

DCMS COMMITTEE INQUIRY INTO NEW MEDIA AND THE CREATIVE INDUSTRIES – A CHANNEL 4 RESPONSE

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ABOUT CHANNEL 4

The Channel Four Television Corporation is a publicly-owned, not-for-profit broadcaster that provides vital competition to the BBC in the provision of public service TV. Our main public service channel, Channel 4, is a free-to-air service funded entirely by advertising and sponsorship. Unlike the BBC, we do not receive licence fee funds. Channel 4 is available on all digital platforms (terrestrial, satellite and cable) as well as through traditional analogue transmission.

Channel 4 also operates a number of other services, including the free-to-air digital TV channels E4 and More4, the subscription service FilmFour (which we will be taking free-to-air this summer), and an ever-growing range of online activities at channel4.com, including the broadband documentaries service FourDocs. The FilmFour production division produces and co-produces feature films for the UK and global markets. Whilst strengthening the core Channel's contribution to public service going forward, we are also looking increasingly to enhance our public service contribution via other new channels and platforms, e.g. our new channel More4 has a daily half hour news bulletin at 8pm and is investing £20m in its own original content.

Channel 4's primary purpose is the fulfilment of its public service remit, which was most recently defined in the 2003 Communications Act. This states that "the public service remit for Channel 4 is the provision of a broad range of high quality and diverse programming which, in particular-

- (a) demonstrates innovation, experiment and creativity in the form and content of programmes;
- (b) appeals to the tastes and interests of a culturally diverse society;
- (c) makes a significant contribution to meeting the need for the licensed public service channels to include programmes of an educational nature and other programmes of educative value; and
- (d) exhibits a distinctive character."

As a publisher-broadcaster, Channel 4 does not produce its own programmes but commissions them from more than 300 independent production companies across the UK each year, a far greater number than any other broadcaster, including the whole of the BBC. It works very closely with the independent production sector, and invests heavily in training and talent development throughout the industry.

The Channel 4 service was originally established under the Broadcasting Act 1981 and was provided for by the Independent Broadcasting Authority. The Channel Four Television Corporation was subsequently established under the Broadcasting Act 1990 and the Channel's functions were transferred over to the new Corporation in 1993. The Corporation's board is appointed by OFCOM in agreement with the Secretary of State for Culture, Media and Sport.

1. EXECUTIVE SUMMARY

1.1 Channel 4 plays an important role in the UK's creative economy, investing over £600m per annum in content, including £425m in programmes produced by over 300 independent production companies (Introduction)

1.2 Channel 4 is required by statute to operate as a publisher-broadcaster and is unable to produce its own programmes, unlike the BBC and ITV. Since our birth in 1982 we have played a key role in the creation and development of the independent production sector (Introduction)

1.3 Channel 4 is required to commission 30% of its programmes by volume and value from outside London. As a result Channel 4 is the UK's biggest single investor in independent creative businesses outside the M25 (Introduction)

1.4 Digital convergence and new media technologies afford exciting opportunities to the broadcasting sector but also pose particular challenges to the UK's public service broadcasting model, especially those elements like Channel 4 that are commercially-funded (Question 1)

1.5 Channel 4 believes that public service broadcasting can play an even more important role in the digital future, underpinning investment in innovative, original, high quality and high cost content. We also believe firmly that this role should not just be left to the BBC. UK viewers benefit from public service competition to the BBC (Question 1)

1.6 As such, Channel 4 is working to make its content available on the new and emerging digital platforms so that viewers are able to access it when and where they want to and not solely via the traditional broadcast. To achieve this goal it is essential that Channel 4 is able to secure the necessary new media rights at the point of commission (Question 1)

1.7 Acquisition of rights to commissioned content by public service broadcasters is regulated under the Communications Act 2003. However, most new media rights are currently excluded from the initial Terms of Trade agreed between broadcasters and independents following the passage of the Act. The terms under which these rights should be made available are being looked at by Ofcom in its current Review of the Production Sector. Within the context of this review Channel 4 is in discussions with Pact about how new media rights should be acquired. Channel 4 is keen to resolve this matter directly with Pact if possible (Question 1)

1.8 It is absolutely essential that we secure a viable outcome from Ofcom's Production Sector Review if we are to sustain and develop our major role as innovator and investor in creative content and creative companies and maintain our key role as PSB competitor to the BBC (Question 1)

1.9 As content becomes available on more and more digital platforms, Channel 4 believes that every effort should be made by the creative industries and government to introduce effective standard rights protection, in terms of a rigorous and clear regulatory framework and also in terms of developing effective digital rights management (DRM) systems in order to minimise piracy levels. (Question 2)

1.10 We are broadly opposed to the extension of traditional TV-style regulation to most new media services, especially those that are on-demand. We favour a co and/or self regulatory approach (Question 3)

1.11 Channel 4 is a supporter of the principles that lie behind the Creative Commons and Creative Archive initiatives. However, as the market evolves it will be important to balance the desire to achieve open access to the widest possible range of content, especially to PSB content, with the legitimate need of rights holders to generate commercial value (Question 4)

2. INTRODUCTION

2.1 Given our key role in the UK's creative industries, Channel 4 welcomes this inquiry, coming as it does at a key moment in the development of the market for the production and supply of content for new media platforms. As one of the UK's key public service content providers, we are keen to take this opportunity to share with the Committee our thinking on how the digital landscape will develop, and to explain our vision of how we can continue to innovate and take risks in this new environment, and continue to act as a supporter and partner of the creative industries. In particular, we firmly believe that in order to sustain a thriving public service television ecology in the digital future Channel 4 will need to ensure it can deliver its content across all new media platforms.

2.2 In this submission, we address in brief each of the four issues highlighted by the Committee. We would welcome the opportunity to expand upon these points during the oral sessions of the inquiry, and are also happy to supply further detail in writing on any particular aspect of the issues discussed below.

Channel 4's role as an investor in quality, innovation and diversity

2.3 Television broadcasting represents a key element of the UK's creative industries. The UK invests more per head in television content than any other country in the world: \$75 per person compared to \$65 in the US and \$52 in Germany.¹ UK television content is admired around the world and UK exports are worth almost \$1 billion annually (according to PACT estimates).

2.4 Since its launch in 1982, Channel 4 has played a key role as an investor in original TV content and, in particular, in the development of a thriving independent production sector. At its foundation it was decided that Channel 4 should operate as a publisher-broadcaster and be prohibited from making its own programmes. This was specifically done to provide a guaranteed outlet for independent producers and to break the dominant duopoly in TV production of the BBC and the ITV companies.

2.5 While Channel 4 does not make any programmes itself, it makes a vital contribution to the creative industries. It takes huge risks by innovating, working with a large number of independent companies, and constantly seeking new types of programming covering a diverse range of genres, programmes such as **Jamie's School Dinners**, **Channel 4 News**, **Anatomy for Beginners**, **The IT Crowd** and **Dispatches**. And to do this, it invests hundreds of millions of pounds each year in originated UK content. In 2006 we will invest over £600 million in total on content across our portfolio of TV services, plus c. £20m on new media services. The 300-plus independent production companies from which Channel 4 commissions each year is substantially more than any other broadcaster: 175 companies worked for the BBC in 2003/4², and we believe a far smaller number worked for either ITV or Five.

2.6 As well as its straightforward quantitative investment in programming, Channel 4 plays a key role in sustaining range and diversity in UK production. The Channel's unique remit means it provides a vital destination for those production companies looking to provide something different and distinctive and get new ideas

¹ Source: UK Television Content in the Digital Age, Oliver & Ohlbaum Report for the BBC, October 2003

² Source: BBC: Press Release, 11 August 2004

commissioned. Channel 4 also helps to ensure a thriving and creatively strong production sector in the UK by providing vital public service competition to the BBC and helping to maintain the plurality and quality of the UK's broadcasting ecology.

Channel 4's contribution to the nations and regions

2.7 Channel 4 plays a particularly important role in the development of independent television production companies outside London. The Channel is required to commission 30% of its original programmes from outside London by both value and volume. As both ITV and the BBC rely heavily on in-house production outside London, this makes Channel 4 a vital lifeline for regional indies. In 2005, Channel 4 invested £115m in out of London production, making it the biggest investor in small independent creative businesses outside the M25. At any time in the year Channel 4 works with over 100 regional companies including television producers, graphics and facilities companies and new media content suppliers.

2.8 Through its Creative Cities strategy the Channel seeks to create sustainable production hubs in centres across the UK. This is no easy task and the Channel plays a key role in supporting indigenous and inwardly investing companies. Channel 4 has built continuing relationships with regional development agencies across the UK, and has pioneered a range of company development support schemes. A business support unit – The Research Centre – which is hosted in Channel 4's Glasgow office provides training and development programmes and investment for researchers providing subsidised support for small and new companies. Channel 4 also has a regional company development scheme which invests up to £300,000 annually in the strategic growth and transformation of regional suppliers.

2.9 We've directly invested in 24 companies since the company development deals were introduced in 2003. Two early recipients from the South West were Touch Productions and TwoFour Productions.

2.10 We invested £35k cash in each of these companies in the second half of 2003. The total package of support we offered them was £80k each as they both participated on the Researcher Development Programme (worth £30k for each place) and had £15k in kind support in the form of mentoring and executive support.

2.11 This was match funded with over £50k cash from South West Screen and SWRDA for each company. This was provided through a scheme called '4SouthWest', in a partnership with the RDA and screen agency and the aim was that not only would the recipient companies benefit but they would also work with smaller companies and creative individuals in the region.

2.12 In 2004, six commissions were won as a direct result of this funding package for Touch and TwoFour. In addition, 39 joint initiative agreements were signed between these lead companies and other South West producers, with 90 ideas developed into pitches for commissioners.

1. The impact upon creative industries of recent and future developments in digital convergence and media technology

3.1 New digital technologies offer a wide range of exciting opportunities for the UK's creative industries, but also pose significant challenges. In this section, we highlight the potential benefits of convergence and also identify some of the challenges that accompany the move towards an increasingly digitised world. We then consider some of the issues relevant to public service broadcasting in the UK and to Channel 4 in particular, in particular the review of the television production sector currently being conducted by Ofcom.

Opportunities of digital convergence

3.2 Analogue platforms have historically been characterised by spectrum scarcity, limiting access to distribution outlets for audiovisual content. In television for example, the analogue terrestrial platform only carries 4-5 TV channels in the UK, while analogue satellite and cable platforms typically offered no more than a few dozen channels.

3.3 The emergence of new digital platforms brings two significant benefits for the distribution of audiovisual content. First, the capacity of new digital television platforms far exceeds that of their analogue equivalents: for example, DTT can carry dozens of TV channels while digital cable and satellite each offer hundreds of channels. And second, digital platforms enable entirely new types of services to be offered. Digital television platforms also carry enhanced (semi-interactive) TV and radio services, like expanded sports coverage. Even more importantly, some platforms also allow true two-way communication, enabling fully interactive services, including video-on-demand (VOD) and gaming.

3.4 Digitalisation thus reduces barriers to entry for new suppliers of content. And digital technology can also significantly reduce some of the costs of production, meaning that it is easier than ever before for those with a creative vision to realise it in audiovisual form. This increased democratisation of digital production and distribution should encourage a new generation of creative entrepreneurs, driving choice, innovation and efficiency. Moreover, the global nature of the internet enables producers to address global markets, providing new avenues for commercial growth.

Challenges posed by digital convergence and threat to PSB

3.5 The flip side of these advances, and in particular of the greatly increased range of services available, is that audiences are fragmenting, both within and across digital platforms. Viewers will continue to migrate to the huge number of digital TV channels that are now available, and also to new services as broadband penetration and video game usage, both on fixed and (increasingly) mobile devices.

3.6 While the increase in the range of services is undoubtedly a good thing for consumer choice, the economics of the TV industry means that there is a trade-off between range and quality, and that the increase in choice might ultimately be damaging to the amount of new high-quality content that is available.

3.7 TV programmes are very expensive to make, and the costs of production and associated risks of investment must be borne before any revenues are generated. Public service broadcasters have historically carried out the vital roles of

commissioning new content and funding the production costs of these programmes, as well as branding, promoting and cross-promoting new content within their TV schedules. The content itself is made by a combination of large in-house production units (in the BBC and ITV) and by the hundreds of independent production companies on which Channel 4 and Five, as publisher-broadcasters, are entirely reliant.

3.8 For commercially-funded public service broadcasters, the large costs of production have historically been justified by the advertising revenues generated by the mass-market audiences that would watch their programmes. Given the scarcity in distribution capacity on analogue platforms that restricted competition, the capacity allocated to public service broadcasters conferred significant strategic benefits to them, enabling them to invest such high amounts in programming.

3.9 In the digital age, however, as both audiences and associated revenues fragment, and the benefits associated with access to scarce analogue spectrum fall away (ultimately to nothing), it will be ever more difficult for the commercially-funded public service broadcasters to fund high-quality content to the same extent as they have done in the past, based on the expected revenues from their traditional linear TV services.

3.10 One option would be to rely solely on the BBC, which enjoys guaranteed income from the Licence Fee, to sustain high levels of high quality, diverse production in the UK. But it is widely accepted that competition for quality is important, both in order to offer viewers real choice and in order to keep the BBC on its toes and drive up quality.

3.11 The challenges for advertiser funded broadcasters are exacerbated by new disruptive technologies such as personal video recorders (PVRs), which enable viewers to record and easily skip the ad breaks. And the global nature of platforms such as the internet will make it ever easier for large international media companies to compete more aggressively for UK audiences.

3.12 These challenges would be less of a problem from the consumer's perspective if the wide range of new services offered a rich variety of new high-quality British content. But this is not the case: most digital channels rely predominantly on archive repeats, US acquisitions, music videos etc. With the sole exception of news and sports – the coverage of which has been revolutionised by Sky over the last 10-15 years – there is almost no new high-cost UK originated content other than that offered by the main public service broadcasters. Even in the digital space, it is predominantly the PSBs that offer new originated content on their digital channels (such as BBC 4, ITV 2 and More4).

3.13 And looking further afield, while audiovisual services available via new broadband platforms promise to offer a vast and unrivalled choice of content, these services seem to rely almost entirely on aggregating pre-existing archive material and on ultra-low-cost user-generated content. Again, there are few (if any) examples of new high-quality British originations.

3.14 In summary, we believe that the benefits of PSB – including the provision of new high-quality content that reflects and appeals to the UK's diverse audiences, that educates as well as entertains, and that innovates and nurtures new British creative talent – are as important in the digital age as in the analogue world. It is

vital to the UK's creative industries that, in addition to the proliferation of low-cost user-generated content that is increasingly being made, it remains viable to create high-cost, high-quality audiovisual content of the kind that public service broadcasters have historically supported and funded. However, this will be increasingly difficult as audiences fragment and national boundaries erode in the converged world.

Channel 4's digital strategy

3.15 Channel 4 has long recognised the need to evolve its services if it is to maintain its relevance and impact with audiences in the digital age. As well as making the core Channel 4 available on the main digital broadcast platforms, we launched More4 in October 2005 as a new free-to-air digital terrestrial channel offering viewers an opportunity to catch up with the best of Channel 4's factual output but also carrying its own prime-time news bulletins and a range of other new high-quality original content. We took E4 free-to-air on Freeview in 2005 to widen public access to our youth-oriented, entertainment channel and FilmFour will become a free to-view channel this summer.

3.16 As well as developing new digital channels, we also believe it is important that public service broadcasters embrace new technologies to develop entirely new services and forms of content. In recent years, we have expanded our online services, experimenting with video-on-demand, launching an extensive music site, and developing **IDEASFACTORY**, a learning resource for young people embarking on a career in the creative industries.

3.17 We also launched our first major public service in the broadband space, FourDocs, in 2005. This provides new and aspiring documentary film-makers with access to advice from key Channel 4 editorial and other staff on the art of documentary film-making and issues of compliance, e.g. how to get copyright clearance, as well as the opportunity to gain access to an audience for short four-minute documentary films.

Access to rights

3.18 In order to sustain the provision of public service broadcasting in the future, it is essential that the traditional public service broadcasters make their PSB content available on the full range of (fixed and mobile, linear and on-demand) platforms on which the public will increasingly choose to consume audiovisual content. It is also essential that they can generate revenues from these platforms to sustain their investment in new content. However, there is an important obstacle preventing Channel 4 from doing this, relating to the current regulatory settlement on rights.

3.19 The current settlement, which resulted from the requirements under the Communications Act 2003 to agree Terms of Trade with independent producers, does not guarantee Channel 4 access to the new media rights it needs when it commissions and funds its programmes.

3.20 The 2003 settlement had a very clear purpose: it was designed to address the fact that some broadcasters (primarily the BBC) had, in the past, exploited their position to retain and sometimes warehouse a range of rights, including valuable secondary rights, and thereby undermine the ability of independent production companies to grow their businesses. This change has had a direct economic impact

on Channel 4, as it was designed to achieve a transfer of value from broadcasters to producers. It has had a disproportionately negative effect on Channel 4 as we are a publisher-broadcaster. The fact that c.70% of BBC and ITV programmes are made in-house has insulated them from this change to a large extent.

3.21 Whilst it has cost Channel 4 money, it is clear that the rights retained by producers as a result of the last Terms of Trade negotiations are not essential to the maintenance of the core Channel 4 economic model, and we are not, therefore, seeking to overturn this earlier intervention. However, as far as new media rights are concerned it is unclear which should be defined as primary and which as secondary. Channel 4 believes that if we are to be able to offer viewers access to our content on the platforms that they wish to use when they wish to use them, we will need access to a wide range of new media rights as part of our primary rights package.

3.22 Access to new media rights is particularly vital to Channel 4's future prospects, as compared to those of the BBC and ITV. As a publisher-broadcaster, Channel 4 does not make any of its programmes and therefore has much less control over rights than its PSB competitors. The BBC and ITV produce between 60 and 70% of their own content, and automatically own all rights to this content. This means that, whilst the current arrangements may be frustrating to them, they do not risk fundamentally compromising their long-term viability as audiences migrate from traditional to new digital platforms.

Ofcom's Review of the Television Production Sector

3.23 Given the need for Channel 4 to be able to access relevant rights to enable it to offer its services across new media platforms, the outcome of Ofcom's Review of the Television Production Sector is of crucial importance to the Channel. We welcome the consultation document issued by Ofcom in December 2005, which encourages broadcasters and PACT to come to an agreement on new terms of trade that include new media rights such as video-on-demand. We are currently in discussions with Pact to reach a voluntary agreement and it is our strong preference to achieve an agreed settlement that does not require regulatory intervention.

3.24 Channel 4 has made a series of submissions to Ofcom over the last few months, and we would be happy to share our thoughts with the Select Committee in more detail. The key points are outlined below.

3.25 Central to our position is an ambition to continue to be able to fund new originated content for the foreseeable future and to make that available to viewers across the full range of platforms as consumer behaviour evolves. As viewing migrates to new platforms, revenues associated with content will likewise migrate to these new platforms. This has a straightforward implication: broadcasters need to be able to access new revenues that substitute for their existing ones as viewing migrates, which means that they need to be able to include the relevant rights within the "primary" rights package they obtain in return for commissioning and funding new content.

3.26 Channel 4's view is that the emerging Video On Demand (VOD) services that will be offered via broadband and TV via mobile markets are much more likely to operate as alternative viewing channels to the traditional linear broadcast, rather than as substitutes for secondary products such as DVD, which are priced and packaged for consumers to build their own content library. As the increasingly rapid

convergence of devices occurs, more and more viewers will have the option of delaying their viewing, safe in the knowledge that they can download the same programme when it is convenient to them or catch it via their preferred mobile device.

3.27 In discussions some producers have suggested to us that they should retain all new media rights and be able to exploit those on other channels more or less immediately post the first transmission of the programme on Channel 4. This might mean a situation arising in which Channel 4 faces competition for viewers within a matter of days or weeks from the initial transmission, from a broadband or mobile service operated by a competitor such as Sky, cherry-picking content that we have fully funded and on which we have taken all the risk. Not only would this undermine Channel 4's ability to establish its service in important new media markets, it would also undermine Channel 4's existing economic model and brand.

3.28 This would be a perverse outcome. What we should be seeking is a regulatory framework that encourages major new market entrants such as Yahoo, Google and Orange to invest in their own original content and grow the total market for commissioned content in the UK.

3.29 To address these issues Channel 4 has proposed that a principle of "when not where" – whereby rights should primarily be defined by time period rather than by platform – should be adopted, and this appears to have been broadly accepted by both Ofcom and PACT. Channel 4 has suggested a primary rights package that would include the ability for it to offer viewers access to its programmes on all platforms on a free-to-view basis for a period of up to 30 days. This would allow for viewing across multiple devices and for the scheduling patterns of new content (where you might get, in successive weeks, a "preview" on a digital channel, followed by the main premiere on the main PSB channel, followed by a subsequent catch-up repeat).

3.30 Beyond the 30-day window a holdback period would apply to broadband VOD and mobile rights, as well as broadcast television, preventing producers from offering Channel 4-commissioned content to other operators for a period in order to protect our brand and investment. Channel 4 would, however, be looking to partner with indies during this holdback period to offer this content on a paid-for, revenue share basis on these platforms via a Channel 4 portal.

3.31 Some producers have suggested that there is no problem with the current arrangements, which exclude key new media rights from the primary window, arguing that if Channel 4 wants these rights then it can buy them in the secondary window. This situation is unacceptable to Channel 4 for two reasons. Firstly, under such a scenario there is the possibility that 'must have' rights are not secured by the Channel but are sold to a major competitor, which would undermine our ability to protect the Channel 4 brand – arguably our most valuable asset in the new digital world – and recoup our investment. Secondly, it would mean the Channel would effectively be paying twice: once when the programme is funded, and then again to be able to actually exploit the rights. As commercially funded public service broadcasters face increasing competitive pressures, it simply will not be feasible for them to fully fund new content and then pay again to access rights to platforms which are cannibalising their existing revenue streams. It is worth bearing in mind that such regulatory restrictions would only be applied to the PSBs. Sky, Google, Yahoo and any other major player that wished to commission its own content would

face no such restrictions on the rights they would be able to obtain at the point of commission.

3.32 Finally, some producers have argued that the PSBs are likely to hold back the development of new media markets and the independent production sector by refusing to make their content available on these platforms. In fact, our intentions are quite the opposite. Moreover, any such fears could be readily addressed by requiring broadcasters to include a "use or lose" clause in any commissioning contract, so that if the relevant broadcaster fails to exploit their new media rights within a specified timeframe the rights would be automatically released to the producer. This is an approach that we would support.

3.33 To conclude, with the right outcome to our discussions with Pact and to Ofcom's review, Channel 4 firmly believes that the opportunities afforded in the new media world will benefit both public service broadcasting and the independent production community. We are looking to establish a model that provides mutual incentives to both Channel 4 and our suppliers to drive the uptake of new media services. A financially strong Channel 4 will be able to go on commissioning a wide range of content, from the widest possible range of suppliers across the UK. This will be essential if we are to maintain our key role as public service competitor to the BBC and go on making a major contribution to the UK's creative industries.

3.34 If we get it wrong, Channel 4 will become less and less relevant to audiences and to advertisers. In turn, this will diminish Channel 4's ability to invest in innovative, diverse and distinctive PSB content, and the range of programming available to the public risks becoming increasingly homogenous as content producers inevitably focus on the production of formats and ideas with proven success and significant value in secondary and international markets. This would significantly diminish the current level of public service plurality on offer to UK viewers, leaving the BBC as the UK's only significant supplier of many genres including current affairs and documentary programming. Independent production would also be likely to centralise further in London and diminish in the UK's nations and regions.

2. The effects upon the various creative industries of unauthorised reproduction and dissemination of creative content, particularly using new technology; and what steps can or should be taken – using new technology, statutory protection or other means – to protect creators

4.1 We have already discussed our role in nurturing the creative industries, part of which is ensuring that those who invest in and create content receive a fair deal concerning their intellectual property rights. However, if those rights, even when in the hands of the creative industries, are not protected from those who would seek to make unauthorised reproductions of that content, then this will have serious implications for the future of these industries.

4.2 Channel 4 believes that every effort should be made by the creative industries and government to introduce effective standard rights protection, in terms of a rigorous and clear regulatory framework and also in terms of developing effective digital rights management (DRM) systems.

4.3 We broadly endorse the recommendations made on DRM in the UK Presidency Creative Economy conference in October 2005, which noted *inter alia*:

- “There are interoperability issues around DRM that are hindering the market. We believe that the Commission should be working harder to create intergovernmental and trade working groups (a la MPEG) to encourage greater consensus on standards. Overall, however, the development of DRM should be market driven but subject to the existing European regulatory framework
- “Important content security concerns remain unresolved, in particular regarding consumers’ transition from analogue to digital devices. Legislation protecting technological measures and rights information is essential to safeguard the deployment of DRMs. Enforcement is also vital.”

4.4 We need to ensure that enough resources are allocated to ensure that those responsible for monitoring and dealing with those pirating intellectual property can do their jobs effectively.

4.5 We would welcome clear leadership from the Government, via the IP Rights Forum and/or similar initiatives, in terms of establishing cross-industry initiatives to educate the public and develop DRM systems that not only protect rights-holders’ assets but also provide choice and ease of use to consumers. It is also vital that producers, broadcasters, technology companies and network operators work together to promote the responsible use of content and reduce potential consumer confusion surrounding multiple DRM systems and content formats.

4.6 Channel 4 participates in the TV Piracy Group, a UK cross-industry body that was recently established to determine the extent of piracy in TV programmes and to consider what action needs to be taken by industry. Members of the group include the major broadcasters, the BPI, PACT, Sky, Warner Bros and Sony. We are also an active member of the cross-industry Media Literacy Taskforce, which is chaired by Heather Rabbatts of Channel 4.

3. The extent to which a regulatory environment should be applied to content accessed using non-traditional media platforms

5.1 The issue of extending regulation of audiovisual content to new media platforms such as the internet has been a central debate in recent months in the context of the EU's current review of the Television Without Frontiers Directive. The Commission proposes extending some existing regulations to new media, for what it calls "non-linear" services – which broadly speaking means on-demand services (as opposed to scheduled, or "linear", services such as traditional television).

5.2 Channel 4's view, which we share with other broadcasters, is that any new services which look sufficiently like television, i.e. are scheduled rather than on-demand services, should be subject to the same rules as television, regardless of the platform on which they are delivered. So, for example, Channel 4 or any other broadcaster should be subject to the same regulations whether its channels are delivered via broadband (as is already the case with services such as HomeChoice) or via satellite, cable or terrestrial platforms. This would overcome the inconsistency of the current regulatory framework, which distorts the playing field, as existing broadcasters face a regulatory burden that new entrants could avoid by distributing their services via other platforms.

5.3 On the other hand, for any other types of services delivered via new media, and in particular on-demand services, we believe that it is impractical for regulations to be extended, given the nature of the services and the global reach of the internet. The on-demand nature of new services means that volume-based quotas of the kind broadcasters have traditionally faced become meaningless. More importantly, the global nature of distribution platforms such as the internet makes it impractical, if not impossible, to impose many forms of traditional regulation on audiovisual services delivered via this platform, as any service could simply locate outside the UK (or the EU), in which case it becomes very difficult for any domestic regulator to impose any rules on it (or to apply sanctions) without imposing draconian censorship measures. For this reason, we believe that, for non-linear services such as video-on-demand, policy makers should encourage a framework based around self- and co-regulation (the established laws of the land are sufficient to address serious issues such as child pornography). This would be a proportionate response that would ensure that UK or EU-based services developed, and complied with, a sensible set of rules, while not overly distorting the playing field between EU and non-EU operators in a sector which is only now beginning to emerge.

5.4 While it appears that industry, regulators and Government share a common position in the UK on this issue, it is important to note that the UK is nonetheless largely isolated in terms of the ongoing debate on the revisions to the TWF Directive. Most Member States are explicitly or tacitly supporting the French-led position in which a raft of regulations will be extended to non-linear audiovisual services. It is essential that industry and government continue to work together – as we have been doing so far, thanks in large part to the DTI/DCMS TWF Stakeholder meetings and the working groups that have been set up in response to issues raised in these forums – to raise awareness in other Member States of the potentially detrimental impact of the Commission's proposals.

4. Where the balance should lie between the rights of creators and the expectations of consumers in the context of the BBC's Creative Archive and other developments

6.1 Channel 4 believes that rights should ultimately reside with those who have invested in and created the content: they should be able to determine the uses to which their endeavours are put.

6.2 The Internet and inexpensive (sometimes free) editing software has enabled a new generation of non-professional creators to emerge, often in an educational setting. They increasingly express themselves through their own Web sites, blogs, podcasts, games and digital art. Some of these new creators will go on to become key players in the UK's creative industries in the coming years.

6.3 Existing works have always acted as creative stimuli and source material for new creations – the Internet age is no different. The Creative Commons and Creative Archive schemes have been developed to make this easier to do whilst staying within the law. The schemes enable creators to allow others to share and re-use their works within specified constraints (e.g. for non-commercial purposes) using flexible copyright licences.

6.4 Channel 4 pioneered the use of Creative Commons in the UK and is a partner in the Creative Archive initiative with the BBC, BFI, Open University and others. The creative re-use of existing content has been a core component of several Channel 4 Education projects (e.g. **IDEASFACTORY**) as well as the 'rushes library' section of our broadband documentary service FourDocs. And user-generated content uploaded to our FourDocs site is subject to the Creative Commons licence. We therefore support the wide availability of content designed to inspire and assist creativity among the public.

6.5 Nevertheless, it is important that the decision to share content under this framework is made by the owner of the work. The legitimate need to ensure that adequate commercial value has been realised from a work is one factor that will affect this decision. Moral rights issues around the re-editing and re-contextualising of such content are another, as is the cost involved in repackaging and distributing it.

6.6 Channel 4 believes that it will further the interests of tomorrow's UK creative industries if the principles behind Creative Commons and Creative Archive are embraced by today's producers and rights-holders. Public bodies, including public service broadcasters, should encourage this and provide resources to facilitate it, but producers' rights to earn commercial revenues and control the distribution of their content remains fundamental.

6.7 It will be important to strike an appropriate balance between, on the one hand, making content available for low cost or for free, and on the other hand, enabling rights-holders to generate sufficient revenues from their content. However, we would note that most large media companies have hitherto adopted a relatively intransigent approach to this issue, and should be encouraged to overcome their innate conservatism in this area and contribute more openly to the debate on issues such as the Creative Commons.