
BRITISH SCREEN ADVISORY COUNCIL

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7 June 2013

Mr Henry Anderton
Department for Culture, Media & Sport
100 Parliament Street
London
SW1A 2BQ

Dear Mr Anderton,

CHANGES TO OFCOM'S STATUTORY DUTIES AND FUNCTIONS

The British Screen Advisory Council (BSAC) welcomes the DCMS consultation on changes to Ofcom's statutory duties and functions. In responding to this consultation we are able to make reference to our previous work in this area, in which we welcomed the proposals first set out by the Government in October 2010 to amend Ofcom's duties in order to reduce unnecessary expense and to avoid duplication.

As you may remember from participating at our meeting in June 2011, BSAC is an independent, industry-funded umbrella group bringing together many of the most influential people in the audiovisual industry.¹ Audiovisual material encompasses broadcasts, films and games. Stakeholders across the value chain for audiovisual material are represented by BSAC. BSAC has worked closely with policymakers in various government departments including DCMS, BIS, HMRC, HM Treasury and IPO to provide an informed lead on emerging business trends and to provide advice on policy.

We have previously undertaken work in advance of the expected Communications Bill in order to set out the principles that we feel should underpin its direction. The paper which we produced in autumn 2011 on Content Regulation is directly relevant to this consultation². It recommends that any of Ofcom's duties which are deemed no longer to be helpful or necessary, or whose costs outweigh the benefits, should be amended or removed.

¹ See <http://www.bsac.uk.com/membership-list.html> for a list of our Members

² See <http://www.bsac.uk.com/policy-papers.html?download=175:content-regulation-report-final> for our report on Content Regulation

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BSAC believes that the proposals to make changes to Ofcom's statutory duties and functions outlined in the consultation could have benefits for the industry, lifting some of the regulatory burden from industry players, and help to ensure that Ofcom works in an efficient and streamlined manner. We made reference in our Content Regulation report to the fact that the Communications Act 2003 was designed to be deregulatory and 'light touch', but in fact Ofcom was designated a total of 263 duties, more than double the combined number of duties of the regulatory bodies that preceded it. This, along with Ofcom's evidence-based approach and the corresponding increase in the number of consultations, has led to a substantial increase in the amount of time industry players are required to devote to regulatory matters.

The following proposals could have an impact in lifting some of the regulatory burden from industry players, as well as enabling Ofcom to deploy its own resources more efficiently, to:

- amend the duty to review Public Service Broadcasting (PSB) at least every 5 years, so that a review will only be conducted at the discretion of the Secretary of State;
- amend the duty to assess Channel 3 networking arrangements, from an annual requirement to a reserve power for Ofcom to assess as required;
- remove the requirement that Public Sector Broadcasters provide annual statements of programme policy;
- amend the duty to review a change of control of a Channel 3 or Channel 5 licence, in order that one is not automatically required.

However, we note that the cost-savings of these amendments are comparatively very small in relation to the overall budget of the public service broadcasters, and of Ofcom, and that the changes would therefore have a fairly minimal impact in terms of increasing efficiency and lifting the regulatory burden.

While we are supportive of amending the duty to review PSB every 5 years, as this arbitrary timeframe may not always be appropriate, we are concerned by the implication contained in the consultation document that a review of PSB would only be necessary every decade. In light of the rapid pace of technological change impacting on the audiovisual sector, we would recommend that, should the duty to review PSB be amended in this way, the Secretary of State prioritises the promotion of a well-functioning broadcasting ecosystem rather than the achievement of minor cost-savings.

We welcome the proposal that Ofcom be allowed to design changes to its own governance, enabling the creation of a more fit for purpose and streamlined regulator. This is of particular importance given the necessity for an agile regulator that can respond quickly to the rapidly changing audiovisual and telecommunications markets.

The proposal to remove the requirement that Ofcom promote development opportunities for training and equality of opportunity, a duty undertaken by the Sector Skills Council, Creative Skillset, seeks to remove unnecessary duplication. As Ofcom's role has been superseded by Creative Skillset and the Equality Act 2010, Ofcom has not been active in this area in recent years, which suggests that this change would have a nominal effect.

Finally, we noted in our Content Regulation paper that 'within the current legislative framework, there are no mechanisms that encourage Ofcom or the Government proactively to pursue deregulatory initiatives on an ongoing basis. Given the fast-changing nature of the industry, it is not sufficient for Ofcom to undertake only occasional or irregular reviews of its duties.' We continue to believe that there should be a mechanism by which Ofcom's duties can be subject to ongoing scrutiny and that those which are judged no longer to be necessary or whose costs to Ofcom and industry outweigh their benefits, should be amended or removed. We would therefore argue that, when a new Communications Bill is brought forward, it should contain processes that actively encourage deregulatory measures to be implemented gradually over the lifetime of the new Communications Act, without the requirement for primary legislation.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'P. P. S. A. Stevens'.

Fiona Clarke-Hackston
Chief Executive