

Television across Europe:
regulation, policy and independence
United Kingdom

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List of Abbreviations

BBC	British Broadcasting Corporation
BSC	Broadcasting Standards Commission
DCMS	Department for Culture, Media and Sport
DTT	digital terrestrial television
EEA	European Economic Area
IBA	Independent Broadcasting Authority
ITC	Independent Television Commission
NAO	National Audit Office
Ofcom	UK Office for Communications
PACT	Producers alliance for cinema and television

1. EXECUTIVE SUMMARY

Television broadcasting in the United Kingdom (UK) has been indelibly shaped by the principle of public service broadcasting. With the exception of satellite and cable television channels, all terrestrial broadcasters in the UK have public service obligations: this is the uniqueness of the British model of broadcasting, which has historically provided a stable and innovative television environment, with quality, universality and diversity enjoying prominence in public policy debate. The concept of public service in television has been supported by a political consensus on the positive contribution of television to society.

The British television industry is one of the largest and most dynamic in Europe and the UK is a leader in the rollout of digital television services. Digitalisation, however, is not an end in itself and there are some important trends in media policy that are fundamentally changing the television sector. Since the 1990s, there has been a progressive move away from a highly regulated commercial sector towards an increasingly competitive market as successive governments have sought to adjust the dynamics of the television sector to meet the perceived changes brought about by the growing penetration of multichannel services and the liberalisation of international markets.

Television regulation in the UK is conditioned by an increasingly complex range of issues which include shifting public policy objectives. The Government introduced a radical set of reforms in the Communications Act 2003, which seeks to liberalise while holding on to the public service principles that have been fundamental in shaping the television industry. The repercussions of such a liberalising instrument in the television industry are yet to be seen. However, it looks likely that the trends over the past decade will continue: competition between the main television broadcasters will increase while the public service remit of the commercial broadcasters are further relaxed. In sum, the UK appears to be aligning its system towards the continental model of television regulation by putting in place a dual system, characterised by a clear distinction between commercial and public broadcasters.

The electronic media in the UK enjoy a great deal of independence from the Government, but independence comes with responsibility and accountability. The main free-to-air broadcasters all have obligations and guidelines to ensure that they retain standards and remain impartial and objective. The BBC is also accountable to the public through Parliament, and annually submits its accounts and an assessment of its performance to parliamentary scrutiny. Although the Board of Governors and the BBC are independent from the State, they are accountable.

The Communications Act 2003 also abolished the separate regulatory authorities for radio, television and telecommunications, replacing the sector-specific regulators with a converged regulator, the UK Office for Communications (Ofcom). The new regulator

has responsibility for the whole of the communications industries in the UK. It legally substituted the previous regulators at the end of 2003.

The spread of multichannel television has transformed the television sector. However, although the terrestrial broadcasters' market shares have reduced overall, they retain a significant share of the market and remain central to the television landscape. The main public broadcaster, the BBC, retains a strong position, as does the commercially funded public broadcaster, Channel 4. The BBC has successfully expanded into a range of new media activities and enjoys strong public support.

There is a currently a wide-ranging debate about the future of the broadcasting industry and especially the role of the BBC in the run up to the renewal of its Charter in 2006. This debate, and the liberalising nature of the Communications Act 2003, suggest that the television sector will become increasingly competitive over the next few years. This may well be at the expense of its unique model, whereby the terrestrial broadcasters as a whole are responsible, and legally required, to provide a television service that not only entertains, but also educates and informs the public across a wide range of subject areas with quality programming.

2. CONTEXT

The television sector in the UK is one of the largest in Europe and has enjoyed long periods of stability, with a detailed regulatory framework to ensure that public policy objectives have been achieved. Television remains the central medium that the public use to receive their news, information and entertainment. A recent survey reveals that 71 per cent of viewers use television as their main source of entertainment, 55 per cent as their main source of news and 58 per cent responded that television was their main source of information on history and science.¹ Generally, the stability of the UK polity and a consensus on the positive (and potentially negative) role undertaken by television in society, coupled with the key principle that broadcasting should be independent of the State, has meant that television has enjoyed a privileged position in British policy making.

There are 25,176,000 television households in the UK. According to the National Statistics Office, as of 2002 over a third of homes had a DVD player and 54 per cent of households a personal computer (PC), making the UK one of the leading countries in terms of home entertainment and PC penetration, though somewhat behind countries in Scandinavia.²

¹ Ofcom, *Ofcom Review of Public Service Television Broadcasting*, Ofcom, London, April 2004, available at http://www.ofcom.org.uk/tv/psb_review/reports/112799/psbr_pdf.pdf (accessed 15 August 2005), (hereafter, Ofcom, *Ofcom Review 2004*).

² National Statistics Office, *Living in Britain: the General Household Survey 2002*, London, 2004.

2.1 Background

Over the past 15 years the television sector has changed dramatically. The growth of multichannel television households and the increasingly competitive environment of the sector overall have acted to partly reshape the industry.

Until 1982 there were only three channels supplied by two broadcasters in the UK, the BBC and the companies that comprised the ITV network.³ Both of these broadcasters had public service obligations placed on them and this continues today, albeit in a diluted form for the ITV companies as their public service obligations have been gradually reduced.

In 1982 a fourth channel was introduced. Channel 4 was established as a non-profit public corporation with a unique remit to innovate and cater to the programme areas and groups that were neglected by the established broadcasters. It was also unique in that it was funded from commercial revenues, as a non-profit organisation – it was not until the 1990 Broadcasting Act that it began to sell its own advertising spots.⁴ Unlike the other broadcasters it was established on a publisher/broadcaster model; its original programming was to be commissioned from the independent production sector.

There is also a Welsh-language television service provided in Wales. SC4 consists of a window within the Channel 4 schedule that broadcasts 36 hours of Welsh-language programming per week, mostly in peak time with Channel 4 programming rescheduled around these programmes. Channel Five was the fifth and final terrestrial channel to be introduced under this kind of regime and it has developed an important niche in the market since its introduction in 1997.

The first major reform affecting the terrestrial broadcasters was brought about by the Broadcasting Act of 1990. This legislation changed the way that licences for the ITV franchises were allocated (an auction plus quality threshold was introduced) and also established a 25 per cent independent production quota for all UK terrestrial broadcasters. The act represented a turning point in the television industry: competition in broadcasting increased significantly, along with shifting public policy objectives that attempt to account for the changing nature of the sector. In 2003 a major overhaul of the regulatory structures of television was completed with the coming into force of the Communications Act 2003, which established the new regulatory body, Ofcom.⁵

³ Since the 1990 Broadcasting Act, the ITV network companies have been referred to in relevant legislation as Channel 3.

⁴ Broadcasting Act 1990 (c.42), Her Majesty's Stationery Office (HMSO), London, 1990, available at http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900042_en_1.htm (accessed 15 August 2005).

⁵ Communications Act 2003 (2003 Chapter 21), Her Majesty's Stationery Office (HMSO), London, 2003, available at <http://www.opsi.gov.uk/acts/acts2003/20030021.htm> (accessed 15 August 2005).

2.2 Structure of the television sector

Until the 1990s the British television system was a model of the steady evolution of public service principles, originally set down in the BBC's Royal Charter and then extended into the realms of ITV, Channel 4 and Channel Five as these channels were introduced. In this respect the system was, and still is, unique: as new broadcasters were issued with licences, each was allocated either a specific public service remit or some degree of public service obligation, regardless of how it was funded. Today the sector remains characterised by a strong publicly funded broadcaster, a group of commercial terrestrial broadcasters with public service obligations, and a public company that is funded through advertising.

There has also been very strong growth in the past decade of multichannel television services, mainly through the services of BskyB. A large number of households also subscribe to digital television services. The development of digital terrestrial television since the introduction of Freeview (see section 8) has also shown strong growth as an alternative to satellite television.

The radio sector has also witnessed similar trends. Growing competition and liberalisation have increased the number of radio stations over the past decade. At the same time, the BBC's radio services enjoy a strong market share and although the BBC's stations have undergone restructuring over the past decade they remain very successful. The commercial radio sector has also burgeoned, and seven major groups provide regional and national radio services.

2.3 Market shares of the main players

The contemporary television sector is characterised by the growth of multichannel television and a declining audience share for the ITV network companies and the general entertainment channel of the BBC, BBC1. Since 1981, as Table 1 illustrates, there has been a steady decline in the audience share of the two largest broadcasters and a notable increase in the "others" category, which are mainly satellite and digital terrestrial television services.

Table 1. Audience share – breakdown by channel (1981–2004)

Channel	Audience share (per cent)						
	1981	1986	1991	1996	2001	2003	2004
BBC1	39	37	34	33.5	26.9	25.6	24.7
BBC2	12	11	10	11.5	11.1	10.9	10.0
ITV	49	44	42	35.1	26.7	23.7	22.8
Channel 4	–	8	10	10.7	10	9.7	9.7
Channel Five	–	–	–	–	5	6.3	6.6
Others	–	–	4	9.2	20.3	23.6	26.2

Source: BARB⁶

Although this decline is inevitable, as viewers gain access to a greater number of channels, it is important to put the changes into context. The free-to-air generalist channels remain central to the television environment – the five channels combined are watched by nearly 74 per cent of the audience. Audience behaviour in multichannel television homes shows a decline in the viewing time of the main channels, but even there an impressive 57 per cent of viewing time is spent watching the free-to-air channels, and 85 per cent of these viewers still watch some programming on one of the main channels daily.

Competition among broadcasters has grown over the past decade, as has the number of niche channels, and what was once a highly consensual system developing out of the BBC/ITV duopoly has become far more competitive overall. With two public corporations (BBC and Channel 4) and two main private operators (the ITV network companies and Channel Five), the television sector has achieved a balance between public and private, although there is competition for revenues between Channel 4 and the private companies. The legal status and main funding sources of the channels is as follows:

Table 2. Legal status of the terrestrial broadcasters

Broadcaster	Status	Primary funding
BBC	Public Corporation	Licence fee
ITV	Commercial	Advertising
Channel 4	Public Corporation	Advertising
Channel Five	Commercial	Advertising

⁶ Information from the BARB (British Broadcasters' Audience Research Board Ltd.) website, available at <http://www.barb.co.uk> (accessed 24 August 2005).

The radio sector is highly competitive and, as a result of its regional structure, horizontal expansion and integration have caused a number of leading groups to consolidate in order to control a significant position. It is structured regionally and there are only three commercial UK national analogue radio stations: Talk Radio, Virgin Radio and Classic FM. The BBC enjoys an extremely strong position; it operates five national licences and 43 regional stations, and enjoys 53 per cent of listener share.

The listener share of the commercial radio market is carved up between seven groups, which together enjoy 86 per cent of the audience share for commercial radio (see Table 3). Of these groups GWR and Capital are the most prominent. Capital focuses on the regional centres such as Birmingham and Manchester, whilst GWR holds a national licence and a range of regional stations. These seven groups also collectively enjoy 99 per cent of all commercial revenues, with the largest two groups, Capital and GWR, accounting for 47 per cent.

Table 3. Listener share of the major radio groups (2003)

Radio group	Listener share (per cent)
BBC	53.0
GWR	12.0
Capital	7.4
EMAP	5.9
Chrysalis	5.1
SRH	3.4
Wireless	3.2
Virgin	1.7
Other commercial	6.2
Other	2.0
Total	99.9

Source: Radio Advertising Bureau 2004 and Rajar data

3. GENERAL BROADCASTING REGULATION AND STRUCTURES

The regulatory structures for radio and television in the UK have recently undergone a radical overhaul with the introduction of Ofcom. The changes in the structure of the regulators, however, have not meant that the culture of television regulation has changed in terms of the relationship between Government and the regulators; the “arm’s length” approach that is fundamental to the UK system has been retained.⁷ Ofcom is accountable to Parliament, but its activities are independent of the State. The BBC is regulated by a Board of Governors who are responsible for ensuring that the BBC fulfils its public service obligations. The Board is also independent from the State; although the BBC is accountable to both the Government and Parliament, these institutions cannot overturn the Board’s decisions.

3.1 Ofcom

The new communications regulator, Ofcom, started operating at the end of 2003 when it replaced all of the regulatory authorities responsible for broadcasting and telecommunications. As far as radio and television are concerned, this means that the regulators formerly responsible for commercial television – the Independent Television Commission (ITC), the Broadcasting Standards Commission (BSC) and the Radio Authority – have merged into one organisation that is responsible for all the communications industries in the UK including radio spectrum and telecommunications.

Ofcom also has a limited role in the regulation of the BBC under the new system based on tiers. Ofcom inherited this system, with the coming into force of the Communications Act 2003, from the BSC (responsible for ensuring broadcasters complied with taste and decency standards) and the Office of Fair Trading (responsible for assessing the BBC’s compliance with the independent production quota). Like its predecessors, Ofcom operates at arm’s length from the Government of the day and is independent of the State. Ofcom is, however, accountable to Parliament through parliamentary committees.

3.1.1 The Ofcom Board – composition and structure

In order to fulfil the tasks that Ofcom has been established to undertake, a complex structure has been built around a board, which resembles that of a commercial company. The Ofcom Board comprises two executive members, the Chief Executive of Ofcom, and six non-executive members, including a Chairman. The non-executive

⁷ “Arm’s length” is the term commonly used to characterise the proper co-operative and respectful relationship between government, industry and the regulators, with particular emphasis on the independence of regulators from political and commercial interests.

members must make up the majority. The Chairman and the non-executive members are appointed by ministers under the so-called “Nolan principles” established by a Committee on Standards in Public Life and laid down in a code set out by the Office of the Commissioner for Public Appointments.⁸ According to the Nolan rules, public life should be governed by seven principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The rules state that a process of openness and transparency should govern public appointments.

The Secretary of State for Culture, Media and Sport and the Secretary of State for Trade and Industry appoint the Chairman of the Ofcom Board for a period of five years. Ministers also appoint other non-executive members to the Board with the Chairman having an input to the appointments. The Chief Executive Officer is appointed by the Board to run Ofcom and sit on the Board.

3.1.2 Other Ofcom boards

Ofcom also has a number of other boards, whose work feeds into the main Board. The two most significant of these independent boards are the Content Board and the Consumer Panel, but there is also an Advisory Committee on Older and Disabled People and separate Advisory Committees for the Nations, whose members are appointed by the main Ofcom Board after the posts are publicly advertised. There are also plans for a Regulatory Assessment Committee.

Content Board

The Content Board is established as a sub-committee that is responsible for content issues in the radio and television sectors. Composed of 11 non-executives and two executives, it acts in an advisory capacity to the main Board and is independent of Ofcom. The Ofcom Board appoints all members of the Content Board, with four members appointed from the regions. The Deputy Chairman of the Ofcom Board chairs it. It is charged with understanding and furthering the interests of the public in the areas covered by the regulatory tiers (described in Table 4 below). It has a responsibility to make recommendations and give advice to the main Ofcom Board and provide an annual report covering its activities.

Consumer Panel

The Consumer Panel also operates independently of Ofcom and its remit complements the Content Board, in that it is responsible for “understanding consumer issues and concerns related to the communications sector”, which excludes content issues that are covered by the Content Board. These issues cover a range of interests including rural

⁸ Further information on the “Nolan principles” is available at http://www.bbc.co.uk/foi/docs/governance_of_the_bbc/board_of_governors/Standing_Orders.htm and http://www.public-standards.gov.uk/about_us/seven_principles.htm (both accessed 24 August 2005).

communities, people with disabilities and disadvantaged groups. There are 11 members of the Panel, who are appointed by Ofcom. The Panel has a Chairman and Vice-Chairman and has an independent secretariat. The panel is constituted from a diverse range of members representing both the regions of the UK and a variety of communities covering the interest groups listed above. The Panel's primary role is to advise Ofcom on consumer issues.

Advisory Committees for the Nations

There are also Regional Advisory Committees representing Scotland, Wales, Northern Ireland and the regions of England. The committees are composed of a range of members (11 in England, eight in Scotland, nine in Wales) and they have an advisory role to the Ofcom Board as well as the Consumer Panel and the Content Board. Ofcom appoints the members.

3.1.3 Ofcom's remit

Ofcom has a broad remit covering the whole of the communications industries, from spectrum management to media ownership, and content matters in the sectors that it is charged with regulating. The Communications Act 2003 sets out Ofcom's "principal duty" to "further the interests of citizens in relation to communications matters" and "further the interests of consumers in relevant markets, where appropriate by promoting competition".⁹ In accordance with the provisions of the act, Ofcom should ensure that its main regulatory duties are based on the principles of accountability, transparency and proportionality in its application of regulatory instruments.

Ofcom's wide-ranging powers include nearly all aspects of television regulation, including content and quotas established under the terms of the contracts that the broadcasters have under their public service remits and European regulation. It is also responsible for promoting competition, encouraging investment in UK television, protecting minors, promoting media literacy, and ensuring a healthy public service broadcasting system.

Cable and satellite regulation is characterised by a "light touch" approach.¹⁰ Satellite and cable operators – this includes operators who serve the UK public, and satellite operators based in the UK and transmitting to third countries outside the EU – do not have any positive regulatory requirements, but are still regulated on taste and impartiality grounds. The ITC/Ofcom has issued around 600 licences to commercial broadcasters and many of these target overseas audiences.

⁹ Communications Act 2003, section 3(1).

¹⁰ The concept of "light touch" regulation was developed in the build up to the Broadcasting Act 1990, in order to characterise the shifting role of the regulator that was marked by the replacement of the Independent Broadcasting Authority (IBA) with the Independent Television Commission (ITC). The concept refers to a loosening of detailed regulatory requirements to allow the industry greater flexibility.

Its regulatory principles are founded on a tiered system that is based on degrees of public regulation, co-regulation and self-regulation (see Table 4). Tiers 1 and 2 apply to all broadcasters including the BBC, while tier 3 is a system of co-regulation for the commercially funded terrestrial broadcasters.

Table 4. Ofcom's regulatory tiers

Tiers	Regulatory areas
1	These requirements apply to all broadcasters in the UK and relate to programming and advertising standards and impartiality. This tier deals with programme complaints from viewers and listeners and taste and decency issues.
2	Relates to quantitative obligations including production quotas, regional, original production quotas, and 25 per cent of original programming from independent producers, News and Current Affairs and educational programming.
3	Is built on a system of self-regulation and includes issues ranging from the fulfilment of programme promises made by broadcasters annually and certain obligations to produce an annual report.

Source: Communications Act 2003, Ofcom information.

The Communications Act 2003 provides a general definition of public service broadcasting (covering all generalist terrestrial channels),¹¹ and in light of this definition requires Ofcom to conduct a review every five years to assess whether public service broadcasters in the UK, taken as a whole, provide:

- a wide range of programming for viewers covering the interests and needs of different communities;
- a balanced and impartial programme service;
- high general standards and quality programming.

The requirement to provide a public service is applied differently to each broadcaster; there are degrees of public service obligations, with the BBC having the most responsibility as the main public broadcaster, followed by Channel 4. ITV and Channel Five have fewer obligations, covering regional productions and minimum programme requirements that include current affairs and news.

3.2 Licensing

Ofcom issues licences for all frequencies to commercial broadcasters. After the changes brought about by the Broadcasting Act 1990, the licences for the ITV franchises were issued on the basis of a sealed cash bid plus an assessment of the quality of the services

¹¹ Communications Act 2003, section 264.

proposed by the competing operators. The licences run on three different timescales, with the current licences in force until 2008 and 2011. Ofcom is reviewing the system to simplify it, especially in light of the merger in February 2004 between Carlton and Granada, which left the new company, ITV plc, controlling the majority of franchises (see below). Both the BBC and Channel 4 receive frequencies at no cost in return for their public service obligations.

As part of its wide review of the industry, Ofcom has undertaken a review of spectrum usage. This includes an assessment of the financial terms agreed with the commercial broadcasters and of the licence fees they pay for access to the spectrum. ITV currently pays approximately €300 million annually for its licence and it argues that its public service broadcasting commitments cost another €375 million on top of this amount.¹² It is widely expected that spectrum charges will be reduced to take account of the growth of multichannel television and ITV's loss of income over the past decade, as viewers turn to digital television services. One estimate by business analysts suggests that the reduction might be as much as 40 per cent.¹³

Channel Five currently pays a considerably lower fee of €36.6 million per year, as was agreed when its original licence was issued in October 1995 by competitive tender. This licence is valid for a period of ten years from the date when the service commenced broadcasting, in 1997. There are no levies on cable or satellite operators.

Ofcom also licenses satellite operators and all bodies that provide a satellite service, whether transmitted from the UK for national reception or transmitted from outside the UK, but managed editorially from the UK. This includes services that are uplinked from the UK but intended for audiences abroad, if the said service is receivable in the UK. Certain entities are disqualified from operating a satellite service, including local authorities, political bodies, advertising agencies and religious bodies.

At the start of 2004 Ofcom introduced spectrum trading for a limited amount of frequencies under a system of co-regulation. As a result, companies will be allowed to trade spectrum, but will be required to refer the transaction to Ofcom for agreement. The system has not been extended to television, though this is envisaged at some future point in time. During the first phase trading will be limited to public mobile operators, private business radio and fixed wireless access.¹⁴

¹² All exchange rates were calculated as of May 2004 (approximately €1 = £0.67).

¹³ D. O'Connell, "Regulators may cut ITV's licence fees by 40%", in *The Times*, 27 June 2004. <http://business.timesonline.co.uk/article/0,,9071-1161094,00.html> (accessed 15 August 2005).

¹⁴ Ofcom, *Trading Guidance Notes: A Practical Guide to Spectrum Trading*, Doc No. OfW224, Ofcom, London, 2004, available at <http://www.ofcom.org.uk/radiocomms/ifi/trading/tradingguide/tradingguidancenotes.pdf> (accessed 15 August 2005).

3.3 Enforcement measures

Although the third tier is in essence self-regulatory, Ofcom may invoke its co-regulatory powers if a broadcaster is adjudged to have failed to fulfil or contribute to its public service remit, and there are no economic or market conditions to explain the failure. In such a case, Ofcom reserves the right to draw up and implement a detailed set of rules and standards. In the event that Ofcom introduces rules and standards at a later date, these can also be revoked at its discretion.

Ofcom may also impose penalties on broadcasters that fail to comply with the requirements of their obligations. In the case of the BBC, Ofcom may impose a maximum fine of €372,334. A range of options is available to Ofcom if the terrestrial commercial companies fail to comply with their remits and obligations. It can fine the licensee a sum of up to five per cent of the qualifying revenue of its last accounting period. In an extreme case, Ofcom is able to revoke the licence of the offending broadcaster and fine the operator a sum of up to €744,668.

3.4 Broadcasting independence

Unlike its European neighbours the UK does not have a written constitution. Whereas in republican constitutions, such as that of France, the rights to the independence of the media are set out clearly, in the UK a less formalised system has developed. Britain has ratified both the European Convention on Human Rights¹⁵ (ECHR), whose Article 10 protects freedom of expression, and the International Covenant on Civil and Political Rights¹⁶ (CCPR), whose Article 19 protects freedom of expression in terms very similar to those of Article 10 of the Convention. Although Britain ratified the Convention in 1951, it was only in 1998, with the introduction of the Human Rights Act 1998,¹⁷ that the provisions of the Convention were fully set out in British Law.¹⁸ In terms of freedom of speech, the full provisions of Article 10 of the Convention set out the right to freedom of speech in the UK.

¹⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953, E.T.S. 005.

¹⁶ International Covenant on Civil and Political Rights (CCPR), 23 March 1976, 999 U.N.T.S. 171.

¹⁷ Human Rights Act 1998 (c. 42), Her Majesty's Stationery Office (HMSO), London, 2002, available at <http://www.opsi.gov.uk/acts/acts1998/19980042.htm> (accessed 15 August 2005).

¹⁸ Although the European Court of Human Rights had already affirmed the provisions of Article 10 and its application to British-based media. See: E. Pertzidou and D. Ward, "Libertad de expresión y libertad de medios: es la concentración de prensa compatible con la Convención Europea sobre los Derechos Humanos? Estudio en la prensa alemana y británica", ("Freedom of expression and media freedom: is the concentration of the press compatible with the European Convention on Human Rights"), in *Libro Blanco de la prensa diaria: estudios sobre los medios de prensa escrita desde las ópticas empresariales, tecnológicas, legales, éticas y de contenidos*, (The *Libro Blanco* daily: studies on the tools of the written media, from the economic, technological, legal, ethical and content perspectives.), AEDE Press, Madrid, 2002. pp. 375–392.

The absence of a constitution has not meant that freedom of speech and the freedom of the media from the State have not been important factors in British political history. At first glance, the UK system looks as if the State is highly involved in the media – and this is true in terms of regulation, the election of regulatory boards, accountability and the overall public policy that shapes the media. However, the main principle underpinning the relationship between State and broadcast media is one of “arm’s length”. While Government and Parliament have a central role in developing public policy objectives and ensuring that they are met and that public institutions are accountable for their activities, they have no role in the management or editorial affairs of broadcasters.

Independence for broadcasters is very much part of the political culture of the UK, rather than being set out in a legal instrument that protects the broadcasters from interference by the State. Although the State retains the right to censor broadcasters when national security is threatened, this has seldom occurred. Only six times in the history of broadcasting has the Government used its legal right to attempt to introduce censorship measures.

The most recent occasion was in 1988 when Douglas Hurd, the Home Secretary, invoked executive powers under the Broadcasting Act 1981 section 29(3) and the BBC’s Licence and Agreement clause 13(4) (under the present agreement it is clauses 8(1) and 8(2)). The power under the licence allows the Secretary of State to compel the BBC to broadcast or refrain from broadcasting material. Previously this power had been used twice in 1927, twice in 1955, and once in 1964. The first two prohibitions barred the BBC from stating its own opinion as an organisation and avoiding controversy (the first of these still stands to this day), the second occasion in 1955 dealt with party political broadcasts and an upcoming debate in Parliament (both withdrawn), and the 1964 intervention banned broadcasters from using subliminal techniques.

In 1988, as part of its fight against militant Irish republicans, the Government introduced what became known as the “Broadcasting Ban”. It was very wide in scope and sought to banish not only members of armed groups such as the IRA from the airwaves, but also those associated with them, including the representatives and supporters of legal political parties. The clumsy wording of the order allowed broadcasters to sidestep the ban by dubbing over the voices of such people – a reflection on the resistance that greets any Government pressure to censor broadcasting. The ban ended in January 1994, and in September of that year the IRA agreed a ceasefire with the British Government.

There is an all-party consensus on the need for all broadcasters and regulators to be independent of political parties and State organisations. In this respect, UK broadcasters operate in a sphere whereby the programme guidelines ensure objectivity and independent journalism, that guarantees broadcasters are editorially independent from external forces and the State alike. Independence is therefore a key concept underpinning the system. The fact that only six times in the history of broadcasting has the State

attempted to invoke the powers granted to it in the Royal Charter and Agreement to impose prohibitive measures on broadcasters is testimony that the system works.

4. REGULATION AND MANAGEMENT OF PUBLIC SERVICE BROADCASTING

4.1 The public broadcasting system

The legal status of the BBC is established by a Royal Charter, granted by the Queen on the advice of the Government and renewable every ten years.¹⁹ Each renewal is accompanied by an Agreement between the Government and the BBC. Together, the Charter and Agreement set out the BBC's structure, activities and obligations as a public service broadcaster, recognising its editorial independence and requiring it to produce and transmit a range of quality programmes that seek to inform, educate and entertain.

The BBC is the main public service broadcaster in the UK and the only broadcaster that receives public revenues. However, the UK system of public service broadcasting is unique in that it includes all the terrestrial free-to-air broadcasters, which have public service obligations as part of their contracts.

4.2 Services

The Royal Charter for the BBC states that the Governors should set and monitor a set of "clear objectives and promises for the Corporation's services, programmes and other activities and monitor how far the Corporation has attained such objectives and met its pledges to its audiences".²⁰ In terms of the services that the BBC should provide, the Charter states that the objectives of the Corporation are,

To provide, as public services, sound and television broadcasting services (whether by analogue or digital means) and to provide sound and television programmes of information, education and entertainment for general reception in Our United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man and the territorial waters thereof, and on board ships and aircraft (such services being hereinafter referred to as "the Home Services") and for reception elsewhere within the Commonwealth and in other countries and places overseas (such services being hereinafter referred

¹⁹ Department of National Heritage, *Copy of Royal Charter for the Continuance of the British Broadcasting Corporation*, Her Majesty's Stationery Office (HMSO), London, 1996, available at <http://www.bbc.co.uk/info/policies/charter/pdf/charter.pdf> (accessed 15 August 2005), (hereafter, BBC Charter).

²⁰ BBC Charter, section 7(1)(a).

to as “the World Service”) the Home Services and the World Service together being hereinafter referred to as “the Public Services”.²¹

The Charter’s rather abstract definition of public service in broadcasting – essentially to entertain, inform and educate – has been both an advantage and a drawback for the BBC. It has provided the Corporation with a wide-ranging remit for its activities, enabling it to adjust over time to cultural, industrial and technological changes with a great deal of success. On the other hand, in recent years it has opened the BBC up to criticism that its remit is too flexible and, as a result, the philosophical principles around which the Corporation has evolved, under the direction of the Board of Governors, remains too loose.²²

4.3 Funding of the BBC

The BBC is funded through a licence fee, which is supplemented with a marginal amount of income from commercial sources. The licence fee ensures a consistent level of funding, necessary for the BBC to provide a wide range of programming and services. In 2002/2003 the total revenues from the licence fee enjoyed by the BBC were €3,959 million, and this sum was complemented with €252.74 million from commercial and other sources of revenue. The BBC’s total revenues make it the sixth largest media enterprise in Europe according to company turnover, and the second largest public broadcaster after ARD in Germany.²³

The Government sets the level of the licence fee. The current fee for a colour television household is €180.21, as of April 2004, a fee of a little under €16.40 per month in line with the current Agreement with the BBC. The level of the licence fee is linked to the Retail Price Index²⁴ (RPI) – according to the agreement between the Government and the BBC, it is set at 1.5 per cent above the rate of inflation as measured by the RPI. Under the current Agreement, the BBC has also been obliged to undertake cost savings and develop additional revenues throughout the present funding agreement (January 2000 to July 2006) of €1.64 billion. There are concessions to the full rate of the licence fee of 50 per cent for blind people, and the 75 and above age group are granted a waiver. In 2003, the BBC received €543.61 million from the Department for Work and Pensions (DWP) to cover the costs of these groups of viewers.

²¹ BBC Charter, section 3(a).

²² ITV, “Memorandum submitted by ITV”, *Select Committee on Culture, Media and Sport Written Evidence*, Her Majesty’s Stationery Office (HMSO), London, 2004, available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmcomeds/598/598we03.htm> (accessed 15 August 2005).

²³ D. Ward, *Media Concentration and Ownership in Ten European Countries: A Mapping Study*, Commissariaat voor de Media, Hilversum, Netherlands, CvdM, 2004, (hereafter, Ward, *Media Concentration and Ownership*).

²⁴ The Retail Price Index is the method used by the Government to measure inflation and is based on a system that monitors fluctuation of high street prices of a range of products.

In the recent Charter renewal debate and at the launch of the BBC's contribution to the review, the new Chairman of the Board of Governors, Michael Grade, has suggested that the independence of the licence fee should be guaranteed by removing the assessment of the level of the fee to an independent body. The inspiration behind this idea, he said, was the success of the Bank of England's Monetary Committee in setting the interest rates independently of the Government. Seeing the setting of the level of the licence fee as the final challenge in achieving a completely independent BBC, Grade argued that, "depoliticising the licence fee settlements could be the final underpinning of the BBC's independence."²⁵ Whether this will be seriously considered is questionable and Grade well may have raised the issue as a strategic move to ensure that the BBC's contribution to the Charter renewal debate covers a wider set of issues rather than its own internal accountability structures. If it were to be accepted, however, it would be a major innovation.

4.3.1 BBC commercial revenues

The BBC also receives revenues from commercial activities that feed into the core activities of the Corporation (the range of these activities is summarised below). These revenues have been growing in recent years and although they remain a small percentage of the BBC's overall revenues, they represent an important source of complementary finance.

Since 1923, the BBC has operated a small range of commercial services, such as publishing the *Radio Times* listings magazine. However, the renewal of its Charter in 1996 reflected a changing approach to the BBC by the Government (which at that time was a Conservative one led by Prime Minister John Major), and a desire to supplement the licence fee with commercial activities, rather than simply fund the BBC by raising the licence fee. The Davies Committee report into *The Future Funding of the BBC* supported this move in 1999 under the "New Labour" Government of Prime Minister Tony Blair. Although the report favoured a rise in the licence fee to support digital services, it recommended that the BBC's primary funding for extra services should be generated from a combination of cost-savings and increased commercial revenues. It argued that,

The BBC should seek to accelerate the growth of its commercial services, which need not conflict with its role as a public service broadcaster, provided that new measures are introduced to ensure that the fair trading commitment is enforced strictly and with full transparency.²⁶

²⁵ Michael Grade, cited in: M. Wells, "Free TV from politics", in *The Guardian*, London, 30 June 2004, available at <http://media.guardian.co.uk/site/story/0,14173,1250203,00.html> (accessed 4 August 2005).

²⁶ Department for Culture, Media and Sport (DCMS), *The Future Funding of the BBC. Report of the Independent Review Panel* ("Davies Report"), DCMS, London, 1999, p. 6.

The BBC has established a commercial arm operated by two subsidiaries, BBC Worldwide Ltd. and BBC Resources Ltd. These subsidiaries have separate Boards and provide separate accounts and annual reports. The commercial services include a number of thematic channels: the global news channel BBC World, BBC Prime (entertainment) and BBC America (drama, news and entertainment). In addition to these channels, the BBC, in cooperation with Flextech, has established four primary channels (which are on the second tier subscriber category). These channels include UK Gold (comedy), UK Horizons (documentary), UK Style (cooking and gardening reruns) and UK Play. The BBC has a 50 per cent stake in these channels. The commercial arm includes distribution, as well as magazine and technology companies that all operate as subsidiaries. Today the BBC derives commercial revenues from the channels, the rental of studios, as well as the sale of programmes. It is the largest exporter of television programmes in Europe.

Table 5. Additional sources of revenues collected by the BBC

Source	Amount (€ million)
BBC commercial businesses	218.69
Open University	0.15
Others	33.62
Total	252.46

Source: DCMS

However, commercial activities must meet certain criteria and essentially meet with, and be supportive of, the BBC's activities as a public service broadcaster. In order to comply with the European Union's Transparency Directive and national competition policy rules, the BBC is obliged to maintain separate and transparent accounting systems for its public and commercial activities, to ensure that it does not distort competition by using the licence fee to cross-subsidise its commercial services.²⁷ The BBC has developed a set of guidelines for its commercial activities to ensure that they comply with competition law requirements. The Executive Board of the BBC also reports four times a year to the BBC's Fair Trading Compliance Committee, which in turn reports to the Board of Governors and reviews and monitors the compliance of the BBC with its commitment to fair trading and transparency. A list of complaints about fair competition received by the BBC is also made available to the public.

These mechanisms have not deflected criticism of the BBC's commercial growth, especially from commercial operators who have focused on both its new digital channels and commercial services. This has been directed both at the European level,

²⁷ European Commission, Directive 80/723/EEC on the Transparency of Financial Relations between Member States and Public Undertakings ("Transparency Directive"), COM (80)723 final, Brussels, 1980.

with complaints lodged to the European Commission's Competition Directorate against the unfair use of State aid and, more vociferously, at the national level. The cases adjudged by the European Commission concerned the BBC's digital channels and News 24; the Commission rejected the claims by BSkyB that these distorted competition beyond the services of general economic interest qualification (and therefore acceptable use of State aid).

The BBC's commercial activities must be within certain standards set out in its guidelines on fair trading. Commercial activities are therefore governed by three main principles:

- the activity must reflect the same values and editorial quality as those of the public activities;
- there should be transparency in all commercial activities and these activities should be at arm's length from the public activities and fairly priced;
- the commercial activities should not present a risk to the licence fee revenues collected by the BBC.

The BBC's Fair Trading Commitment was independently reviewed in 2001 on behalf of the Department for Culture, Media and Sport (DCMS). The report concluded that the commitments were satisfactory to ensure that the BBC's commercial activities did not lead to unfair competitive practices.

The Fair Trading Commitment and the Guidelines are appropriate to ensure that the BBC does not distort competition in commercial markets. I am aware that this conclusion will disappoint some interested third parties, who have serious concerns about various aspects of the BBC's commercial behaviour. However, for the purpose of this review, the relevant question must be whether any conduct complained about was anti-competitive and yet of a kind condoned, or at least prohibited, by the BBC's Fair Trading Commitment or the Guidelines. If this were to be the case, it would be appropriate to question these instruments. My view is that they do adequately address the fair trading issues that are relevant to the BBC.²⁸

However, the report was limited to a review of the guidelines. It did not investigate the actual practices of the BBC, and therefore no assessment was made of whether the BBC's system of transparency and separation is adequate. In this respect the BBC is still frequently criticised by commercial broadcasters, and the report has done little to silence the critics who argue that the BBC's commercial services distort the market and are unnecessary as the private sector already provide these services.

²⁸ R. Whish, *Review of the BBC's Fair Trading Commitment and Commercial Policy Guidelines. Independent Review on behalf of the Department for Culture, Media and Sport*, DCMS, London, 2001, p. 5, available at <http://www.culture.gov.uk> (accessed 15 August 2005).

4.3.2 Auditing BBC revenues

Despite common perceptions to the contrary, the BBC is rigorously and independently audited each year to assess its spending activities. Prior to the Communications Act 2003, the parliamentary watchdog, the National Audit Office (NAO), was responsible for assessing a limited number of BBC activities, including the collection of the licence fee and the spending of the BBC World Service. The BBC was exempted from being fully audited by the NAO on grounds that this would potentially threaten its independence. However, the role of the NAO has been extended under the Communications Act 2003 and now includes an assessment of all the BBC's activities.

4.4 BBC governance structure

Despite the overhaul of broadcasting regulation and the creation of Ofcom, the BBC has, at this time of writing, retained its traditional self-regulatory structure. A Board of Governors is charged with ensuring that the BBC maintains, in its radio and television activities, a set of practices in compliance with the Royal Charter and Agreement.

4.4.1 The Board of Governors

The Board of Governors has a dual role as both strategic directors of the BBC as well as its regulator. This is a sometimes contradictory role, frequently criticised by those who see the Board as too close to BBC management to regulate the activities of the Corporation independently.

4.4.2 Composition

The Board consists of 12 governors, including a Chairman, Vice Chairman and three governors for Wales, Scotland and Northern Ireland, who are responsible for ensuring that the public interest, in terms of programming, services and activities is served. The regional governors also chair the National Broadcasting Councils in their respective regions, with each council consisting of between eight and 12 governors. These councils are supplemented with ten regional councils representing areas in England.

4.4.3 Appointments

The appointments to the Board are made by the Secretary of State for Culture, Media and Sport and are directed by the Chairman of the Board. The appointment of the Chairman follows the Nolan principles and includes an independent assessor to ensure compliance. For the most recent appointment – to replace the Chairman who resigned following the Hutton Inquiry (see below) – a scrutiny panel was established consisting of Privy Councillors from the main political parties, who have no influence on the

appointment itself but sit on the panel to ensure that the selection process remains fair and transparent.²⁹

4.4.4 Responsibilities

Under the Royal Charter, the Board of Governors approves the objectives and commitments of the Corporation, and monitors them and ensures that they are achieved. In this respect it both acts as strategic director in granting approval of the management board’s strategies and budgets, and assesses the BBC’s performance against its programming promises and commitments. The Board of Governors is theoretically independent from the general management of the BBC and is responsible for selecting a Director General who heads managerial affairs. This appointment is not subject to Government approval.

Table 6. Division of responsibilities of the BBC

Executive Committee	Board of Governors
Responsible for management	Guaranteeing the public interest
Proposing key objectives	Setting key objectives
Developing strategy and policy in light of the set objectives	Approving strategy and policy
Operating all services within the strategic and policy framework	Monitoring performance and compliance, and reporting on both in the Annual Report
	Ensuring public accountability
	Appointing the Director General and, with him or her, other Executive Committee members, and determining their remuneration

Source: BBC³⁰

The Board of Governors reviews the performance of the BBC annually against the previous year’s set objectives. Subsequently, the annual report is presented to Parliament for Members to scrutinise before the Chairman of the Board of Governors formally presents it and receives questions and comments on it. The annual report is also reviewed by the Culture, Media and Sport Select Committee in the House of Commons, whose members can question relevant Governors, the Director General and senior executives of the BBC. The Governors’ judgements on the BBC’s performance cannot, however, be overruled by any of these actors.

²⁹ “Her Majesty’s Most Honourable Privy Council” is a largely ceremonial body of personal advisers to the Queen, as the head of State of the UK.

³⁰ BBC, *BBC Governance in the Ofcom Age*, BBC, London, 2002.

There is also an Executive Committee, which consists of the Director General and ten other members, who hold a variety of internal responsibilities in respect of the general running of the BBC, and are responsible for the management of the Corporation.

4.5 BBC programme framework

At the start of every financial year the BBC Governors set out the Corporation's objectives for the coming year together with programme commitments. Each year sees a different set of objectives; in the past, these have included providing high quality programmes or content, upholding the BBC's editorial values and offering a distinctive mix of programming or content (2000 objectives); and extending the range of quality programmes, especially culture and arts, engaging younger audiences, and minority groups, to providing better value for money (2003/2004 objectives). The framework that the BBC has developed to assess its own performance, and therefore its compliance with the Charter, encompasses both qualitative and quantitative measures. These measures cover a number of what the BBC calls Key Performance Indicators that are employed to aid the assessment and evaluation of the BBC's overall performance. They include:³¹

- breaking new ground in format, subject matter and talent;
- leading viewers and listeners from accessible to more challenging programming;
- reports on individual services by independent Advice Panels;
- views at public meetings;
- a range of genres in peak time and across the day;
- a range of communities, regions and nations served and reflected in programming and content;
- the provision of genres or programme formats which the commercial sector ignores or marginalizes.

These general tools employed to monitor the BBC's performance as a whole include a set of wider measures that the BBC utilises to ensure that its service meets the needs and interests of the British audience. This includes public consultation to inform the BBC of the audience's priorities and needs, as well as to help it judge the degree to which it is fulfilling its public service mission in general.

³¹ Simon Milner, Secretary to the BBC, 2000, cited in: E. Machet, E. Pertzididou and D. Ward, *A Comparative Analysis of Television Programming Regulation in Seven European Countries: A Benchmark Study*. Hilversum, Netherlands, NOS, 2002.

In its contribution to the current Charter renewal debate,³² the BBC has proposed to strengthen these instruments and increase the effectiveness of the assessment tools employed in its annual review, ultimately making itself more publicly accountable. To this end it has highlighted a number of key components in its methodological toolkit. The main principles underpinning the system are “reach, quality, impact and value for money”. These will be combined under the banner of what the BBC calls “public value” to provide a system of assessment which would allow the BBC to account fully for its performance and, crucially, for its relationship with the public.

- *Reach* refers to the range of people watching BBC programmes in terms of the variety of different interest groups and members of the public catered for in its programming.
- *Quality* is the range and distinctiveness of high quality programming.
- *Impact* refers to wider indicators of programming value to society, including the use of BBC programmes in schools and the awards collected by individual programmes.
- *Value for money* is understood to denote how the audience perceives the BBC’s spending and investment of the licence fee and commercial revenues.

Thresholds are not set for the percentage of genres to be broadcast on the BBC’s television services; the management board is responsible for ensuring that the schedule contains a mixed range of programmes. However, the Board of Governors must agree to accept the detailed budget submitted by the management, which includes a detailed account of revenues allocated to specific genres.

³² BBC, *Building public value: Renewing the BBC for a digital world*, BBC, London, 2004, available at http://www.bbc.co.uk/thefuture/text/bbc_bpv_complete.html (accessed 15 August 2005), (hereafter, BBC, *Building public value*).

Table 7(a) BBC Network output – breakdown by genre (2003/2004) (Part 1)

Genre	Output line			
	On all platforms		On digital platforms only	
	BBC1	BBC2	BBC3/BBC Choice	BBC4
Factual and learning	1,686	1,293	876	774
Education for children	–	664	–	–
News and weather	2,571	516	369	126
Current affairs	134	311	109	163
Entertainment	650	872	1,155	107
Sport	496	863	64	–
Children's	777	1,261	–	–
Drama	923	328	239	167
Music and arts	66	289	168	1,213
Film	911	818	172	254
Religion	87	37	13	30
Open University	–	455	–	5
BBC Learning Zone	–	577	–	–
Continuity	253	292	116	71
Total network	8,554	8,576	3,282	2,910

Source: BBC³³**Table 7(b) BBC Network output – breakdown by genre (2003/2004) (Part 2)**

Genre	Output (hours) – on digital platforms only			
	The CBBC Channel	CBeebies	BBC News 24	BBC Parliament
Education for children	637	182	–	–
News and weather	–	–	8,711	8,290
Children's	3,423	4,043	–	–
Continuity	294	492	73	14
Total network	4,354	4,717	8,784	8,304

Source: BBC³⁴

³³ BBC, *Annual Report 2003–2004*, p. 140, available at http://www.bbcgovernors.co.uk/annreport/broad_facts_figures.pdf (accessed 24 August 2005), (hereafter, BBC, *Annual Report 2003–2004*).

³⁴ BBC, *Annual report 2003–2004*, p. 140.

4.6 BBC editorial standards

The BBC has an extensive set of programme guidelines that apply to radio, television and online services. All activities must adhere to a set of principles governed by impartiality, accuracy, fairness and accurate and fair representation of all social groups and individuals. These principles should underpin all programme-making at the BBC, including both public and commercial services. Any programmes that might be perceived to stray outside the above principles, or approach a subject of controversy should be referred to the Controller of Editorial Policy and other senior management members, for an assessment of their compliance. There are also special subject areas where a mandatory referral process is employed, including areas covering national security, gaining information through surreptitious recording and interviews with serious criminal elements.

“Due impartiality” is a key concept for the BBC’s editorial policy. It underpins a programming culture that is governed by accuracy, fairness and a respect for the truth. Due impartiality does not have to be restricted to one programme and can be extended throughout a series of programmes that look at a specific issue. However, all individual programmes that are not part of a series of programmes dealing with a specific issue should retain due impartiality. The notion of impartiality employed in UK broadcasting is therefore not some kind of straightjacket that restricts journalists in their investigations, but more a question of balance and disinterest.

Where personal views are represented in programmes, producers are also responsible for ensuring that these are signalled and that accuracy is respected. It is not permitted for BBC staff or journalists to represent their personal views on matters related to news programmes or public policy related programmes dealing with controversial subject areas.

Accuracy is also a central plank in the BBC’s editorial policy. The programme guidelines set down a rigorous checking process that recommends that producers should show reluctance to rely on single sources and notes are recorded of significant interviews. If a complaint about a programme is made, the BBC should issue a correction if the subsequent investigation into the relevant programme concludes that the programme failed to provide fair and balanced treatment of a subject or if it was inaccurate.

Individuals contributing to a programme should also be treated fairly by BBC staff. Their role in the programme should be explained to them, as should the subject of the programme and the range and nature of opinions it contains. In this way, contributors will clearly understand the nature of the programme that they are participating in.

The BBC guidelines also cover issues such as taste and decency. As stated in the BBC’s Royal Charter and Agreement, the Corporation should not broadcast programmes that “include anything which offends against good taste and decency or is likely to

encourage or incite to crime or lead to disorder, or be offensive to public feeling”.³⁵ To this end the BBC (like the other free-to-air UK broadcasters) uses a watershed policy, whereby programming before 9 p.m. should be suitable for all audiences including minors. Producers should also guarantee that when material is potentially offensive to a large part of the audience, then signposting and warnings should accompany the programme. The BBC should also ensure that all social and community groups are portrayed fairly and strive to achieve full coverage of all social groups. These standards are applicable to the BBC’s Internet services as well.

On rare occasions, as in any other system with such a large output, the BBC makes mistakes and these standards are not met. In such cases, the viewers and listeners have the right to request Ofcom to investigate the relevant material and the BBC itself has a department for processing viewer’s complaints about programming. Ofcom in turn has the power to assess the material in question. If it finds a breach of the taste and decency, impartiality or fairness requirements that apply to all UK broadcasters, Ofcom can request measures to be taken to redress the situation, such as an on-screen airing of its judgement and a formal apology by the broadcaster. The BBC has recently committed itself to improving its response to viewer complaints and it has promised to review the current process in consideration of improving the system.

4.6.1 The Hutton Report

In 2003, the BBC and the Government entered a protracted and bitter dispute over the former’s reports that the latter had allegedly “sexed up” a dossier intended to bolster the case for a controversial war against Iraq.³⁶ A report by a BBC journalist on the flagship *Today* Radio 4 news programme referred to an unnamed “senior official” as the source for claiming that Government Ministers had been involved in instructing the intelligence services to colour the report and had knowingly exaggerated the threat presented by Iraqi weapons of mass destruction. This allegation, if proved true, would have seriously undermined the whole Cabinet.

The source was revealed as Dr David Kelly, a senior adviser on chemical weapons to the Ministry of Defence. When Dr Kelly subsequently took his own life, the Prime Minister ordered a public inquiry into the circumstances of his death. Chaired by Lord Hutton, the inquiry concluded in January 2004 that the BBC had breached its own reporting standards. The Hutton Report drew criticism from some quarters for absolving the Government of any responsibility in the affair. On publication of the report, the Chairman of the BBC’s Board of Governors resigned, followed shortly

³⁵ BBC, *Producer’s Guidelines: The BBC’s Values and Standards*, BBC, London, not dated.

³⁶ Lord Hutton, *Report of the Inquiry into the Circumstances Surrounding the Death of Dr David Kelly C.M.G.*, Her Majesty’s Stationery Office (HMSO), London, 2004, available at <http://www.the-hutton-inquiry.org.uk/content/report> (accessed 15 August 2005).

afterwards by the Director General, who was later to claim that the Board of Governors forced him to resign.

The BBC's major mistake in the whole affair was not so much the misreporting of events, serious as this was, but the way that management responded to criticism from the Government. The Board of Governors almost immediately expressed support for management against the Government without having first investigated the details and circumstances of the controversial broadcast. In doing so they demonstrated loyalty to the Corporation in defending it against an irate Government, but at the same time demonstrated the tension between their dual role as both strategic directors and regulators of the BBC. It is likely that the current review of the Royal Charter will look at ways of reforming the Board, as its dual role has been criticised for a number of years. In this respect, the Hutton inquiry merely highlighted the problems inherent in the Board having two functions that at times are bound to come into conflict – though this seems to have rarely occurred historically. The last time a Director General was dismissed by the Board of Governors was in 1987, when the criticism of them was the opposite, namely that the governors were afraid of, or worse, were creatures of, the Government.

After an internal investigation into the whole affair, the BBC has suggested tightening up some of the journalistic processes and clarifying the staff's awareness and understanding of the producer guidelines. These measures were published as a report in June 2004, which recognised the inadequacy of the BBC's procedures and the lack of compliance with programme guidelines on the part of the journalist who filed the report, Andrew Gilligan.³⁷ Essentially, the report reaffirms the basic principles of impartiality, independence and accountability that govern the Corporation and recommends a tightening of the standards concerned with note-taking, reliance on sources, external publications by BBC staff and fairness. The central recommendation is that training provisions for BBC journalists should be developed to guarantee that the producer guidelines are fully adhered to. (The BBC subsequently began a process to increase its own training capacity). The report also suggests a greater degree of legal consultation in programming matters to ensure legal compliance in its coverage of controversial issues.

As of July 2005, the BBC introduced new guidelines for its editorial staff, incorporating changes to the way it operates, following criticism about its journalism in the run-up to the war in Iraq. Among the changes is an explicit commitment, that "accuracy is more important than speed" and to constantly review any decision to use secret recordings in undercover investigations.³⁸

³⁷ BBC, *The BBC's Journalism After Hutton. The Report of the Neil Review Team*, BBC, London, 2004, available at http://www.bbc.co.uk/info/policies_ (accessed 25 June 2004).

³⁸ BBC, *Editorial policy meeting, 23 June 2005*, available at <http://bbc.co.uk/guidelines/editorialguidelines/assets/meetings/June2005Minutes.doc> (accessed 13 August 2005).

The ultimate consequences of the episode for BBC journalism, if any, are not as yet possible to assess. It is, however, unlikely that the Government would seriously wish to revisit the whole affair during the Charter renewal debate. Any new restrictions on journalism are likely to be self-regulatory, rather than resulting from external pressure.

5. REGULATION AND MANAGEMENT OF COMMERCIAL BROADCASTING

Since the Broadcasting Act 1990, the commercial broadcasters have enjoyed an increasingly liberal regulatory regime. Nevertheless, they retain their public service obligations and they are accountable to Ofcom, which, under the terms of the Communications Act 2003, is responsible for assessing whether commercial broadcasters meet their contractual obligations. Ofcom is also responsible, together with the Office of Fair Trading, for assessing mergers and acquisitions in the television sector under the new framework.

5.1 Public service obligations for commercial broadcasters

All the terrestrial commercial broadcasters in the UK have public service broadcasting obligations, and are regulated within a framework that obliges them to supply a service that is governed by a set of programme principles and guidelines that are required by law. As part of their contractual conditions, therefore, the free-to-air broadcasters are all regulated according to principles that aim to ensure a high quality mix of programming that reflects the needs and tastes of a diverse audience.

In recent years, these requirements have been somewhat diluted and have been once again been reformulated in the Communications Act 2003, which states that the public service remit for Channel 3 and Channel 4 is “the provision of a range of high quality programming”.³⁹

5.1.1 Channel 3

A basic television service characterised by a mix of different programmes is required as a contractual condition for the Channel 3 licensees, which ensures that they provide a minimum range of programmes. These thresholds are supplemented with indicative targets for a wider range of programme genres. Taken as a whole, these form a comprehensive framework for establishing ITV’s public service obligations, as well as monitoring compliance with the set thresholds.

³⁹ Communications Act 2003, section 265(2) and (3).

5.1.2 Channel Five

Channel Five's programme obligations are similar in certain respects to Channel 3. Its contract stipulates that the broadcaster must provide a television service that is characterised by a diversity of programmes. Under its legal requirements, Channel Five is obliged to provide a minimum of programmes in four areas: news, current affairs, religious programmes, and programming for children. However, as in the case of ITV, the ITC/Ofcom has traditionally set indicative targets in other programme genres as well.

5.1.3 Channel 4

Channel 4's remit is unique; it was established in 1982 to provide for segments of the audience whose tastes and needs were not catered for in the services provided by the other UK broadcasters. Under the Communications Act 2003, Channel 4 is required to provide,

[...] high quality and diverse programming which, in particular:

1. (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.⁴⁰

The channel has in past years reformed its multicultural programming strategies in order to cater for a wider audience. This has meant that it has moved away from providing niche programmes for minority groups, towards a more generalist approach that seeks to represent groups in society within more mainstream programming.

It also has additional requirements to provide schools programmes and minimum thresholds for certain kinds of programmes. In 2003/2004 these were a minimum of seven hours of education, four hours of news, four hours of current affairs, three hours of multicultural and one hour of religious programming per week, as well as 330 hours per year of schools programming.

⁴⁰ Communications Act 2003, section 265(3).

Table 8. Channel 4 output (2003/2004)

Programme strand	Hours	Costs (€ millions)
Entertainment	1,791	161
Drama	929	121.5
Education	1,426	110.8
Sport	1,041	60.5
Films	1,061	28.9
Other factual	530	43.6
News	346	33.5
Documentaries	295	26.2
Current affairs	225	18.9
Quiz and game shows	448	16.2
Arts and music	247	13.9
Multicultural	191	12.0
Children	175	5.0
Religion	55	5.2
Other	–	13.3
Total	8,760	6,834

Source: Channel 4⁴¹

Channel 4 structure

Channel 4 also has a Board to oversee its public and commercial activities. The Board has overall responsibility for ensuring that Channel 4 complies with its statutory duties, as set out in the Communications Act 2003 and in accordance with its licence agreement with Ofcom. It is comprised of between 13 and 15 non-executive and executive members – there are presently five executive members and eight non-executive members. Although Channel 4 is primarily regulated by Ofcom, it is also obliged to deliver a copy of its annual report to the Secretary of State for Culture, Media and Sport and the two chambers in the Houses of Parliament. Ofcom is responsible for overseeing the appointment of the Chairman of the Board, which is formally approved by the Secretary of State for Media, Culture and Sport.

5.2 Commercial television ownership and cross ownership

The framework for the regulation of media ownership and market concentration consists of a number of rules that have recently undergone reform to reflect a greater

⁴¹ Channel 4 Television, *Report and Financial Statements 2003*, London, 2004, p. 39.

degree of liberalisation in ownership rules, to encourage competitiveness whilst theoretically protecting media pluralism. At the same time, what has been termed a “public interest test”, which has already been employed in the press and radio sectors in merger and acquisition decisions, has been extended to television and woven into the fabric of the overall regulatory framework at the instigation of the House of Lords, during the passage of the Communications Act 2003.⁴²

As a result, prospective mergers or acquisitions between media companies with any features that might be against the public interest, in any of the media sectors covered by the act, together with the newspaper sector, must be reviewed by a combination of Ofcom and the Office of Fair Trading. Their opinions will be delivered to the Secretary of State, who in turn can refer any qualifying case to the Competition Commission. These reforms have been incorporated into the Enterprise Act 2002, which deals with newspaper mergers and acquisitions above a certain threshold.⁴³ On the whole, the Communications Act 2003 repeals some of the provisions regulating media ownership and replaces them with a more liberalised, case-by-case procedure.

Since the introduction of the Broadcasting Act 1996, the system for evaluating and monitoring media ownership and pluralism has consisted of an audience share framework rather than outlet share limits.⁴⁴ The main changes to legislation on television ownership brought about by the Communications Act 2003, concern the withdrawal of previous restrictions and limitations. These include the removal of the upper limit of 15 per cent audience share that one company could control, introduced in the Broadcasting Act 1996. The rule preventing the joint ownership of the two ITV London franchises has also been removed, as has the rule preventing ownership of both an ITV company and Channel Five. The most controversial part of the act was the removal of the restriction on non-EEA ownership of UK terrestrial television companies.⁴⁵ This rule was widely perceived primarily as an instrument to prevent major take-overs in the UK by large US media companies, such as Rupert Murdoch’s News Corporation, which is the largest shareholder of BskyB, the dominant satellite television company in the UK. However, any attempt by a non-EEA based company to acquire a UK terrestrial broadcaster will have to undergo a public interest test.

⁴² Department for Culture, Media and Sport (DCMS) and the Department of Trade and Industry (DTI), *The New Newspaper Regime*, Her Majesty’s Stationery Office (HMSO), London, 2003; DTI, *Intervention on Media Mergers: Draft Guidance. Consultation Document*, Her Majesty’s Stationery Office (HMSO), London, 2003; DCMS, *Consultation on Media Ownership Rules*, Her Majesty’s Stationery Office (HMSO), London, 2002.

⁴³ Enterprise Act 2002 (c. 40), Her Majesty’s Stationery Office (HMSO), London, 2002, available at <http://www.opsi.gov.uk/acts/acts2002/20020040.htm> (accessed 15 August 2005).

⁴⁴ Broadcasting Act 1996 (c. 55), Her Majesty’s Stationery Office (HMSO), London, 1996, available at <http://www.opsi.gov.uk/acts/acts1996/1996055.htm> (accessed 15 August 2005).

⁴⁵ The European Economic Area (EEA) comprising the EU member States plus Iceland, Liechtenstein and Norway.

Some remaining restrictions on owning an ITV company are concerned with cross ownership and relate to disqualifications of companies that own newspapers. These restrictions exclude:⁴⁶

- an entity with a national newspaper with a national market share of 20 per cent or above;
- an entity with national newspapers with a combined national market share of 20 per cent or above;
- an entity with a local newspaper that has a local market share of 20 per cent or more in the coverage area of the service.

Some of the restrictions previously placed on the ownership of Channel Five were lifted by the Communications Act 2003. There are no set restrictions on newspapers or other broadcasters owning Channel Five. However, any such move will have to undergo a review as to its impact on the services provided by the broadcaster and investment in regional and UK programming under the public interest test that would be applied by the relevant bodies. The public interest test will also cover any proposed merger or acquisition including cross-media ownership of Channel Five, any changes in the ownership of the ITV network and foreign (non-EEA) ownership of terrestrial television channels.

The public interest test is a significant device for protecting pluralism in the UK media industries. While many ceilings and fixed limits have been removed by the Communications Act 2003, it remains to be seen how this test will be employed and what kind of precedents will be set for the individual media sectors, as well as the sector overall in terms of pluralism and diversity. The public interest test can be employed where the transaction level is below €100 million and one of the parties has a 25 per cent or above market share in the relevant broadcasting or newspaper sector, or for cross-media purposes. When one of these criteria is triggered, the Secretary of State can intervene where it is believed that a public interest consideration is relevant. On this basis, where a media merger or acquisition case arises, the factors set out below will be central in determining whether a case is blocked or cleared, though the Secretary of State must make a decision that a case is a special interest case before this process is initiated. As it relates to broadcasting and cross-media mergers or acquisitions, the criteria for rejecting or clearing a merger or acquisition are as follows:

- whether there is overall a sufficient plurality of persons with control of media outlets;
- whether a wide range of quality television and radio service is available for the end consumer;

⁴⁶ Communications Act 2003, Schedule 14, Part 1, section 350 (1) and (2).

- whether the owners have a commitment to fulfilling the objectives set out in Section 319 of the act (standards).

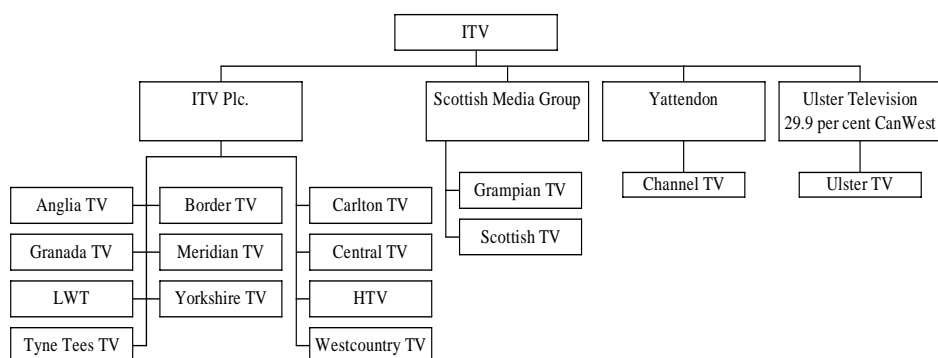
A whole range of considerations will be addressed in any assessment based on these criteria, including the number of outlets and the audience share of the actors involved in the merger or acquisition, the availability of a wide range of quality programmes, and the owners' strategic planning policy for programming. Furthermore, the standards set out in Section 319 of the Communications Act 2003 relate to a raft of obligations, ranging from advertising standards to the protection of minors.

5.2.1 Ownership of the main players

The UK has one of the most plural television sectors in Western Europe.⁴⁷ This situation was guaranteed by the ownership rules that were removed in the Communications Act 2003. The new policy framework is liberalising in this respect, and there appears to be a political consensus that UK television companies should be allowed to grow in order to take better advantage of the international television market place.

The main commercial network, ITV, has a regional structure consisting of 15 broadcasters combining to form the ITV national network plus GMTV, which is a window channel for breakfast television. ITV was originally designed to have a regional ownership structure with limits set restricting the number of regional franchises each member of the network could control. In reality, changes in legislation and relaxation of ownership rules mean that this structure has been eroded by the growth of Carlton and Granada as they expanded and acquired the other network companies. The February 2004 merger between the two groups' ITV assets completed this process; at the beginning of 2004, one company controlled the majority of the network, as the 15 per cent audience share ceiling that has traditionally restricted expansion in the sector was removed to allow companies to expand.

⁴⁷ Ward, *Media Concentration and Ownership*.

Chart 1. Ownership structure of the ITV network (2004)

Source: David Ward (2004)

The merger resulted in the majority of ITV regional franchises, and all the larger ones, being owned by one company, which retains a regional remit for programming and production while it benefits from economies of scale in programming, advertising sales and administration. The new group enjoys a combined market share, based on the current combined audience share, of 19.6 per cent.

Both the BBC and Channel 4 are publicly owned. The final terrestrial free-to-air broadcaster is Channel Five, of which a majority share of 66.6 per cent was acquired by the RTL Group from Pearson in 2000. The remaining shareholding is owned by United Business Media. The channel has successfully carved out a market niche; RTL highlighted Channel Five as one of its stable of channels that outperformed other channels in the RTL Group.

Since 1992, the cable industry in the UK has undergone significant consolidation as the regional licences that were owned by 29 companies have increasingly become dominated by two companies: NTL and Telewest. Even in the short period between 1997 and year-end 2003, the 13 companies that controlled 155 regional licences have decreased to two major players and a few minor operators in the Isle of Man, the North West of England and South Western Scotland. Telewest also acquired a content arm when it merged with Flextech in 2000 and inherited 11 channels that were established as a joint venture between Flextech and the BBC under the brand UKTV (see above). Its 2003 annual report records a decline in its cable television subscribers of 47,973 to 1,293,811, of which 66 per cent are digital households. The other main cable operator, NTL, holds 102 franchises and claims some 1,294,000 subscribers to its television services. The company's cable assets were extended considerably when it purchased the UK cable networks of Cable & Wireless Communications (owned by Cable & Wireless Plc.) in 2000, a bid that was partly financed by France Telecom.

These companies have both experienced significant financial losses in their UK cable operations due to a combination of strong competition from satellite in the content market, the strong position of BT in the telephony market, and a general decrease in confidence in the delivery sector. There has been speculation that they may merge at some point in the future.

US media mogul Rupert Murdoch owns News Corporation, which is the largest shareholder of BSkyB. It effectively controls the company's activities, and its satellite activities have no competitors. Given the high advance investment costs necessary to establish a viable competitor in the area and the considerable market power of BSkyB, any real competition in the satellite market is highly unlikely. In this sense BSkyB has a monopoly in the satellite industry, and its highly successful business model has fundamentally transformed the UK television market over the past decade. Three of BSkyB's channels are broadcast free-to-air on the Freeview digital terrestrial television platform, and on its digital satellite platform it offers over 200 television-based channels and 67 radio stations to UK subscribers.

5.2.2 Cross-media ownership

The restrictions on cross-media ownership have limited companies' expansion across media sectors. Granada plc has quite typical structures of horizontal and diagonal integration both within specific media and across different media. Such structures are common in the UK as companies attempt to create greater economies of scale and scope. Due to the nature of the media rules that have traditionally restricted cross-ownership between certain sectors, there has been a natural tendency to expand within the regulatory framework. This has led to a high degree of integration between the newspaper and radio sectors, terrestrial television and radio assets through the Granada Group, and satellite television and newspapers and publishing interests through News Corporation's interests in national titles and BSkyB. The changes introduced in the Communications Act 2003 support new constellations of ownership patterns with a greater degree of liberalisation of cross-media ownership rules to encourage companies to expand their interests across media sectors.

5.3 Funding

The breakdown of revenues that the television industry enjoys has undergone changes in the past decade, largely due to the development of subscription as a major part of the overall finance of the sector. Traditionally, funds from the licence fee and advertising have provided the public and commercially funded broadcasters with the majority of their revenues. Although this has not changed in respect of the terrestrial television services supplied by these broadcasters, overall there is a significant growth in revenues derived from subscription and pay per view for satellite and cable.

Table 9. Revenue breakdown for the UK television sector (2003)

Revenue source	Revenue (€ million)	Share of total revenue (per cent)
Advertising	4,725	33.0
Subscription	4,813	33.6
BBC licence fee	3,357	23.4
Other	1,430	10
Total	14,325	100

Source: Ofcom⁴⁸

Subscription became the single greatest source of revenue in the television industry in 2003, for the first time overtaking advertising revenues by a small amount, marking an important landmark for the sector. The traditional advertising market is still dominated by the ITV network companies. Despite its decline in audience share, ITV remains the most popular commercially funded channel in the UK and it also retains the majority share of advertising revenues.

Table 10. Net advertising revenues – breakdown by channel (2002 and 2003)

Channel	Net advertising revenue (€ million)	Market share (per cent)	
	2002	2002	2003
ITV	2,452	54.9	51.9
Channel 4	884	19.8	19.3
Channel Five	314	7.0	7.7
Cable, satellite and other	816	18.3	21.1
Total	4,466	100	100

Source: ITC 2003 and Ofcom⁴⁹

Channel 4 has also established a commercial arm, 4 Ventures. The subsidiary is divided into four main activities: 4 Channels, which operates a range of basic tier and premium subscription channels including entertainment and film, 4 Rights that exploits programme rights and sales, 4 Learning that is responsible for supplying schools programming, and 4 Services that includes Internet and interactive businesses. Unlike

⁴⁸ Ofcom, *The Communications Market 2004*, Ofcom, London, 2004, available at <http://www.ofcom.org.uk/research/cml/> (accessed 24 August 2005), (hereafter, Ofcom, *The Communications Market 2004*).

⁴⁹ Ofcom, *The Communications Market 2004*.

with the BBC channels, there has been little or no criticism of Channel 4 developing these services.

5.4 Programme framework

A system of programme promises was introduced in 2001 by the Independent Television Commission (ITC) and then incorporated into the Communications Act 2003. All broadcasters are required to submit to Ofcom their individual aims and objectives for the forthcoming year, in terms of their programme obligations. Ofcom publishes the broadcasters' commitments, which are used to assess their performance at year-end. The commercial terrestrial broadcasters are required to provide annual statements of programme policy, setting out proposals for achieving their respective public service remits.⁵⁰ The broadcasters are obliged to conduct their own assessments of their activities in the first instance. Operators must consult with Ofcom before any significant alterations are made to the statement⁵¹ and Ofcom has the power to direct revisions to the programme policy as it sees fit.

All commercial cable, satellite and terrestrial broadcasters are contractually bound by the ITC/Ofcom's code of practice covering issues such as impartiality, coverage of elections and taste and decency, based on principles similar to the BBC producer guidelines. In terms of fairness, however, the ITC/Ofcom rules refer directly to the European Convention on Human Rights (ECHR), concerning the right to privacy and freedom of expression.⁵² The commercial broadcasters are not restricted in any way as to subject matter, but they are obliged by the ITC/Ofcom guidelines to abide by the principles of truth and fairness.

The broadcasters are also required, pursuant to the requirements set down in the Broadcasting Act 1990, to preserve due impartiality in all matters relating to news, political or industrial controversy, and public policy. In this respect it is incumbent on ITC/Ofcom to ensure "that due impartiality is preserved on the part of the person providing the service as respects matters of political or industrial controversy or relating to current public policy."⁵³

As with the BBC, due impartiality is employed by the ITC/Ofcom in a manner that allows broadcasters room for investigation; they are not constrained by a mathematical notion of balance. The broadcasters should approach and represent subjects in an even-handed manner with different viewpoints. Opinion should also be separated from fact. The opinions of broadcasters are not allowed to be expressed in any programming covering the stated areas above and where there is a series of programmes covering a

⁵⁰ Communications Act 2003, Section 266.

⁵¹ Communications Act 2003, Section 267.

⁵² ECHR, art. 8 and 10.

⁵³ The Broadcasting Act 1990, cited in: ITC, *The ITC Programme Guide*, London, 2002, p. 23.

particular issue; broadcasters are allowed to provide balance across a series (rather than in each individual programme). It is not sufficient, however, to argue that other channels may provide an alternative viewpoint: each broadcaster is responsible for maintaining due impartiality within its programming.

In addition to the measures above, the policy of the 9 p.m. watershed is equally applicable to all the terrestrial broadcasters; only encrypted channels with PIN systems that restrict access to services are exempt. The broadcasters should also show respect for the rights of individuals and no programme must incite racial hatred. Where appropriate, indeed, broadcasters should ensure fair representation of all groups in society regardless of their race or religion.

The above requirements have all been incorporated into the Communications Act 2003.⁵⁴ In July 2004, Ofcom launched a review of the programme codes⁵⁵ of the legacy regulators, including the ITC's guidelines, that will eventually result in a new set of programme guidelines that will replace all the existing ones.⁵⁶ There is a shift in terminology used in the consultation document by the regulator from "taste and decency" to "harm and offence". This indicates a move towards a more flexible framework for the watershed system employed by broadcasters. At the same time, rules for the protection of minors will be clearly defined by Ofcom, reflecting public concern about the effects of media content on children. It is unlikely, however, that many of the central principles and regulations such as due impartiality will be changed, as these are set out clearly in the Act and reflect fully the ITC's code. More flexibility may be granted to the commercial broadcasters in the new guidelines, but they will still have to comply with the principle of due impartiality.

6. REGULATION OF PROGRAMME PRODUCTION

The regulation of programme production for UK broadcasters is centred on two areas: investment both in original national and independent production, and compliance with the requirement in the Television without Frontiers Directive to transmit a majority of European works. Ofcom also has the power to see to it that the "regulatory regime" requires broadcasters to produce and distribute an "appropriate proportion" of original programming, to ensure each channel's output remains of a high quality.

⁵⁴ Communications Act 2003, Section 320.

⁵⁵ Ofcom, *Consultation on the proposed Ofcom broadcasting code*, Ofcom, London, 2004, available at http://www.ofcom.org.uk/consultations/current/broadcasting_code/bcast_code1.pdf?a=87101 (accessed 14 July 2004).

⁵⁶ These include the BSC Code on Fairness and Privacy, BSC Code on Standards, ITC Programme Code, ITC Code of Programme Sponsorship, RA News and Current Affairs Code and Programme Code, and the sponsorship rules contained in the RA Advertising and Sponsorship Code.

Ofcom has the power to impose a more detailed framework at its discretion, in consultation with the relevant broadcasters under a co-regulatory framework.

Table 11. Annual production quotas for terrestrial broadcasters

	Production quotas (per cent)				
	BBC1	BBC2	Channel 3	Channel 4	Channel Five
Independent production (share of hours)	25		25	25	25
Total original (share of hours)	70	70	65	60	51
Original in peak time (share of hours)	90	80	85	70	42
Regional production (share of hours)	25		33	30	10
Regional production (share of expenditure)	30		40	30	10
European production (share of hours)	50	50	50	50	50
European independent production (share of hours)	10	10	10	10	10

Source: Ofcom⁵⁷

The free-to-air terrestrial broadcasters are all obliged to commission a minimum of 25 per cent of original qualifying programming, as determined by the Secretary of State, from the independent production sector. Qualifying programmes include all programming except acquired programmes, repeats, news, programmes provided by, or on behalf of, the Open University or Open College, and broadcasts on behalf of political parties.⁵⁸ Independent production companies are the largest supplier of programming to Channel 4, which was established as a publisher/broadcaster that commissions programmes rather than producing them itself.

As is the case for the other commercial broadcasters in the UK, SC4 is obliged to make annual programme promises. These are currently to produce at least 30 minutes of news programming in peak hours during weekdays, 15-minute bulletins at weekends, at least one hour of factual programming per week during peak time, and a minimum of 100 hours of drama and 110 hours of children's programming annually.

⁵⁷ Ofcom, *Ofcom Review 2004*, Figure 1.

⁵⁸ The Broadcasting (Independent Productions) Order 1991, Statutory Instrument 1991, No. 1408, Her Majesty's Stationery Office (HMSO), London, 1991. Amended 2003 as Statutory Instrument 2003 No. 1672.

The ITC/Ofcom's Invitation to Apply for regional Channel 3 (ITV) licences states that the Central Scotland and North of Scotland licensees must broadcast at least one hour a week on average, of programmes in the Gaelic language, funded by themselves. They must, in addition, broadcast programmes in the Gaelic language on a regular basis up to 200 hours a year, funded by the CCG (Gaelic Broadcasting Committee). It is a licence condition that Grampian TV airs 53 minutes a week, of Gaelic programmes funded by themselves, plus an additional 30 minutes a week which may be supplied by Scottish Television. Scottish Television is required to transmit 30 minutes a week of Gaelic programmes, plus an additional 30 minutes a week, which may be supplied by Grampian TV.

As part of their regulatory obligations, the ITV companies also have to produce and distribute regional programming. A suitable amount of airtime with an adequate range of high quality regional programming, some in peak time slots should be included in the schedule. For Channel 4, Ofcom should ensure that a suitable percentage of programming is commissioned from outside the M25 area.⁵⁹ In an attempt to decrease the dominance of London as the centre for the television industry, Ofcom is reviewing the level of the quotas and it is likely that the percentage of commissions required from the regions, i.e. outside London, will be increased.

The BBC has been criticised in the past for not meeting the independent production quota. In the latest report by the Office of Fair Trading, although the BBC met the requirements to commission a broad range of programming, it failed to meet the 25 per cent threshold for the third consecutive year in 2002/2003.⁶⁰ In 2003/2004, however, it fulfilled the quota and Ofcom reported that the BBC commissioned 28.8 per cent of qualifying programmes from independent producers and more than 2,300 hours of programming, 47 per cent of which was entertainment. In this period, the BBC commissioned programmes from 175 independent production companies spending €459 million. This represented some 2,300 hours of programming for the year.

The failure of the BBC to meet the 25 per cent requirement, according to the independent producers, stems from the sheer size of the BBC's own production resources and pressures to keep production in-house. There is, to some extent, a conflict of interest between the BBC farming out programme production to independents at the expense of using its own resources and it has been fairly aggressive in its relationship with the sector and therefore somewhat of a reluctant partner. One of the reasons that the BBC did not meet the previous year's quota was that the pan-European independent production company Endemol, which produces some of the most popular programming in the UK, lost its status as an independent producer when it was acquired by Telefonica that holds considerable television assets in Spain. Ofcom has now reinstated Endemol's independent status after an appeal by the company.

⁵⁹ The M25 is the orbital motorway circling the London area.

⁶⁰ Office of Fair Trading, *Independent Productions Transmitted by the BBC. Tenth Report*, London, 2003.

In order to improve its relationship with the independent production sector the BBC have created a new post within the organisation directly concerned with commissioning programmes from the independent sector. In 2004 the BBC also agreed a new set of terms of trade for the commissioning of programmes with PACT (Producers alliance for cinema and television), the independent producer trade association that aim to strengthen the relationship between the BBC and independent producers.⁶¹

Prior to the Communications Act 2003 there were no sanctions that could penalise the BBC for its failure to meet the quota. However, the new measures in the act have changed this situation and today a series of fines could be administered if the BBC fails to meet the 25 per cent threshold for commissions (see section 3.3). Alternatively, the BBC could be made to carry the shortfall over into the following year by Ofcom.

The BBC's digital channels also have quotas that it is obliged to meet under the terms of its agreement with the Secretary of State to operate these channels.

Table 12. Annual production quotas for BBC digital channels

	Annual production quotas (per cent)					
	BBC3	BBC4	CBeebies	CBBC	News 24	Parliament
Total original (share of hours)	80	around 70	around 80	70	90	90
Original in peak time (share of hours)	70	50	–	–	–	–
European (share of hours)	90	around 70	around 90	around 75	–	–
Independent (share of hours)	25 (across all channels)					
Regional production (share of hours)	25 (across all channels)					
Regional production (share of expenditure)	30 (across all channels)					

Source: Ofcom⁶²

⁶¹ BBC Press Release, "Ofcom confirms BBC independent production quota 2004", 11 August 2004, available at http://www.bbc.co.uk/pressoffice/pressreleases/stories/2004/08_august/11/quota.shtml (accessed 14 August 2005).

⁶² Ofcom, *Ofcom Review 2004*, Figure 2.

7. EUROPEAN REGULATION

The rules and regulations laid down in the EU “Television without Frontiers” (TWF) Directive are incorporated into UK broadcasting law.⁶³ The UK has actually benefited from the free movement principle in the Directive, as it has acted as a base for numerous satellite operators who broadcast across Europe. The 25 per cent independent programme quota imposed by the Broadcasting Act 1990 surpasses the 10 per cent independent quota provision of the Directive. According to the European Commission’s report on compliance with the European works quota, the main UK broadcasters exceed the quota by a healthy margin.⁶⁴

Although cable and satellite broadcasters have no national positive regulatory requirements placed on them, the Directive is applicable to all broadcasters in the UK except for those channels distributed from the UK to third countries that are not received in any of the Member States. This means that the European programme quotas are placed on all broadcasters. However, Article 4 of the Directive stipulates that the production quotas should be imposed “where practicable”. In this respect, there has so far been a lack of enforcement of the quota provision as Member States have applied the caveat broadly and cable and satellite channels have little regulatory incentives (either positive or negative) in meeting the requirements of Article 4 of the Directive.

The UK is one of a handful of member States that has introduced an *events of national importance* list, a requirement laid down in the Directive. The list guarantees the rights to these events for broadcasters with a minimum of 95 per cent coverage of the UK (these are the so called Category A channels: BBC1, BBC2, ITV, Channel 4).⁶⁵ The A list requires protection of live coverage of the listed events, while the B list allows Category B channels (which do not meet the coverage threshold above) access to the

⁶³ “Television without Frontiers Directive” (hereafter, TWF Directive): European Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 89/552/EEC, OJ L 298 of 17 October 1989, as amended by European Parliament Directive of June 1997, 97/36/EC, OJ L 202 60 of 30 July 1997, consolidated text available on the European Commission website at http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf (accessed 15 March 2005).

⁶⁴ European Commission, Sixth Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC “Television without Frontiers”, as amended by Directive 97/36/EC, for the period 2001–2002, Brussels, 28 July 2004, COM(2004) 524 final, available at http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004_0524en01.pdf (accessed 24 August 2005).

⁶⁵ Channel Five only has about 80 per cent national coverage and therefore fails to cross the coverage threshold.

rights of the listed event on condition that the Category A channels have delayed coverage rights, allowing them to broadcast the events at a later time.⁶⁶

Table 13. Listed events

A list	B list
The Olympic Games	Cricket Test Matches played in England
The FIFA World Cup Finals Tournament	Non-Finals play in the Wimbledon Tournament
The European Football Championship Finals Tournament	All Other Matches in the Rugby World Cup Finals Tournament
The Football Association (FA) Cup Final	Six Nations Rugby Tournament Matches Involving Home Countries
The Scottish FA Cup Final (in Scotland)	The Commonwealth Games
The Grand National horse race	The World Athletics Championship
The Derby horse race	The Cricket World Cup – the Final, Semi-finals and Matches Involving Home Nations' Teams
The Wimbledon Tennis Finals	The Ryder Cup
The Rugby League Challenge Cup Final	The Open Golf Championship
The Rugby World Cup Final	

Source: DCMS⁶⁷

8. THE IMPACT OF NEW TECHNOLOGIES AND SERVICES

The diffusion of new technology is a key Government objective and the rollout of digital television and Internet services are seen as crucial policy areas. The BBC, following the historical precedents set by its expansion from radio to black and white television, then to colour television, has established a strong position on both digital platforms and on the Internet. The remaining terrestrial broadcasters have also developed new services, though these are dwarfed by the BBC's expansion. Whether or not the Government's ambition to switch off the analogue airwaves by 2010 will be achieved will depend on consumer behaviour and on the industry overcoming some of the technical problems with coverage.

⁶⁶ DCMS Broadcasting Policy Division, *Coverage of Sports on Television*, DCMS, DCMS leaflet, revised March 2005, available at <http://www.culture.gov.uk/NR/rdonlyres/E4039BD6-FF27-49F2-9ECF-907518C4BDDF/0/SportLeafletrevmarch05.pdf> (accessed 24 August 2005).

⁶⁷ DCMS, *Coverage of Sports on Television*, Appendix A.

8.1 Digital television

In 1998, the UK saw the first and by far the most ambitious attempt of any government in Europe to introduce digital television services and switchover from analogue to digital signals, thereby creating greater efficiency in the use of spectrum. In 1999, the Government set the objective for the time framework for analogue switch off between 2006–2010. This was based on the projected criteria that 95 per cent of UK households would have access to digital equipment to receive the services, and that all the main public service channels that are available through analogue television would be available in digital form.

At the third quarter of 2004, over 13 million households had access to multichannel television, according to Ofcom. The number of households that subscribed to cable, satellite or digital terrestrial television (DTT) was estimated to be in the region of 55.9 per cent.⁶⁸ Satellite has traditionally dominated multichannel television services in the UK, both in terms of subscribers and revenue share. However, the growth of Freeview has created a viable competitor to BSkyB in terms of penetration. At the same time, BSkyB's significant market position and its access to key programme rights such as Premiership football and movies leaves it in a powerful position in the market that is largely unchallenged. In October 2003 BSkyB announced that it had seven million subscribers to its services, and its "churn rate" has decreased at 9.6 per cent to below 10 per cent.⁶⁹

Overall, subscribers for these services are increasing, though in a report on the development of digital television in the UK Ofcom recently concluded that it has reservations as to whether 95 per cent of households will have access to digital platforms by 2010. It estimates a maximum of 78 per cent based on current trends in the market. The major obstacles Ofcom notes are, on one hand, technological and relate to the fact that the power of the existing signals restricts the amount of households using traditional aerials that will have access to DTT until this is increased at switchover. On the other hand, there is evidence of a lack of development in the pay TV market, which under current conditions Ofcom predicts will reach no more than 50 per cent of households. It does, however, suggest that these can be overcome with a clear plan of action and switchover date. Access to DTT services is currently limited by the technical restriction of DTT to 73 per cent of the country, of cable services to 51 per cent of households, and satellite television to 97 per cent of the population.⁷⁰

⁶⁸ Ofcom, *Driving Digital Switchover: A Report for the Secretary of State for Culture, Media and Sport*, Ofcom, London, 2004, (hereafter, Ofcom, *Driving Digital Switchover*).

⁶⁹ The "churn rate" is the number of subscribers who discontinue their use of a service (during a given period) divided by the average number of total subscribers.

⁷⁰ Ofcom, *Driving Digital Switchover*.

Table 14. Digital television penetration (third quarter 2004)

	Platform	
Number of households	Digital cable	2,502,451
	Digital Satellite (Sky)	7,085,000
	Total digital pay TV households	9,598,981
	Free-to-view DTT (Freeview)	5,016,200
	Free-to-view digital satellite	345,000
	Total Free-to-view receivers	5,361,200
	Total Free-to-view households	4,259,920
	Total UK digital households	13,858,901
	Analogue cable	860,193
	Total UK pay TV households	10,459,174
	Total UK multi-channel households	14,719,094
Share of households (per cent)	Digital penetration	55.9
	Multi-channel penetration	59.4

Source: Ofcom⁷¹

With the closure of ITV Digital in April 2002 due to bankruptcy, the licence for DTT was re-issued to Freeview, a consortium of the BBC, Crown Castle and BSkyB. Freeview provides a range of channels based on a free-to-air model with some additional opportunities for consumers to subscribe to premium channels such as film and sports channels. The BBC has become central to the development of digital terrestrial television in the UK, with the launch of Freeview. Over the past years the BBC has introduced a number of new digital channels (with the permission of the Secretary of State for Culture, Media and Sport) including an up-market cultural channel, BBC4, Youth (BBC3), Children's (CBeebies and CBBC), Parliamentary (BBC Parliament) and News channel (BBC News 24).

⁷¹ Ofcom, *Digital Television Update*, Ofcom, London, 2004, available at http://www.ofcom.org.uk/research/industry_market_research/m_i_index/dtvu/dtu_2004_q3/dtu_2004_q3.pdf (accessed 12 January 2005).

Table 15. BBC television services (year-end 2003)

Channel	Content	Audience share (per cent)	Expenditure (€ million)
BBC1	Popular generalist	25.5	1,279.19
BBC2	Highbrow and culture	10.8	547.18
BBC3	Youth	0.7	112.44
BBC4	Highbrow and culture	0.2	61.36
CBeebies	Children's (under 6)	1.3	59.42
CBBC	Children's (6-12)	0.3	
BBC News 24	News	0.5	35.45
BBC Parliament	Parliamentary coverage	NA	4.02

Source: DCMS

These channels are all categorised as *auxiliary services* to the main channels provided by the BBC. The BBC's plans to establish digital channels must satisfy the Secretary of State for Media, Culture and Sport that:

- they are sufficiently different from existing services provided by commercial broadcasters;
- they enhance the public services already provided by the BBC;
- the channel will be universally available "within a reasonable period of time".

Internal approval by the Board of Governors must also be confirmed. In this respect, the BBC must submit a detailed plan and case for the distinctiveness of the proposed channels, scope and coverage of the channels, before they are given the consent of the Secretary of State. New public services are also subject to independent review approximately two to three years after they are launched.

A former editor of the *Financial Times*, Richard Lambert, undertook the review of BBC News 24. Although the report pointed to serious flaws in the original plans for the channel, Lambert judged that radical changes introduced by the BBC had succeeded in improving the channel significantly, and concluded that the channel performed "satisfactorily in all areas, and better than that in some areas [...] [and] is highly regarded by a range of senior opinion formers."⁷² He also concluded, however, that the BBC could do better in its international coverage, depth in news stories, and in bringing a wider range of issues to the screens than its main commercial competitor, Sky News.

⁷² DCMS, *Independent Review of BBC News 24*, DCMS. London, 2002, p. 9.

8.2 Internet

The main UK broadcasters have approached the Internet in markedly different ways. Channel 4 has invested in new services and has developed interactivity and a wide range of online services and has used the Internet to complement popular programming such as *Big Brother*. The ITV network companies and Channel Five have invested less in the medium and have remained cautious in their expenditure on Internet sites, whose content mainly relates to entertainment and the main television schedules.

None of these broadcasters approaches the scale of investment in resources that the BBC has devoted to its Internet services. The BBC perceives itself to be a leading broadcaster in the development of new technologies and its Internet sites are widely regarded as being some of the best available for news and information. BBC Online's website is amongst the ten most visited websites in the UK and, according to KPMG, has a reach of 40.5 per cent of the population.⁷³ It also sees its expansion into the Internet as a natural extension of its programming, mirroring its expansion from radio to television in the 1940s.

The BBC established a small range of Internet services in the mid-1990s to support key programming. In 1997, the Secretary of State for Culture, Media and Sport approved an expansion programme based on a two-stage growth plan. In 1998, after a full review of BBC services, approval was granted for Phase Two, with the BBC setting out its public service objectives for online services. BBC Online now provides a wide range of interactive services on the Internet, television and mobile telephony. Its Internet activities focus upon providing content, searching facilities and chat rooms. Content is the core activity and consists of a number of main categories set out in the table below.

Table 16. BBC main UK-based websites

BBC Online main websites	
News	History
Sport	Learning
World Service	Music
Health	Science and Nature
Entertainment	Society and Culture
Business and Money	Children's

Source: BBC Online (2004)

⁷³ KPMG LLP, *Market Impact Assessment of BBC's Online Service*, KPMG, London, 2003, available at http://www.bbc.co.uk/info/policies/pdf/kpmg_exec_sum.pdf (accessed 14 August 2005).

Each of these main sites leads to a myriad of different web pages covering a range of areas and there are also regional sites covering local issues and news and sport throughout the UK.

The BBC's online services are divided into three different sections:

- the UK services are funded from the licence fee and run as public services catering to the needs of the British public;
- the BBC World Service is funded by a grant from the Government;
- Beeb.com is a commercial service aimed at international audiences, produced by the commercial arm of the BBC, BBC Worldwide, and including bbcworld.com, bbcprime.com and bbcamerica.com.

The Internet sites funded from the licence fee are not allowed to carry advertising. The sites that do carry advertising are part of the BBC's commercial services and are largely targeted at audiences outside the UK. There are limits on the placing of advertisements; for example, they cannot be placed on the BBC's commercial news and current affairs pages designed for a UK audience. Likewise the BBC does not accept advertising from political, religious and governmental organisations. Although the growth of BBC online activities is impressive in terms of the number of websites, it is important to keep this in the context of the BBC's overall activities. Approximately three per cent of the licence fee is spent on the BBC's online services, demonstrating the continued dominance of traditional activities in radio and television.⁷⁴

July 2004 saw the publication of the second of the independent reviews of the BBC's new services, commissioned by the DCMS, with a remit to assess whether BBC Online's activities were meeting their terms of approval.⁷⁵ The report broadly recognised the value of the BBC's online services, citing audience research that suggested users found the service of high value. The report was critical of a minority of the online services and questioned whether sites containing content such as game sites and listing magazines should be operated by the BBC as a public service broadcaster, as they were not "sufficiently distinctive enough [*sic*] from [the] commercial alternative or adequately associated with public service purposes". However, the review concluded that the original remit, though broadly stated and interpreted, "has been largely fulfilled. The present BBC Online site is impressive in terms of its breadth, depth and capabilities. I found clear evidence of innovation and creativity".⁷⁶

⁷⁴ DCMS, *Report of the Independent Review of BBC Online. Commissioned by the Secretary of State for Media, Culture and Sport*, DCMS, London, May 2004, available at http://www.culture.gov.uk/global/publications/archive_2004/BBC_Online_Review.htm (accessed 14 August 2005), (hereafter, DCMS, *Report of the Independent Review of BBC Online*).

⁷⁵ DCMS, *Report of the Independent Review of BBC Online*.

⁷⁶ DCMS, *Report of the Independent Review of BBC Online*, pp. 9–11.

The main recommendations of the report sought to ensure that the BBC remained within its traditional content boundaries. To this end it suggested clipping the Corporation's wings, so that its services fully reflected its public service remit (though this would be a very minor practical constraint). On the other hand, the report raised more fundamental issues about the accountability and assessment of the services, as well as about increasing access to independent producers.

Broadly, however, the report proposes leaving BBC Online intact. Although the areas highlighted for criticism will need to be addressed by the Board of Governors and management, they do not represent fundamental changes in its online activities. Some services are expected to be closed or re-evaluated in terms of the *public value* test that will apply to radio, television and Internet services equally, but these will represent a small number of services. Additionally a market impact test was recommended, though this would be an extremely difficult undertaking, given the shape and rapidly developing nature of the Internet.

In an immediate response to the report, the BBC announced the closure of five websites (representing one to two per cent of traffic on BBC Online, according to the BBC) and to undertake a review of all of BBC Online's activities. In many respects such a review fits in with the overall internal review process that will be strengthened in the "public value" initiative (see above). It also promised to look into opening up the production side to independent producers.

9. CONCLUSIONS

A survey conducted as part of Ofcom's review of public service television, and published in April 2004, indicated continued popular support for public service broadcasting.⁷⁷ It also showed that the public believes the generalist free-to-air channels should provide a range of programming governed by social values, quality, range and balance and diversity, and strongly supports programmes such as news and children's strands. Furthermore, when asked whether it was important for these broadcasters to provide popular American programming, a low of 27 per cent was recorded, suggesting a strong public preference for domestic British productions. The survey results also indicated that certain kinds of programme strands such as news and drama are seen to be of high value and great social importance.

The liberalising trend in the regulation of UK television is unlikely to be reversed in the coming years. Indeed, judging by the recent conclusions of Ofcom's review, further radical changes may well be introduced in the future to the detriment of the quality and range of public service television. The challenge facing British television is therefore to ensure that socially important genres of programming are not further

⁷⁷ Ofcom, *Ofcom Review 2004*.

marginalized in the schedules. Ofcom's conclusion to its 2004 review is to suggest that the broadcasters with public service obligations only partly fulfil the requirements in the Communications Act, hence: "The pressures of competition and of changing viewer behaviour are leading some of the more challenging or minority genres to be pushed outside of peak-time viewing; and overall, to ratings-driven schedules with less originality and innovation than audiences wish to see".⁷⁸ The review states that the BBC should reaffirm its position as the standard setter for delivering the highest quality public service broadcasting. However, at the same time it recommends a reduction of the public service obligations on the ITV network and Channel Five – a somewhat peculiar conclusion given that a relaxation of public service obligations is likely to draw these broadcasters away from public service principles rather than strengthen them and thereby increase competition.

This conclusion reflects the contradiction that runs through the remit of Ofcom: on one hand, it takes a pro-competition approach to the television industry, while on the other, it is supposed to maintain the quality of public service television. Such multiple and arguably conflicting goals are inevitable, given that Ofcom has merged the regulatory functions of the legacy regulators with their very different remits and regulatory cultures. Coupled to this, the objective of promoting competition while protecting the interests of citizens and consumers has been a focus of debate for the past decade. Although it is perhaps premature to assess Ofcom's position on this balance, it has stated that it does not see these premises at odds with one another – an indicator of its pro-market orientation and its sense of its role as a light touch regulator.

It seems likely that the public service obligations, which have traditionally been placed on commercial terrestrial broadcasters by the state will be traded off for improved economic and financial performance by these companies. In this case, the ITV network and Channel Five would increasingly pursue commercial strategies to maximise ratings without any positive content regulations except for national, independent and regional quotas. This would inevitably put more pressure on the remaining public broadcasters, especially Channel 4 as its revenues are derived from advertising. In the worst case, the BBC and Channel 4 (and SC4) would be left as the only public service broadcasters.

There is also a debate about the feasibility of introducing contestable funding, a system that was first discussed in the 1980s by the Peacock Committee.⁷⁹ This system would be based on a centralised body (a form of an "arts council of the airwaves") distributing public funding to programme makers and broadcasters whose programme proposals qualified for funding due to their public service nature. In its most radical form this would involve dismantling the BBC and replacing it with an arts council of the

⁷⁸ Ofcom, *Ofcom Review 2004*.

⁷⁹ Report of the Committee on Financing the BBC, Cmnd. 9824, Her Majesty's Stationery Office (HMSO), July 1986.

airwaves.⁸⁰ In its weaker version, mooted by Ofcom, it would involve providing a subsidy to the commercial broadcasters for producing programming that is defined as public services – something that was previously written into their licences.

The radical option will probably not be considered as a serious alternative by the Government in the current Charter renewal debate, and is highly unlikely to become a serious alternative to the current arrangement in the foreseeable future. The weaker option, however, might gain force in the run up to Charter renewal, though it is unlikely that the revenues will be “top sliced” from the Corporation’s existing revenue streams.

Part two of Ofcom’s review of public service television in the UK that complements the initial review suggests that a fund should be established to enable broadcasters to apply for funding from such a centralised body to produce what are perceived to be public service programmes on new media platforms such as the Internet. This recommendation marks a break with the past as public service principles have almost seamlessly developed institutionally across platforms and the separation of new media, and a specific fund for broadcasters to access revenues to develop public services on these platforms represents a shift in the concept.

UK television is witnessing a period of intense debate in the run up to the BBC’s Charter renewal in 2006. The outcome of this debate will determine the structures and quality of television, for the near future at least. The BBC retains a strong and central position in the sector and remains the most popular broadcaster; it provides a range of new services on the digital terrestrial television platform and the Internet; and it is still widely supported by the general public. Contrary to popular belief it is also heavily regulated, especially in terms of the separation of public and commercial services, and is accountable to Parliament annually. Its new services across platforms have also been, or are shortly to be, independently reviewed and assessed at the request of the DCMS.

The BBC has come under fire mainly from commercial operators or television executives that have an interest in criticising the Corporation. Yet the alternatives to the BBC model put forward by these critics, sometimes with eloquence, have been ill thought out and lack a basis in the reality of television production and the need to retain large vertically integrated operators that can not only provide a public service, but do so efficiently.

Another idea, that was also raised in Ofcom’s public service broadcasting review and would in many ways complement the contestable funding model, is to raise the independent production quota threshold to 50 per cent. This would inevitably reduce the in-house production capacity of the main television companies. Thus the policy debate is about introducing mechanisms that would reduce the efficiency and strength

⁸⁰ David Elstein et al, *Beyond The Charter: The BBC after 2006*, Broadcasting Policy Group, London, February 2004, available at http://www.pact.co.uk/uploads/file_bank/1269.pdf (accessed 14 August 2005).

of UK broadcasters, while at the same time there is a political desire to increase the size of UK television companies and relax ownership restrictions to enable companies to enjoy larger economies of scale and become more competitive in the global marketplace. This contradiction has not yet been satisfactorily aired.

It looks likely, however, that the increase in competition that has been evident over the past decade will further increase as the growth of multichannel television households continues to act as a powerful argument for the reform of the present system. The tension in the UK television system between consumer choice and citizenship rights has always promoted the latter, though not always in a democratic manner. Current trends suggest that the consumer choice arguments will become increasingly central to the television sector, due to a combination of three factors: a strong commercial television lobby group, a government policy of liberalisation, and a regulator that perceives multichannel television to be an all-purpose remedy against detailed State intervention.

This having been said, public service broadcasting and free-to-air generalist television will continue to dominate the television sector for the foreseeable future at least. It is likely that the BBC Charter renewal process will look to reform some of the regulatory instruments, such as the ten-year Royal Charter and the role of the Board of Governors as both strategic directors and regulators. There is certainly a need to ensure that the Board of Governors has independence from the BBC in order for it to regulate the Corporation in an adequate manner, and this may be undertaken in a number of different ways. A separate and independent Board with greater independent resources could be a solution to any accusations that the Board suffers from “regulatory capture”. Alternatively, an external independent regulator that assesses the BBC’s performance might provide a mechanism to ensure that regulation is fully independent from management.

In its submission to the Charter renewal debate, the BBC has responded to its critics and has laid out a plan of action for greater independence of the Board in its regulatory capacity.⁸¹ If the Government and Parliament do not conclude from the Charter renewal debate that the regulatory functions of the Board should be transferred to an independent body, the BBC will certainly undertake to achieve greater independence and scrutiny from the Board internally. In many respects, the BBC’s response to the Charter debate suggests retaining the current structure of self-regulation, while committing itself to a greater degree of public accountability through its “public value” initiative, attempting to prevent closer regulation by the authorities by improving its links directly to the public as the primary source of accountability. By communicating its objectives and performance to the public more clearly, the BBC is also responding to criticisms of the latest review of its online services as well as wider criticism from the commercial broadcasters.

⁸¹ BBC, *Building public value*.

Supported by the Government, the BBC has also expanded successfully into new media and both digital television and the Internet. No other European broadcaster can boast the range and depth of the BBC's online activities or range of niche channels. Furthermore, despite continued reservations from parts of industry that the BBC should be allowed to expand into new platforms, there now appears to be far more acceptance of the fact that the BBC, as a public service broadcaster, should have a legitimate claim to expand from radio and television into new areas of content provision. There will be limits to this expansion, and these should be more clearly articulated in the Charter renewal debate.

Unless there is a seismic shift in Government policy during the next year or two, the BBC can expect to retain the licence fee and some form of Board of Governors. The current UK television sector and public will therefore continue to benefit from a unique institution that not only entertains, but also informs and educates. Channel 4's position in the UK television sector would be weakened if the public service obligations on Channel Five and ITV are relaxed as it competes for advertising revenues with these two broadcasters, though it will retain its uniqueness in the television landscape.

The increasing concentration of ownership in the media sector generally is also a long-term concern. The liberalisation of the ownership rules by the Communications Act 2003 created the possibility that a US company may own either Channel Five or ITV; if this happens, it will further change the nature of the sector and the constellations of ownership. Such a move would have to undergo a public interest test; even if it was sanctioned by the authorities, the ITC/Ofcom guidelines would require the operator to meet certain standards and quality that would cover due impartiality, taste and decency and regional programming.

The BBC is essentially in good shape in the run up to the Charter renewal in 2006. Many of the ideas touted as alternatives to the status quo are in retreat. In a recent speech, Michael Grade's predecessor as Chairman of the BBC, Gavyn Davies, cited internal BBC research that suggested 75 per cent of the British public believed that the licence fee represented value for money, with 33 per cent of the sample saying they would pay double the present sum for the BBC's services.⁸²

Moreover, Lord Burns, the Government's independent advisor on Charter renewal, has stated that from evidence drawn from the consultation process the public has demonstrated strong support for the BBC. In evidence to the Culture Media and Sport Select Committee, Burns suggested, "The evidence we have received from our consultative process and our research still points to the fact that a lot of people like the

⁸² Gavyn Davies cited in: M. Brown, "What price the BBC?", in *The Guardian*, 28 June 2004, available at <http://media.guardian.co.uk/mediaguardian/story/0,7558,1248596,00.html> (accessed 11 July 2004), (hereafter, Brown, *What price the BBC?*).

BBC, and quite a lot like it a lot. They are not turning away from an important institution”.⁸³

The new Director General of the BBC has also indicated that there will be changes at the BBC and has stated that he expects “the BBC to change more over the next two to three years than over the past 80 years”.⁸⁴ Given the changes in the past decade this might be overstating the case, but change is certainly a central force in UK broadcasting and sizeable cuts in staffing levels are currently being undertaken in an effort to demonstrate value for money and efficiency. In June 2005, ahead of charter renewal in 2006, the BBC announced that it would spend €90 million on a restructuring that would include cutting 3,780 jobs and lead to annual savings of €125 million until 2008.⁸⁵ Previously, thousands of BBC journalists and technicians had threatened a 48-hour strike because of plans to axe so many jobs. The key challenge is to ensure that broadcasting retains its important role in British society and serves its democracy. This will mean maintaining many features of the past in order to guarantee that television’s positive contribution continues to be enjoyed by the British public.

Perhaps the biggest threat to UK television and its core role for the principle of public service broadcasting is not the oft cited developments in technology and audience fragmentation, but the continued Government support for the liberalisation of the sector and the subsequent reduction of a full commitment to ensuring that the institutions that have been shaped by these principles retain their remits and direction. While it is too early to assess Ofcom’s performance, the citizen/consumer terminology it employs does suggest that two concepts of society and the individual which are sometimes diametrically opposed enjoy equal status in its policy approach – an outlook that clearly relegates the normative notion of citizenship and promotes the consumer.

⁸³ Lord Burns cited in Brown, *What price the BBC?*

⁸⁴ BBC 2 “Newsnight”, 29 June 2004.

⁸⁵ BBC, “At-a-glance: BBC job cuts”, available at http://news.bbc.co.uk/1/hi/entertainment/tv_and_radio/4369221.stm (accessed 24 August 2005).

10. RECOMMENDATIONS

10.1 Media policy

Media pluralism

1. Parliament and the Government should ensure that in the new regulatory framework media pluralism is rigorously protected. As this is an issue concerning the whole of society, the discussion about the new regulatory framework should be as transparent and encompassing as possible, also involving professional, consumer, civil society and other organisations.

Public service broadcasting

2. Parliament and the Government should continue to support public service broadcasting. The status and public funding of the BBC should be proportional and adequate to enable the BBC to fulfil its public service remit across platforms.

10.2 Regulatory authorities

Media plurality

3. Ofcom should rigorously protect media pluralism in the new regulatory framework. It should ensure that the television market remains plural and open to new competitors. It should develop a transparent framework to ensure that the public interest test maintains acceptable standards of pluralism in the television sector.

The BBC

4. Parliament and Government should ensure that adequate regulatory structures are put in place to ensure a clear separation between the management and the Board of Governors of the BBC. The strategic and regulatory functions of the Board should also be assessed as to the effectiveness of such an arrangement.

Public service broadcasting

5. The BBC should resist pressures of competition and prevent some of the more challenging or minority genres from being pushed outside of peak-time viewing. It should not succumb to ratings-driven schedules with less originality and innovation than audiences wish to see.

Commercial broadcasters

6. Ofcom should ensure that where a greater degree of self-regulation is introduced for the commercial broadcasters, co-regulatory measures are in place to guarantee that these broadcasters continue to contribute to the quality

and diversity of television services. Public service obligations, which have traditionally been placed on commercial terrestrial broadcasters by the State, should be maintained.

10.3 New media platforms

Digital television

7. The Government should continue to support the UK public service broadcasters to ensure that they have a central place in the digital television landscape and on the Internet. Digital rollout should enhance the quality of television in the UK and not threaten the quality and diversity of television.

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