

## **Pwyllgor Diwylliant CC 11-02 (p.2)w**

Date: 29 May 2002

Time: 9.00 - 12.30pm

Venue: Committee Room 1, National Assembly for Wales

The following are responses to the Draft Communications Bill:

### **Pwyllgor Diwylliant y Cynulliad Cenedlaethol – Ymateb gan BBC Cymru**

#### **Mesur Cyfathrebu Drafft a'r BBC – Cyffredinol ac Annibynnol**

#### **Cyflwyniad**

1. Mae BBC Cymru yn croesawu'r cyfle i gyfrannu at ystyriaeth y Pwyllgor o'r Mesur Cyfathrebu drafft a'i oblygiadau i ddarlledu yng Nghymru. Ceir cytundeb cyffredinol o fewn y diwydiant darlledu nad yw'r fframwaith rheoliadol presennol yn gyffredol o ganlyniad i newidiadau cyflym ym maes technoleg, y marchnadoedd ac yn ymddygiad defnyddwyr. Felly, mae'r mesur drafft yn gyhoeddiad pwysig a groesawyd yn gyffredinol gan y BBC.
2. Yn ystod y misoedd nesaf, byddwn yn cymryd rhan lawn yn ymgynghoriad y Llywodraeth ar y mesur drafft. Bydd y BBC yn rhoi tystiolaeth lafar i'r Cydbwyllgor Craffu ar 20 Mehefin, a bydd yn ymateb i'r ymgynghoriad cyhoeddus sy'n dod i ben ar 2 Awst.

#### **Pwyntiau i'w croesawu**

3. Croesawodd y BBC yr argymhellion gwreiddiol yn y Papur Gwyn ar Gyfathrebu a oedd yn cadw annibyniaeth y BBC modern o fewn fframwaith rheoliadol cyffredin. Felly, rydym yn falch fod yr Ysgrifennydd Gwladol wedi ymrwymo i gadw rôl ganolog darlledu gwasanaeth cyhoeddus yn yr oes ddigidol.
4. Yn arbennig, croesawn yr amcan o gymhwyso ymagwedd gyson tuag at reoleiddio'r BBC a darlledwyr gwasanaeth cyhoeddus eraill, tra'n cydnabod rôl a chyfansoddiad unigryw Llywodraethwyr y BBC. Byddant yn parhau i gadw a diogelu annibyniaeth wleidyddol a golygyddol y BBC, ac i ddwyn rheolwyr i gyfrif.
5. Bydd effaith gyffredinol y mesur drafft yn golygu y bydd y BBC yn destun mwy o reoleiddio allanol yn y dyfodol, tra bydd darlledwyr gwasanaeth cyhoeddus eraill yn wynebu llai o reoleiddio allanol. Derbyniwn yn llwyr y dylai'r BBC ymgymryd â chyfrifoldebau mwy beichus.

#### **Goblygiadau i ddarlledu yng Nghymru**

6. Mae gan y Mesur drafft hwn gryn botensial i ailddiffinio'r ecoleg ddarlledu yng Nghymru, yn anad dim o ran y newidiadau arfaethedig i reolau perchenogaeth y cyfryngau. Rydym wedi canolbwyntio yn ein cyflwyniad ar y rhan y byddai'r BBC yn gobeithio ei chwarae o fewn yr ecoleg honno, gan weithio o fewn fframwaith Cynnig y Cynulliad Cenedlaethol ar ddarlledu a gymeradwywyd ar 30 Ebrill 2002.

Pwysigrwydd darlledu i ansawdd bywydau pobl, hunaniaeth ddiwylliannol Cymru, a lles ein democratiaeth

7. Cytunwn â barn y Cynulliad fod darlledu yn cyfrannu'n sylweddol at les diwylliannol a democrataidd y wlad. Credwn fod BBC Cymru sy'n gryf a chreadigol yn hanfodol i'r broses honno ac er budd y cyhoedd.

### **Yr angen i sicrhau mynediad a darpariaeth darlledu o safon drwy gyfrwng y Gymraeg a'r Saesneg yn ystod y broses o drosglwyddo o wasanaeth analog i wasanaeth digidol**

8. Un o brif amcanion y BBC yw sicrhau cyffredinolrwydd ein gwasanaethau yn yr oes ddigidol. Felly, croesawn y darpariaethau yn y mesur drafft i sicrhau bod gan yr holl sianeli darlledu gwasanaeth cyhoeddus yr hawl i gael eu cynnwys ar y prif lwyfannau, ac y gall gwylwyr dderbyn gwasanaethau darlledu gwasanaeth cyhoeddus heb dalu costau sy'n ychwanegol at bris yr offer a ffi'r drwydded.
9. Fodd bynnag, rydym yn pryderu ynghylch y ffaith nad yw'r mesur drafft yn bwriadu cyflwyno'r darpariaethau hyn tan ar ôl trosglwyddo i wasanaeth digidol. Gan nad oes dyddiad pendant ar gyfer trosglwyddo i wasanaeth digidol, credwn nad yw'r mesur drafft yn foddhaol ar faterion sy'n ymwneud â mynediad. Mae'r mesur hyd yn oed yn crybwyll y posibilrwydd o 'dâl' oddi wrth ddarlledwyr. Credwn fod angen i'r bwriadau a grybwyllwyd ym mholisiau'r mesur drafft, y dylai darllediadau gwasanaeth cyhoeddus fod ar gael yn gyffredinol i ddefnyddwyr heb unrhyw gost, gael eu cyflwyno drwy gymalau a fydd yn sicrhau bod hyn yn digwydd, ar draws pob llwyfan, cyn gynted â phosibl.
10. Croesawn yr addewid y gwarantir 'amlygrwydd priodol' ar Ganllawiau Rhaglenni Electronig (EPG) i ddarlledwyr gwasanaeth cyhoeddus, a byddwn yn ceisio eglurhad ynghlun â ph'un a fyddai OFCOM, fel corff rheoleiddio wedi'i gydgyfeirio, yn cymhwyso hyn i wasanaethau teledu a radio fel ei gilydd.

### **Bydd y Comisiwn ar Bwerau'r Cynulliad a sefydlwyd o dan Gadeiryddiaeth yr Arglwydd Richard yn ystyried darlledu**

11. Edrychwn ymlaen â diddordeb at adolygiad y Comisiwn a byddwn yn cymryd rhan lawn a gweithgar mewn unrhyw drafodaethau ar ddarlledu.

Yr angen am gynrychiolaeth o Gymru ar OFCOM

12. Mae BBC Cymru yn cefnogi'r angen am OFCOM effeithiol ac effeithlon sy'n ystyried yn llawn buddiannau pob rhan o'r DU wrth hyrwyddo ecoleg ddarlledu iach.
13. Mae gan y BBC strwythur atebolrwydd trwyadl yng Nghymru eisoes. Mae Cyngor Darlledu Cymru, a sefydlwyd yn Siatr y BBC, yn gyfrwng uniongyrchol i'r Llywodraethwyr ddod yn ymwybodol o anghenion a barn y bobl yng Nghymru sy'n talu ffi'r drwydded. Hwyrach y bydd y Cynulliad am ystyried p'un a yw darpariaethau'r mesur drafft ar gyfer cynrychiolaeth genedlaethol a rhanbarthol ar y Bwrdd Cynnwys a Phanel y Defnyddwyr, yn arwain at haenau rheoleiddio gan fwy nag un sefydliad a allai orgyffwrdd o bosibl, a sut y bydd hyn yn effeithio ar greadigrwydd darlledwyr gwasanaeth cyhoeddus yng Nghymru. Yn amlwg, bydd yn bwysig i Gyngor Darlledu Cymru gysylltu'n gadarnhaol â'r strwythur rheoliadol newydd a sefydlwyd gan OFCOM yng Nghymru, gan sicrhau bod ill dau yn arfer eu hawdurdod mewn ffordd sy'n gyson ac yn ategol.

*Y Gweinidog dros Ddiwylliant i gomisiynu astudiaeth ar ddarlledu yng Nghymru o dan nawdd Cymru'n Creu*

14. Fel partner yn y fenter *Cymru'n Creu*, byddwn yn cymryd rhan mewn unrhyw astudiaeth a gomisiynir.

### **Y cyfraniad sylweddol a wneir gan S4C i ddarlledu yng Nghymru a datblygiad ein diwylliant cenedlaethol**

15. Cefnogwn y gydnabyddiaeth yn y mesur drafft o statws unigryw S4C a'r ffaith y bydd y broses o'i rheoleiddio yn debyg i ddarpariaethau'r BBC. Mae BBC Cymru yn cyfrannu

10 awr o raglenni Cymraeg bob wythnos i'w darlledu ar S4C yn ogystal â darlledu holl weithgareddau Cynulliad Cenedlaethol Cymru yn llawn ar S4C2.

## Cyfrifoldeb y prif ddarlledwyr i ddarparu rhaglenni a gwasanaeth newyddion cytbwys a chynhwysfawr i Gymru

16. Cytunwn â'r Cynulliad bod gan y prif ddarlledwyr gyfrifoldeb dros ddarparu rhaglenni a gwasanaeth newyddion cynhwysfawr i Gymru. Mae'n bwysig, felly, y dylai'r mesur drafft ddiogelu cymeriad cenedlaethol a rhanbarthol darlledu.
17. Ym mis Tachwedd y llynedd, lansiodd BBC 2W gan BBC Cymru, sef gwasanaeth digidol oriau brig rhwng 8.30pm a 10pm bob nos yn ystod yr wythnos, sydd ar gael yng Nghymru ar bob llwyfan digidol ac ar loeren ddigidol ledled y DU. Mae rhaglenni 2W yn canolbwyntio ar Gymru ac maent yn cynnwys rhaglen *News and Sport* reolaidd sy'n para 15 munud am 9pm bob nos yn ystod yr wythnos. Mae BBC Cymru hefyd yn darparu gwasanaeth newyddion ar-lein cynhwysfawr yn y Gymraeg, sef *Cymru'r Byd*.

### **Casgliadau**

18. Wrth gyflwyno'r mesur drafft, nododd yr Ysgrifennydd Gwladol fod sector amrywiol a iach ym myd y cyfryngau gydag amrywiaeth o safbwyntiau a darpariaeth ym mhob cwr o'r DU yn hanfodol i'n dyfodol democrataidd. Rydym yn cyd-fynd â'r farn hon, a chredwn fod gan y Cynulliad rôl bwysig wrth ymchwilio i oblygiadau'r mesur drafft o ran newid y byd darlledu yng Nghymru.
19. Credwn, o gofio ein statws unigryw a'r ffordd y cawn ein hariannu, ei bod yn gwbl briodol fod y BBC yn cael ei reoleiddio drwy system gadarn sy'n sicrhau ein bod yn gyfrifol ac yn atebol i'r bobl sy'n talu ffi'r drwydded. Rhaid aros i weld effaith ehangach a thymor hwy y cynnig yn y Mesur drafft i lacio rheolau trawsgyfyngol a'r pwysau cystadleuol sy'n debygol o fod ar waith yn y dyfodol. O ran y materion hyn, a'u goblygiadau yng nghyd-destun Cymru, byddwn yn cymryd mwy o amser i astudio darpariaethau'r mesur drafft cyn dod i gasgliad.

**BBC Cymru**

**Mai 2002**

### Equity

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### Submission to the National Assembly Culture Committee on the Communications Bill

1. As the principal union representing performers in both the UK and Wales, Equity has a considerable interest in developments in broadcasting policy. The union will be making a wide-ranging response direct to the Westminster Government but Equity in Wales felt it important to approach the National Assembly with views relevant to Wales.
2. Equity in Wales hopes that the National Assembly will take an inclusive approach to evidence on the Bill by recognising that many organisations outside the four main broadcasters and the ITC are interested parties in the debate. We hope that a wide-range of views will be sought. If necessary we would support public meetings as a way of giving the audience a voice. We would also support the Culture Committee inviting the Joint Parliamentary Committee to Wales.

3. We hope that the Assembly will concentrate its thoughts on content as well as delivery. In previous debate, a great deal of time has been taken in discussion over digital terrestrial v digital satellite v cable etc. Our predominate concern is that whatever delivery method is adopted or preferred, what is seen on the screen, where it is made and what it depicts is equally important. It is also crucially important that the Assembly recognise that broadcasting is one of the most important cultural industries and that the effects of major changes in policy could considerably, and possibly adversely, affect employment in Wales.
4. It appears that the highly centralised approach to broadcasting in the draft Bill is at odds with the Government's general approach to self determination in the Regions and Nations of the UK.
5. We support the Assembly in wishing to see representation from Wales on OFCOM. We believe it is important for this to be achieved on the main Board, which should be increased if necessary as a consequence. However we recognise that the main Board will have an enormous range of matters on which to make policy, and therefore we believe that much of the important decisions will be with the Content, Consumer and other Boards or Advisory Panels where representation from the Nations will be (even more) important. The Bill makes provision for membership of both the Content and Consumer Boards to come from the Nations and Regions so that throws up the further question of how they will be chosen and to whom are they accountable. We would propose that in both cases the National Assembly should play an important role. We also support the establishment of an OFCOM Office in Wales dealing at first hand with Welsh concerns.
6. It is disappointing to note that some aspects of policy which will directly affect Wales have yet to be drawn up. We would hope that at the appropriate time The Culture Committee will seek to address:
  - i. The maintenance of a meaningful regional identity to Channel 3 (ITV) output. The formation of a monolithic ITV has been brought closer by the ownership sections of the Bill and it appears that a single owner may give less priority within the global marketplace in which it will be trading to regional output. It must be pointed out that during United's ownership of HTV a policy decision to increase drama output from 11 to 20 hours was taken. This was highly trumpeted in front of the Welsh Grand Committee investigating the effects of digital technology on Wales. When ownership passed to Carlton the commitment was dropped immediately unannounced. This has, at a stroke, reduced employment and impaired the cultural identity of Wales. It contrasts sharply with the BBC's current policy. The supposition must be that had Carlton been able to withdraw from this obligation altogether, they would have done so. Equity firmly believes that the commitment to regional production should not begin and end with news and current affairs. Each regional broadcaster within the ITV structure should be required to maintain and produce a portfolio of different programme types.
  - ii. A suitable means of making S4C more accountable to the people of Wales. We consider the present situation where the responsibility for S4C, which broadcasts in and for Wales, sits with the DCMS despite the fact that Wales has its own National Assembly, to be unsatisfactory. We appreciate that there will be no legislation in the immediate future to give the National Assembly prime responsibility for broadcasting matters. However we do believe that S4C should be required to report to, and take account of, the National Assembly's policy concerns as determined through the Culture Committee. Equity is concerned for example that S4C's commercial activities are not being scrutinised at all. The Chief Executive stated publicly back in 1996 that S4C's investment in commercial digital services would become a revenue earner within a few years. SDN is still losing as much as £22million per year and S4C is responsible for a third. This is money which should be invested in public service broadcasting in Wales via S4C's primary service.
  - iii. A commitment to quality Public Service Broadcasting in Wales in both languages. PSB requirements have underpinned the success of the Welsh Media sector and have helped to develop quality news, current affairs, drama and entertainment programmes. Any dilution of the PSB remit will have a deleterious effect on

quality and will weaken the cultural infrastructure in Wales.

- iv. Maintenance of a strong and committed work force in Wales. Independent production quotas should be allied to an understanding that independent production made and commissioned in Wales should predominately employ local talent.
1. Equity would join with those voices which warn that more does not mean better. The only way Wales is going to compete in the fierce media war that is bound to take place in the next few years, is by nurturing and maintaining an indigenous broadcasting regime. It is by ensuring that Wales has a high quality output that people want to see because it relates to their everyday lives and expectations as citizens of Wales. As soon as Wales tries to compete with the global broadcasters at their own game it will be swamped. Therefore we must recognise what Wales does best and play to that strength. We hope that the National Assembly shares Equity's aspirations and will take care to make comments and recommendations on the Bill which will safeguard the situation.

EQUITY

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**Teledwyr Annibynnol Cymru**

**YMATEB CYNTAF I'R**

**MESUR CYFATHREBU 2002**

2. Teledwyr Annibynnol Cymru (TAC) yw'r cymdeithas fasnach i gynhyrchwyr ffilm a theledu annibynnol yng Nghymru. Ar ddechrau Mai 2002, 'roedd dros naw deg o fusnesau yn aelodau, yr rhan fwyaf ohonynt yn ardaloedd Caernarfon a Chaerdydd, gyda nifer bach yn y Gorllewin ac eraill yn rhannau eraill o Gymru ac yn Lloegr. Mae gan TAC swyddfeydd yng Nghaernarfon a Chaerdydd.
3. 2 Prif weithgaredd y cwmnïau sy'n aelodau yw cynhyrchu ystod eang o raglenni yn yr iaith Gymraeg. Fel canlyniad, y prif gwsmer yw S4C gyda comisiynau'r BBC a HTV yn gyfrifol am rhan o'r busnes. Mae nifer o gwmnïau yn arall gyfeirio drwy geisio a derbyn comisiynau gan ddarllledwyr eraill neu gweithredu mewn meysydd eraill megis radio, gwaith corfforaethol and â'r cyfryngau newydd (neu ddigidol). Yn gynyddol, mae TAC yn denu sylw oddi wrth cwmnïau cynhyrchu cynnwys digidol gyda ychydig neu dim profiad o gyfleu cynnwys yn uniongyrchol i'r darllledwyr "traddodiadol". Mae'r Gymdeithas, ar y cyd gyda nifer o bartneriaid, yn weithgar wrth geisio galluogi a chefnogi datblygiad ac arall gyfeirio cwmnïau a manteisio ar y cyfleon sy'n

codi yn sgil cydgyfeiriad technolegau.

4. Mae'r papur hwn yn cynrychioli ymateb cryno a chychwynnol i'r Mesur Cyfathrebu Drafft, i'w gyflwyno i Bwyllgor Diwylliant Cynulliad Cenedlaethol Cymru. Mae'r hyn sy'n dilyn yn canolbwyntio ar y sefyllfa sy'n berthnasol i Gymru ac i gynhyrchu annibynnol. Fe fyddwn yn datblygu'r papur yn ystod y cyfnod ymgynghori o dri mis er mwyn sicrhau cyflwyniad llawn i'r Adran Diwylliant, Cyfryngau a Chwaraeon (DCMS).
5. Gyda'r uchod fel cefndir, hoffai TAC gynnig y sylwadau isod:
  - Nodwn fod y Ddogfen Polisi sy'n cyd-fynd â'r Mesur Drafft yn datgan, yn paragraff 2.4.1 fod angen cymalau ychwanegol i sicrhau newidiadau i bwerau'r Awdurdod Cymreig. Teimlai TAC fod angen crybwyll yr rhain cyn gynted a phosibl ac yng nghyd-destun y Mesur drafft.
  - Mae TAC yn cefnogi'r galw am cynrychiolaeth cyn gryfed a phosibl i Gymru ar OFCOM. Gan nodi fod y Mesur yn cynnwys darpariaeth ar gyfer Bwrdd Cynnwys a Phanel Defnyddwyr, teimlwn dylid mabwysiadu'r un egwyddor yn achos y prif gorff. Tra mae llawer o sôn am ddyletswyddau'r ddau gorff llai yng nghyd-destun adlewyrchu gofynion y cenhedloedd â'r rhanbarthau, sydd i'w groesawu, mae'n angenrheidiol fod y cymunedau ieithyddol gwahanol yn derbyn sylw tebyg. Dylid annog OFCOM i sefydlu Pwyllgor Cymreig.
  - Croesawn y ffaith fod S4C Digidol yn un o'r Darlledwyr Gwasanaeth Cyhoeddus (PSBs) bydd rhaid ei gario ar bob wasanaeth digidol ac un fydd rhaid cynnig ei wasanaeth i'r prif gyflenwyr dosbarthu.
  - Mae'r oblygiadau yn yr ail a'r drydydd haen i'w croesawu ac yr ydym yn cydnabod bod y Mesur yn cydnabod rôl a chyfansoddiad arbennig S4C â'r BBC.
  - Gan gyfeirio at y pwynt blaenorol, 'rydym yn nodi fod cwotâu cynhyrchu annibynnol ar gyfer S4C wedi eu cyflwyno am y tro cyntaf. Mae cymal 189(1) sy'n cyfeirio at yr ystod o Ddarlledwyr Gwasanaeth Cyhoeddus (PSBs) yn gosod y cwota ar ddim llai na 25% o'r holl amser sydd wedi ei glustnodi ar gyfer rhaglenni sy'n gymwys. Tra'n croesawu hyn yn gyffredinol, mae TAC o'r farn dylid codi'r canran i 75% yn achos S4C. Byddai hyn yn cydnabod nid yn unig rôl arbennig y Sianel ond hefyd y modd mae S4C wedi mynd ati i sicrhau cynnwys yn y gorffennol. Yn y cyfnod 1994 i 1998, pan 'roedd S4C yn darlledu gwasanaeth analog yn unig, 'roedd rhaglenni wedi eu comisiynu o'r sector annibynnol ym amrywio rhwng 62 a 69.5% o'r rhaglenni a gomisiynwyd ac a ddarlledwyd. Gyda dechrau'r gwasanaethau digidol cynyddodd y canran i tua 80% ym 1999/2000. Nid yw'r ffigyrau ar gyfer 2001 wedi eu cyhoeddi hyd yma. 'Rydym yn nodi fod cymal 189(3) yn caniatáu'r Ysgrifennydd Gwladol i newid yn canrannau ac o'r farn dylid gosod y canran uwch o'r dechrau.
  - Gan ddatblygu'r pwynt, 'rydym yn nodi fod cymal 197 yn gorfodi Bwrdd Corfforaeth Channel 4 i beidio ymhél â chynhyrchu rhaglenni i'w darlledu ar Channel 4. Teimlwn mai priodol byddai ymestyn yr egwyddor i weithrediadau awdurdod S4C er mwyn sicrhau fod y sector gynhyrchu iaith Gymraeg yn gweithredu ar yr un sail â'r sector sy'n gweithredu yn yr iaith Saesneg.
  - Mae TAC yn croesawu'r bwriad i orfodi'r "Awdurdod Cymreig" i gynhyrchu datganiad o'i bolisi rhaglenni

- Mae'r Ddogfen Bolisi sy'n cyfeirio at y Mesur yn delio gyda pwerau Channel 4 a S4C, yn arbennig y ddarpariaeth ar gyfer gweithgareddau masnachol. Tra'n cydnabod fod y gwasanaethau'n gwahaniaethu o safbwynt sail eu pwerau a'r ffordd maent yn gweithredu o ddydd i ddydd, teimlir fod angen sicrhau fod cysondeb yn y modd mae'r gweithgareddau hyn yn destun rheoliaethu. Tra mae'r Mesur yn cyfyngu ar bwerau Channel 4 parthed "qualifying companies" gyda'r bwriad fod angen i'r Sianel "...agree with OFCOM, and publish, formal arrangements to be followed by the Corporation in approving new ventures...". Yn achos S4C, mae'r Ddogfen yn datgan dylai'r Sianel "... have power to introduce new public services or turn existing commercial services into public ones, subject to the approval of the Secretary of State. We also propose to put in place for S4C an approvals process for commercial ventures broadly based on that for the BBC, so that S4C will be able to enter into joint ventures or partnerships and set up subsidiary companies, subject to the approval of the Secretary of State. All S4C commercial and additional public service activities will need to be incidental or conducive to the Authority's statutory purpose..." Mae TAC o'r farn fod rhesymau da dros geisio sicrhau mwy o arolygaeth a rheolaeth dros weithgareddau masnachol S4C ac unrhyw weithgaredd i greu mentrau newydd nad ydynt yn disgyn o fewn diffiniad pwrpas statudol yr Awdurdod. Byddai'n bosibl sicrhau hyn drwy ychwanegu'r materion hyn i'r adolygiad o berfformiad yr Awdurdod Cymreig fel sydd wedi ei ddisgrifio yng nghymal 226.
- Mae'r argymhelliad parthed sicrhau lleoliad teilwng i'r Darlledwyr Gwasanaeth Cyhoeddus ar yr "Electronic Programme Guides" i'w groesawu.
- Mae'r Mesur yn ceisio adolygu a newid nifer o adrannau o'r Deddf Darlledu 1990, ond nid yw'n cynnwys unrhyw gyfeiriad at Adran 58, gyda rhan yn

*58 (1) For the purpose of enabling the Welsh Authority to comply with their duty under section 57(2)(b) it shall be the duty of the BBC to provide the Authority (free of charge) with sufficient television programmes in Welsh to occupy not less than ten hours' transmission time per week, and to do so in a way which meets the reasonable requirements of the Authority.*

Yn sgil y gweithrediadau masnachol diweddar rhwng S4C a'r BBC mae TAC wedi sicrhau barn cwnsler parthed yr rhan yma o'r Ddeddf a wedi derbyn y cyngor canlynol. "... Section 58 of the Broadcasting Act 1990 is without doubt poorly drafted. In my view it is reasonably capable of two interpretations, namely that the BBC may or may not bid commercially for Welsh language S4C work ....In my view the construction advanced by TAC, i.e. that any Welsh language content must be supplied free of charge, is the preferable interpretation..."

Teimlwn fod angen diwygio'r adran yma o Ddeddf 1990 i adlewyrchu y gosodiad sydd wedi ei ddisgrifio uchod.

- 'Rydym yn croesawu yr amod yn cymal 5 o Atodlen 8 sy'n datgan fod angen darparu amser ar gyfer amrywiaeth o gynhyrchiadau annibynnol.
- Tra'n cefnogi'r egwyddorion parthed cydraddoldeb cyfleoedd sydd yn ymddangos yn cymal 16 o Atodlen 8, hoffai TAC sicrhau fod gofynion is-gymal (5) fel mae'n cyfeirio at is-gymal (3)(b) yn gorfodi'r Awdurdod Cymreig i ymgynghori gyda'r rhai sy'n gwneud rhaglenni neu eu corff masnach cynrychioliadol.
- Mae TAC wedi lleisio'i bryder parthed methiant Channel 4 i adlewyrchu natur amrywiol y gymdeithas

Brydeinig, gan gyfeirio yn enwedig at Gymru; a'i record wael wrth gomisiynu rhaglenni a chynnwys arall o Gymru. Gan groesawu cymal 195 sy'n sefydlu'r egwyddor o gydnabod gwahaniaethau daearyddol, teimlir mai dim ond rhan o'r ffordd mae'r gofyn i wneud rhaglenni tu allan i ardal yr M25 yn mynd i sicrhau beth a ddisgrifir fel "...ystod addas o raglenni..". Fe fydd TAC yn crybwyll cyflwyno cynnig bydd yn cryfhau sefyllfa'r cynhyrchwyr yn y gwledydd a'r rhanbarthau, i sicrhau ystod mwy eang o raglenni, gan bwysleisio'r gofyn i wella sefyllfa'r sector gynhyrchu Cymreig.

- Mae TAC yn siomedig fod y Ddogfen Bolisi yn:
  - rhoi'r argraff fod ADSL yn darparu cysylltiadau "band lydan" ac yn cynrychioli rhyw fath o uchelgais, heb fod unrhyw gyfeiriad at SDSL, VDSL, na thechnolegau eraill sydd â'r gallu i ddarparu cysylltiadau dwy ffordd o safon uwch sy'n llawer cyflymach.
  - adlewyrchu methiant i gydnabod, yng nghyd-destun sicrhau fod gwasanaethau band lydan ar gael yn yr ardaloedd gwledig a phellennig (beth bynnag yw'r diffiniad ond, mae'n debyg, yn cyfeirio at yr rhan fwyaf o Gymru), fod angen llawer mwy o weithgaredd gan y Llywodraeth fydd, efallai, angen newidiadau deddfwriaethol er mwyn annog blaengarwch technolegol i ddarganfod atebion.
2. Edrychaf ymlaen at ymhelaethu ar y pwyntiau hyn, ac eraill, mewn trafodaeth a chyflwyniadau ysgrifenedig ychwanegol.

Dafydd Hughes

Prif Weithredwr,

TAC,

Gronant,

Caernarfon,

LL55 1NS

THE NATIONAL ASSEMBLY FOR WALES

**CULTURE COMMITTEE**

**Communications Bill consultation**



## Preliminary Memorandum from the Radio Authority

1. **The Radio Authority welcomes the opportunity to present this preliminary memorandum to the National Assembly of Wales' Culture Committee, setting out those issues which the Radio Authority regards as pertinent at this stage.**
2. In its general approach to the establishment of the Office of Communications (OFCOM) the Radio Authority advocates the following key principles:
  - that OFCOM should be a modern, flexible, non-monolithic body capable of ensuring world class regulation for broadcasting, telecommunications and spectrum management;
  - that the momentum of the legislative process, and the parallel design of OFCOM should be maintained;
  - that OFCOM should be so organised that it can deploy specific and appropriate regulation to radio, rather than imposing television or telecom solutions on this distinct medium, and giving radio full and proper attention so that the regulation of this medium does not become a 'Friday afternoon job';
    - that, given Government decision to remove many restrictions on the ownership of broadcasting licences, including especially the prohibition on non-EEA ownership, every care should be taken to ensure that OFCOM has appropriate duties and sufficient powers to protect the quality and key characteristics of UK broadcasting, and in the case of local and regional broadcasting, to guarantee a proper service to those localities. We regard the implementation of this decision as of the highest importance to local radio broadcasting in Wales, as well as in the UK as a whole;
    - that OFCOM should have appropriate powers in respect of the BBC to ensure that the value of converged regulation is not lost by leaving key matters affecting a major player in the broadcasting market outside the scope of that regulation.

### 3. Policy Issues

#### a) Content Board

The provision of a Content Board and a Consumer Panel provides, in the Radio Authority's view, important structures to ensure public access and accountability for the new regulator. We will urge that Government ensures that both these bodies include proper representation for Wales, and for the other the Home Nations. The roles and duties of the Content Board need to be carefully defined, to ensure that this does not detract from the purpose of OFCOM to be a properly converged, single regulator. We are pleased that there will be consultation with the National Assembly in making appointments to these bodies.

#### b) OFCOM's presence in Wales.

We believe that OFCOM will need to sustain a permanent office in Wales, in order to

take proper account of the needs of broadcasting, spectrum management and telecommunication in Wales, and to sustain proper contact with the Welsh Assembly Government and the National Assembly committees. It will need to be in a position to represent and to look after Welsh interests across the whole range of matters covered by the new, converged regulator.

-

### c) Radio Licensing

The Radio Authority is pleased that Government has accepted our recommendation to extend the length of analogue radio licences from eight to twelve years. We also endorse the decision that licences should continue to be competed for at the end of their duration, but that the fast track re-advertisement procedure should be retained and extended to all local licences, including the London-wide licences which were previously excluded from this approach. We welcome the decision to abolish separate cable and satellite licences, replacing them with a single new radio licensable content services licence.

We had urged on Government that cable and satellite radio services did not need separate licences, and we have noted the potentially deregulatory power allowing the Secretary of State to do this if it appears that separate licensing is no longer needed. We are pleased that the Bill continues to promote and support the growth of digital radio (Digital Audio Broadcasting – DAB) in which the UK is authentically the world leader. However, some further slight modifications will be needed to ensure that the digital industry is not needlessly hampered by regulation. OFCOM will need to monitor the development of digital radio in Wales most carefully, in order to facilitate the viable development of both commercial and BBC radio services within a reasonable time scale.

### d) Programme Formats

Government has accepted the case put forward by the Radio Authority for some further relaxation, in order to make it easier for licence holders to respond to local expectations and to allow OFCOM to engender further competition in well-developed major markets. We are encouraged by the power proposed for OFCOM to review the onward sale of local licences, to reduce the risk of new owners moving to the middle ground of public tastes and thereby reducing programming diversity in local markets. However, we continue to hold the view that the regulator needs a specific power to prevent such onward sales, during the first year or so after a licence is awarded, if the integrity of the licensing system is to be protected.

### e) Ownership

We note the Government's proposals to abolish all rules on ownership by non-European Economic Area nationals. As the policy narrative accompanying the draft Bill makes clear, this will place even greater emphasis on ensuring national and local content in broadcasting, and that will be of particular relevance in the circumstances for Wales and the other Home Nations. We therefore welcome the statement that OFCOM will have a duty to promote and protect the local content and character of local radio, and that the new regulator will have a continuing duty in respect of the quality of broadcast output, and we commend to the Committee the crucial importance of seeing that this

undertaking, which is not yet part of the Draft Bill, is given full effect.

We strongly welcome the Government's endorsement of the proposals developed jointly by the Radio Authority and the Commercial Radio Companies Association to liberalise ownership rules for local commercial analogue licences. These involve doing away entirely with UK-wide limits on licence ownership, leaving these matters solely to the competition authorities. In each local area, the formula that we have jointly proposed, that there should be a minimum of three owners plus the BBC in mature markets, is to be adopted. That would ensure a sufficient plurality of ownership, a safeguard which will be especially important given the removal of restrictions of foreign ownership on such licences. We note that the Government is adopting this 'three plus BBC' approach for cross media ownership between newspapers and local radio and television companies and local radio, and that by implication it also underpins the approach to concentration of ownership within television where there will be at least three separate owners of network services plus the BBC. We believe that this approach is straightforward, transparent, fair and effective.

We welcome the fact that Government proposes to address the anomaly in the Broadcasting Act 1996, under which religious organisations are not allowed to hold a digital sound programme service in a local area. Government has correctly concluded, however, that the severe limitations on available spectrum mean that legislation should continue to preclude religious bodies from owning UK-wide radio licences.

#### f) Access Radio

We are heartened by the support and impetus that Government has given to our proposal for the creation of Access Radio, a new third tier of radio services to be established on a not for profit basis, designed to provide specific social gain in local communities. With Government's agreement, the Radio Authority is undertaking a range of experiments through fifteen pilot projects which are being launched this year, most of which are already on air. One of these pilots is in Wales: GTFM, which came on air this week, a joint venture in Pontypridd, between the Glyntaff Residents' Association, and the University of Glamorgan.

Access Radio would be distinct from commercial and BBC local radio, providing opportunities for those in local communities to have access to the making of radio, and deploying the medium for demonstrable social purposes. The experiment is the subject of independent evaluation. However, it is already clear that, for the successful implementation of Access Radio, OFCOM will need to exercise its powers to deploy FM frequencies from within the BBC's national and local sub-bands, as well as the ILR and INR bands. If the experiments are successful, and Access Radio is instituted on a full scale, it may have particular relevance to the development of radio in Wales.

#### 4. Staffing

We are particularly pleased to see, in the Policy Narrative accompanying the Draft Bill, confirmation from Government that the principles of the Transfer of Undertakings (Protection of Employment) Regulations will be followed in respect of OFCOM, together with principles of the Fair Deal on Pensions. This will be crucial in ensuring that OFCOM has a good supply of high-quality experienced staff and to maintain business as usual for the existing regulators in carrying out their statutory tasks during the next year or two. We urge that draft clauses to give effect

to this undertaking are prepared as a matter of urgency.

## 5. Detailed drafting

The Radio Authority will be pleased to offer further detailed evidence in due course, if that will assist the Committee

## **Radio Authority**

20 May 2002

## **NUJ-Submission to Welsh Assembly on Broadcasting Bill**

Meic Birtwistle , National Executive Committee, National Union of Journalists.

The National Union Of Journalists thanks the National Assembly's Culture Committee for this opportunity to respond to their consultation on the Communications Bill. However, the timescale imposed in commenting on this proposed piece of legislation has been restrictive. We apologise because we have not had time to provide a Welsh language version. The union will be producing a further detailed response to the Bill as a whole to the Joint House of Commons- Lords Committee established to investigate this subject.

The NUJ is clearly seriously concerned as to the tenor of the Bill in general as constituted. Historically, broadcasting is recognised as possessing a major influence on the social, cultural and political landscape of Wales. The significance of the industry cannot be overstressed. The short-term demands of big business must not be assuaged at considerable long-term cost to Welsh society.

Sadly, the proposed legislation fundamentally cuts across the government's own stated aim of introducing devolution for Britain - its nations and regions. Both regulation and ownership would inevitably be centralised and concentrated by these proposals. A tiny OFCOM committee does not recognise the need for dedicated representation from the nations and regions.

A potentially inaudible voice would be given to Wales with a representative appointed in consultation with the Secretary of State For Wales and the National Assembly to the Content and Consumer Boards. These bodies,

however, possess a purely advisory role, unless otherwise granted an executive role by OFCOM. However, The Assembly's Culture Report recommended 'the need for Wales to be represented on the new regulatory body OFCOM.'

In 'Broadcasting in Wales and the National Assembly' by The Welsh Affairs Committee it was stated that:

"We need to ensure that devolution increases the visibility of Wales throughout the UK."

This must be done in terms of both political and screen representation neither of which aims will be achieved under present proposals.

The viewers are essentially defined as consumers in this Bill - with their role as citizens viewed as a secondary function. This is a fundamentally dangerous assumption to adopt with regard to society. It is clear that the Content Board of OFCOM needs to be considerably strengthened, with particular attention being paid to the nations and regions.

At the time of writing the full details of the nature of the intended relationship between the BBC and OFCOM have not been made clear. However, it is certain that the BBC will increasingly be drawn into its orbit. Over the years the watering down of the public service broadcasting remit has been particularly noticed in ITV. But the BBC has not been immune from these processes. That trend will undoubtedly continue apace under the proposed 'light touch' regulation. Consumer journalism and infotainment are set to increase at the expense of more weighty journalistic endeavours.

The current move towards one ITV is nodded through in the Bill - whilst the concept of some fifteen franchises is somehow retained. The threat of the further erosion of a distinctive ITV voice for Wales is thus deemed inevitable. Budgets, staffing and slots will increasingly be apportioned by centralised accountants rather than autonomous Welsh managers.

The threat to Welsh production of programmes under a unified ITV would thus be very real.

The jobs of broadcasters would clearly be in danger as well as the current range of distinctive programmes demanded by existing regulatory bodies. Political, current affairs and factual programming might well be particularly exposed.

Specifically, Welsh politicians already bemoan the inadequate geographical spread of broadcasting coverage to represent the varied communities of Wales. Economic pressures in ITV would further exacerbate such a situation within the country.

There appears to be no intention to ensure that national or regional requirements are introduced to C4, C5 or any non-analogue suppliers. So the least that could be expected would be protection of existing output on the ITV and BBC in Wales.

The delicate question of the regulation of S4C is only partly addressed in this draft. In part, it will be subject to an OFCOM without significant Welsh representation whilst also retaining its autonomous regulatory authority. Surely, this is one further reason for strengthening the Welsh element of OFCOM. This proposed solution to S4C still needs to be examined as the proposed regulation is still not ideal.

Concentration of newspaper ownership in Wales puts additional responsibility on broadcasters' shoulders. This raises particular fears as to concentration and cross media ownership in the commercial radio sector.

Significant in-migration of population into Wales plus poor take-up of Welsh channels along the border makes the informative role of the Welsh media particularly onerous. A distinctive and informed Welsh perspective must be preserved in Welsh and English language programmes on television and radio. A devolution deficit in Welsh broadcasting could cause a significant democratic deficit in Welsh politics for future generations.

Broadcasting is clearly vital in strengthening Welsh political accountability and giving voice to Welsh cultural life in its many and varied forms. But the Bill as constituted will further unleash the market forces and their daily race for ever higher viewing figures which currently bedevil the industry. For the sake of the political, social and cultural health of Wales there needs to be a vigorous, varied and socially-aware broadcasting sector preserved not only in Wales but Britain as a whole.

A submission to the National Assembly's Culture Committee on the Communication Bill and its implications for the media in Wales

**Tom O'Malley**

**Campaign For Press and Broadcasting Freedom**

**May 20th 2002.**

### **Introduction**

1. For modern Wales mass communications has played a crucial role in helping to shape and develop national identity. In particular the public service culture has been the bedrock upon which mass broadcasting in the country has rested providing the base for the emergence of both a key production centre in the UK and Welsh language broadcasting. In addition the high quality of UK wide public service, commercial and licence fee funded broadcasting, plus the restraints placed on cross media ownership have provided people in Wales with a relatively diverse set of media outlets from which to choose.

2. It is the avowed intent of the government to reduce regulations on content and ownership and to foster more economic competition in the media. This is stated clearly in the government's policy statements accompanying the Bill, and is embedded within the powers and responsibilities of the Office of Communications (OFCOM). Thus the Bill is designed to weaken the regulatory structure on which the Welsh media has depended. The National Assembly of Wales has therefore, over and above the specific issues that relate to Wales, a clear responsibility to engage with the overall deregulatory direction of the legislation.

### **The general direction of policy**

3. Government Policy is to re-regulate in favour of market forces. The core activity of the main regulator, OFCOM is: 'to promote competition in the provision and making available of... services and facilities'. [(3)(1)(b)]. The Bill generally refers to citizens in this context as 'customers', [(3)(1)(a)]. In addition, the purpose of OFCOM is to provide a one-stop shop for media companies to gain swift regulatory adjustments. Section (5) (1) of the draft Bill

requires 'that regulation by OFCOM does not involve (a) the imposition of burdens which are unnecessary; or (b) the maintenance of burdens which have become unnecessary'.

4. Government Policy is centralist. The government has stated that OFCOM will have to pay particular interests to the needs of Wales and Scotland in general. It will have Welsh and Scottish people appointed in consultation with the National Assembly and Secretary of State for Wales to the Content and Consumer boards. These boards are fundamentally advisory, with no executive functions as of right. The net result is to diminish the number of Welsh voices on broadcasting bodies in Wales. Equally, whilst a Welsh governor will continue to sit on the BBC, no such figure will sit on OFCOM.

### **Impact on Wales**

#### **Ownership.**

5. The ownership provisions will impact on Wales. There will be one UK wide ITV contractor. Cross ownership between press, TV and radio will increase. In this context, the commercial pressures unleashed will make the existing providers of broadcasting services less able and inclined to fund distinctively Welsh programming. The market sought by these providers will be overwhelmingly one which generates the largest return in the swiftest fashion.

6. The proposals on radio will lead to further concentration of ownership in the commercial radio industry in Wales. Thus the ability to develop genuinely local and community stations, with distinctive identities, something which under present conditions has proven extremely difficult in Wales, will be severely curtailed.

#### **Production in Wales**

7. The requirement for 'quota's for programming of a regional nature in ITV, in the context of allowing OFCOM to lift 'burdens' where it feels it should, creates a double problem. Quotas are generally about particular types of programming, with no guarantee of quality for the whole output. Secondly, in the conditions of intense competition already unleashed in TV and which are about to intensify, the pressure will be on OFCOM to lift, modify and, or, to 'flexibly' interpret these quotas'. In addition a unified ITV franchise will be de-facto one company, but according to the Bill, it will be made up of separate franchise areas with specific regional production quotas. How will this state of affairs work, if the main ITV contractor is pleading poverty in the face of competition when OFCOM asks it to fulfil regional programming obligations? Add to this the fact that the Bill only requires OFCOM to ensure that companies 'include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area' [(181) (5)(h)] - this could mean Reading rather than Cardiff or Bangor!

8. The public service requirements on ITV and Channel 5 will be less than those required for Channels 4 and S4C. This in itself is an admission that ITV will not be in the business of maintaining high quality public service programming.

9. All of this raises major questions about the kind of regional programming that will be developed under the new system. The Bill provides no regulatory incentives for commercial TV operators to maintain a high level of regional production in Wales, or anywhere in particular.

#### **BBC and Wales**

10. The BBC will be eventually drawn into OFCOM. Under the Bill its public service performance will be subject to OFCOM oversight and, the government is going to publish more details of ways to tie the BBC into OFCOM. If the BBC is to become increasingly subjected to the commercial rigours of OFCOM, then this will lead to arguments with the commercial sector about whether the programming it provides should be produced by a public service

broadcaster. This is but one step from incorporating the BBC into a commercially driven OFCOM structure, with the long-term prospect of weakening that organisation's ability and commitment to Welsh programming. Whilst many voices in Wales have been raised against the centralising habits of the BBC, the way to change this is to reform the BBC not to radically undermine its public service remit by incorporating it into OFCOM.

## **S4C**

11. The bill leaves S4C with its current remit, and as with third tier public service responsibilities, which will be under similar levels of supervision by OFCOM. OFCOM has no Welsh member on its main board, and S4C's members will continue to be appointed from London. Thus the most important part of Welsh language broadcasting is to remain controlled, ultimately, from London. This makes, at the very least, the case for a Welsh member on OFCOM, appointed by the National Assembly, even more pressing.

12. The policy document accompanying the Bill shows no evidence of the government having considered the medium and long term effect of unleashing so much additional, non public service competition on S4C's audiences.

## **Recommendations**

13. The government policy documents that have preceded this Bill, and those accompanying it carry no evidence of any impact assessment on production and culture in Wales of these changes. Thus the proposals therein are being introduced in a vacuum. The National Assembly should request that the government publish any research it has done on the likely impact of these proposals on the media in Wales in order to facilitate more informed public debate.

14. The Assembly should repeat its request for a Welsh member on the main OFCOM board and also ask that this member be appointed directly by the Assembly.

15. The Assembly should request an additional right in connection with appointments to the Consumer and Content Boards and, in the interests of objectivity support the removal of these boards from the OFCOM structure. They should be established as powerful, independent, monitors of OFCOM's activities.

16. The forthcoming Act should contain specific provisions relating to Channel 3, and Channel 5, and commercial local radio companies placing contractual obligations on the contractors to produce a high percentage of output in Wales and for and about Wales.

17. OFCOM's purpose should be re-orientated towards promoting public service values across all the media for which it has responsibility.

18. The tiered nature of the public service broadcasting obligations needs to be altered. A system could be devised which starts from the presumption that all major terrestrial broadcasters will be expected to fulfil a wide range of public service broadcasting obligations, and that growth in revenues and, or, services of others should trigger increased obligations.

19. The ownership proposals should be changed, to encourage less cross media ownership, in the interests of cultural diversity.

20. The Joint Committee of the House of Lords and Commons should be requested to pay particular attention to



the impact of the changes on the media in broadcasting in Wales, and the Assembly should encourage other organisations in Welsh civil society to submit evidence to the Joint Committee.

## BECTU

### SUBMISSION TO THE NATIONAL ASSEMBLY CULTURE COMMITTEE ON THE COMMUNICATIONS BILL

1. BECTU, as the union representing those involved at all levels of radio and television production has a considerable interest in developments in broadcast policy.
2. Following our own Communications Bill Conference to be held in London on the 22<sup>nd</sup> June, BECTU will make a detailed response to the Westminster Government.
3. BECTU in Wales notes with some disappointment, that areas of particular interest, such as proposals for the BBC and S4C are yet to be made public. Whilst we welcome the opportunity of being able to share some initial views with the Culture Committee on the impact of the proposals on the industry in Wales, we request the Culture Committee seek further opinion on these areas as they are made known.
4. Due to the importance of the industry to the public and economy of Wales, we would respectfully request that the Culture Committee seek as wide a spectrum of opinion as possible, who should be encouraged to submit evidence on the Communications Bill.
5. BECTU notes the establishment of the **Joint Committee on the Draft Communications Bill**. We respectfully suggest that the Joint Committee be invited by the National Assembly Culture Committee to come to Wales to seek the views of people of Wales.
6. We consider that OFCOM should be open and accountable in its operations, especially in relation to the balance between economic and content regulation. It should be representative of all the nations of the UK and accountable to their national Parliaments.

7. In respect of the Content Board, we believe that it should have a direct and significant input to the full OFCOM board;

- That it should have administrative autonomy within OFCOM
- That it should be representative of the nations of the UK and accountable to their national Parliaments
- That it should include a suitable proportion of people with a content background.

1. In relation to Public Service Broadcasting, we retain major reservations about the proposed self regulation in respect of programme quality in tier 3 and want a more proactive role for OFCOM.

Rather than lighter touch regulation for Public Service Broadcasters, we want more positive programming requirements to be extended to cover non-terrestrial broadcasters, including B Sky B.

2. The forthcoming Act should contain specific provisions relating to the ITV companies, placing contractual obligations to produce a high percentage of its output in Wales and for Wales. Therefore, while we welcome in principle the proposed quotas on regional production, regional programming and original production, we wish these commitments to be made compulsory, substantial and explicit.

3. In respect of Ownership:

- We welcome the retention of cross-ownership restrictions applying between ITV and national newspapers
- We oppose the removal of restrictions on non-EU ownership of ITV/Channel 5; which could lead to even greater pressure for the import of American programming.
- We oppose the removal of the bar on joint ownership of ITV and Channel 5
- We believe that single ownership within ITV is unacceptable without clear and meaningful commitments on ITV regional production.

NATIONAL OFFICER

May 2002

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HTV Wales Evidence

National Assembly Culture Committee

May 2002

HTV Wales

Television Centre

Culverhouse Cross

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**HTV Wales Evidence on the Draft Communications Bill**

**Functions and Duties of OFCOM**

Role and membership of OFCOM's Content Board and Consumer Panel

## Relevant Clauses

### Part 1 – Functions of OFCOM

General duties of OFCOM (Clauses 3 and 5)

OFCOM's Content Board and its functions (Clauses 17 and 18)

### Part 2 – Networks, services and the radio spectrum

Customer consultation, representation and membership (Clauses 96 and 97)

- a. We have consistently argued that OFCOM must take proper account of the different interests of people living in Wales, the other nations and regions of the UK. We believe this is recognised by the draft Bill and policy narrative, which include measures to ensure that the interests of Wales permeate the structure of OFCOM.
- b. We agree that all members of the OFCOM Board, in their capacity as UK wide regulators, should be obliged to take account of the national and regional dimension of any decisions they take or strategies they implement.
- c. Statutory membership for Wales on the Content Board is essential as its members will be directly involved in ensuring that a diverse and quality English language programme service for Wales is delivered by HTV and that regional production commitments are met. We note that "OFCOM shall secure, so far as practicable" a representative from Wales on the Content Board. We believe this may not be a sufficient guarantee.
- d. The appointment of a member for Wales on the Consumer Panel is also "so far as practicable". The role of the Consumer Panel in relation to content issues needs to be clarified in order to ensure that it does not duplicate the functions of the Content Board.
- e. In delegating functions to the Content Board, it is important that the OFCOM Board gives equal weight to public service broadcasting as well as competition issues. A balance needs to be struck between the economic and cultural aspects of the communications industry.
- f. We believe the relationship between the Content Board and the OFCOM Board needs to be clarified.
- g. We agree that OFCOM should have a presence in Wales. However, this is an expectation in the Policy Narrative (4.4.1.6), and is not included in the draft Bill.
- h. We welcome the expectation that OFCOM will build on the links already established by some of the existing regulators with the National Assembly and that the Assembly will be consulted on appointments. (Policy narrative 4.4.1.7). We note, however, that there is no statutory obligation.
- i. A clearly defined relationship between OFCOM and the Assembly is necessary in order to allow the broadcasters to operate at arms length and secure editorial independence.

- j. We believe this relationship should embrace economic and content issues to fully reflect the role of OFCOM.

## Other Issues and Clauses of Particular Relevance to HTV Wales

### Relevant Clauses

Must Carry Obligations (Clause 49)

Part 3 – Television and Radio Services

Chapter 2 – Regulatory Structure for Independent broadcasting services

Digital Channel 3 licences (Clauses 150 – 152)

Chapter 4 – Regulatory provisions

Fulfilment of the public service remit (Clauses 181 – 183)

Regional production and regional programming (Clauses 193 and 194)

- a. The 'Must Carry' regime will be maintained on the cable platform for the public services broadcasters. We have argued that it should also be extended to the satellite platform and the Government has pledged to look at ways of doing this after digital switchover. We believe this issue needs addressing now. Currently public service broadcasters like ITV are obliged to make huge payments for access to satellite that are not required on either cable or DTT.
- b. OFCOM will be able to grant Channel 3 digital licences to end in 2014. However, existing licensees will not be given 'first refusal' for renewal of these. We believe this would be a retrograde step raising the prospect of an auction, which when introduced in the 1990 Broadcasting Act led to some licences being awarded for £2k and others, such as HTV, being awarded for £20 million. This would also be a disincentive to investment if there were no guarantee of the licence being held in time for a return to be made.
- c. We would wish to explore whether the conversion of existing Channel 3 licences to a digital licence would include discussion of the licence payments made by ITV companies, including HTV. ITV companies pay for their licences through "the cash bid" (the amount bid for each licence plus inflation) and the "percentage of qualifying revenue" (PQR is a levy based on each licence's advertising and sponsorship revenue). This system does not take account of the cyclical nature of advertising revenue.
- d. OFCOM's review of public service broadcasting will rightly include an assessment of the contribution made by all public service broadcasters.
- e. We have argued for clear but non-prescriptive public service remits to be set and are pleased to

see their inclusion in the draft Bill.

- f. HTV Wales, other ITV licensees and the Network Centre already publish an annual statement of programme policy at the beginning of the year and a review of performance at the end of the year.
- g. We are pleased the draft Bill recognises the importance of regional production and the need to ensure it is spread across the UK.
- h. HTV Wales is pleased with the recognition given to regional programming. We have consistently argued the need to ensure programmes for Wales are available to the audience at prominent times in the ITV1 schedule. We believe this to be the most effective means of delivering a national service for Wales in the English language.

## Media Ownership

Relevant Clauses

Chapter 5 – Media Ownership and Control

Changes of control and regional character (Clause 234 and 235)

- a. We believe that the provisions for maintaining the character of regional services are an important counterbalance to the changes in media ownership, which are being proposed. These provisions will ensure that the quality and range of the HTV Wales programme service is maintained and that people working in the HTV licence area take managerial and editorial decisions.

HTV Wales

May 2002

Ymateb S4C i'r Mesur Cyfathrebu Drafft

### 1. Cyflwyniad

1.1 Mae ymateb S4C i'r Mesur Cyfathrebu drafft wedi seilio ar ein hasesiad o'r graddau y bydd ei

gynnwys yn hyrwyddo ein cyfrifoldeb craidd i adlewyrchu a chyfoethogi bywydau pobl Cymru. Mae S4C, felly, yn croesawu'r ail-gadarnhad o'i rôl y mae'r Mesur yn cyflwyno. Rydym hefyd yn croesawu'r cadarnhad y bydd perthynas cyfansoddiadol S4C gyda'r rheoleiddiwr newydd, OFCOM, yn adlewyrchu yr hyn a gynigiwyd ar gyfer y BBC. Awdurdod S4C fydd yn parhau i fod yn gyfrifol am reoleiddio remit cyhoeddus S4C. Croesawir hefyd y cyfraniad pwysig y disgwylir i ddarlledu cyhoeddus wneud yn fwy cyffredinol wrth gynnal safon ac amrywiaeth yn y DU. Yn ein barn ni, dyma fydd y dull mwyaf effeithiol o sicrhau fod teledu yn parhau i ddatblygu'r cyfoeth o dalent a sgiliau creadigol sydd yng Nghymru.

1.2 Mae S4C yn parhau i gefnogi sefydlu un rheoleiddiwr i fod yn gyfrifol ar bob agwedd ar y diwydiannau cyfathrebu. Mae ein cefnogaeth yn deillio yn rhannol o'r pwyslais y mae'r Llywodraeth wedi rhoi ar yr egwyddor o hunan-reoleiddio gan ddarllledwyr. Yn achos S4C, teimlwn fod hyn wedi hen ennill ei blwyf. Mae'n sicrhau y budd ychwanegol bod materion sydd yn ymwneud â darlledu trwy gyfrwng y Gymraeg yn cael ei benderfynu gan awdurdod sydd wedi'i leoli yng Nghymru ac sydd yn cynnal ei busnes trwy gyfrwng y Gymraeg. Awdurdod o'r fath sydd yn y sefyllfa orau i adlewyrchu anghenion a disgwyliadau gwylwyr yng Nghymru. Mae rhai o'n sylwadau ar swyddogaethau OFCOM yn ymwneud ag agweddau o'r Mesur lle teimlwn fod eisiau adlewyrchu yr egwyddor o hunan-reoleiddio yn gryfach fyth. Mae S4C wedi ymrwmo i weithio gyda'r rheoleiddwyr presennol i baratoi ar gyfer y fframwaith newydd. Rydym yn arbennig o awyddus i sicrhau bod y fframwaith rheoleiddio yn adlewyrchu anghenion Cymru a darlledu trwy gyfrwng y Gymraeg. Edrychwn ymlaen at gydweithio gyda'r rheoleiddiwr newydd yn y pen draw.

1.3 Yng ngweddill y ddogfen hon rydym yn cyflwyno ymateb S4C i gynigion manwl y Mesur sydd yn effeithio arnom ni. Mae S4C wedi ymrwmo i sicrhau bod ei gwasanaethau yn parhau i roi gwybodaeth, i addysgu ac i ddiddanu yn y tirwedd darlledu newydd y mae'r Mesur yn gobeithio'i sefydlu. Fodd bynnag, pryder Awdurdod S4C yw na fydd S4C yn gallu cyflawni'r swyddogaeth hollbwysig hon os na ddarperir cyllid a phwerau priodol ynghyd â'r pwerau perthnasol er mwyn iddi allu gwneud hynny. Mae rôl darllledwyr gwasanaeth cyhoeddus yn newid yn gyflym. Rhaid i ddarlledu yn y Gymraeg adlewyrchu'r newidiadau hyn. Mae angen i ymateb manwl S4C, felly, gael ei weld ochr yn ochr a'n cais am godiad yn ein hariannu craidd yn debyg i'r hyn y mae'r prif darllledwyr eraill wedi derbyn yn barod..

## **2. Pwerau a Chyfrifoldebau S4C**

2.1 Mae dyletswyddau S4C wastad wedi eu cyflwyno trwy ddeddfwriaeth ac rydym yn hapus ar y cyfan gyda'r newidiadau y mae'r Mesur yn cyflwyno er mwyn addasu ein cyfrifoldebau i'r fframwaith rheoleiddio newydd ar gyfer pob darllledwr. Croesawn y ffaith fod y Mesur yn tanlinellu y bydd Awdurdod S4C yn parhau i fod yn gyfrifol am reoleiddio cyhoeddus S4C. Rydym yn hapus gyda'r syniad (226) y dylai fod hawl gan yr Ysgrifennydd Gwladol yn y dyfodol i adolygu perfformiad yr Awdurdod ynglŷn â'r dyletswydd hwn. Bydd hwn yn dod â S4C yn agosach at sefyllfa'r BBC lle mae'r Siarter yn cael ei adolygu pob deng mlynedd. Er mwyn sefydlu cydraddoldeb gyda'r BBC, teimla S4C y dylai adran 226 gael ei diwygio er mwyn sefydlu na ddylai unrhyw adolygiad ddigwydd yn amlach na deng mlynedd yn hytrach na'r pum mlynedd sy'n cael ei gynnis ar hyn o bryd. Fe fyddai cyfnod o ddeng mlynedd hefyd yn ei wneud hi'n fwy tebygol bod adolygiad yn gallu canolbwyntio ar newidiadau mwy sylweddol i'r tirwedd darlledu y mae S4C yn gweithredu tu fewn iddo.

2.2 Effaith adran 145 a paragraff 3 o Siediwl 8 yw i ail-ddatgan, heb newid, remit craidd S4C. Mae rhoi'r hawl i'r Ysgrifennydd Gwladol newid yr agweddau mwy technegol o'r remit sydd yn is-baragraffau (2) a (3) o baragraff 3 yn golygu bod S4C mewn sefyllfa debyg i'r prif ddarlledwyr eraill. Mae S4C yn hapus bod y Llywodraeth wedi cytuno i gynnig y dylai fod yr hawl ganddi i gyflwyno gwasanaethau cyhoeddus ychwanegol ond bod yr Ysgrifennydd Gwladol yn cytuno. Fe fydd hwn yn ein galluogi ni i symud i ffwrdd o'r sefyllfa bresennol lle mae S4C2 wedi eu trwyddedu fel gwasanaeth 'masnachol' gan yr ITC. Yn y dyfodol, bydd hwn yn gallu cael ei gyflwyno fel gwasanaeth cyhoeddus gan Awdurdod S4C. Nid yw'r elfennau newydd hyn o'r remit wedi'u cynnwys yn y drafft presennol o'r Mesur.

2.3 Mae'r newidiadau sydd yn cael eu cynnig i bwerau masnachol S4C (sydd hefyd heb eu drafftio) i fod i adlewyrchu'r trefniadau sy'n ymwneud â gweithgareddau masnachol y BBC. Nid oes gan S4C unrhyw anhawster mewn egwyddor gyda newidiadau o'r fath. Byddwn, serch hynny, yn awyddus i sicrhau bod y trefniadau manwl yn adlewyrchu maint tra gwahanol gweithgareddau masnachol S4C o gymharu â'r BBC. Rydym yn arbennig o awyddus i sicrhau na fyddent yn creu baich gweinyddol fydd yn ein harall-gyfeirio o'n brif flaenoriaeth o ddarlledu gwasanaeth teledu o'r safon uchaf bosibl.

### **3. OFCOM**

3.1 Yn gyffredinol, mae S4C yn croesawu sefydlu un rheoleiddiwr gyda chyfrifoldebau yn ymestyn dros bob agwedd ar y diwydiannau cyfathrebol. Gall hwn ddod â manteision arbennig i wlad fel Cymru lle nid yw'r her o gyflwyno rhwydwaith telegyfathrebu uwch mewn ardaloedd gwledig yn dra gwahanol i'r dasg o gyflwyno teledu digidol. Mae S4C hefyd yn croesawu'r arwydd glir yng nghyfrifoldebau OFCOM bod ei rôl yn cynnwys yr angen i sicrhau gwasanaethau teledu ym mhob ran o'r DU (Adran 3 (1)) a bod disgwyl iddo adlewyrchu anghenion gwylwyr yng ngwahanol rannau o'r DU (Adran 3(2)).

3.2 Yng ngwyneb yr her o sicrhau gwasanaethau teledu digidol ym mhob ran o'r DU, mae S4C yn teimlo dylai'r Mesur fynd ymhellach a rhoi OFCOM o dan ddyletswydd penodol sydd yn adlewyrchu yn agosach ymrwymiad y Llywodraeth i sicrhau y dylai gwasanaethau digidol ymestyn dros 95% o'r wlad. Hoffwn hefyd tanlinellu ein gofid ynglŷn â sicrhau bod y targed hwn yn cael ei gyrraedd ym mhob ran o'r DU.

3.3 Mae S4C yn gweld y cynigion sy'n ymwneud â datganiad blynyddol ar raglenni (Siediwl 8, paragraff 4) fel estyniad o'n polisi presennol o gyhoeddi cynllun corfforaethol gyda thargedau sy'n ymwneud â rhaglenni. Mae'n briodol mai cyfrifoldeb Awdurdod S4C fydd cynnwys y datganiadau yn ein hachos ni, gan mai'r Awdurdod sydd hefyd yn gyfrifol am gytuno'r strategaeth rhaglenni cyffredinol. Mae S4C yn gofidio serch hynny na fydd y fframwaith sy'n ymwneud â'r datganiadau hyn yn cyd-fynd gyda'r ymrwymiad i gyhoeddi Adroddiad Blynyddol sydd yn cyflwyno gwybodaeth gynhwysfawr i'n gwylwyr ar raglenni ac ar ein gweithgareddau yn fwy cyffredinol. Mae'r rhain yn faterion y byddwn yn awyddus i drafod ymhellach gyda'r Adran Ddiwylliant, Cyfryngau a Chwaraeon.

3.4 Mae S4C hefyd yn difaru bod y cynigion ynglŷn â delio gyda chwynion nawr yn rhoi llai o bwyslais ar yr egwyddor o hunan-reoleiddio. Mae'n peri gofid yn arbennig nad yw'n ymddangos bellach ei fod yn fwrriad i ddarlledwyr orfod delio gyda chwynion sy'n ymwneud â safonau rhaglenni cyn i'r cwynion hynny gael eu trosglwyddo at OFCOM. Mae hyn, serch hynny, yn tanlinellu pwysigrwydd o sicrhau fod gan OFCOM trefniadau yn eu lle i ddelio gyda chwynion sydd yn ymwneud â rhaglenni Cymraeg.



## 4. Materion Eraill

**4.1 Arweiniadau Rhaglenni Electronig** - Mae S4C yn croesawu'r cadarnhad (adran 209) y bydd disgwyl i OFCOM paratoi canllawiau sy'n ymwneud ag arweiniadau rhaglenni electronaidd (EPGs). Mae'r cynigion ar gyfer yr amlygrwydd y dylid ei roi i ddarlledwyr gwasanaethau cyhoeddus a'r EPGs yn arbennig o berthnasol ar gyfer sianeli megis S4C y mae disgwyl iddynt gynnwys ystod eang o raglenni. Mae'r wybodaeth a ddarperir ar EPG yn gynyddol felly'n cael ei rannu yn ôl gwahanol gategoriâu o raglenni ac fe'i cyflwynir yn aml mewn modd sy'n tueddu i roi amlygrwydd arbennig i'r sianeli hynny sydd ond yn cynnwys rhaglenni yn y categori hwnnw. Nid yw'n bosib dosbarthu S4C yn ôl unrhyw un categori o raglenni. Mae peth o gynnyrch S4C wedi'i anelu at blant, peth ohono at y sawl sy'n dilyn chwaraeon, peth ohono at y sawl sy'n hoff o gerddoriaeth ac felly ymlaen. S4C yw'r unig sianel sy'n darparu rhaglenni Cymraeg ar gyfer plant. Serch hynny, nid yw cyfres rhaglenni *Planed Plant* ar S4C yn un o'r dewisiadau yng nghategori'r plant ar y fwydlen EPG. Mewn amgylchedd sy'n ddigon anodd fel y mae, mae'r tebygrwydd y bydd y dewis Cymraeg yn cael ei ddewis felly'n cael ei leihau. Bydd yr un ystyriaethau yn berthnasol ar gyfer drama, ffilmiau a chategoriâu eraill o raglenni. Mae gan y polisi ar gyfer EPG oblygiadau pwysig hefyd ar gyfer rhannau o'r wlad megis Cymru, ble y mae'r gystadleuaeth rhwng gwahanol lwyfannau digidol yn gyfyngedig iawn. Os yw'r EPG yn mynd i fod yn offerynnau defnyddiol ar gyfer gwylwyr yn hytrach nac yn offerynnau marchnata ar gyfer rhai sianeli penodol, dylai'r grymoedd a awgrymir ar gyfer OFCOM yn y maes hwn fod yn ddigon hyblyg a nerthol i gynnig cyfle cyfartal i bawb.

**4.2 Priso'r Sbectwm** – mae S4C wedi nodi nad yw'r llywodraeth wedi dod at farn terfynnol ar brisio'r sbectwm. Mae S4C yn deall fod angen sicrhau fod darlledwyr yn defnyddio'r sbectwm a ddosrannwyd ar gyfer darlledu mor effeithlon ac effeithiol ag y bo modd. Mi fyddai S4C yn gofidio os oedd unrhyw symud i sefyllfa lle roedd disgwyl i ddarlledwyr cyhoeddus talu am eu defnydd o'r sbectwm. O dan y trefniadau presennol byddai unrhyw ymdrech i gael S4C i dalu am y sbectwm a ddefnyddia ond yn bosib ar draul y gwasanaeth rhaglenni. O gofio ei bod yn cael ei hariannu o'r Trysorlys, byddai S4C yn awgrymu y dylid naill ai ei heithrio o drefniadau o'r fath neu fod disgwyl i'r Trysorlys gynyddu'r arian a ddarpara ar gyfer S4C gyda'r bwriad o'i dderbyn yn ôl maes o law. Mae'n bosib y byddai gan hynny oblygiadau ar gyfer fformiwla ariannu S4C.

S4C

Mai 2002

**MEMORANDUM TO THE CULTURE COMMITTEE OF  
THE NATIONAL ASSEMBLY OF WALES ON THE COMMUNICATIONS BILL**

**SUMMARY**

- The ITC supports the objectives of the draft Communications Bill and confines its comments to gaps addressed in the Policy Document which accompanies the Bill or areas where the Bill is unclear. [Paragraphs 1 to 4 of the attached submission].
- This summary and the attached paper deal with the issues in the Bill as they relate to the Government's policy objectives of creating a dynamic market in the communication sector, ensuring universal access to services of the highest quality, safeguarding citizens and consumers and minimising regulation. In addition, the summary draws out the implications for Wales. The ITC has made a similar submission to the Joint Scrutiny Committee established by both Houses of Parliament to consider the draft Bill.

**Implications for Wales**

- Notwithstanding changes to media ownership rules that open the way for single ownership of ITV licences, there is no change to the system of separate licences for the different parts of the UK, each with specific National/Regional programming obligations. It is vital that consolidation does not lead to vibrant cultural centres in broadcasting outside London becoming mere "branch offices" of a London-centric or international operator. We welcome the Bill's inclusion of out-of-London investment targets as one of the mandatory requirements on Channel 3 and we are working with the ITV companies to develop and spread best practice in local accountability. The ITC has pressed for a Charter for the Nations and Regions to sustain programming made in and for the Nations & Regions, regional investment and greater local accountability.
- If OFCOM is to serve the interests of citizens and consumers throughout the UK, it will need an effective office in Wales, as well as other Nations and Regions of the UK. Although there is no statutory provision for this (just as there is no statutory provision for the ITC office in Wales), the ITC is confident that OFCOM will want to establish an office in Wales
- Clearly, the location will be a matter for the OFCOM Board to decide. For its part, in anticipation of OFCOM, the ITC will develop its Viewer Consultative Councils in Wales and elsewhere into more representative Content Panels, able to work with regional offices and inform the Content Board about interests particular to different parts of the UK. The ITC has also suggested that representatives of the Nations and Regions on the Content Board could be supported by streamlined Councils in the Nations and Regions, which they might also chair. Amongst other things, these Councils could ensure that diverse interests in each Nation and Region are taken into account;
- The ITC believes that it is appropriate for publicly-funded broadcasters like S4C and the BBC to be accountable through Ministers for the way in which they discharge their public remit, although it will be important for OFCOM to take account of the contribution they make to Public Service Broadcasting in assessing what other broadcasters should do. The ITC believes that it is right for the Welsh Authority to continue, as at present, to regulate itself on the basis of the same content standards as other licensed broadcasters.

**Creating a Dynamic Market**

- The ITC welcomes the proposed liberalisation of media ownership rules, particularly as they are balanced by strengthened safeguards for pluralism in news and for investment in regional cultural activity. In a global market, those countries with the most investment friendly regulatory frameworks are likely to gain competitive advantage. [Paragraphs 5 to 6]
- An integrated OFCOM, with concurrent competition powers, should be in a position to ensure the market works in an open way and provides quick and effective redress against any abuse of a dominant position; it will need, in particular, to ensure genuinely open access to relevant networks and systems and real ease of access to consumers by competing service providers. [Paragraphs 7 to 8]
- The opening of the sector to international investment should be allied with policies that ensure high levels of funding in original production for UK audiences and real accountability. Three important tools are:
  - The BBC licence fee.
  - The not-for-profit status of Channel 4 and S4C.
  - OFCOM's powers to ensure pluralism in news, to set targets for original production as well as investment for production in the Nations and Regions and to assess the delivery of their remits by public service licensees. [Paragraphs 9 to 11]

## **Universal Access to Services of the Highest Quality**

- The ITC supports the Three Tier concept of regulation and the carrying forward of core principles designed to underpin editorial standards, such as impartiality, fairness and decency. It recommends a "level playing field" in the equal application of sanctions, where necessary, to all broadcasters, including the BBC, and suggests the yield of any BBC fines that may be levied is devoted to training or similar mechanisms for supporting high standards to the benefit of audiences. [Paragraphs 12 to 14]
- The Tier Three proposals for greater self regulation could work well, provided that each of the Public Service Broadcasters' distinctive contributions to the overall ecology are properly captured in their statutory remits. We believe further work is needed to achieve this. [Paragraph 15 to 16]
- The framework within which commercial licensees are responsible for annual statements of programme policy and performance also needs more focus if it is to work effectively. The current draft does not permit OFCOM to reach conclusions which provide guidance for individual services and risks creating a gap of several years between the identification of issues in the market and actions to meet audience concerns. [Paragraphs 17 to 18]
- The Bill, in its final form, should include guidance on the relationship between spectrum pricing and trading and the obligation on public service broadcasters to make certain services universally available. The ITC hopes there will be mechanisms for ensuring the investment in programmes made by the not-for-profit public service broadcasters is not put at risk by spectrum pricing. [Paragraphs 20 to 23]. Such mechanisms are available in relation to Channels 3 and 5.
- A broad balance is also necessary between the must-offer and must-carry obligations of public service broadcasters as a necessary condition of universal availability of services on fair terms. [Paragraph 24]
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## **Safeguarding Citizens and Consumers**

- The ITC welcomes the formation of a strong Consumer Panel, able to give independent advice on service issues such as access, choice, price and value for money, and believes the Panel will be most effective if appointees have sectoral, business and consumer expertise. [Paragraph 25]
- It recommends that OFCOM should have explicit duties not only to customers, but also to members of the public, whether as audiences of non-pay services or as citizens. [Paragraph 26]
- The proposed Content Board should involve strong lay representation appropriate to upholding the public interest in what are, inevitably, subjective issues relating to quality, editorial standards and pluralism.
- The statutory nature of the Content Board should demonstrate that content issues will receive proper consideration, reassuring stakeholders that such issues will receive due attention without unbalancing the focus of the OFCOM Board on economic and competition concerns. [Paragraph 27]
- The ITC welcomes the proposed obligation on ITV to ensure the Nominated News Provider is adequately funded to fulfil its role. It supports the simplification of ownership rules for any Nominated News Provider, allied with continued commitment to the existence of independent supplier(s) of news to the sector as a whole. There is, however, one gap in the proposals, which fails to carry over from existing legislation the requirement for "a sufficiency of news" in peak time. [Paragraph 28]
- The ITC welcomes the emphasis on representation of the Nations & Regions on the Content Board and believes OFCOM should provide an opportunity to create more accountability and a stronger presence in the Nations & Regions, supported by a combination of regional offices and dedicated Content Panels. [Paragraph 29 to 31]

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## **Minimising Regulation**

- OFCOM should develop a new culture that avoids unnecessary or detailed intervention, whilst acting strongly and effectively when necessary to correct any abuse of power. [Paragraph 32]
- It will bring together responsibility for spectrum policy (where government will necessarily retain significant powers of direction), regulation of networks and systems (subject to EU Directives) and content responsibilities, which are delegated to Member States and have traditionally in the UK been exercised independently of government. Parliament will wish to be satisfied that, in an integrated body, content regulation - with its implications for pluralism, impartiality and freedom of expression - will continue to be undertaken as independently in the future as it has been in the past. [Paragraph 33]

## **ITC MEMORANDUM**

### **INTRODUCTION**

1 The Independent Television Commission is a statutory corporation charged with regulating

commercial television in the UK under the Broadcasting Acts 1990 and 1996. Its current remit covers all licensed television services (including S4C2) but excludes those licence-fee funded services provided by the BBC, and by the Welsh Authority (S4C and S4C Digital). In addition to the commercial terrestrial services (Channel 3, GMTV, Channel 4, Channel 5 and Teletext), the ITC licenses a further 500 cable, satellite and digital terrestrial services. These include the large majority of the international foreign language channels uplinked in Europe, which have chosen to establish themselves in the UK because of the favourable regulatory framework.

2 The ITC is one of the five regulators whose functions will, under the Communications Bill be incorporated into the new sectoral regulator OFCOM.

3 The ITC has consistently urged a new statutory framework for the Communications sector which

- Uses competition rather than regulation whenever possible to secure the interests of citizens and consumers.
- Is investment-friendly, so that the UK communications sector can attract the maximum amount of global capital, innovative technology and managerial and creative talent.
- Meets audience expectations for protection from harmful or offensive material and for universal access to a wide range of high quality programmes, particularly from a strong Public Service Broadcasting ecology.

4 The ITC believes that the draft Bill and its accompanying Policy Document go a long way towards meeting these objectives. The ITC's comments (in paragraphs 5 to 33 below) are organised round the Government's four declared objectives for legislation and concern issues raised in the Policy Document or those few remaining gaps in the Bill where policy intentions have not yet been fully captured in drafting.

## **A. CREATING A DYNAMIC MARKET**

### **Media Ownership**

5 In the global competition for capital to fuel necessary investment by the communications sector, it is those countries with the most investment-friendly regulatory frameworks which are likely to gain competitive advantage. They will also be well placed to attract the best of technological innovation and talent.

6 The ITC therefore welcomes the Government's proposed liberalisation of media ownership rules, particularly as they are balanced by strengthened safeguards for plurality, and for investment in regional cultural centres. [Paragraphs 28 to 31]

### **Competition Powers**

7 The Bill will give OFCOM concurrent powers with the Director General of Fair Trading. In place of the hotchpotch of current competition powers held by the existing regulators, OFCOM will have the modern, best-practice competition powers enshrined in the Competition Act 1998 and European

legislation. These powers contain real bite against, for example, operators found to be abusing a dominant position in the market. These concurrent powers, combined with the integration of the five regulators into OFCOM, should ensure that the new regulator can be an effective pro-competition authority right along the value chain from rights acquisition, through programming, infrastructure and distribution. This is becoming increasingly important with the entry of global, vertically integrated companies into the UK communications market; and with the reliance on competition powers rather than detailed ownership regulation in individual media markets.

## **Access Requirements**

8 The ITC welcomes the above changes. In particular, it endorses the recent recommendation of the Select Committee on Culture, Media and Sport that the final Bill "will need to make provision for clear ex ante rules ensuring genuinely open access (to networks and systems) to ensure genuinely open competition in the sector". The UK's communications sector will only remain economically vibrant and grow if it is open to investment from the best global companies. But the network business is characterised by bottlenecks at the point of supply to the home and is susceptible to market dominance, so regulators must use effective tools, (notably access requirements) to ensure competing service providers can reach audiences on fair terms.

## **Investment in Britain's creative industries**

9 The ITC believes that the opening of the sector to international investment should be allied with policies that ensure high levels of investment in original production for UK audiences and real accountability. There are three main tools, consistent with the deregulatory thrust of the draft legislation:

- The BBC licence fee.
- The not-for-profit status of Channel 4 and S4C.
- OFCOM's powers to set targets and to review the performance of public service licensees.

10 The ITC recently commissioned an independent Review of Content Regulation in ten countries across Europe, Asia Pacific and North America. This concluded that regulators are moving away from detailed interventions designated to promote quality in domestic production, towards structural, funding based solutions. It noted that only the US has a domestic market of sufficient size to be confident of the preservation of quality through a thriving indigenous production industry. But the UK, through its combination of an intensely competitive commercial market and public funding, comes a close second to the US in levels of spending on domestic content production (adjusted for market size) and well ahead of most other countries.

11 As the UK market is opened up to global competition it will be particularly important to maintain the support for investment in original UK content discussed in paragraph 9 above.

## **B. UNIVERSAL ACCESS TO SERVICES OF THE HIGHEST QUALITY**

### **The Three Tier Framework**

12 The ITC welcomes the emphasis in the Policy Document accompanying the draft Bill on "maintaining the role of public service broadcasting in the digital age", defined as "the availability of a wide range of high quality radio and television programmes - free at the point of use and encompassing information and education as well as entertainment - which reflects the needs and interests of all listeners and viewers".

13 The ITC supports the concepts underlying the proposed "Three Tier" arrangements for regulating Public Service Broadcasting.

#### **Tier 1 - Editorial Standards**

14 The Bill transplants the core principles which have successfully underpinned basic content standards, impartiality etc. in broadcasting. It allows flexibility for their application to evolve in line with changing public expectations. The Policy Document raises the question of a "level playing field" in the application of sanctions for breaches of accepted standards to the BBC as well as commercial licensees.

The ITC has learned from experience that standards are most effectively set with the backing, if necessary, of sanctions. It accepts the argument that licence payers' money should not be diverted to the Treasury as a result of any fines for breaches of standards by the BBC and S4C, but hopes the Committee may find a constructive alternative, for example, payment to an industry training fund or similar mechanism relevant to supporting high editorial standards.

#### **Tier III - Public Service Broadcasting**

15 The ITC welcomes the deregulatory thrust of the "Tier Three" arrangements for Public Services Broadcasting. Following publication of the Government's White Paper, the ITC has tested this approach over the past two years, moving away from detailed "box ticking" regulation towards high-level outputs, leaving the broadcasters with greater freedom and responsibility to determine in detail how they deliver those outputs. In parallel, the ITC's annual reports have moved towards a more rigorous, factual analysis of the television ecology, drawing on detailed audience research. These provide an objective benchmark for public and parliamentary debate about what is wanted from Public Service Broadcasting and whether the current system is providing it.

However, as set out below, there are a number of respects in which the White Paper concepts have not yet been effectively translated into the draft Bill.

16 The Third Tier could work well, provided that each of the Public Service Broadcasters' distinctive contributions to the overall ecology are properly captured in their statutory remits. We believe further work is needed to achieve this. The draft Bill sets out a full list of what Public Service Broadcasting as a whole should achieve. But, thereafter, the remits for the individual broadcasters are at such a general level that it is impossible to assess sensibly what Parliament could expect each to contribute

to that whole. This has a number of disadvantages.

- First, the old dictum that if "everyone is responsible" in practice means no one accepts responsibility, could leave OFCOM in the position of arbitrarily assigning responsibility but unable to enforce it.
- Second, there could be a mismatch between expectations and what is possible in a commercial environment. For example, the draft Bill assigns the same remits to Channel 5 and ITV. Despite recent, welcome, evidence of Channel 5's commitment to Public Service Broadcasting, their role is currently clearly different from ITV's, as is their revenue. It is unreasonable to expect the same of both. It also slights ITV's contribution which, in addition to "high quality and diverse programming", plays a real regional role and makes a major commitment to original production and landmark programmes (which, throughout its history, from *Jewel in The Crown* to contemporary output such as *Othello*, *Bloody Sunday*, *Bob and Rose* and the *Forsythe Saga* have kept the BBC on its toes). Where public service licensees enjoy a high share of revenue, this should sustain an appropriate share of responsibilities. We believe ITV would, currently, accept a remit which captures its commitment to investment in original production (including well-funded landmark programmes), to investment in the nations and regions and to the provision of news, as well as to quality and diversity.
- Third, the generality of the remits throws much greater weight on OFCOM "guidance" about the broadcasters Statements of Programming Policy. This risks a return to a box-ticking mentality and reduces the flexibility which the "Tier Three" concepts seek to deliver.
- Fourth, it may render nugatory the flexibility provided in the White Paper for the Secretary of State, on OFCOM's recommendation, to amend individual remits in the light of changing market circumstances. It is difficult to see how remits as general as those proposed in the Bill for Channels 3 and 5 could sensibly be amended, short of giving up public service status altogether.
- Finally, the BBC provides the foundation for the public service ecology. As noted below, the Committee will, no doubt, wish to recommend how the Licence and Agreement should reflect the BBC's remit.

17 The ITC believes that the framework within which commercial licensees are responsible for self-regulation (through annual statements of programme policy and of performance) also needs more focus. The draft Bill requires broadcasters to draft their statements with regard to "guidance given by OFCOM" and "the most recent (triennial) report" from OFCOM which analyses the public service ecology. This raises a number of difficulties.

- Although the Policy Document suggests that OFCOM should review annually licensees' reports on their own performance, such a review would inevitably be reactive and would not place the broadcasters' output in the context of the development of the Public Service Broadcasting ecology as a whole; this is to be reviewed only every three years.
- In a fast-moving market, competitive analysis could, therefore, be three years out-of-date and may not provide relevant guidance as to the current range and quality of available programmes.
- The lead time for programme commissioning is often up to two years, so there could be a gap of five years between OFCOM's ability to analyse a trend, apply its concern to a licensee's annual statement and remedial action.
- OFCOM's powers to conduct triennial analysis of the overall delivery of public service only permit it to reach conclusions about services taken "altogether over the period as a whole"; so it is hard to see on



what basis OFCOM can inform the annual statements of individual licensees.

- OFCOM will need powers to obtain information from the BBC, as from the commercial public service broadcasters, if it is to analyse the sector as a whole.

18 The ITC is further concerned that an ineffective triennial review system would create pressures and frustrations which would come to a head around each review. This would put pressure on government to intervene and change the channels' public service remits, creating business uncertainty and an unsatisfactory alternation between self-regulation and government intervention. The ITC believes a more effective but lighter tough regime could be delivered on the basis of OFCOM's annual report to Parliament, including a brief high level analysis of the output of public service licensees in the context of the market as a whole. This would provide a regularly updated framework within which licensees could judge whether their commissioning plans were delivering their remit.

## **The BBC**

19 The ITC welcomes the government's plans to make available the draft of a new Licence and Agreement for the BBC, so that Parliament can take a view of how public service will be delivered across all relevant broadcasters. The ITC believes the Agreement could usefully be updated to emphasise:

- The BBC's commitment to distinctive services; this should not mean limiting the BBC to a narrow remit or particular genres, but - taken as a whole - each of its services should set standards for the industry and be clearly distinguishable from what is available in the commercial market.
- The BBC's duty to make universally available attractive material likely to encourage take-up of new media and digital services.
- The need to avoid any impact on the commercial market likely to be disproportionate to the quality of the BBC service supplied.

The BBC should condition the market rather than foreclose entry or undermine any part of it.

## **Spectrum Trading and Universal Public Service**

20 The Government's Policy Document promises a response to the proposals of the Cave Report on Radio Spectrum Management during the summer and Government will announce as soon as possible thereafter if it intends to revise the spectrum provisions in the Bill.

21 The ITC supports the Cave Report's approach to spectrum pricing and trading as a means of ensuring more efficient use of spectrum. In the case of national public service networks, however, it believes incentives towards efficiency need to be balanced against obligations to provide universal services.

22 The ITC hopes that the Bill in its final form will include guidance for OFCOM on the relationship between spectrum pricing and trading and the obligations on public service broadcasters to provide universal services. It commends to the Committee the inclusion of universality in the Bill as part of the

definition of public service broadcasting as it relates to national television networks.

23 If spectrum is designated as required for the delivery of universal public service, then the opportunity cost of using it for broadcasting is low and the price should reflect that. In the cases of Channels, 3 and 5, any spectrum charges can be taken into account, along with other costs, in setting the level of fees charged for their licences. Spectrum charges need not, therefore, actually divert investment away from programmes. The BBC and Channel 4, however, pay for licences in kind, through their remit, and not in cash. They are non-profit making organisations whose primary purpose is to invest in content for national audiences. The ITC hopes the Committee will recommend options for ensuring this investment is not put at risk by spectrum pricing. [The ITC's more detailed response to the Cave Report is attached to this submission].

## **Must Offer/Must Carry**

24 The Policy Document notes [Paragraph 8.2.2.5] that clauses will be issued shortly to ensure that the Public Service Broadcasters provide their services universally through all main distribution systems and that the operators of these systems carry the Public Service Broadcasters' services. The issue in respect of satellite conditional access systems is about the terms of access. A broad balance between "must-offer" and "must-carry" is clearly a necessary condition for universal availability of Public Service Broadcasting in an all-digital environment. The ITC welcomes the consideration being given to a duty on OFCOM to take account of the special position of Public Service Broadcasters when regulating access terms. We note that there appears to be some uncertainty about how far this would be consistent with European Directives. The Committee may wish to satisfy itself on this important issue.

## **C. SAFEGUARDING CITIZENS AND CONSUMERS**

### **The Independent Consumer Panel**

25 The ITC welcomes the Bill's commitment to a strong Consumer Panel, able to provide independent advice on service issues such as access, choice, price and value for money. It believes this Panel, with appointments approved by the Secretary of State, will be most effective if its members have sectoral, business and consumer experience.

26 The Policy Document refers to citizens as distinct from consumers, reflecting the particular rights of individuals as members of society rather than as customers. At present, OFCOM's duties under the Bill refer only to customers and we recommend the Committee considers ways to ensure it is clear that OFCOM also has duties to:

- Audiences, who are not "customers" in relation to free-to-air public service networks, and
- Members of the public as citizens.

## The Content Board

27 We welcome the proposed Content Board and its role in representing the public interest in the nature and quality of radio and television. This will allow strong lay representation on what are, inevitably, more subjective issues such as pluralism, impartiality and quality, while allowing the main OFCOM Board to focus on economic and competition issues. We believe that statutory support for a Content Board will reassure the public that content issues will receive proper consideration. At the same time, the fact of delegation will reassure other stakeholders that content issues will receive due consideration without unbalancing the focus and decisions of the main board.

## Plurality

28 The Content Board will be particularly important in advising OFCOM on issues of pluralism. As indicated in paragraph 6, the welcome relaxation in media ownership constraints has particular implications for news and the need to ensure access for audiences to a range of agendas:

- Plurality is, in essence a news issue. We believe that the Government is right, in current market conditions, to maintain the separation between the main commercial television networks (a key source of impartial news) and groups with a significant share of the press (which is also a vital source of both news and opinion). The proposals in the Policy Document preserve the independence of the Nominated News Provider from Channel 3, while nonetheless allowing ITV companies to have a stake sufficient to allow them to be active and committed shareholders.
- We welcome, in particular, the proposed obligation on ITV to ensure that the Nominated News Provider is adequately funded to fulfil its role; that is, to be an effective nation-wide competitor with the BBC for domestic and international news. The ITC expressed concern in its most recent annual report that funding constraints on ITN, the current Nominated News Provider, threatened a reduction in the range and quality of output it could provide. We recognise the inherent tension between "adequate funding" and the competitive tender process set out in the current legislation. We believe, however, that, properly drafted, the proposed obligation should help stop and preferably reverse the current trends.
- There is however one gap compared with current legislation: while ITV Channel 4 and Channel 5 will still be obliged to transmit news in peak time, there is no provision to ensure that this is anything more than at one extreme a short clip of headlines. OFCOM should not specify the precise duration or timing of peak time news bulletins; individual broadcasters are best able to judge the balance. But there should be a backstop power to prevent such an extreme case arising. Current legislation speaks of "a sufficiency of news". The ITC believes this should be carried forward.

## The Nations and Regions

29 If OFCOM is to serve the interests of citizens and consumers throughout the UK, it will need effective offices in the Nations and Regions. The ITC believes these should amount to more than the integration of the existing ITC, Ofcom and Radio Communications Agency presence outside London. Over the coming year, and in anticipation of OFCOM, the ITC will develop its Viewer Consultative

Councils in the Nations and Regions into more representative Content Panels, able to work with regional offices and inform the Content Board about interests particular to different parts of the UK. The Committee may wish to consider whether representatives of the Nations and Regions on the Content Board could be supported by streamlined Councils in the Nations and Regions, which they might also chair. (We assume, by the way, that the Bill intends to allow for offices in the English regions as well as the Nations).

30 Ownership liberalisation is likely to accelerate the trend towards consolidation. It is vital that this does not lead to vibrant cultural centres in broadcasting outside London becoming mere "branch offices" of a London-centric or international operator. The ITC has pressed for a Charter for the Nations and Regions to sustain programming made in and for the regions, regional investment and greater local accountability. We welcome the Bill's inclusion of out-of-London investment targets as one of the mandatory requirements on Channel 3; and we are working with the ITV companies to develop and spread best practice in local accountability. It will also be important in the move to the "Three Tier" system for Public Service Broadcasting not to lose the benefits of the Licence Commitments, voluntarily entered into by Channel 4 and Channel 5, to out-of-London commissioning. Channel 4 currently undertakes to commission 30% of its output from outside London and employs a senior member of staff to champion the regional production centres. Channel 5's commitment to 10% out-of-London commissions is a more modest but still useful contribution. Under the proposed new arrangements these commitments would become simply a part of the Channel's self-regulatory Statements of Programme Policy. It will be for Parliament to consider whether this is a sufficient safeguard.

## **D. MINIMISING REGULATION**

### **Deregulation**

32 The draft legislation creates a new framework for broadcasting in the UK which opens up the market to new players and gives competition a much bigger role in protecting the interests of listeners and viewers. It will be very important that OFCOM develops a new culture that avoids unnecessary or detailed intervention, whilst acting swiftly and effectively when necessary to correct an abuse of power.

OFCOM's role should also be to empower audiences directly through better consumer information, through OFCOM's Content Board, Content Panels and reporting systems and through its function of developing media literacy.

The Bill makes a number of specific deregulatory changes which we support, notably the explicit shift for Internet and true video-on-demand services from a licensed framework to a self-regulatory one.

It will be important for OFCOM to work closely with and help develop existing self-regulatory initiatives. These include the Broadcasters Advertising Clearance Committee, which performs a valuable role in television and radio advertising self-regulation; and the Independent Commission for the Supervision of Standards of Telephone Information Services (ICSTIS), which oversees basic consumer safeguards in premium rate services and is the industry ombudsman service for communications products and services.

### **Independence**

33 OFCOM will bring together spectrum policy, where government will necessarily retain significant powers of direction, regulation of networks and systems, subject to overriding EU Directives, and content responsibilities which are delegated to Member States and which have traditionally in the UK been exercised independently of government. Parliament will wish to be satisfied that, in an integrated body, content regulation (with its implications for pluralism, impartiality and freedom of speech) will continue to be undertaken as independently in the future as it has in the past.

## Digital television planning issues (Summary note from the ITC)

### Current coverage of DTT services

UK DTT services were launched in November 1998 and are now being broadcast from 80 sites around the UK including nine in Wales. To improve the coverage of these services an equalisation plan was developed by the Joint Planning Project (JPP). This aimed to improve the number of households in the UK which could receive all six multiplexes (known as core coverage). Planning was completed by the JPP for six regions around the UK which if implemented would improve core coverage from the initial 56% to 68% of UK households.

To date the DTT broadcaster have implemented improvements to three of these regions (Crystal Palace 5 (CP5), Mendip + & Winter Hill +) affecting 13 transmitter sites of which 2 are in Wales (Wenvoe and Llanddona). Further improvements in coverage can be achieved when the broadcasters agree to fully implement the rest of the equalisation plan. The predicted coverage of the network in its current state for the UK and Wales is:

Mux	1	2	A	B	C	D	Core
Operator	BBC	D3&4	SDN				
UK Homes (%)	81	80	78	79	76	74	68
Wales Homes (%)	62	60	62	59	55	55	42

### Coverage improvement trials

The digital broadcasters in conjunction with the ITC have mounted two power increase trials over the last year. The objective of trials has been to monitor the impact of higher power DTT signals on analogue viewers and to assess if the power increases improved the quality and reliability of the DTT services.

The first trial doubled the power of all multiplexes at 6 sites around the UK affecting around 28% of the population from June 2001. No reports of interference or complaints were validated during the trial. Following a detailed assessment of the trial results the JPP concluded that the power increases do not adversely affect analogue viewers under normal circumstances. Further research carried out by the ITC & BBC confirmed that the quality and reliability of DTT services in the power increase areas improved significantly through the trial. The ITC and BBC have accordingly changed the planning requirements for DTT service to allow for this new level of interference. Following this the broadcasters have indicated that they wish to now roll out the power increase to a number of new DTT sites (29 have been proposed by the broadcasters) over the coming months. This timetable has recently been delayed due to the ITV-Digital going into administration.

The second trial increased the power of a single multiplex by up to 20 times its normal power. The results of this trial are still being assessed, however, the trial did receive and validate reports of severe interference from some viewers in the affected areas. The trial is expected to reach its conclusions in June this year.

## **Digital switchover developments**

The government has now launched its Digital Action Plan under the joint chairmanship of the DTI and DCMS. The purpose of the Digital Television Action Plan is to set out a series of actions which need to be undertaken to ensure the switchover from analogue to digital television takes place; to identify who should lead on those issues and to set target dates for delivery. The ITC is working closely with the government in all elements of the DAP. It is particularly committed in the area of spectrum matters where it chairs the Spectrum Planning Group, a task which compliments its chairing of the Joint Planning Project.

The ITC has also recently made a detailed response to the government's spectrum planning consultation. In this it stated that:

1. The ITC believes that planning should be based on the aim of sustaining at least 95 per cent terrestrial coverage for the PSB services after switchover. In practice, this means adopting "analogue conversions", which are predicted to be able to increase coverage to 94.5 per cent using only the current 80 DTT transmission sites. If the number of sites is increased to 120, the coverage rises to 96 per cent and a coverage which fully matches analogue (99.4 per cent) can be provided if all 1100 sites are employed. In order to achieve universal digital terrestrial coverage in Wales to match current levels of analogue, all main and relay transmitters in Wales would need to be adapted to digital.
2. This would be one way of ensuring the reception of appropriate PSB services for all UK homes [*this would include all homes in Wales*] that can currently receive them in analogue. However, it is not necessarily the most cost-effective means. The extra investment needed to roll out DTT on switchover from 80 to 1100 sites is expected to be around £50 million per multiplex. The extent to which it would be more cost-effective to rely on satellite coverage instead for the last few per cent of homes (balancing the extra transmitter costs of DTT against receiver and ongoing conditional access costs for a DSat solution) will depend on a cost benefit analysis nearer the time. It is not possible to know at this stage which way this analysis would go, since we do not have accurate information on how many homes will be affected or on future costs.

**Greg Bensberg**

**ITC Project Director – Digital Planning 29 May 2002**