

## **Ensuring the Future of Public Service Broadcasting and Other Matters. A National Union of Journalists response to Ofcom's Consultation on its Draft Annual Plan 2008/9.**

The National Union of Journalists welcomes Ofcom's consultation on its Draft Annual Plan and the road shows held as part of this process. We are disappointed that no road shows were held in the English regions outside London as a great part of this year's work will have key importance for these stakeholders. We would ask why draft dates for sessions in Norwich and Birmingham were cancelled? The draft plan itself states that its purpose is to make sure all Ofcom's stakeholders understand what Ofcom is proposing to focus on in the coming year and that it welcomes all views from stakeholders (para 2.13). The NUJ hopes that no one particular view (ie from business) will be given undue weight.

### **Background**

The UK has a proud tradition of Public Service Broadcasting, rooted in both the public and private sector. This PSB has served our democratic and economic credentials enormously, not least making UK television among the most envied TV service across the world. It has also contributed significantly to the UK economy as well as enhancing the UK's reputation. But both private and public based PSB's are currently under threat. ITV recently announced its intention to drastically reduce the regional news coverage it provides, which is a cornerstone of its PSB commitment. The BBC is also in the middle of a process which could result in thousands of staff being made redundant, affecting every area that the corporation operates in. It is against this background that Ofcom's consultation on its Draft Annual Plan 2008/9 is taking place.

Ofcom also has a responsibility to fulfil its legal obligation to 'maintain and strengthen' public service broadcasting (PSB) in the UK. It is also the way that PSB is handled and treated that is of utmost importance. In the NUJ's view, PSB must never be allowed to become 'the poor peoples broadcast service', ghettoised into a corner of the Television landscape where only the desperate and the needy go, because there is no profit to be made from them and no-one else wants them.

It is therefore imperative that in the future, PSB is guaranteed an equitable place at the heart of broadcasting in the UK, no matter what shape it eventually turns out to have. Ofcom's Annual Plan therefore must have a commitment to meaningful, clearly defined, available to all, PSB as one of its cornerstones.

### **The Draft Plan and PSB**

From the outset (para 1.3) the plan talks about 'public interest objectives' and how these can be delivered by public service broadcasting. Whilst PSB is clearly defined in the Communications Act 2003, there appears to be no definition in the plan, or elsewhere, for what is meant by 'public interest objectives'. Without a clear definition of what is meant by this phrase, it is difficult to make constructive comments. A business definition of public interest objectives would probably be different to the

NUJ's definition, and this may be different again to the government's, parliament's and Ofcom's. The NUJ would like to see a clear definition of the phrase 'public interest objectives' so that it can make more informed comment on this.

The plan states how traditional ways of delivering 'public interest objectives' are being challenged and that the current business model for PSB is being undermined by increasing choice and competition. The NUJ strongly disagrees with this, in fact the NUJ believes that PSB is actually being strengthened by competition, and traditional ways of delivering PSB are being enhanced and complimented by the new landscape of broadcasting. In fact the more astute PSB's are benefiting by embracing the new landscape and technology. Channel 4's On demand service, 4OD, is gaining in popularity, and the BBC's iPlayer has seen usage rocket since its launch on Christmas Day 2007. As an example, the BBC's regional news programmes are now available to be viewed on the internet whenever anybody wants to watch them, rather than just at their transmission time. This, at a stroke, vastly increases their availability and enhances the BBC's PSB offering. The move works as an addition to traditional broadcast services, but simply would not work if these sorts of tools were used in place of traditional offerings.

The plan outlines how Ofcom will need to 'look beyond traditional broadcast services' for its PSB review, and that it will 'assess the potential for new platforms and services to contribute to public purposes, including those provided by non-traditional public service broadcasters' (para 6.28). The NUJ has objected to this unilateral moving of the goalposts in its response to Ofcom's consultation on the PSB Review Terms of Reference. We are still awaiting a response from the regulator on this point and would respectfully request one. The Communications Act 2003 sets the terms of Ofcom's work in this area. It defines the public service television broadcasters as the BBC, ITV, Channel 4, Five and S4C and the public Teletext service. This is a statutory duty and is not open to Ofcom to vary without parliamentary approval. It may indeed be desirable to consider the definitions contained within the Communications Act. However, these should be considered by the government and parliament and not by a unilateral change to the terms of the Ofcom PSB review. The proposal also seems to indicate that Ofcom will broaden its review to include some consideration of the internet and radio. Once more this is an extension of the regulator's remit in this area. The review must consider the existing PSBs not other services. It would be a most ambitious and costly exercise to review the internet. We do not believe it appropriate or justifiable for Ofcom to broaden its purpose in this way. Also, the phrasing here implies an Ofcom proposal to change the definition of Public Service Broadcasting to Public Service Content. These definitions are laid down by parliament and are not open to change by Ofcom. The point made that the PSB definition is evolving is something for government and parliament to consider, not Ofcom. As Ofcom states this is enshrined in the Communications Act of 2003.

The NUJ is also wary of this language, as it opens the door to the possibility of PSB only taking place 'beyond traditional broadcast services' (para 6.28). One interpretation of this could be that in the future PSB may only be available via the internet, whilst the 'traditional broadcast services' transmit something completely different, and devoid of any PSB content. The NUJ would be strongly against even such a suggestion (let alone a specific proposal or criteria), as this would remove

anyone who does not own the necessary equipment from being able to view PSB content. PSB must be available to all, across all platforms at all times, and free to view, otherwise it would be ghettoised and suffer possible disastrous consequences.

## **Ensuring PSB for All**

Post digital switchover, the NUJ believes that a digital version of the PSB compact could be created that encompasses allocated space on DTT alongside allocated space on HD DTT. In the same way that the analogue PSB compact relied on the terrestrial broadcasters providing certain desirable PBS goals in return for access to the analogue spectrum, this could be reaffirmed on DTT with the same or similar PSB goals in return for space on the PBS multiplex (Multiplex 2 for ITV and Multiplex 1 for BBC) coupled with a HD service on a regraded Multiplex B<sup>1</sup>. This new digital compact could include a commitment that any PSB operating on DTT in this way should be mirrored on as many other platforms as possible. It could also define the platforms that are required to have a PSB presence, for example Digital Satellite and the internet. This could include a fair, independently assessed fee system for platform operators<sup>2</sup> (to make sure the platform operators do not act unreasonably but are also not disadvantaged). It could also enshrine that all PSB operators give a guarantee that all their content will be available free to view on all defined platforms. This would go as far as possible to fulfil the criteria that PSB should be ‘available to all’.

This could also be used as one lever to at least maintain, or even strengthen PSB programming, and in particular the provision of regional, national and international news coverage. Other levers could also be used (some may require primary legislation) like tax exemptions or reductions concerning licence fees (or any other type of fee or levy that is subsequently introduced) should be among the options considered as well as the review of the Contract Rights Renewal remedy.

The NUJ notes and has campaigned against the relaxation over recent years of ITV PSB commitments. At present for ITV, the key component of its PSB offering remains its local, regional, national and international news. The NUJ also notes a suggestion by Ofcom that national and international news would continue even if there were no regulation on ITV1. However, the NUJ does not accept this view. It is imperative that ITV remains committed to providing a quality news service. Although the economics of such programming remain favourable, and the current leadership of ITV appear committed to national and international news, this cannot be taken for granted. Owners change, as do the economics of broadcasting. Therefore Ofcom needs to ‘future-proof’ the delivery of this public good by ensuring that effective regulation is in place.

In analogue terrestrial television, the Government has enshrined certain ‘listed’ events (e.g. sporting) in legislation. These must be available to the public free-to-air. In the

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<sup>1</sup> This refers to the NUJ’s submission to Ofcom: ‘Safeguarding Public Service Broadcasting on DTT. A National Union of Journalists response to Ofcom’s Consultation on the Future of Digital Terrestrial Television’.

<sup>2</sup> According to Broadcast Magazine on 11<sup>th</sup> January 2008, 100 to 150 companies have missed out on a Sky EPG slot, with Sky indicating no new slots will be made available. This has increased demand for EPG prominence, with some slots now worth tens of millions of pounds.

digital age broadcasters holding PSB status could be given certain commercial advantages in bidding for these specified 'listed' events. As above, in return, broadcasters would commit to providing free-to-air content across all the defined platforms over which they operate, including providing specific PSB characteristics such as regional, national and international news.

## **Other Aspects of the Annual Plan**

There are other aspects of Ofcom's Draft Annual Plan that the NUJ would like to comment on.

In spite of Ofcom's attempts to engage with stakeholders, the NUJ believes that Ofcom's work in this area is still lacking. It should be actively seeking to engage better with people, especially for key consultations like the PSB review. In particular Ofcom could seek to examine web related ways for stakeholders, and in particular individual members of the public, to comment on these consultations in order to widen the pool of responses. The Ofcom website is very limited and does not provide an opportunity for debate on the relevant issues. It adds to the feeling that Ofcom lacks a certain degree of transparency and accountability. Also, responses to the consultations should be more timely, and explanations given regarding why particular approaches were not adopted.

The NUJ is intrigued by Ofcom's regulatory principles (Figure 3 page 9). By operating with a bias against intervention, this means that organisations could try to avoid certain responsibilities to cut costs. This means that Ofcom will inevitably not deliver its public policy goals. Also, the strategy of using the least intrusive regulatory methods of achieving Ofcom's public policy objectives simply will not work. Ofcom also states that where intervention is required, it will intervene quickly and decisively (para 3.5), yet the NUJ sees no evidence of this. Recent examples of premium phone abuse has shown that the regulators needs to act in a more coherent fashion, and that they need to be more proactive rather than arriving at a view after the event. Post-incident review is not sufficient – self-regulation does not work. In broadcasting, this model has been applied to delivery of PSB objectives, but this has not worked in a satisfactory manner. How were the interests of the citizen protected? How were the interests of consumers protected?

The NUJ believes that Ofcom's proposals to assist the OFT in the review of the Contract Rights Renewal remedy should not be carried out in isolation from some of the other reviews and consultations that Ofcom is committed to. This is just one of the levers (outlined elsewhere in this document) that can be used to ensure PSB commitments from the channel 3, 4 and 5 licensees.

The draft plan devotes much space to the issue of spectrum use, and it attempts to put a monetary value on this use, and that this value has 'increased by 50% in five years' (para 4.21). The NUJ would like some clarification on this issue. Does this mean that the public and businesses are spending more on mobile and broadcasting services? A key Ofcom argument has been that the price of Broadband, telecoms and broadcasting is going down. However, per capita spend must be up. This contradicts the view that markets are operating efficiently in the interests of the consumer/citizen.

The plan also talks about ‘ensuring that spectrum is put to its most efficient uses’ (para 4.26). How does Ofcom define efficiency? Without a clear definition, how can the efficient use of spectrum be measured? Public Service Broadcasting cannot be left to the market alone. It is recognised that some intervention is required to ‘drive economic value for the UK through the use of spectrum’ (para 4.27). Further on in the same paragraph (4.27) the plan states that ‘we are considering ways to accelerate the pace of spectrum liberalisation and trading in the next twelve months’. The NUJ is unsure as to what is meant by this phrase and would like some clarity on it, as well as the precise details.

‘Ofcom has a duty to continue its focus on regulating platform operators with market power ... at the same time, we would need to be increasingly aware of potential new sources of market power ... Ofcom has to balance its regulation of traditional competition issues with issues posed by potential new sources of market power’ (para 4.30). This old world and new world approach which this phrase indicates Ofcom is using, is wrong. The NUJ’s view is that Ofcom should be finding ways of harnessing the market value/public value to the benefit of citizens and consumers.

Ofcom accepts that there has been a significant decline in first run hours of children’s TV shown by the main commercial channels and the pressures on regional news delivery as well as Channel 4 (para 4.41 and figure 8). The NUJ has yet to see Ofcom react swiftly or decisively to tackle any of these issues. Can Ofcom please outline any action that has or will be taken to address these issues in the interests of citizens?

The NUJ supports Ofcom’s view about access and inclusion (para 4.43) ‘delivering many of the benefits of convergence to all UK citizens and consumers hinges on services being made available to everyone.’ But how does Ofcom plan to achieve this, especially ensuring those at the margins of society (like pensioners whose only income is the state pension) are not left behind or disenfranchised.

The NUJ also welcomes Ofcom’s view that ‘consumer information is increasingly important in enabling effective choice in the marketplace’ (para 4.46), but the NUJ believes that Ofcom has been slow to address some of these issues. In particular the plan mentions consumer uncertainty over actual broadband speeds that are offered by different companies, but Ofcom has also taken its time over tackling this. Alongside this, there is an issue surrounding High Definition TV and digital television, where the NUJ believes that many retailers have sold new technology, in particular, High Definition TVs irresponsibly<sup>3</sup>.

The proposals to improve media literacy, whilst welcomed by the NUJ, are lacking in detail with no apparent mechanism laid out for measuring success in this area. The NUJ would like further clarification on both of these points. Where the plan talks about Ofcom’s ‘need to enhance our focus on media literacy’ (para 4.49), it seems to the NUJ that the only Ofcom activity in this area is information gathering. The NUJ believes that the use of PIN numbers and content management do not improve media literacy among consumers or citizens.

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<sup>3</sup> The NUJ raised this point in its submission to Ofcom called Public Service Broadcasting and the Future of News Provision: an NUJ response to Ofcom’s study: ‘New News, Future News’ and is still awaiting a response from Ofcom.

A section of the plan is entitled 'Delivering public interest as platforms and services converge (ahead of para 6.45) but where does this phrase come from? And again there appears to be no clear definition of what this phrase means.

Throughout the entire plan, there appears to be no element of self-criticism by Ofcom, which implies that Ofcom is perfect, a view that the NUJ does not share, as the NUJ believes that Ofcom has had some serious failings (see elsewhere in this document).

Generally, the plan also seems to prioritise the interests of business over the interests of citizens. It also appears that Ofcom is dealing with matters separately, on an individual basis. The NUJ believes that a lot of the issues raised in the plan should be dealt with together. For example spectrum sales and management should form an integral part of Ofcom's work on ensuring that PSB can be maintained and strengthened.

The NUJ believes that Ofcom is unilaterally moving the goalposts concerning its second review of Public Service Television Broadcasting.

## **Conclusion**

The NUJ welcomes Ofcom's consultation on its Draft Annual Plan 2008/9 and we will fully participate in the continuing debate about all broadcasting-related issues. Our response to the 'Draft Annual Plan 2008/9' document should be considered in the context of our continued participation in this wider debate. We will continue to explore the ideas contained within this submission and look forward to Ofcom's comments on them. The NUJ believes that our comments on this should not be taken in isolation, but they should be taken alongside the other issues Ofcom is consulting over, and that the NUJ has also contributed to, so that the best possible outcome for citizens is achieved. We would be happy to expand on our comments made in this document as part of this continuing process.