Reply to open letter of

DCMS of 16 May 2011

5 July 2011

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Introduction

This response is submitted on behalf of STV, Scotland's leading multi platform digital media business, which holds the regional Channel 3 licences for Central and North Scotland.

STV welcomes this opportunity to contribute its views towards building a regulatory framework for the digital age – a framework which is oriented towards growth, and which removes barriers to our promotion and provision of compelling content and services to our audience and consumers in Scotland.

STV embraces the opportunity offered by the technological advances of the digital age, and by the ever increasing digital "savviness" of the Scottish population. STV is already on the path to create a truly relevant offering for the people of Scotland which achieves reach and impact for public service content through multi-platform delivery.

In submitting our response primarily around growth in the creative sector, we also recognise the importance of securing key elements of public service content and the need to migrate provision from traditional broadcasting on to new platforms. These two objectives of growth and PSC availability are entirely complementary. STV has a strong track record in driving multi-platform engagement across online and mobile using the intrinsic appeal of high quality content.

Below we have provided answers to the broad questions posed which are of key relevance to us. In our Executive Summary, we have set out our current path and vision.

Executive Summary

STV has developed from its roots as the commercial public service broadcaster for Scotland to become a leading digital innovator. This metamorphosis has largely been achieved in the last four years following the appointment of a new board and chief executive and subsequent change in strategy away from a previous course that left the company heavily indebted and on the brink of financial collapse. The reinvention of STV has been achieved through selling off non-core assets, focussing on the main STV business in Scotland and developing a complementary digital strategy. Self help, a recurring theme throughout our submission, lies at the heart of this turnaround.

- **STV has embraced the Digital environment:**

  - Our output is distributed on multi platform, digital terrestrial, cable and satellite; on line; on mobile; on connected devices;

  - Our core service is now available in HD on a free-to-air basis;

  - Our digital STV Player was voted second only to the BBC's iPlayer for user experience (Webcredible study of all UK based web Players);

  - Over 2.5m unique users visit STV's digital platforms every month;

  - We are at the forefront of new technologies such as YouView where STV will be a launch content partner;

  - We innovate in house - STV News app; Android app; PS3 platform build;

  - Over 45% of online page views for STV content are delivered via mobile platforms.

- **STV is at the heart of the creative industries in Scotland:**

  - We are committed to producing more UK-origination contributing to diversity in the supply chain, and promoting the creative hub of Scotland. We know the talent base that exists in Scotland, but we know that talent needs to be nurtured, and that crucially it needs access to markets;

  - STV Productions represents approximately a quarter of all television content produced in Scotland, other than BBC material;

  - We continue to lobby for the removal of regulatory barriers around the production business (in the form of lack of independent status at UK network level) to give our businesses every chance to grow for the benefit of the whole community.

- **STV is committed to innovative locally produced regional news:**

  - We have taken advantage of DSO efficiencies to provide more localised news offerings within our evening news programmes;

  - We have recently launched the only peak time evening news programme produced and presented from the Scottish capital as well as the other key cities of Glasgow and Aberdeen together with a weekday opt presented from Dundee;

- STV has a vision for future news delivery in Scotland that is relevant, distinctive and sustainable.

- **STV Local**

  - We have invested behind a network of hyper local websites each serving a discrete community. There are currently 22 STV Local sites across Scotland each serving unique news and information and enabling local voices to be heard by encouraging dialogue and contribution. Our vision for full rollout spans 100 different STV Local sites for individual communities across Scotland.

- **STV reaches out and "partners".**

  - STV operates successful partnerships with a wide range of organisations. We have a Memorandum of Understanding with the BBC through which we share resources, are co-investing in future talent with Creative Scotland and have just completed a marathon series of 200 live performances streaming online together with the National Theatre of Scotland.

In summary:

- STV is committed to being an innovative commercial public service broadcaster (with EPG listing; gifted spectrum; universality on DTT). But our vision extends to a future PSB remit delivering across multi-platforms. Channel 3 has evolved over its history. That is a dynamic process and we believe it still offers the best solution – a nationwide competitive system with scale which can provide strong regional content and responsiveness to differing audience needs.

And therefore our key asks are:

- Certainty for the future through the timely renewal of our regional Channel 3 licences, as a member of a network which can co-operate and collaborate in the digital future, we believe that the PSB model continues to deliver high quality innovative service for our audiences.

- Establishment of a single, Scotland-wide Channel 3 licence to end the anomaly whereby viewers in the south of the country have no access to Scottish programming, particularly news and current affairs.

- Independent producer status for our production business.

- Action to prevent interference to digital terrestrial transmissions from future use of 800MHz frequency.

We have selected below key questions for response.

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?

STV Answer:

Digital development creates more choice for consumers. Barriers to entry reduce as access to distribution becomes easier and cheaper. The exponential growth of global digital operators continues apace. However, the market alone is unlikely to deliver many of the public service broadcasting elements which are vital to the democratic process, particularly impartial news and current affairs. In Scotland, with Devolution now firmly embedded, contextualising the workings of both Westminster and Holyrood as they affect citizens is crucial. Yet for broadcasters and other media, it is neither easy nor inexpensive.

STV therefore believes that, as a Channel 3 licensee, we continue to have an important role to play in the delivery of PSB content. The value of licences has reduced, but free access to spectrum, EPG prominence and universality remain key components that can secure sustainable PSB delivery. Ensuring such content becomes available on new, digital platforms, remaining relevant and engaging is important, although traditional media operators are clearly incentivised to migrate their content and their audiences online. Through a process of reinvention, STV has developed a complementary digital strategy, “STV Anywhere” that facilitates access to our content across a growing number of platforms. More challenging is how to receive a return on investment in a digital world. We believe the combination of scale and reach of television and associated revenues will, for some time, remain a primary driver for investment in high quality, original content which will increasingly be available on other platforms.

Technological changes, once thought to threaten television’s position as the pre-eminent audio/visual media have actually helped consolidate it. Consumer investment in areas such as HD and the growth of connected devices and iTV sets underscore television viewing as a primary leisure activity, with audiences continuing to consume upwards of 4 hours per day in Scotland.

Certainty too is important. STV has been able to invest in its STV Local initiative secure in the knowledge that the BBC, which has traditionally moved into new areas of technology and editorial using public funding and without commercial pressure, would not contest the local space by virtue of a decision by the BBC Trust.

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

STV Answer:

Commercial television remains highly regulated in terms of spectrum use and licence obligations across programmes and commercial content. STV welcomes de-regulation, however we would encourage further steps to lighten the regulatory burden, particularly on public service broadcasters. In particular, we would like to see a level playing field for commercial inventory across PSB and non-PSB channels, preferably achieved through a “levelling down” of minutage on non PSB services.

STV is impacted by the constraints of the Contracts Rights Renewal remedy which applies to ITV plc, our airtime sales agent. Further sales house consolidation has resulted in three major buying points for advertisers and against that background STV sees scope for the relaxation of CRR restrictions on ITV1, always subject to continuing safeguards for the minority Channel 3 licensees – STV, UTV & Channel TV – remaining in place.

As a broadcaster who is actively embracing online and encouraging digital consumption of our content, STV considers there to be potential to rationalise the duties and locus of ATVOD and Ofcom. It appears to us to be unnecessary and burdensome to have two regulators consider the same content simply because it is being distributed via multi platforms, and which in our case is produced to the high compliance standards of the Channel 3 licence regime.

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

STV answer:

STV believes that there is a delicate balance to be struck between ensuring consumers continue to enjoy the benefits of appropriate regulation without it unduly stifling new editorial voices and forms of content. A case in point is connected devices. In future people will increasingly access both broadcast content, which is highly regulated and online content, which is much more lightly regulated on the same screen via the same remote control, moving seamlessly from one to another. Media literacy will be important to ensure people have both technological skills and editorial awareness to access different types of services. Whilst there is unlikely to be a "one size fits all" solution for all content, some key considerations, such as those already captured under Ofcom's regulation of video on demand, television-like services online[1] under the AVMS Directive will remain vital – i.e protection of minors, incitement of racial hatred etc.

In the case of STV, a public service broadcaster of over 50 years standing, PSB characteristics within the parameters of the prevailing regulation are a defining part of our brand. We believe this is helpful as consumers access our content in new ways since, even on platforms subject to less regulation, it remains logical and natural for us to continue to work within those parameters, partly out of requirement - to maximise the benefits of cross promotion (which requires compliance and accountability for online content related to Channel 3 material) and partly out of choice - to ensure a consistent user experience.

Whilst STV has, through self help, successfully adapted to this new digital world, at the same time, existing regulation of television services need to be continually reviewed to ensure television itself is not disadvantaged or out of step with prevailing trends and the potential offered by technological and commercial change. The relative efficiency of digital one-to-many broadcast models will mean this remains a primary method of accessing content for some time to come and in order to remain competitive and relevant, television must be freed from legacy regulation that in some cases remains burdensome.

[1] http://stakeholders.ofcom.org.uk/binaries/consultations/vod/statement/vodstatement.pdf

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

STV has long been an exporter of content – we have made dramas such as *Taggart* for over twenty five years and continue to sell it to over 70 territories world wide. Recently we have established a joint venture with Kinetic Productions in the US whereby we will develop and swap formats for our respective territories. However, the role of UK networks – particularly public service broadcasters – remains vital as originating commissioners and primary funders of content which is then exploited overseas. The terms of trade for broadcasters and producers will need to be reviewed to ensure the appropriate balance of value for both, along with wider considerations around multi platform use, additional funding models and protection of copyright and other intellectual property.

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?

N/A

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?

As of this month, Scotland has completed digital switchover of television broadcasts. Freeview is now universally available to over 98% of the population and roughly half of households have either satellite or cable reception. The efficiencies of digital over analogue provide 40+ television channels including 4 HD services of choice but occupy less bandwidth than did the old analogue service with its five channels. Even in this multi-channel world, viewing remains predominantly biased towards the original PSB services. Only a few digital channels have a share of viewing greater than 1%, only two achieving higher than 2%. The top rated multi-channel services such as ITV2, E4 and BBC3 are heavily reliant on their PSB siblings for original content and cross promotion. This tends to suggest that demand for spectrum for television purposes is largely satisfied, with a fairly liquid supply of DTT spectrum and greater space on satellite and cable. Inevitably it would appear, demand for spectrum will be more based around IP purposes for services that offer a variety of potential uses in delivering text, voice and picture data.

As the primary lever in the delivery of public service content, spectrum continues to be allocated for PSB purposes. This ensures that access to highly valued genre such as news and current affairs and original UK content endures. The market has proven that these genres will not be provided on a commercial basis and the democratic process continues to be served by such material being provided on a free-to-air basis.

It is also important not to fixate on models and delivery methods at the expense of promoting skills base and talent pools. Talented creators and designers and innovators will delivery high quality material by whatever distribution method becomes available. It is trusted players who promote their brands, encourage skills and take risks to innovate who will serve UK's creative interests and its people.

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?

STV answer:

The legacy benefit of the move to digital transmission is spectrum being freed up for alternative use. In an increasingly competitive commercial environment, access to spectrum remains the primary lever in securing public service obligations such as investment in original UK content and provision of high quality, impartial news. For this reason, STV believes it is vital that universality remains a fundamental characteristic of public service broadcasting. At the same time, consumers will undoubtedly expect and demand better and faster access to data resulting in improved networks that carry internet protocol (IP) traffic, capable of delivering text, pictures, audio and video. However, increased use of spectrum has the ability to impair existing transmissions, including Freeview, and STV is concerned at the prospect of new data networks on 800MHz which could interfere with up to 760,000 households across the UK[2]. We welcome Ofcom's consultation[2] on this important subject and will participate fully to ensure access to free-to-air television remains a universal experience.

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

N/A

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

N/A

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?

STV answer

STV has commissioned an independent report[3] which quantifies the benefit to the creative industries in Scotland of granting STV independent production status. This quantifies the resulting benefit of increased production coming to Scotland with a cluster of size and scale emerging. Biggar Economics, who conducted the analysis, estimates that the value to the Scottish production sector as a whole would be increased by some £19.8million in GVA and 396 jobs by 2016, a 30% increase from the current economic impact.

Dispersal of production around the UK is a desirable objective, underpinned by the BBC moving staff and resources to Salford and its stated intention to increase commissioning from the nations. The UK as a whole – not just the south east has much to contribute and much to gain from the generation of intellectual property such as high quality production, however the strong gravitational pull of London mitigates against this, hence appropriate regulation (or in our case, de-regulation) is required.

[2] http://stakeholders.ofcom.org.uk/binaries/consultations/dtt/summary/dttcondoc.pdf
[3] Biggar Economics, *Economic Impact of STV Productions and the Scottish Television Production Sector*

STV anticipates that future changes to the Channel 3 networking arrangements in order to streamline the complex contractual detail designed for an earlier age will further underscore the fact that we have no commissioning or scheduling power at network level.

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

STV answer:

STV believes that the role that has been fulfilled by the public service broadcasting networks as primary commissioners and funders of UK originated material should remain the core focus of PSB. The BBC, with its access to public funds via the television licence settlement is rightly the largest spender on original UK content. That remains of enormous benefit, both to audiences and to the creative sector where producers inherit rights for further exploitation. STV welcomes the move by the BBC to move more production out of London and in particular, to increase spending in the Nations commensurate with population.

The indirect subsidy to commercial broadcasters in the form of spectrum access and EPG prominence continues to act as the lever for licence obligations to commission, fund and produce content rather than reliance on cheaper, acquired material. The system remains meantime in equilibrium, with upwards of £800m continuing to be spent on the Channel 3 network programme budget.

Absent these interventions, other digital channels' spending in original UK content is a fraction of the main networks and we believe that investment in UK content, as part of a properly matched costs/benefits licence regime, should therefore remain a PSB imperative. STV also considers that the relationship between free-to-air PSB broadcasters and platform operators also needs to be re-considered. The status quo, whereby PSB services are required through "must offer/must carry" obligations to secure carriage, for which they bear the cost of transmission does not properly reflect the value of original UK content appearing on platforms such as DSAT. We believe that some form of "re-transmission" fee, towards copyright, transmission and carriage costs is appropriate.

Particular types of content are important too. A future where, for example, the BBC was the only provider of news and current affairs would represent a real deficit in choice for consumers. In Scotland, STV's output provides a strong counterpoint to the BBC. We include discrete stories across four different local areas within our nightly news programmes while the BBC offers a single Scotland-wide service. Audiences are largely comparable in size though the demographic mix for each is different, the resulting choice bringing in a wider audience overall. For both recent UK and Scottish elections, STV provided comprehensive campaign coverage and a through-the-night results service. High quality news and current affairs is highly valued by viewers but remains expensive and with limited commercial opportunities, material of this kind is unlikely to be provided by the market alone and should therefore remain provided for as part of the wider PSB system. Indeed, STV believes that, with Scotland now a devolved nation for over twelve years, the establishment of a single, Scotland-wide Chanel 3 licence is a priority. In the former Border Television region across the south of Scotland, little, if any Scottish news and current affairs is carried, with the result that the prevailing political and administrative process is not properly reflected. The Digital Economy Act 2010 facilitates an end to this anomaly[4] and STV believes that effecting this change is an important part of the future Channel 3 landscape.

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

<u>STV answer</u>:

STV perceives that there are few barriers to innovation per se, however, creating and distributing content on a sustainable basis remains commercially challenging. In the past few years, STV has developed a successful digital operation in house, through embracing new technology and innovating to meet growing consumer demand for access to our content across all platforms. We are currently pioneering the use of new technology to deliver, for the first time, a daily news programme produced and presented from Edinburgh, the Scottish capital. This in turn has enabled the programme broadcast out of Glasgow to become focused on the west of Scotland. Through new workflows and technology, the incremental cost of running what is currently a pilot service is relatively small, however the initiative continues to leverage the £10m investment that STV makes into its news service on an annual basis. Such an investment does not pay for itself on a stand alone basis but has to be cross-subsidised from other, more commercial parts of the STV schedule. Even with falling costs of production and ready access to internet delivery, returns achievable for digital content are nowhere near the levels required to support new services based around original production.

In this regard, STV echoes the views of Nicholas Shott in his report into the potential viability of Local TV[5] where he identified that "*Local TV is unlikely to be viable if it is dependant on local advertising revenues alone*". The growth of internet revenues is based around search and transactional revenues and those companies deriving the greatest benefit have not as yet, and indeed appear unlikely to, become the digital equivalent of traditional media owners insofar as they still fund and/or create very little content themselves.

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?

<u>STV answer</u>:

Broadcasting

In relation to broadcasting, the Channel 3 system contains good examples of co- and self-regulation.

Indeed, the Channel 3 Networking Arrangements require the Channel 3 Licence holders to manage systems between themselves and avoids "double compliance". The success of the arrangements is demonstrated by the relatively small number of regulatory breaches experienced by the Network.

[4] Digital Economy Act, section 24(1)(a)
[5] http://www.culture.gov.uk/images/publications/Local-TV-Report-Dec10_FullReport.pdf

Another example can be found in Clearcast, who provides a clearance system for TV commercials and acts as a single point of contact for broadcasters and advertisers. Whilst the regulatory regime remains enshrined within respective companies' licences and subject to backstop regulation by Ofcom, working practices have grown up around Clearcast's activities without the need for Ofcom itself to maintain detailed codes or guidance. Instead, Ofcom has delegated the creation of such Codes and Clearcast is charged with assessing advertisement copy against these Codes without interference from Ofcom. The system is not perfect but it is self-funding and acts in the interest of viewers, advertisers and broadcasters in ensuring only appropriate material is cleared for transmission. The advertising industry also maintains a voluntary Institute of Practitioners in advertising, a non-profit trade body that provides advice and guidance to advertisers in accordance with the advertising laws and Codes - with a view to self-regulation.

Similarly, the manner in which Ofcom works with the Advertising Standards Authority to provide specialist regulation of commercial areas obviates the need for duplication, prevents against potential “double jeopardy” of decision making and goes some way to providing consistency of regulation across different media.

These examples work successfully where a regulator with a wide remit, in this case, Ofcom, is supplemented by a specialist agency with specific interest.

What has been less successful is the example of ATVOD, where the crossover between what it regulates and what Ofcom does is high and the benefit of having a separate agency is not clear, either from a policy or financial perspective.

Notwithstanding the above, public service providers, such as STV self-regulate on a daily basis with the support of various systems and controls - with the measurement of success based on the minimal Ofcom breaches.

Ofcom previously investigated the approaches taken by different regulators outwith the UK but it should be noted that within the UK different approaches are followed. This includes:

Non Broadcasting

The Information Commissioner's Office is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The law requires organisations to process data in accordance with various legislation and the Information Commissioner's Office provide statutory codes to help the industry to follow. Organisations are expected to comply with the law and the statutory codes and in the event of a complaint, the regulator refers a complainant to the organisation in the first instance, to allow that organisation the opportunity to put things right. If the organisation is unable to resolve the problem, the Information Commissioner will investigate and give advice on how to solve the problem. If the organisation fails or if the failure has caused significant harm, then the Information Commissioner will take appropriate action.

Similarly, the Financial Services Authority require organisations to submit reports and in addition conduct monitoring at most on an annual basis. Complaints are managed by an Ombudsman Service who also defer to the financial organisation in the first instance.

Summary

Self and co-regulating clearly work in certain instances but not in all. Therefore it is STV's view that the approach needs to be varied and be dependant upon the significance of harm likely to be caused to individuals and organisations as a result of the failure to adhere to regulation. Therefore different approaches need to be explored and further research is required to establish the most effective framework across the UK.

5 July 2011