



## **A Communications Review for the Digital Age**

### **Response by British Sky Broadcasting**

**July 2011**

#### **Executive Summary**

- The overriding objective of the Communications Review must be to create the right environment to encourage sustained investment in the UK communications and media industry.
- It is particularly important to create the right conditions for the British content industry to thrive and to benefit the country's economic and cultural life.
- Market based competition is providing greater choice, innovation and value to consumers. As commercial incentives deliver more of what the economy, consumers and society require, there will be less need for public intervention. Future policy should aim to incentivise further commercial investment.
- Sky has made a significant contribution to the UK's creative industries over the past two decades and is a major investor in British content. Our over-riding interest is therefore to ensure that a durable and sustainable commercial model for content investment prevails in the UK.
- As digital IP-based networks become increasingly important, they create new opportunities and risks for content creators. The Government's role is to recognise these challenges and to set the right conditions for sustained content investment. Sky's submission proposes five high-level policies that will help strengthen the incentives to invest.
  1. Ensure that content creators retain sufficient control over their intellectual property to incentivise them to make the most of technology and market innovations.
  2. Tackle internet piracy through implementation of the Digital Economy Act and encourage ISPs and rights owners to address the supply of illegal content online.
  3. Maintain a balanced approach to incentives to invest in content and infrastructure and ensure that the regulatory models support such an approach.
  4. Avoid applying linear broadcast regulation to emerging video-on-demand platforms, which would otherwise hamper their ability to compete and ultimately to contribute to future content investment.
  5. Steadily reduce the regulatory burden on linear platforms and channels as competition from emerging platforms grows and consumer expectations change.
- These proposals should be taken as a starting point for policies that will help the creative industries make an even bigger contribution to the UK economy and society. Sky looks forward to developing these ideas with the Government as the Communications Review moves forward.



## **Introduction**

BSkyB (Sky) welcomes the opportunity to respond to the Secretary of State's open letter to industry. We support the ambition that is evident in the letter, specifically its emphasis on deregulation as a means of promoting growth and innovation.

Fostering the right environment for investment should be the overriding objective of any future legislative process. This could be achieved either through a new Communications Act, or more immediate measures. What is important is that the underpinning approach to legislation and regulation takes into account economic incentives to invest in the UK and the increasingly global nature of the communications sector.

The three themes set out in the Secretary of State's letter reflect the reality of the increasingly global markets in which UK businesses, such as Sky, compete. It is therefore important that these themes, and each of the issues that relate to them, are examined in the context of whether they make the UK a more attractive place in which to deploy capital and whether they enable UK companies to innovate and compete with their international rivals.

We are particularly pleased that the Secretary of State has recognised the need to create the right environment for the British content industry to thrive. The creative industries play a crucial role in this country's economic and cultural life, accounting for 6 per cent of GDP. Each year £13bn of funds flow through the UK audio-visual sector alone, and £4bn is invested in home-grown content production. In addition, programme exports amount to £1.3bn annually and more than half of all world-wide exports of English-language format hours now come from this country<sup>1</sup>. The UK is a global leader in content creation, which has the potential to make an even bigger contribution to the UK's economic success.

In order for the industry to do more and to make a greater contribution to economic growth, the Government needs to recognise the foundations on which existing investment is made, and to put in place the necessary conditions for sustained future investment and innovation.

## **Overall approach to policy**

The Secretary of State's commitment to market-based competition as the source of choice, innovation and value for consumers is very welcome. Our industry cannot afford to rely on the historic assumption that only government sponsored interventions deliver public value. Such an approach, even if it could be afforded financially, results in an unhealthy dependence on public-sector solutions, the erosion of incentives for commercial investment, and a reduction in choice, quality and innovation for consumers.

The overall approach to policy should be based on the premise that, as commercial incentives produce more of what consumers, the economy and society require, the need for the State to provide these things will diminish. Beyond Sky there are many commercial companies in the media and communications sector investing heavily to deliver significant public value. They should be encouraged to deliver even more, so that reliance on public-sector solutions can be reduced.

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<sup>1</sup> Creative UK - the Audio-visual Sector and Economic Success, 2011



In broadcasting that means recognising that purely commercial incentives are delivering significant investment in 'public service content' across a wide range of genres including news, arts, drama and sport. Commercial broadcasters, such as Sky and ITV, have invested in this type of content for many years because that is what viewers want and expect and because the investment makes commercial sense. In future there will be fewer requirements for narrow PSB-based intervention, and where there is public intervention it is important to ensure that it does not crowd out what the market is already providing or is capable of providing.

### **Sky's contribution**

Sky's own contribution to the UK creative industries over more than two decades provides strong evidence of the way in which purely commercial incentives deliver significant public value. Sky entered the UK television market, which then contained just four terrestrial channels, because we saw a commercial opportunity to provide more choice. Since then we have invested more each year and consistently innovated to meet the needs of our customers. As a result Sky has become a major supporter of creativity, investing over £2bn a year in audio-visual content, two-thirds of which is spent in the UK, all driven by what customers want and not because of regulatory intervention or obligation.

That commitment has delivered many significant benefits, including over £11bn invested in sport that has helped to raise standards of coverage across the industry and supported British sport at all levels. £1bn invested in Sky News, the only UK television news service that operates without any form of public support. And billions invested in a state of the art digital TV platform that has stimulated the growth of a vibrant multi-channel industry and has helped the UK become a European hub for international broadcasters.

Sky continues to demonstrate an appetite for investment and risk taking that supports the British creative industries at all levels. This year we will spend £380m on British programming for our wholly owned channels (excluding sports rights and the support for third party broadcasters such as Discovery and History). We employ 2,500 people directly in skilled roles in production and broadcasting and work with over 100 independent production companies to broadcast more than 100 hours a day of original British programmes. On top of that, we have recently announced that we intend to grow our investment in British content to £600m a year by 2014, including more investment in home-grown drama, comedy and arts programming. These plans are driven by a strong commercial rationale: UK content resonates strongly with audiences, adds value to existing customers and helps us to reach out to more people who haven't yet chosen Sky.

### **Role of Government**

Sky therefore has a strong interest in ensuring a durable and sustainable model for investing in content. However, incentives to invest cannot be taken for granted. As digital IP-based networks become ubiquitous, they create risks as well as opportunities for content creators. As an example, Sky has invested heavily in an IP network to become one of the UK's largest ISPs, bringing increased choice and competition to the broadband market. We fully appreciate the advantages of such a network in making it easier to deliver content quickly and efficiently to multiple devices in customers' homes, and increasingly on the move. However, we also recognise that new distribution networks also pose new risks, making content harder to package securely, harder to value and more difficult to monetise.



These risks could threaten the models that have made the UK a world leader in content creation. The objective for this Communications Review must therefore be to strengthen the incentives to invest in content, by addressing the risks and creating a framework for the industry to make the most of the opportunities. As the Secretary of State's letter acknowledges, this is only the initial phase of reviewing a new policy framework. Accordingly, in this response we offer five high-level proposals to help the Government achieve this objective.

## **The Policy Framework**

### 1. A flexible copyright regime

Intellectual property rights are the foundation stone of the creative economy. As new distribution platforms and windows emerge, certainty about content rights, combined with the flexibility to exploit them in new environments, is an important determinant of whether or not to take the risk of investing in content.

We therefore welcome the Hargreaves Report conclusion that fundamental changes to the copyright regime would create the kind of uncertainty that would diminish incentives to invest in content. While there is scope for incremental change to copyright to enable the exploitation of new distribution channels and formats, the manner in which this happens should not be determined by government or regulators. Individual rights owners should be free to judge how to exploit their content commercially.

Within the EU, there is a debate about major changes to copyright and licensing in order to meet the political expectation of pan-European distribution of content. Fundamentally, we do not see any barriers to this under the existing regime since a number of cross-border content markets already exist, including Sky's own distribution in the Republic of Ireland. Where there is a commercial case for pan-European distribution of content it may be that a single European copyright title would be helpful (for example, in relation to the online distribution of music), but the UK Government must be active within the EU in ensuring that country by country distribution, licensing and pricing is still available to rights owners at their discretion.

### 2. Tackle online piracy

One of the most significant threats to the success of the audio-visual sector is the impact of piracy. As broadband penetration and download speeds grow, piracy has become an increasing threat to the ability of the audio-visual sector to monetise and reinvest in high quality content. The illegal distribution of content online, where creators receive no financial return, is a significant and growing problem for the UK's content industries.

The Digital Economy Act (DEA) is a sensible first step in informing those involved in illegal file-sharing that their actions are both illegal and detrimental, and in targeting further sanctions against the worst repeat infringers. While it is disappointing that implementation of the DEA has been delayed, we urge the Government to introduce the initial obligations as soon as practicable.

Having implemented the DEA, the Government should make as its next priority the targeting of those who supply content illegally for commercial return. Websites that provide illegal access to content are often hosted outside the EU which makes it difficult for rights owners to take



enforcement action. The Government therefore should encourage ISPs and rights owners to work together to undermine the business models of such sites and, if required, review the legal framework to facilitate this. The UK Government must also take a robust approach to copyright enforcement in the relevant international institutions, including the EU and the World Intellectual Property Organisation.

3. A balanced approach to incentives to invest in content and infrastructure

We agree with the Government's view that the efficient management of spectrum and broadband infrastructure is needed to support the delivery of services which will underpin growth in the communications market. However, while content can and will play a role in supporting the growth of new distribution platforms, it is important to ensure that infrastructure investment does not happen at the expense of investment in content and services. That requires a balanced approach which ensures that incentives to invest in content are not subordinated to those of infrastructure, and that the significant differences that exist between content and infrastructure investments are reflected in the regulatory models that underpin them.

Spectrum regulation needs to reflect the rapidly evolving ways in which content is being distributed and consumed, particularly on the move. This is best achieved by ensuring that the allocation of new spectrum avoids placing unnecessary constraints on its use. For example, out-of-home Wi-Fi networks support mobile applications with high data traffic demands, such as streaming video, which are currently unsustainable over 3G networks. The rapid growth of devices with inbuilt Wi-Fi has demonstrated that open standards technologies and unlicensed spectrum have a considerable role to play in the delivery of mobile services to an increasing number of handheld devices in the market.

4. Avoid over-regulation of emerging platforms

UK broadcasters have led the way in making content available over IP-based networks through a wide range of on-demand and linear services. As a result of this the UK has more households using online TV services than any other country (almost a quarter)<sup>2</sup> and, over time, we see the potential for these platforms to make a growing contribution to content investment.

If they are to do this, and ultimately have a significant future role in the content value chain, it is vital that they are subject to a proportionate regulatory regime. Regulation must take account of the international context in which UK based services compete with overseas content and service providers who are not subject to the same level of regulation. Over-regulation of this area will result in content providers establishing themselves in alternative, less regulated, jurisdictions. Where there are legitimate concerns about appropriate safeguards on what minors may access via new platforms, the best way forward is industry self-regulation built around the kind of parental controls that companies like Sky offer.

5. Progressively de-regulate linear channels and platforms

Many of the regulatory obligations on platforms and channels stem from a time when there was little choice, virtually no competition and no global internet. As consumers increasingly take the choice into their own hands and competition from new platforms and international players grows, obligations can be steadily reduced and the reliance on competition between brands for

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<sup>2</sup> Ofcom International Communications Report, 2010



consumers' trust increased. Some regulations stand out as immediately anomalous. For example, the regulation of interactive services on linear platforms in a world of un-regulated IP platforms, connected TVs and internet portals is unnecessary and hampers the ability of those linear platforms to innovate and therefore compete.

However it is also clear that television continues to play an important and influential role in family life and in society. Appropriate protection for children and other vulnerable groups, as well as the provision of access services to those who require help to get the most out of television, will remain relevant for linear channels.

## **Conclusion**

We believe that these five proposals represent an important starting point as the Government seeks to preserve and enhance the incentives to invest in content, in the face of the challenges created by new technologies. Together, they have the potential to make a significant difference to the contribution that our industry makes to the country's economic growth and to deliver the public value that society expects.

Sky has been a committed investor in content and communications infrastructure over two decades, based on our belief that commercial objectives and open competition are a force for good. We have the capability and appetite to do much more, given the right conditions and a sustainable framework. However, it is up to the Government to grasp the opportunity of this review of the framework to recognise what the market is delivering today and its potential to deliver even more in the future. We look forward to engaging further with ministers and officials at DCMS as the Communications Review develops.