary of State to lay an order subject to the super-affirmative procedure which would amend that Act by:

- **establishing scope for Ofcom to introduce a common regulatory framework for TV and TV-like content and giving Ofcom authority to designate a co-regulator for that purpose;**
- **moving non-PSB broadcasters from a licence based to a notification based regulatory system and altering, where appropriate, any detailed content standards requirements set out in the Act for those non-PSB broadcasters.**

In this way the Government can make good on its commitment to develop a policy with sufficient flexibility to remain relevant and adaptable to future advances, while being mindful of the need for the exercise of such flexibility to be suitably overseen by Parliament.

206. The Bill should establish a duty for Ofcom to advise the Secretary of State on a regular basis (e.g. once every four years) about the timing of laying such an order, with the first such review to be conducted no later than 2016 (coinciding with Charter renewal).

207. The Government should set out, after consultation, clear guidance to Ofcom on the considerations for Ofcom to take into account in giving advice regarding the establishment of a new system of co-regulation for all (non-PSB) TV and TV-like audiovisual services, whether broadcast or not. These considerations might, for example, include:

- **the demonstrable convergence in the markets for TV and TV-like content;**
- **the extent to which disparity in the content standards codes for each is detrimental to audiences and to innovation;**
- **the scope for reducing the burden of statutory regulations which are or have become unnecessary;**
- **the prospects of establishing adequate alternative arrangements which would secure effective co- or self-regulation.**

We agree with the Committee's view that new technologies and behaviours are evolving more quickly than regulatory protections and that action will be required to ensure that public expectations of content standards are met. We therefore agree with the general principle that regulation should be flexible and able to respond to changes in the media landscape as and when they arise, and that there should be a mechanism to allow for this.

As we have said previously, the effects of media convergence, and in particular the increasing difficulty for audiences to distinguish between linear broadcasting and video on demand services, mean that current regulatory approaches and structures may not continue to give viewers the protections and assurances they have come to expect. For example, services that combine linear and on-demand viewing will become commonplace, as electronic programme guides can increasingly be scrolled backwards to previous schedules as well as forwards. Such greater freedom and access mean that there will be an erosion of the mechanisms we have historically used to protect audiences. This in turn will create greater risks in relation to harmful content reaching audiences in the living room.

As noted in our written evidence to the Committee, a more coherent overall approach to digital media will be required in the future. In particular, there may be an opportunity to establish a core set of principles and aims which are held in common across a diverse media landscape with different regulatory frameworks. This could begin to make regulation more coherent and clear for consumers and industry.

Any changes to the legislative framework for media regulation are a matter for Parliament. We would, however, be happy to provide advice on these issues.

We note that the Committee also makes recommendations relating to the AVMS regime. We agree with the Committee's analysis that many of these issues, because of their nature, may require cross-border European-level coordination.

216. As part of a proposed co-regulatory model for TV and TV-like content providers, Ofcom and Government should consider, in consultation with the future press regulator, the implications of incorporating regulation of all non-PSB news and current affairs content into its remit, and removal of the impartiality requirement from those providers.

217. Ofcom should at the same time consider arrangements for providers who combine news and general entertainment in a single TV or TV-like service.

218. In establishing a co-regulator for TV and TV-like content providers, Ofcom should investigate the option of non-PSB providers of news services, such as Sky News, being invited to comply with the Broadcasting Code (suitably amended for their environment if TV-like) in return for some form of public recognition or kitemark.

Our research indicates television is considered the most trusted source of news, and rates considerably higher than newspapers, newspaper websites and even broadcast websites. Our recent audience attitudes survey found that 72% of all people over 16 consider television to be their main source of UK and world news. Even among 16-34s 65% considered television as their main source of news. 93% of people said that they thought it was important that television news is impartial, although only 56% thought it was.

Our research also suggests that there is very little variance in perceptions of accuracy, trustworthiness and impartiality of news content between public service broadcasters (PSBs) such as the BBC and non-PSBs such as Sky³. In addition, it indicates that the public believe that television news provides them with what they need to make up their own mind about a news story.

In our view, trust arises from, at least in part, requirements on broadcasters to be impartial and we should be wary of limiting this trusted space and removing something that the public values. However, it is also the case that removing impartiality requirements, except for a selected set of news providers which includes the public service broadcasters, could create opportunities for new approaches to news and discussion programmes which could in turn increase interest and public discourse around current affairs.

Ultimately, however, any changes to current legislation which would remove impartiality requirements for linear services are a matter Parliament.

A Safer Internet

220. The next communications Bill should establish a more pro-active role for Ofcom regarding the internet than has been the case to date, to be reflected in Ofcom's general duties.

221. Specifically, Ofcom should be required, in dialogue with UK citizens and key industry players, to establish and publish on a regular basis the UK public's expectations of major digital intermediaries such as ISPs and other digital gateways, specifically with regard to protecting UK audiences and their families when accessing content through digital intermediaries' services, covering for example:

³ Kantar Media research on attitudes towards news for plurality report

- **The scope of their responsibilities (given they are not always in direct control of the content to which they provide access);**
- **Appropriate processes for receiving complaints and subsequent redress;**
- **Any specific measures, such as access controls, content classification systems, or other actions which the UK public might expect them to take in protecting children from harmful material.**

222. In publishing the UK public's expectations of major digital intermediaries, Ofcom should also carry out periodic reviews to establish their current performance against them. Ofcom should have no sanction or reward for successful or insufficient action, not least because of jurisdictional problems of enforcement. Should these reviews reveal a major concern on the part of the UK public, which the industry repeatedly and without reason fails to respond to, Ofcom would then be required to advise the Secretary of State.

The Committee rightly identifies the importance of ensuring self regulatory approaches are effective and the importance of finding appropriate ways of monitoring their effectiveness. Players across the communications industry have a responsibility to protect the users of their services from harm and you rightly recognise the important role digital intermediaries need to play, especially given the global nature of both internet companies and content.

Ofcom currently carries out a number of separate strands of work in this area, under our media literacy duties in the Communications Act. For example, our consumer research programme looks at issues around access to content, ratings, and touches on the roles which intermediaries play. This includes consumers' understanding of different media and how it is funded and regulated. We also look specifically at parents' concerns about media content that their children are or may be exposed to and the steps that parents currently take to protect their children from inappropriate content or experiences.

In addition, Ofcom is on the Executive Board of the UK Council for Child Internet Safety, a broad coalition of more than 200 including industry players, charities and NGOs, academics and Government. UKCCIS membership includes the main UK digital intermediaries – internet service providers, search providers such as Google, and social networking providers, such as Facebook. UKCCIS members work in partnership to help keep children safe online, through the development and monitoring of self-regulatory codes of practice. The accessibility of potentially harmful content online is a key area of focus for the UKCCIS, which has driven the recent evolution of major UK internet service providers' policies and practices on parental controls.

We can see merit in the approach recommended by the Committee. However, there are a number of practical considerations associated with such a duty. For example, consideration would need to be given to the legislative changes required in order to carry out such a duty effectively, including the ability to request information from a set of stakeholders which do not fall under the scope of Ofcom's remit, such as Google and Facebook, and how the review function might be funded. As these are matters relating to Ofcom's duties, any such role is a matter for the Government and Parliament to determine.

Content creation

223. We recommend that as preparation for the next BBC Charter Review, the

Government consider fundamental strategic questions surrounding the PSB system as an interconnected whole and the potential impact of convergence: what is the right scale and scope of PSB, what purposes should it serve and how can it be best sustained in a converged world? Such consideration could be informed by the work of Ofcom's periodic reviews of the current state of PSB, and should include the role not just of the BBC but of other providers such as Channel 4.

Ofcom has a duty to review and report on public service broadcasting for the five-year period up to the end of 2012 as soon as practicable after the close of the period under review. The Government has proposed to amend this duty to be at the discretion of the Secretary of State. As a result, Ofcom will no longer be able to conduct periodic reviews, but will only be able to conduct PSB Reviews when asked to do so by the Secretary of State.

We consider it appropriate to focus our time and resource on work which is also relevant to our other statutory duties and functions. For example, we will continue to publish our PSB Annual Report, which provides a statistical evidence base for assessing the delivery of public service broadcasting on the five main PSB channels, the BBC digital channels and S4C.

We also note the Committee's recommendations in relation to the accessibility and discoverability of public service content. As a principle, we support the reform of benefits to the PSB system and will work with Government to implement any changes to the current system they might make.

226. We recommend that, as part of its current work in re-planning the UHF spectrum, Ofcom helps secure the future of DTT by making available sufficient spectrum to support a sustainable DTT platform for the future, capable of delivering a sufficient range of services to remain attractive to audiences, and provide a competitive broadcast platform. The Government and Ofcom should also consider how best to manage the costs of any transition to the new spectrum, especially those costs which might be incurred by audiences if they need to acquire new receivers and antenna as part of the change.

We recognise the important benefits associated with the DTT platform. One of the core objectives of our current work on the long term strategic planning of the UHF spectrum is to secure the ongoing delivery of these benefits. To this end, we are seeking to ensure that the UHF spectrum is re-planned in such a way that the DTT platform can access the 600 MHz band, assuming a change of use of the 700 MHz band takes place. We believe this will help ensure that the DTT platform has sufficient spectrum to remain sustainable in the future.

As we move forward, we will consider carefully how best to manage the costs of any transition to new spectrum, liaising with Government as appropriate. One of the main focuses of the work we are doing in relation to the 700 MHz band is to take pre-emptive action now to avoid costs and disruption to consumers at the point of any future transition. Examples of this work include encouraging DTT and mobile equipment manufacturers to improve the quality of equipment being brought to market now, with a view to reducing the risk of future interference between mobile phones in the 700 MHz band and adjacent television services; and working with installers and trade bodies to raise awareness of what aerials would be compatible with a potential future re-plan.

227. While welcoming Ofcom's proposal to delay the introduction of AIP for DTT until 2020, we recommend that, following the current consultation process and before any move is made to full AIP, Ofcom should consider further the risks and benefits

involved in introducing AIP for DTT. As part of that analysis, Ofcom should be asked fully to assess the impact that spectrum pricing will have on the funding available for high quality PSB. If any adverse effect seems likely, we recommend that AIP is only introduced once the Government has proposed alternative funding or other plans for offsetting that impact.

In our consultation published in March, we set out a working hypothesis for a phased approach to the application of administered incentive pricing (AIP) for DTT broadcasters, with fees being introduced gradually from a low level over an extended period. In the consultation, we said that we expect to introduce AIP over five years from around 2020, so that the full opportunity cost is realised as multiplex operators approach the end of their existing licences. We have also committed to consult more fully on the details of how AIP should be introduced nearer the implementation date.

In 2007, we gave a commitment that we would consider both the potential effects of AIP on broadcast content, and the steps available to mitigate those effects, before applying AIP – particularly in regard to public service television broadcasting. We believe this position remains valid and will consider these implications at the appropriate time.

We will also consider whether there are compelling arguments for differentiating between different types of spectrum use in applying AIP – particularly between PSB and non-PSB services.

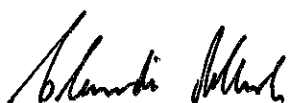
Competition

197. We recommend that Government should, in the forthcoming White Paper and communications Bill, consider clarification of Ofcom's existing ex ante competition powers for the audiovisual sector. The aim of such clarification should be to enable Ofcom to take effective action where necessary, but also to ensure a high hurdle before an ex ante approach can be adopted.

We agree that adjustments need to be made to the current legislation governing the ex ante competition regime for broadcasting. Adjustments are necessary to ensure that the regime remains effective in response to technological and market developments in the context of convergence. We also agree that clarification to the legislation, such as a fuller articulation of when and where Ofcom, as the regulator, can act would provide greater clarity and certainty for both industry and Ofcom, provided these are proportionate and ensure that the system ultimately works well for consumers. This would contribute to a better quality process which supports growth and innovation, and where new entrants and investors have a clearer sense of the regulatory framework, and greater ability to assess the risks and implications of launching new businesses and services.

I hope our response on these recommendations and comments is useful to the Committee.

Yours sincerely



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