

"Working for quality
and diversity in
British broadcasting"



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**Response by Voice of the Listener & Viewer (VLV) to
'A Communications Review for the Digital Age',
an Open Letter from Jeremy Hunt, Secretary of State for Culture, Media, the Olympics
and Sport, published 16 May 2011.**

Q11. Should the core focus of public service broadcasting be on original UK content?

VLV welcomes the opportunity to contribute to the debate in the run up to the Green Paper for the Communications Bill and to highlight some of the concerns of those who both consume and ultimately in one way or another, pay for these services.

VLV believes that original UK content is a crucial aspect of public service broadcasting (PSB) because the social, cultural and economic benefits of content produced in the UK for British citizens are undeniable. There has been a 19% drop in investment in original UK content on the main public service broadcasters since 2004¹. Therefore we would urge the Government to include measures in the forthcoming Communications Bill which ensure that commercial PSBs must, as part of their licences, commission an appropriate amount of UK produced content. We believe that this requirement should now also be applied to satellite and cable broadcasters targeting British audiences. Whilst the EU requirement of 51% of broadcast content to be of original indigenous production may not be practicable, an appropriate contribution would bring considerable benefits both to UK audiences, the industry and national economy. It should be noted that exports from the four PSBs bring a welcome surplus to the UK balance of payments but that surplus is negated by imports by the cable and satellite companies.

UK produced content is essential for the UK as an informed, democratic society because it is produced from a UK perspective, reflecting the world we live in from a British point of view. We welcome the Government's ambition to encourage growth in this market by developing legislation which removes barriers to growth, but VLV believes that there should not be de-regulation at the expense of public service broadcasting content. There still needs to be legislation to ensure the future provision of high quality public service content on television and radio which might otherwise not be provided.

VLV acknowledges that the focus in the letter from the Secretary of State is on the '*growth aspect*' of the review, and it urges the Government to ensure that any approach in new legislation will be to the benefit of both consumers and citizens as well as industry. VLV welcomes his commitment that the '***wider public interest will always underpin our approach to how any issues are addressed***'.

Our response is based on the principles embedded in many of our previous submissions on policy for public service broadcasting submitted to the Government in the past.

¹ Ofcom PSB Report 2010

The decline of public service broadcasting

With the continued decline in UK originated content, VLV believes that public service broadcasting content is likely to diminish, at the expense of more imports, principally from North America, pushing the balance of exports further into the red.

We note Ofcom's recognition in 2009 that, despite the changes which have taken place in public service broadcasting between 2003 and 2008, "audiences attach a high value to content that reflects the UK in all its facets, which they see as essential to maintaining our cultural identity and social cohesion."²

We stress our support for the notion of public service broadcasting being an integral part of commercial broadcasting in the UK and assert our belief that the guiding principles for audiences remain universality, choice and value for money – none of these values are at odds with the commercial imperatives that must inform ITV, Channel 4 and Five.

We believe that the overwhelming thrust of the evidence is that in 2020 television channels will still be the main way people find programmes, that most viewing will still be 'live', via an off-air TV screen, using the cheapest means available to the largest number of people and hence, will be heavily skewed towards the main channels.

Consequently, the increased choice of electronic communication channels and delivery methods, such as broadband, mobile TV, and HDTV, is unlikely to improve significantly the available range of UK programme content. What may well develop instead, however, is an increase in the availability, and possibly the take-up, of non-UK programme content, principally from North America and other English-language speaking parts of the world. For while the market in electronic communication distribution networks is likely to remain predominantly domestic, that in programmes is likely to become increasingly international.

VLV research commissioned in 2009 asked what categories of programmes on mainstream channels should be British-made. Respondents selected national, regional and local news (97%), serious current affairs (87%), documentaries (63%) and children's programmes (also 63%)³.

Coincidentally, regional, local and children's programmes are all key areas of market failure. VLV urges the Government to address these aspects of market failure in any new legislation.

Programming in the Nations

Public service broadcasters are national institutions and have a proud and rich tradition of providing programmes for all audiences and this has continued into the digital era. VLV has commended the original and innovative output of PSBs in portraying life and culture in the nations and regions across all media. However, public service broadcasters remain under intense financial pressure in an increasingly commercialised and globalised broadcasting market. Public service broadcasting therefore requires support across the UK to continue its traditional remit but also to help re-engage lost audiences and win new ones. This support should include exploring ways of safeguarding production spending in the nations and also for protecting regional news services.

² Ofcom PSB Review Phase 2

³ The contribution and value of public service broadcasting, YouGov, 2009

New and Current Affairs

The provision of impartial high quality news and current affairs programmes is a key component of public service content which is valued by audiences for the vital part it plays in British democracy.

Children's Programming

In light of the widely recognised market failure of provision of television for children aged 6 - 16, notwithstanding Channel 4's desire to cater for this market in future which may include online content for 10-14 year olds, VLV urges the Government to explore all possible avenues to rectify this situation. Children have the right to high quality television just as adults do – arguably far more right in a world where television plays such a dominant role in their lives – to programmes which reflect their own environment and rich cultural heritage of speech, literature, music and drama. Yet there is serious market failure in UK produced content which reflects and tells them about the world in which they live, ie the United Kingdom.

Radio – A Key Element in Public Service Media

Whilst we welcome the extra choice that commercial radio provides, Public Service Radio as provided by the BBC, despite massive competition, attracts more than half of all listeners in the UK and is not replicated by any of its commercial rivals in the breadth and value of the service it provides. Radio costs a fraction of television to produce yet plays a unique and vital role in British cultural, social and democratic life at national and local levels.

At local level BBC Radio:

Responds to emerging news situations quickly with authoritative local spokespeople, providing essential news and information at times of crisis and emergency; enriches local democracy and accountability; encourages community projects, cohesion and pride; offers many opportunities for training young reporters and performers, often engaging and involving young people in schools and colleges; fosters media education, literacy and knowledge amongst all age groups; is flexible, universally available and provided free at a fraction of any television alternative.

At national level BBC Radios 1, 2, 3, 4 and Radio Five Live:

Play distinctive roles in catering for special interests, different age groups and demographics, each commissioning different content and news bulletins to suit its particular audience.

Radio 1 targets 16 – 34 year olds, providing news and public service messages on health, education and civic matters in a manner which appeals to an age group notoriously difficult to reach by other established media.

Radio 2 targets middle age groups and broadcasts a range of public service messages which inform and educate its listeners in a range of civic, health and consumer issues. At night it commissions programmes to cater for those with specialist musical interests.

Radios 3 and 4 cater for highly distinctive audiences desiring classical music and a variety of high quality speech programmes, including impartial news and current affairs programmes that develop democratic understanding and participation.

Radio 5 Live caters less formally often for non-metropolitan listeners and those on the move or mainly interested in news and live sport.

Each of the BBC national radio services plays an irreplaceable role in British cultural life by commissioning hundreds of hours of original drama, live programmes like *Any Questions* and church services plus thousands of hours of live and new music including the Proms (the largest and most successful music festival in the world), Cardiff Singer of the World, Young Musician of the Year, Choir of the Year and the many special pop and folk events broadcast live by Radios 1 and 2. Events like these are brought freely within reach of every listener in the land and not replicated by any

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commercial broadcaster. Our national democracy, culture and society would be poorer without them. They also underpin one of the UK's most successful export industries.

BBC Radio in the Nations of the UK sustains and supports distinctive services in English and indigenous languages which reflect and serve its own particular audiences.

Intellectual Property Rights in Digital Works

In general, VLV supports the protection of the intellectual property rights of owners and contributors to audiovisual digital works. We do not support digital piracy. Nevertheless, in the interests of continuing to provide listeners with the right to free access to publicly funded and provided programmes for their own personal use, VLV considers that UK law must continue to preserve a fair balance between the rights of owners of intellectual property and consumers and users of those works.

UK citizens, who wished to use works protected as intellectual property for these purposes, should therefore be exempted from the general requirement to obtain licences from the rights owners in these works.⁴

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Appendix (1) VLV response to open letter from Jeremy Hunt MP 29.06.11

Intellectual Property Rights in Digital Works

In general, VLV supports the protection of the intellectual property rights of owners and contributors to audiovisual digital works. We do not support digital piracy. Nevertheless, UK law must continue to preserve a fair balance between the rights of owners of intellectual property and consumers and users of those works. Chapter III of the *Copyright, Designs and Patents Act 1988* (Acts Permitted in Relation to Copyright Works) established that fair balance. It recognised that certain limited and carefully defined uses of non-digital works were of educational, archival, administrative, informative, and critical value to British life and culture. UK citizens, who wished to use works protected as intellectual property for these purposes, should therefore be exempted from the general requirement to obtain licences from the rights owners in these works. Ss. 66-75 of the 1988 Act specified the details relating to sound recordings, films and computer programs, broadcasts and cable programmes.

Since 1988, those exemptions to copyright have been partially updated by amendments which were included in the *Copyright and Related Rights Regulations 2003* (SI 2003/2498), and in the *Audiovisual Media Services Regulations 2009* (SI 2009/2979). Both sets of amendments were introduced into UK law in order to implement European Union Directives [*The Copyright Directive* (2001/29/EC) and the *Audiovisual Media Services Directive* (2010/13/EU {codified version})]. But because of the different legal traditions in the EU's 27 Member States, any exemptions and limitations to copyright in UK law have largely fallen outside the purview of these two directives.

A central issue for VLV – and for all UK listeners and viewers - is the need to update for the digital age the rights, which are allowed by ss. 70-72 of the 1988 Act, for viewers and users (a) to make a recording of a broadcast for private and domestic use; (b) to make a photograph of the whole or part of an image forming part of a television broadcast for private and domestic use, and (c) the right to show or play a broadcast in public to a non-paying audience. The 1988 Act was partially updated by ss. 19-21 of the *Copyright and Related Rights Regulations 2003* (SI 2003/2498), but the regulations failed to prevent any owner of a copyright work from using a technological measure which would deny

⁴ See Appendix (1)

consumers of their right to make fair use of that digital work. Although s. 296ZE of the regulations did permit the Secretary of State to intervene if a right owner used a technological measure to prevent a permitted act, in every instance, the onus of proof was placed upon the consumer to follow a complex, but unspecified, procedure which could – but as far as we know never has - been laid down by the Secretary of State. Moreover, the 2003 Regulations also specified that the Secretary of State would not intervene to allow the fair use of copyright works which were “made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.”

VLV submits that the growing overlap between the provision of broadcasting and on-demand audiovisual services requires the Government to update these arrangements for exemptions and limitations to intellectual property rights to works included in audiovisual media services. Many radio and television broadcasts are currently made available to viewers on an on-demand basis, but not on agreed contractual terms. Moreover, although viewers can often access the works on a computer, or even a next-generation TV set, at a place individually chosen by them, many on-demand services are only available for viewing for a limited period of time.

VLV is aware that this is a complex issue. One solution would be for the Secretary of State to delegate to Ofcom the power to require in its licences to broadcast radio, television and on-demand services a requirement for the licensee not to use technical measures to prevent the fair use of its broadcasts. Another would be to amend and extend the relevant limitations and exemptions within the *Copyright and Related Rights Regulations*. Whatever solution is found, we are clear, however, that digital piracy will start to grow if the new Digital Economy Act fails to introduce a mechanism which can update the traditional freedoms which citizens and consumers have enjoyed to make fair use of broadcasts and audiovisual works generally.

End