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**A Communications Review for the Digital Age:  
S4C's response to the Secretary of State's open letter of 16 May 2011**  
30.06.2011

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## **Introduction**

S4C is pleased to respond to the Secretary of State's open letter of 16 May 2011 on a Communications Review for the Digital Age. This paper outlines the general areas which S4C, as a public service broadcaster in the Welsh language, believes should be addressed by the review.

We have followed the main headings in the Secretary of State's letter but have only responded to those questions where we have comments to offer.

## **Growth, innovation and deregulation**

S4C welcomes the Government's aim of making the UK communications and media markets more competitive globally and for these sectors to contribute to the UK's long-term economic growth.

S4C has long recognised the economic impact which it has created by investing the vast majority of its content budget on independent television production from Wales. The latest independent study of S4C's economic impact (published in November 2010) showed that in 2010, S4C produced significant gross value added impact to the Welsh economy. This sustained, directly or indirectly, more than 2000 jobs in Wales, most of which were high skilled jobs.

As part of the Government's Comprehensive Spending Review, it was decided to reduce S4C's funding by 24.4% for the period from 2011 to 2015 and for most of this reduced funding to come from the licence fee from 2013. The funding position after 2015 has not been determined and this is a source of considerable uncertainty for S4C and the independent production sector in Wales. Against this backdrop it is crucial to seek to generate greater economic and public value from content. We discuss potential ways of doing so later in this paper.

The situation in Wales is further complicated by the fact that elements of economic development in Wales have been devolved to the National Assembly for Wales. The Welsh Government has announced the creative industries sector as one of the priority sectors identified for economic renewal. An independent review of the creative industries in Wales – by Professor Ian Hargreaves for the Welsh Government – published in March 2010 suggested that S4C could play an even more active role in this field through greater engagement with the Welsh Government and a more inventive approach to online media.

We acknowledge the calls for greater engagement between S4C and the National Assembly for Wales and the Welsh Government in view of the cultural, economic and linguistic importance of S4C for Wales. We also recognise the complexity of a discussion on matters which span devolved and non-devolved areas.

Irrespective of these issues, we believe that S4C's statutory remit needs to be updated. S4C's current remit is to provide a television service substantially in the Welsh language. The Communications Bill should provide the opportunity to update S4C's remit and make it fit for purpose in a multi-media, non-linear age. This should include a stronger digital element to S4C's remit and empower it to create digital content beyond that which is merely ancillary to TV content.

When reviewing S4C's remit and powers, we would also welcome a discussion on relaxing the statutory constraints on S4C's commercial activities which do not involve any use of public monies. More details can be provided at the appropriate time.

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

There are areas of regulation which we believe should be looked at in the context of economic growth and the global competitiveness of the media sector. As media content becomes increasingly available across a range of platforms, the whole question of content regulation needs to be revisited.

Currently, there are three layers of regulation:

- *TV*: TV content is subject to full regulation by the Ofcom Codes, including the Ofcom Broadcasting Code, the Code on the Scheduling of Television Advertising and the Code on Television Access Services.

- *On demand programme services:* VOD content in a “TV-like” online service is subject to regulation under the AVMS Regulations. These provide a certain level of protection for consumers, but the level of regulation is significantly less than for TV content.
- *Other online audio visual content:* There is no general regulatory framework for other online or mobile content. Certain protection is provided under general UK law or under self-regulatory codes, but on a very fragmented basis.

We believe this whole area should be reviewed when scoping the new Communications Bill. The current system contains considerable inconsistency, with the significantly higher degree of regulation in TV content putting it at a competitive disadvantage to online content and potentially deterring investment in TV content. Much TV content is delivered on different platforms, meaning that the same content can be subject to different regulatory requirements, depending on how and where it is accessed. This will become even more acute with the expected take-up of web-connected TVs (so-called Smart TVs) in coming years, when TV and online content will become truly integrated.

We believe it is important to have a single point of regulation for all audio-visual content, otherwise achieving some form of consistency and integration would be virtually impossible, and we believe that Ofcom is best placed to fulfil this role.

In order to achieve convergence across different platforms, it is also necessary to ensure that broadcasters operate within a rights framework which facilitates this.

In a converging world, there is ever-increasing demand for consumers to be able to access content on such platforms and at such times as they want. There are greater opportunities than ever for new and archived content to be made openly available in digital form. These could either be revenue-generating opportunities or opportunities to maximise the public value of content which, in S4C’s case, has been paid for with public monies. For example, we believe that there are opportunities for S4C to partner with organisations in Wales to create greater access to archive material.

S4C wishes to ensure that it operates within a system of rights which appropriately reflects the use of content, both in terms of its availability across numerous platforms and the way in which consumers access content, and provides the flexibility to adapt to evolving consumer behaviour patterns in the future. S4C needs to ensure that its arrangements with producers, contributors and collection societies ensure platform neutrality and provide the level of access to content which consumers now expect. A regulatory framework is needed that gives broadcasters the flexibility to negotiate alternative arrangements which achieve these aims.

These may or may not be areas which need to be addressed through regulation, but they are very pertinent to any broadcaster who wants to achieve true convergence. Any debate on these issues would need to address the need to secure fair remuneration to content creators and contributors in light of the changing dynamics of how content is consumed and the increased budgetary pressures on broadcasters. A fit-for-purpose, flexible approach needs to be adopted for managing rights.

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

Please see our comments on Q10 below.

**Creating the right environment for the content industry to thrive**

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

As well as looking at cross-platform issues (as discussed under Q3. above), we would expect the review leading to the Communications Bill to look anew at TV regulation, or provide a framework for Ofcom to do so, and to ensure that regulation remains appropriate and proportionate in light of current consumer expectations and usage patterns. One example is product placement. As product placement was permitted in UK TV programmes for the first time in February 2011, it is subject to fairly stringent restrictions. As consumers become more familiar with product placement on TV, and bearing in mind that they are already used to prop placement and to product

placement in non-UK acquired content and cinematic films, we believe it may become possible to relax these restrictions. This in turn should create greater scope to raise commercial income from product placement, thereby attracting more funding for TV content.

Aside from regulation, another key factor influencing investment in content is the ability to generate a return on investment beyond the value to a broadcaster of the broadcast licence. Following the Communications Act 2003, S4C amended its Terms of Trade in light of Ofcom's revised Code of Practice to enable content producers to retain ownership of content and to have the opportunity to generate secondary and commercial revenues from their catalogues. After 7 years of operating under these Terms of Trade, it has become evident that there has been limited commercial exploitation of the secondary rights in content produced for and licensed to S4C. As a consequence, S4C continues to fund most commissions on a 100% basis. There are some exceptions in the area of co-productions. S4C is trying to encourage further use of co-productions by producers by launching its own Co-production Fund from commercial monies and by investing in training provision for the independent production sector in this area.

We believe a debate is needed on how to generate commercial income from secondary rights, e.g. through DVDs, merchandise, games and overseas sales. Potential solutions could include:

- Developing skills in the sector and a business support framework to maximise commercial exploitation.
- Enabling the broadcaster to aggregate content and set up its own distribution arrangements, which would require a change in the nature of the rights acquired and/or respective shares of commercial income.

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

On the question of whether the core focus of public service broadcasting should be on original UK content, we firmly believe that it should be. This goes to the essence of public service broadcasting and justifies the types of intervention that go with it. We feel that it is particularly important that public service broadcasters produce or commission original UK content for children, as this is an area which is less viable for commercial broadcasters. Public service broadcasters need to be adequately funded to enable them to commission or produce original, high-quality UK content. Acquisitions of non-UK programmes, or in the case of S4C, non-Welsh programmes, are a cost-effective answer to budgetary pressure. It is imperative, both for audiences and for the creative and economic health of the creative industries in the UK, for public service broadcasters to minimise the reliance on acquisitions and continue to show original UK content in order to maintain distinctiveness, high quality and content which reflects our culture and society.

It is also crucial for public service broadcasting to promote the creation of original, high-quality content in the Welsh language. Since S4C was established as a dedicated Welsh language channel in 1982, it has contributed significantly to the confidence with which people approach the language, at home, at work or at play; to the increased standing of the language in public esteem and legal status and, crucially, to a more assured position for the language within the education system at all levels. This could not have been achieved to anywhere near this degree without market intervention and this is a clear-cut example of public service broadcasting delivering far-reaching cultural and educational benefits.

#### **Conclusion**

This paper is a high-level outline of the areas which we believe the Secretary of State's review should address from a broadcasting perspective. To summarise, we have proposed the following:

- New multi-media remit for S4C.
- Relaxation of commercial constraints on S4C.
- Review of regulatory regime for audio visual content, including consideration of regulatory convergence across platforms and a single point of regulation – possibly Ofcom.
- Consideration of a new flexible, fit for purpose rights regime.
- General review of TV regulation, e.g. relaxation of product placement rules.
- Continued commitment to adequate funding for PSB content, including Welsh language content.

We are happy to provide further details on any of these areas. We hope that these comments will be helpful as the Government develops its proposals for the Communications Bill and look forward to contributing further as more detailed proposals emerge.

