

A Communications Review for the Digital Age

Q1. What could a healthier communications market look like? How can the right balance be achieved between investment, competition and services in a changing technological environment?

The British Film Institute is the Government's lead agency for film. It promotes the understanding and appreciation of film and television heritage and culture. Established in 1933, the BFI delivers a range of activities and services which are at the heart of the communications market. For example, we are the custodians of the BFI National Archive which houses the world's richest and most significant collection of film and television.

Since April 1, 2011 we have been the Lottery Distributor for film and our support for activities including film production, distribution and learning about film deliver significant economic and cultural value to the benefit of the creative industries, UK plc and the public. We have also absorbed a number of other activities previously carried out by the UK Film Council such as film certification for the purposes of tax relief.

The BFI believes that a flourishing British film sector which produces indigenous films and makes available a wide range of British and other films across a variety of platforms to a diverse audience already makes a vital contribution to the health of our communications market. We believe that existing Government support for film via tax reliefs, Lottery support and direct grant-in-aid plays a critical part in addressing the market failures which affect the film sector in the UK. This public support helps attract private investment into the sector as well as delivering cultural and educational benefits, including through access to our rich film heritage, which are enjoyed by people throughout the Nations and Regions of the UK.

Lottery support for production has ensured that audiences at home and overseas have been able to enjoy films such as diverse as *The King's Speech*, *StreetDance 3D* and *Bright Star*. *The King's Speech*, for example, reflects a particular strand of British culture which caught the imagination of audiences at home and overseas. It has so far grossed £267 million at cinemas worldwide, even before it is released to DVD and to cinemas.

Overall, the core UK film industry contributed over £4.5 billion to UK GDP in 2009, taking into account its multiplier impacts, and over £1.2 billion to the Exchequer (gross of tax relief and other fiscal support).¹

The core UK film industry is a substantial industry, directly employing

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http://www.ukfilmcouncil.org.uk/media/pdf/i/r/The_Economic_Impact_of_the_UK_Film_Industry_-_June_2010.pdf

36,000 people in 2009 (up 7% from 33,500 in 2006) and supporting a total of 100,000 jobs, taking into account those working in its supply chain and its contribution to UK tourism, trade and merchandise sales.²

In a digital age, the market failures affect film will persist. Effective regulation, for example in stemming the significant levels of online copyright infringement via the Digital Economy Act and other appropriate measures, and the use of competition policy as appropriate are also a powerful means by which market failures in film can be addressed. Such mechanisms, together with public funding, continue to be crucial to British film and the wider communications in a changing technological environment. This will enable our film sector to grow and to deliver an enhanced range of cultural and educational benefits to the public.

Q2. What action can be taken to facilitate greater innovation and growth across the wider competition regime, and how can deregulation help achieve this?

It is critical that the film sector in the UK innovates if it is to maintain growth in a digital age. This requires policies which ensuring that the small and medium-sized enterprises in the UK film sector do not face barriers in accessing finance.³

The BFI is particularly keen to ensure that arrangements for collecting and making available our rich heritage of films and television programme are fit for purpose in a digital age.

Under the current arrangements for archiving, as governed by the Broadcasting Act 1990 and the Communications Act 2003, and overseen by Ofcom, a large amount of the television output of channels (including the metadata which relates to that output) in the UK is not captured for the benefit of future generations. For example, this material can be used in learning of all kinds and may be re-used by creators within the limits allowed by the current copyright regime to create new forms of content.

In the context of a new Communications Bill, the BFI would like to explore with the Government whether there are mechanisms (for example, a small levy on broadcasters' turnover) which might enable a far wider and more diverse range of this output to be captured for posterity, given that it represents a rich and varied record of British life in all its many forms.

Equally, the BFI believes there is a need to address the anomaly in the current framework for the collecting of the nation's heritage of the absence of any obligation for the deposit of film in the BFI National Archive equivalent to that which applies to other published works (including the internet) which have to be lodged in the

² Ibid.

³ See submission by the UK Film Council to the Government's Digital Creative Industries and Growth Review for further analysis.

legal deposit libraries. Films supported by Lottery funding are deposited as part of the producer's contractual obligation but this obligation does not apply to the many films which benefit from tax relief provisions.

The Kenny Committee set up in the mid-1990s recommended the extension of legal deposit to non-print works but film was not included in the DCMS-supported Legal Deposit Bill in 2003.

We would expect future benefits to accrue to the UK's creative industries. As the Hargreaves Review has noted: 'Supporting the potential of new technologies will prevent the loss of works, and could open the way to new services based on digital use of those archives. We may well find that this public digital archive turns out to have considerable economic as well as social and cultural value, but this will not happen if our cultural institutions are prevented from securing it through digitisation.'⁴

The BFI would welcome the opportunity to provide Government with further evidence on the benefits of legal deposit for film.

Q3. Is regulatory convergence across different platforms desirable and, if so, what are the potential issues to implementation?

A rigorous, transparent and effective regulatory regime, including for intellectual property, across all platforms is essential to help ensure that the broadest possible range of films is available to British audiences.⁵

With regard to the implementation of any new regulatory regime, the BFI notes with interest the debate taking place in the USA regarding net neutrality. While recognising that the market conditions in the UK have largely precluded a local version of the discussion, the BFI is committed to the principles of net neutrality. Net neutrality ensures that everyone has equal access to an audience using the internet as a critical distribution mechanism and as such ensures the greatest plurality and diversity of sources for audiences and users of films and moving images. It also helps stimulate a variety of new business models using the web as both distribution mechanism and shop front, without the added burden of competing for preferred status.

Q4. What barriers can be removed to facilitate greater exports and inward investment and make the UK more globally competitive in digital communications?

When the UK Film Council was abolished, the Government removed the grant-in-aid that was used to support export promotion work around film. The BFI believes that if British culture is to be enjoyed by audiences around the world and if British film businesses are to prosper, including

⁴ <http://www.ipo.gov.uk/ipreview-finalreport.pdf>, p.50.

⁵ For a detailed analysis see the British Film Institute's submission to the Hargreaves Review at <http://www.ipo.gov.uk/ipreview-c4e-sub-bfi.pdf>

production companies, distributors and sales agents, then it is important that a new policy of support for export is developed by Government, ideally within the context of its Film Policy Review. The industry exported £1,341 million worth of services in 2008 (latest year for which figures available – tbc), made up of £792 million in royalties and £549 million in film production services. Exports in 2008 were 92% higher than in 2001. The UK film trade surplus in 2008 was £494 million.⁶

The tax reliefs for film, in particular the tax relief for films costing over £20m, play a very important role in attracting inward investment into the UK. In 2010, £928m was spent in the UK by the producers of inward investment films.⁷ The Government needs to ensure the continuance of its strong and unwavering a commitment to inward investment tax reliefs as well as to the reliefs for films costing £20 million or less. The level of skills are also critical to attracting inward investment and continuing support for skills, including through Skillset, the Sector Skills Council for the Creative Industries is vital.

- Q5. What further market and regulatory developments would lead to widespread take-up of superfast broadband? What regulatory action would government need to take to make superfast broadband more readily available in a) urban areas; and, b) rural areas?

The BFI is not best placed to comment on this question.

- Q6. What are the competing demands for spectrum, how is the market changing and how can a regulatory framework best accommodate any rapidly changing demands on spectrum and market development?

The BFI is not best placed to comment on this question.

- Q7. How should spectrum be managed to deliver our growth objectives whilst also meeting our policy objectives of furthering the interests of citizens and consumers in relation to communications matters?

The BFI is not best placed to comment on this question.

- Q8. How should the UK engage on an EU/International level in relation to spectrum?

The BFI is not best placed to comment on this question however we touch on this issue in our answer to Question 9.

- Q9. Is the current mix of regulation, competition and Government intervention right to stimulate investment in communications networks?

⁶ <http://www.ukfilmcouncil.org.uk/PRprodstats2010>

⁷ <http://www.ukfilmcouncil.org.uk/PRprodstats2010>

Broadly, yes. It is imperative that the Government's plans to ensure that superfast broadband is available to everyone in the UK are realised. This will help to ensure that the full range of economic, cultural and educational benefits delivered by the British film sector are available to all.

Q10. Are there disproportionate regulatory barriers to investment in content? If so, what are they and how can increased investment in UK content production be encouraged?

The BFI has not identified any disproportionate regulatory barriers to investment in British content. We have identified the measures which need to be maintained to support investment in UK films in our answers to questions 1 and 11.

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

Yes. A strong, well-financed public broadcasting sector plays a crucial role in both helping to produce and to distribute British films (both new and those that are part of our rich heritage) to audiences. The BBC currently invests £12m per annum in new British films, and Channel 4 invests £15m. Such investment has helped to stimulate the production of films such as *An Education* and *Slumdog Millionaire* which were enjoyed by millions of people throughout the UK.

In addition, the BBC and Channel 4 make available many British and specialised films each year, across a variety of different platforms, which are enjoyed by British audiences. In 2009, the terrestrial services BBC1 and BBC2 aired a total of 182 British films, 26% of the total films shown, while Channel 4's terrestrial service screened 129 British films, 23% of the total. Since the public service channels are widely watched by the British public, we believe that they could play a stronger role.⁸

The proportion of recent UK films shown on the main networks has increased over the last few years, from 3% in 2002 to 7% in 2009.⁹ But the overall percentage show clearly remains low. In part with this mind, we would like to see the Government re-examine and strengthen Clause 264 (6) (b) of the Communications Act 2003 which places specific obligations on broadcasters with regard to films which reflect cultural activity in the UK.¹⁰

The BFI believes that a new Communications Bill needs contain measures to help underpin the commitment of the public service

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http://www.ukfilmcouncil.org.uk/media/pdf/a//Film_on_UK_TV_2009_Statistical_Release_2_3_10.pdf

⁹ Ibid.

¹⁰ <http://www.legislation.gov.uk/ukpga/2003/21/section/264>

broadcasters to making a wide and diverse range of British and specialised films available to audiences. We also note that the Digital Economy Act placed new obligations on Channel 4 and we look forward to seeing these robustly implemented, with oversight by Ofcom.¹¹

We are aware that the Producers Alliance for Film and Television (PACT) has called for a new settlement on broadcast rights for films to television.¹² Without prejudice to the merits for or against PACT's proposals the BFI would welcome a review of the way in which film rights are licensed to broadcasters, similar to the review undertaken by Bob Phillis for the Government ahead of the last Communications Act, which paved the way for new terms of trade for the broadcast rights to independent television productions.

Q12. What barriers are there to innovation in new digital media sectors, including video games, telemedicine, local television and education?

The BFI is not best placed to comment on video games and telemedicine. We have followed with great interest the Government's work on local television but it appears that a sustainable business model has yet to be found.

With regard to education around film, it is vital that innovation is encouraged in a digital age if learning is to remain relevant, most particularly to young people as they increasingly rely on a wide array of digital media to access films, television and forms of audio-visual content.

Q13. Where has self- and co-regulation worked successfully and what can be learnt from specific approaches? Where specific approaches haven't worked, how can the framework of content regulation be made sufficiently coherent and not create barriers to growth, but at the same time protect citizens and enable consumer confidence?

The BFI is not best placed to comment on this question.

¹¹ http://www.legislation.gov.uk/ukpga/2010/24/pdfs/ukpga_20100024_en.pdf

¹² http://www.northernmedia.org/tpl/uploads/PACT_producer_recoupment.pdf