

DIGITAL ECONOMY ACT 2010

Impact Assessments

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**BIS** | Department for Business  
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**INTELLECTUAL**  
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department for  
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# IMPACT ASSESSMENT FOR THE DIGITAL ECONOMY ACT 2010

<b>Foreword</b>	3
<b>Executive Summary</b>	4
Introduction	4
Why the Digital Economy Act is important	6
Summary of policy proposals included in this impact assessment	11
<b>Equality Impact Assessment</b>	24
<b>Individual Impact Assessments</b>	
Ofcom Duties – Reporting Duties	31
Ofcom Duties – Report on Media Content	42
Online Copyright Infringement	54
Domain Names	86
Public Service Content – Overarching	98
Channel 4 Corporation Functions	119
Public Sector Broadcasting Licensing Procedures	141
Gaelic Broadcasting	162
Digital Radio Networks	172
Amending the Wireless Telegraphy Act	197
Video Recordings – Video Games Classification	208
Matched Penalties	240
Public Lending Right	250
<b>List of Acronyms</b>	265

## Foreword

In June 2009, the UK Government published the Digital Britain White Paper, entitled Digital Britain: Final Report ("Digital Britain Final Report"). The report set out the Government's ambition for the UK to be at the forefront of the global move towards a digital economy and digital inclusion, and set out policy proposals to achieve this. Many of the measures outlined in the Digital Britain Final Report are being taken forward without legislation. However, the UK Government sought to implement a number of the proposals included in the Digital Britain Final Report as legislation, and thus, introduced the Digital Economy Bill in the House of Lords in November 2009.

The Bill received Royal Assent on 8 April 2010, and the UK Government is publishing, in line with better regulation principles, revised Impact Assessments on the measures contained in the Digital Economy Act 2010. These present in detail the rationale and the respective costs and benefits. These Impact Assessments have been prepared by the Department for Business, Innovation and Skills, the Department for Culture, Media and Sport, and the Intellectual Property Office.

# Executive Summary

## Introduction

This Impact Assessment package, which was first published in November 2009 to accompany the Digital Economy Bill ("the Bill"), has been updated to reflect the Digital Economy Act 2010. The Bill received Royal Assent on 8 April 2010, and is now an Act of Parliament – Digital Economy Act 2010.

In June 2009, the UK Government published the Digital Britain White Paper<sup>1</sup>, which set out the Government's ambition for the UK to be at the forefront of the global move towards a digital knowledge economy and the detailed policy proposals to achieve this goal. This built on the high level objectives outlined in the Digital Britain interim report, published in January 2009.<sup>2</sup>

Many of the measures outlined in the Digital Britain White Paper are being taken forward without legislation. However, there are a number of measures which are in the Digital Economy Act 2010.

The benefits from the digital revolution cover four broad areas:

- **A competitive digital communications infrastructure:** to strengthen and modernise the country's communications infrastructure by enhancing Ofcom's reporting duties in relation to infrastructure and content, providing Ofcom with additional powers to support the modernisation of the mobile network spectrum and making changes to the radio licensing regime to support the move to digital radio;

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<sup>1</sup> BIS/DCMS (2009) *Digital Britain: Final Report*. The report and accompanying publications can be accessed at: [http://www.culture.gov.uk/what\\_we\\_do/broadcasting/5631.aspx](http://www.culture.gov.uk/what_we_do/broadcasting/5631.aspx)

<sup>2</sup> BERR/DCMS (2009) *Digital Britain: Interim Report*. The report and accompanying publications can be accessed at: [http://www.culture.gov.uk/what\\_we\\_do/broadcasting/5631.aspx](http://www.culture.gov.uk/what_we_do/broadcasting/5631.aspx)

- **Creative industries in a digital world:** to make the UK one of the world's main creative capitals by taking action to tackle online infringement of copyright, and updating public lending right for the digital age;
- **Public service content in Digital Britain:** to ensure the provision of engaging public service content by updating Channel 4 Corporation's functions and allowing the future-proofing of the Channel 3 and Channel 5 licences; and
- **Digital security and safety:** to ensure that everyone can work online with confidence and safety by putting age ratings of boxed computer games on a statutory footing for ratings of 12 years and above, and supporting the efficient and effective management and distribution of Internet domain names.

## **Why the Digital Economy Act 2010 is important**

The UK Government attaches particular importance to establishing the UK as a leading digital economy for several reasons:

- A Digital Britain can make a significant contribution to the Government's *New Industry, New Jobs* agenda.
- A Digital Britain can play a crucial role in helping the Government deliver a number of wider policy objectives.
- Broadcasting, the creative industries and the information and communication technology sectors are of major economic importance in the UK.

### **Digital Britain and the Government's New Industry, New Jobs Agenda**

On April 20<sup>th</sup> 2009, the Government published its policy statement, *Building Britain's Future – New Industry, New Jobs*<sup>3</sup>. This paper set out how the Government's industrial policies could be strengthened in ways which could help the UK economy emerge more strongly from recession. The policies enable British businesses to, not only, exploit the new opportunities which the global economy will offer after the current downturn, but also respond effectively to the growing competitive threat from countries such as China and India which are continuing to move into higher skilled and value added economic activities where the UK has long enjoyed a comparative advantage.

The Digital Britain White Paper, which was published in June 2009, is an example of the government's new approach to industrial policy in practice. The White Paper's specific policy actions and decisions make a significant contribution to the Government's New Industry,

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<sup>3</sup> HM Government (2009) *New Industry, New Jobs*. This paper can be accessed at: [http://www.dius.gov.uk/~media/publications/N/new\\_industry\\_new\\_jobs](http://www.dius.gov.uk/~media/publications/N/new_industry_new_jobs)

New Jobs agenda in two ways. First, these can play a major part in helping the UK emerge from recession by encouraging innovation – one of the five drivers of productivity – in new digital and broadband technologies and content. Second, these can provide the telecommunications infrastructure that UK businesses – particularly those in the content and creative industries – crucially rely on in order to compete effectively in the global economy.

The Government will implement these through the Digital Economy Act 2010, which this Impact Assessment accompanies.

### **Digital Britain and the Government's wider policy objectives**

The Digital Economy Act 2010 will contribute to the delivery of a number of the government's wider economic, social and environmental objectives. The high-level benefits of the move to a digital economy, as set out in the form of Public Service Agreements (PSAs)<sup>4</sup> include:

- *Raising the productivity of the UK economy (PSA 1)* – lower costs of important factors of production (information and communication costs) for businesses through the development of digital infrastructure;
- *Delivering the right conditions for business success (PSA 6)* – this includes a better and more complete infrastructure, a more certain legal environment, and increased competition and consumer choice; and,
- *Maximising employment opportunities for all (PSA 8) and promoting innovation (PSA 4)* - setting out the right framework to promote further investment, job creation and innovation in digital infrastructure and content.

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<sup>4</sup> More information on the UK Government's Public Service Agreements (PSAs) can be found on the HM Treasury website: [http://www.hm-treasury.gov.uk/pbr\\_csr07\\_psaindex.htm](http://www.hm-treasury.gov.uk/pbr_csr07_psaindex.htm)

## Broadcasting, the creative industries and the information and communication technology sector

The digital economy is not so much a sector but rather a significant change in the UK's telecommunication infrastructure in which economic activity, society and cultural way of life become increasingly underpinned by digital and broadband technologies.

As yet, there is no agreement on how the digital economy should be defined and measured. Different definitions and ways of measuring have been used giving rise to different estimates of its size. Digital and broadband technologies pervade nearly all sectors of the economy and the fact that they cannot be easily captured using standard industrial classification (SIC) codes makes the task of assessing the importance of the digital economy in terms of its contribution to the GDP and employment extremely difficult.

In the Digital Britain interim report, the information and communication technology (ICT) sector was used to help provide a first estimate of the size of the digital economy. Using the OECD definition of the ICT sector and official statistics for 2006, we estimated that the digital economy represented around 8% of UK GDP.

For the Digital Britain White Paper, efforts were made to improve this estimate. Accepting the significant limitations of using SIC codes<sup>5</sup>, for the purposes of this impact assessment we have worked to draw up a more accurate and sensible definition of the digital economy based on recognised and approved definitions of the ICT sector (OECD), the Creative Industries (Department for Culture, Media and Sport) and the Digital Content industry

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<sup>5</sup> From 2008 onwards data has been collected under SIC 2007 rather than the previously used SIC 2003. For 2008 only data was collected under both codes. Under SIC 2007 content of the Digital Economy is not wholly consistent with SIC 2003. BIS have received permission from ONS to publish totals for the Digital Economy in 2008 under SIC 2003, but are unable to disclosure check the individual codes.



(Centre for International Economics in Australia)<sup>6</sup>. The definition of the digital economy used in this impact assessment is set out in Table 1 overleaf.

Using this definition and the latest official statistics available we estimate that the digital economy generated around £130 billion in gross value added (GVA)<sup>7</sup> in 2008 representing around 10% of UK GDP. In the same year, the digital economy employed over 1.7 million people, representing around 6% of total UK employment. As expected these figures are higher than the estimates used in the interim report as we have included more industries in our definition of the digital economy – namely the digital content industries.

The sectors described above in Table 1 can be considered as the core digital economy. However, the digital economy is more than just an emerging sector which is becoming of increasing economic importance. It is a fundamental change in the telecommunications infrastructure of the UK economy in which economic activity in manufacturing and services – including public services – are increasingly based on digital and broadband technologies. Telecommunications is an important input into many other sectors of the economy, some of which make a significant contribution to the UK economy. For example, telecommunications is a key input in businesses services and financial services which together accounted for nearly a third of total UK GVA and more than a fifth of total UK employment in 2007<sup>8</sup>. Accordingly the digital economy is of far greater importance to the UK economy than the estimates in Table 1 above suggest.

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<sup>6</sup> Centre for International Economics (2005) *Australian digital content industry futures*. Study prepared for the Department for Communications, Information Technology and the Arts (DCITA). The study can be accessed at: [http://www.archive.dcita.gov.au/\\_data/assets/pdf\\_file/0007/37474/Appendix\\_C.2\\_Australian\\_digital\\_content\\_futures.pdf](http://www.archive.dcita.gov.au/_data/assets/pdf_file/0007/37474/Appendix_C.2_Australian_digital_content_futures.pdf)

<sup>7</sup> Gross value added (GVA) is one measure of the total value of goods and services produced in an economy. In its simplest terms, it is defined as the total value of output less the total value of inputs used to produce it.

<sup>8</sup> According to official statistics published in the National Accounts Blue Book, in 2007 total UK Gross Value Added UK was an estimated £1.27 trillion while total UK employment was some 31.5 million. Gross value added for the business services sector and financial services sector were some £302.6bn and £95.4bn respectively while the total number of people employed in both sectors together was some 6.6 million.

Table 1: Definition of the UK digital economy used in this Impact Assessment

UK DIGITAL ECONOMY			
SECTOR	SUB-SECTOR	GVA (£m)	EMPLOYMENT (000s)
<b>ICT sector</b>			
30	Office, accounting and computing machinery	Detail is not available due to technical challenge of disclosure checking across both classifications - disclosure checked detail is now published on a SIC2007 basis and content of Digital industry is not wholly consistent with SIC2003 basis	
31.3	Insulated wire and cable		
32.1	Electronic valves and tubes and other electronic components		
32.2	Television, radio transmitters and apparatus for telephony and telegraphy		
32.3	Television and radio receivers, sound or video recording or producing apparatus and associated goods		
33.2	Instruments and appliances for measuring, checking, testing and navigating and other purposes		
33.3	Industrial process equipment		
51.43	Wholesale of electrical household appliances		
51.84 and 51.85 (previously 51.64)	Wholesale of machinery equipment and supplies		
51.86 and 51.87 (previously 51.65)	Wholesale of other machinery used in industry, trade and navigation		
64.2	Telecommunications services		
71.33	Renting of office machinery and equipment including computers		
72	Computer and related services		
<b>Total ICT</b>			
<b>Digital content industries</b>			
74.4	Advertising	Detail is not available due to technical challenge of disclosure checking across both classifications - disclosure checked detail is now published on a SIC2007 basis and content of Digital industry is not wholly consistent with SIC2003 basis	
22.32	Reproduction of video recording		
74.81	Photographic activities		
92.11	Motion picture and video production		
92.12	Motion picture and video distribution		
92.13	Motion picture projection		
22.14	Publishing of sound recordings		
22.31	Reproduction of sound recording		
22.11	Publishing of books		
22.12	Publishing of newspapers		
22.13	Publishing of journals and periodicals		
22.15	Other publishing		
92.4	News agency activities		
22.33	Reproduction of computer media		
72.21	Publishing of software		
72.22	Other software consultancy and supply		
22.21	Printing of newspapers		
22.22	Printing n.e.c		
22.24	Pre-press activities		
22.25	Ancillary activities relating to printing		
92.2	Radio & TV		
<b>Total Digital</b>		66,836	953
<b>TOTAL</b>		<b>130,652</b>	<b>1,760</b>
<b>% of UK economy</b>		<b>10</b>	<b>6</b>

Source: BIS estimates based on Annual Business Inquiry data published by ONS and DCMS methodology and estimates for the Creative Industries. GVA and employment totals above are the sum of all SIC codes listed above except 71.21 and 72.22 to avoid double counting.

## Summary of policy proposals included in this impact assessment

The Digital Economy Act 2010 includes a number of specific policy proposals, decisions and recommendations, which were first announced in the Digital Britain White Paper. The rationale for these different proposals, and the respective cost and benefits of these measures are summarised below and are discussed in more detail in the individual impact assessments which follow this Executive Summary.

### **1. Ofcom Duties**

#### *a) Reporting duties*

In the Digital Britain White Paper, the UK Government set out ambitious goals with respect to the communications and broadcasting infrastructure. To achieve these, Ofcom needs to ensure that the infrastructure is functioning properly and that any significant deficiencies associated with coverage, capability and resilience are detected and resolved as quickly as possible.

<b>Policy Area</b>	<b>Policy Proposal</b>	<b>Benefits</b>	<b>Costs</b>
<b>Ofcom Duties – Reporting Every 3 Years</b>	Impose an additional statutory duty on Ofcom to: <ul style="list-style-type: none"><li>- Report every three years to the Secretaries of State giving an assessment of the UK's communication infrastructure.</li><li>- Write as necessary alerting the Secretaries of State to any matters of high concern regarding the developments affecting the communications infrastructure.</li></ul>	Possibility of swifter and greater progress towards the goals set out in the Digital Britain White Paper with respect to communications and broadcasting infrastructure if these proposals lead to more informed and swifter decisions as to where remedial action is needed to address identified deficiencies in the coverage, capability and resilience of the infrastructure.	Costs to communication providers associated with complying with additional information obligations and data requirements. Costs to Ofcom associated with gathering additional market intelligence and producing report every three years. Significant uncertainties mean that it is not possible to quantify them in this impact assessment.

The Digital Britain White Paper set out the ambition to give Ofcom a statutory duty to monitor and report on the overall communications infrastructure in the UK on an ongoing basis. This should enable Ofcom to make informed and prompt decisions as to where remedial action is required and should give the Government better information about the current state and performance of the communications infrastructure. For this to happen, Ofcom requires detailed and accurate information from communication providers which it can use to make informed and prompt decisions about the best course of action.

*b) Promoting Investment in Public Service Media Content and reporting on media content*

Government intervention is needed to address a current regulatory failure. The existing statutory framework gives Ofcom specific duties and powers in relation to public service media content but only when it is provided on linear television by specifically identified institutions – the existing public service broadcasters (PSBs). As the definition of public service broadcasting is narrow, Ofcom's ability to take account of the wider delivery of public service media content is limited. The Digital Britain White Paper therefore announced that the Government would discuss with Ofcom how it could best take account of the wider delivery of public service media content in the future, as part of a series of wider measures aimed at securing plurality of public service media content.

The Government believes that the best way to address this failure is to extend the scope of Ofcom's statutory review of the delivery of public service broadcasting on television to the delivery of public service media content on other platforms, such as on-line, on demand and mobile, and beyond the traditional main public service broadcasters, including the PSBs' digital channels, Sky and others.

The rapid diminution of the advertiser-funded market that has funded commercially-provided public service media content, the competition faced by the commercially funded PSBs from multichannel television and the increased levels of viewing on on-demand platforms is leading to a reduction in investment in content that meets public purposes. ITV plc for example have announced that they made a small profit in 2009 and forecast a rise in advertising revenue for the first two quarters of 2010, but given the losses suffered by ITV in 2008, investment in public service media content is unlikely to substantially increase. Ofcom's extended reporting duty will allow Ofcom to take regulatory action and to make recommendations to Government to address threats to plurality caused by these market changes based on a more comprehensive assessment of public service media content provision.

Policy Area	Policy Proposal	Benefits	Costs
<b>Ofcom Duty to report on media content</b>	Extend Ofcom's reporting duty to allow them to take account of the provision of public service media content more widely across all platforms (beyond the existing public service broadcasters) and consider the areas where intervention may be required.	The change to Ofcom's duty should help to support plurality of UK public service media content by requiring Ofcom to gather information on its wider delivery. Similar to the costs, the extent of the benefits will be determined by how Ofcom approaches this duty and any specific changes it recommends.	The extension of Ofcom's PSB review duty to public service media content provided on platforms beyond the traditional public service television broadcasters will result in them incurring some minimal costs (e.g. staffing). However, it is extremely difficult to assess any additional costs on either industry or society in general as this will very much depend how Ofcom approaches this duty and any specific changes it may recommend to the regulatory framework in order as a result.

## **2. Online infringement of copyright**

File sharing of audio, video, data, or anything in digital format between users on a computer network has increased significantly in the last few years. This has served to reduce the

incentive for the creative industries to invest in the development, production and distribution of new innovative content.

To reduce unlawful downloading, the Government is proposing to bring in legislation which makes it easier for rights holders to bring targeted civil actions against suspect copyright infringers. The legislation would place an obligation on internet service providers (ISPs), when informed by rights holders, to notify subscribers of their unlawful behaviour. It would also place an obligation on ISPs to maintain records of the most frequent offenders, which would allow rights holders to take targeted legal action against these infringers.

Policy Area	Policy Proposal	Benefits	Costs
<b>Online infringement of copyright</b>	Preferred policy option outlined in the Government Response (January 2009) to previous Consultation (July 2008). This requires ISPs to take direct action against users identified by rights holders as infringing copyright through online infringement of copyright.	Benefits to rights holders of recovering displaced sales. (Total benefit: £1700 million.) Benefits to consumers in ensuring that investment in high quality and diverse creative content is at appropriate levels.	Costs to ISPs of complying with the legislation, including costs of notifying infringers, capital costs to ISPs, costs of setting up and running a call centre, annual capital and operating costs to mobile network operators. Possibility of higher broadband costs for consumers. (Total cost: £290 – 500 million.) Costs to low income/low valuation digital product consumers who would stop consuming digital content altogether rather than purchase it; costs to rights holders of identifying infringing IP addresses and taking infringers to court.

### 3. Domain Names

The domain name system is a crucial element in the Internet economy. However, the UK Government is becoming increasingly concerned about reported abuse of the domain name system. First, it can have a detrimental impact on Internet users as they can be exposed to the risk of financial loss and emotional distress as a result of mistakenly accessing a (fake) site similar to the one they intended. Second, it can prevent the Internet economy functioning efficiently because it raises the costs to business – especially small businesses -

of securing the domain name they want and the search costs to consumers because it makes it more difficult to find the web site of the firm they are looking for. As a result, further growth in e-commerce may be hampered.

We are proposing reserve powers to regulate the authorisation and distribution of domain names by certain UK-based registries where the Government believes self regulation is at risk of failure. The Secretary of State will be able to take enforcement action against a registry that does not correct a serious failure by that registry, its registrars or end users such as allowing practices that are unfair or involve the misuse of domain names to continue; or has inadequate for dealing with complaints.

Policy Area	Policy Proposal	Benefits	Costs
<b>Domain Names</b>	Allow the industry to remain self-regulated but have reserve powers in case Government intervention is required to protect consumers and UK Internet users, including businesses.	There is the potential for benefits for consumers and business as a result of the behaviour of registries being positive influenced by the existence of the Government's reserve powers. For example, increased consumer welfare due to reduced exposure to risk of financial loss and distress associated with mistakenly accessing a fake site similar to the one they were intending and access to better delineated disputes procedures. Businesses are better protected from lost sales, brand dilution and may benefit from potentially not having to pay for dispute resolution.	Potential compliance costs to members of registries if the Secretary of State appoints a manager to run the registry on a temporary basis or applies to the court to alter the registry's constitution. The registry would be responsible for the manager's costs.

#### **4. Channel 4 Corporation Functions**

Digital communications are radically changing the way people consume audiovisual services, with digital channels and internet take-up increasing rapidly. In contrast, there is currently a statutory remit only for the linear TV<sup>9</sup> channel, Channel 4, but not for anything else the

<sup>9</sup> Linear TV channels consist of fixed schedules, where the broadcaster rather than the individual viewer determines what is broadcast, and when.

Channel 4 Corporation (C4C) does. This does not reflect the full range of C4C's public service activities nor does it provide the right incentives for C4C to take full advantage of the potential of new media to deliver public services in new formats and on new platforms, with enhanced impact and reach. As audiences shift over time, so may the balance of C4C's activities, to maximise its reach, impact and public value. This is all the more necessary as the digital age is also putting pressure on the commercial public service broadcasters' advertising-funded TV business model, posing a risk for the future plurality of public service content beyond the BBC.

Policy Area	Policy Proposal	Benefits	Costs
<b>Channel 4 Corporation remit</b>	To clarify C4C's objectives in the digital age; provide for a more robust accountability framework adapted to this new environment and for C4C's public service output to be provided on all platforms and media rather than only via the traditional linear TV channel (Channel 4).	Although there is no guarantee of future spend, C4C's 2008 spend on content to be covered by the new functions (excluding hosting/streaming costs, which are not significant) was: Original content on digital channels - £32m; Other digital media content (e.g. online) - £7m; Digital media projects for 14-19-year-olds - £5m; Film4 investment - £12.6m <sup>10</sup>  There will also be benefit to UK audiences of additional impact and reach of C4C public service content.  And benefit to content producers (both on digital channels and in new media) from C4C commissions.	Ofcom estimate minimal start-up and ongoing resource implications, which will be absorbed into existing resources.  C4C have indicated that the new arrangements will not have material cost implications for them over and above current plans.

## 5. Public Service Broadcast Licensing

Historically, commercially funded and run public service broadcasters (PSBs) (e.g. ITV plc and Five) have been required to fulfil public service obligations in return for certain rights and privileges - allocation of analogue spectrum, access to digital terrestrial capacity and due prominence on Electronic Programme Guide (EPG) listings. Due to a number of factors that model has become unsustainable. Structural changes in the communications markets have

<sup>10</sup> Source: C4C Report and Financial Statements, 2008 - Public Impact Report



led to greater fragmentation of audiences and advertising revenue, and the value of the regulatory assets that commercial PSBs benefit from in exchange for the fulfilment of specific production and programming obligations is declining. Although ITV plc have recently announced a return to profit, these factors continue to threaten the provision of public service media content by PSBs, with the risk that some types of public service media content will not be provided beyond the BBC. The current legislative framework is adding to the problem by limiting Ofcom's ability to adjust the commercial PSB licences to market realities. It also limits Ofcom's ability to maximise, in the medium term, the commercial PSBs' contribution to public service media content by ensuring that the obligations in their licences are focused appropriately. Addressing this issue requires primary legislation to amend the legislative framework.

Policy Area	Policy Proposal	Benefits	Costs
<b>PSB Licensing</b>	Allow public service licences to be adapted to market realities. This would allow Ofcom the flexibility to ensure that the obligations attached to the PSB licences (set out in sections 277, 278, 279, 286 and 287 of the Communications Act 2003) remain relevant to current and future market conditions. Provide Ofcom with manoeuvrability to assess the viability of the public teletext service and make recommendations to the Secretary of State about its future provision.	By allowing flexibility around licence obligations these provisions will ensure that the costs of licences reflect their true market value. This should allow licence holders to make cost savings based on short term variations to public service obligations and plan for the future more effectively.	The net costs to broadcasters will be negligible, although there will be minimal staffing costs to Ofcom, which we cannot speculate upon. This is because the policies will only apply either to channel 3 and 5 licence holders with their consent or will be temporary changes to the public service obligations contained within the relevant licences that will simply reflect market value. There will also be a cost to Ofcom of preparing and publishing a report on the future of the public teletext service.

## 6. Gaelic Broadcasting

It has been a long-term Government policy to ensure that there is appropriate broadcasting provision for people in the United Kingdom who speak minority languages. As adequate alternative provision of Gaelic content has now been secured, via BBC Alba, the Gaelic

obligations imposed on Scottish channel 3 licensees will no longer be necessary. The objective of this policy is therefore to remove redundant regulation which is placing significant and unnecessary compliance costs on businesses. Currently, in the light of the above changes, and the continuing financial pressures on Channel 3 licensees, Ofcom have reduced the public service broadcasting obligations on Channel 3 licensees in Scotland. The intention now is therefore to remove the remaining obligations on the Channel 3 licence holders in Scotland to fund their own Gaelic programming and to show Gaelic programming in peak time. The removal of the other obligations (high-quality, wide-ranging Gaelic programmes of at least 1 hour a week to be shown) is dependent on all viewers in Scotland being able to receive a digital Gaelic service. This will not be the case until after digital switchover in Scotland (due by June 2011).

Policy Area	Policy Proposal	Benefits	Costs
<b>Gaelic Broadcasting</b>	Remove the obligations on the Channel 3 licence holders in Scotland to fund their own Gaelic programming and to show Gaelic programming in peak time. Allow for the removal of the other obligations (high-quality, wide-ranging Gaelic programmes of at least 1 hour a week to be shown) once all viewers in Scotland are able to receive a digital Gaelic service. This will not be the case until after digital switchover in Scotland (due by June 2011).	<p>Limited benefits to the Channel 3 licence holder of (£7,000) gained from the ability to generate advertising revenues from broadcasting commercial content in place of Gaelic programming and from savings on Gaelic production (£11,000).</p> <p>When obligations to carry Gaelic programming can be removed (at switchover) there will be a limited opportunity benefit for the Ch3 Licence holder of £69,000, since more popular programming can be scheduled.</p> <p>The audience for English-language programming is greater than for Gaelic, so there will be a small net benefit for Scottish viewers in the greater availability of English programming; and the increased competition for audience could increase the quality of programming on competing channels</p>	Loss of 30 minutes Gaelic programming for viewers and small loss to the production community

## 7. Digital Radio Networks

Current regulatory frameworks are imposing significant costs on the industry, specifically by imposing a higher percentage of fixed costs, and preventing the structural changes needed to improve DAB coverage and reception. Government intervention is needed to update the regulatory framework to ensure that the market operates effectively, ensuring that broadcasters, manufacturers and listeners are able to invest and innovate with confidence.

Policy Area	Policy Proposal	Benefits	Costs
<b>Digital Radio networks</b>	<p><b>Analogue licensing regime</b></p> <ul style="list-style-type: none"> <li>- De-regulation of localness rules to allow greater flexibility for co-location within pre-determined regions;</li> <li>- New legislation to insert a two-year termination clause into all new licences; and</li> <li>- Amend the terms of the analogue licence renewal regime, to allow a further renewal of up to 7 years and greater flexibility to renew regional services against the provision of a national DAB service.</li> </ul> <p><b>Multiplex licensing regime</b></p> <ul style="list-style-type: none"> <li>- New legislation granting Ofcom the power to alter multiplex licences which agree to merge; and</li> <li>- Take the power to extend multiplex licences until 2030, if as part of a wider plan to extend DAB coverage.</li> </ul>	<p>Co-location changes will allow cost saving and economies of scale. Large stations could see profits before interest and tax rise from 6% to 24% assuming a 10% fall in advertising revenue or from 6% to 7% assuming a 20% fall in revenue.</p> <p>Broadcasters granted analogue licence renewal will have more certainty in their future business, allowing for longer term business planning and greater confidence to invest.</p>	<p>Extension of the licence renewal regime will mean a loss to Government where it might have raised funds via the 'blind auction' – a value of around £10 million. The regime will also reduce the opportunity for new entrants to the analogue commercial industry, therefore potentially reducing competition.</p> <p>Allowing consolidation of multiplexes will allow transmission costs to be more equally shared amongst all the services carried. It will also allow broadcasters to sell advertising either nationally or on a region by region basis depending upon which was the most valuable.</p>

## 8. Amending the Wireless Telegraphy Act

The UK Government is to implement a package of measures brought forward by the Independent Spectrum Broker (ISB) aimed at achieving the release, liberalisation and wider spread of spectrum including sub-1GHz spectrum between mobile network operators. This is necessary in order to make progress towards the goals set out in the Digital Britain White

Paper with respect to wireless infrastructure. However, amendments to the Wireless Telegraphy Act 2006 are first needed to give the measures effect. Without these, there exists the possibility of regulatory failure in that the regulatory framework underpinning the market for radio spectrum may prevent it from functioning as well as it could do. If these amendments are made then the market for radio spectrum may be better able to allocate this scarce resource more quickly and efficiently between mobile network operators than it is now. This should help ensure that the ISB's proposed solution is able to have the maximum possible effect in terms of facilitating progress towards the goals set out in the Digital Britain White Paper with respect to wireless infrastructure.

Policy Area	Policy Proposal	Benefits	Costs
<b>Amending the Wireless Telegraphy Act</b>	Amend the Wireless Telegraphy Act as follows: <ul style="list-style-type: none"> <li>a. Allow Ofcom to impose penalties on operators in respect of a breach of licence conditions where these licence conditions have been directed by the Secretary of State;</li> <li>b. Allow Ofcom, in specific circumstances, to apply annual charges to licences allocated by auction; and</li> <li>c. Authorise payments between operators in relation to licences auctioned under s14 WTA.</li> </ul>	Potential monetary benefits will be considered as part of the Impact Assessment accompanying the Government response on the consultation on a Direction to Ofcom to implement the Wireless Radio Spectrum Modernisation Programme, which was published on 9 March 2010. Market for radio spectrum may be better able than it is presently to allocate this resource quickly and efficiently between mobile network operators. This will help to ensure that the ISB's proposed solution, should it be implemented, is able to have the maximum possible effect in terms of facilitating progress towards the goals set out in the Digital Britain White Paper which has the potential to deliver significant benefits to consumers, businesses as well as the wider economy and society.	It is extremely difficult to try and quantify accurately the size of the potential monetary costs associated with the proposed amendments. For this reason, we have not quantified them in this impact assessment. Some operators may incur costs arising from additional licence conditions imposed by Ofcom. Payments made by operators in relation to licences auctioned under s14 of the Act and annual charges applied to licences allocated by auction represent transfers and are not included in the cost-benefit analysis.

## 9. Video Recording – Video Games Classification

This extension of the classification requirement to a wider age bracket for video games will implement Professor Tanya Byron’s recommendation set out in her independent review, *Safer Children in a Digital World*. Her review was followed by a UK wide public consultation on the options for the future structure of the video game classification system.

Policy Area	Policy Proposal	Benefits	Costs
<b>Video Games</b>	Extend the arrangements for the classification of video games, so that all games suitable only for those aged 12 and over are subject to statutory classification.	The new arrangements will extend the protection afforded to children, and help to ensure that they are not exposed to unsuitable material in video games. They will also help make the classification clearer for parents.	The option chosen is broadly similar to the status quo in terms of costs to industry. There will be costs associated with setting up the necessary administration, but the new arrangements capitalise on the existing set-up.

## 10. Matched Penalties

Copyright infringement is a serious economic crime. It is important that the penalties available are proportionate to the harm caused to UK industries and that they act as an effective deterrent. Copyright offences are usually committed for economic gain and the Government wants to ensure that the courts have effective remedies to deny offenders the profits of their crimes. The policy follows through on the Government’s agreement to take forward the recommendations of The Gowers Review of IP; Gowers Recommendation 36 called for equalisation of penalties for online and offline copyright infringement.

The existing intervention in the market, which is that of establishing intellectual property rights, allows the market to operate efficiently. However, further intervention is required to

ensure the continued effectiveness of the intellectual property regime given the presence of new technology.

Policy Area	Policy Proposal	Benefits	Costs
<b>Matched Penalties</b>	Introduce a £50,000 exceptional statutory maxima for copyright infringement in s.107 and for use of illicit recordings in s.198 of the CDPA.	There will potentially be benefits to the Exchequer through fines levied on those convicted of offences. Indirect benefits to business through a reduction in pirated goods and an increase in legal sales of their products.	There will potentially be some additional costs incurred by enforcement agencies and the courts. This would be as a result of any increased workload in identifying and prosecuting offenders. However, it is not possible at this stage to estimate this. There will also be costs incurred in updating sentencing guidelines to courts.

### ***11. Public Lending Right***

Currently only printed books can be registered for Public Lending Right (PLR) payment. In 2008-09 authors received £6.6 million of £7.4 million in grant-in-aid, the remainder was used to administer the Scheme. Lending rights for non-print formats are conferred and protected by copyright law, but it is for rights holders and library services to make appropriate arrangements to license loans. We believe regular formal licensing arrangements are rarely achieved to the satisfaction of libraries or rights holders. The market has not and cannot of itself be expected to deliver an efficient outcome or overcome co-ordination failure. These proposals would extend eligibility for compensation under PLR to rights holders of non-print book formats, including authors, narrators and producers.

Extending eligibility of the PLR Scheme to non-print book loans will provide more equitable compensation for similar categories of rights holders, and will update the 1979 PLR legislation to keep abreast of the growth of non-print book loans. It will

remove the need for individual or national negotiations between libraries and rights holders to enable lawful loan of non-print books under copyright legislation. It will simplify arrangements for payment for such rights, ensure that a wider range of rights holders are adequately protected and remunerated, demonstrate the government's commitment to innovation in publishing and the creative industries, and support the growth of non-print lending.

Policy Area	Policy Proposal	Benefits	Costs
<b>Public Lending Right</b>	To extend eligibility for compensation under Public Lending Right to rights holders of non-print book formats, including authors, narrators and producers	Rights holders of non-print books could benefit from up to £300,000 in additional payments.	Exchequer funding of approximately £300,000 may be required as additional grant for payments to rights holders of non-print books  One off set up costs of £60,000. Costs of ongoing administration expected to be absorbed within existing arrangements.

# Equality Impact Assessment

In line with better regulation best practice and the statutory equalities duties, (race equality duty – section 71 of the Race Relations Act 1976, gender equality duty – section 76A of the Sex Discrimination Act 1975 and the disability equality duty – section 49A of the Disability Discrimination Act 1995), the Government has considered the impacts of the Digital Economy Act on race, gender and disability equality.

It is important that the measures from the Digital Britain White Paper are developed further, and through the Digital Economy Act 2010, the Government can ensure by legislation that the benefits of the digital economy are extended to all UK citizens.

There have been five consultations undertaken on the policy areas within the Act. These consultations complement the discussions with various internal equality groups, where we sought their views on whether there were any equality impacts suggested by the Bill, in preparing this specific assessment on equality.

## *Race Equality*

We have considered the race equality duty in section 71 of the Race Relations Act 1976. In developing the policy on the Act, we have therefore had due regard to the need to:

- (a) eliminate unlawful racial discrimination; and
- (b) promote equality of opportunity and good relations between persons of different racial groups.

Our internal equality group shares our view that the Act is unlikely to have any adverse impact in terms of race equality, and may have a positive impact. The latter, by strengthening and modernising the digital communications infrastructure, the Act will



upgrade the UK's digital networks, create a dynamic investment climate for UK digital content, facilitate production of quality content for all UK users, ensure fairness and access for all and move towards widespread on-line delivery of public services will benefit all segments of the population.

It should be noted that there is no evidence at present that ethnic minorities are disadvantaged with respect to internet usage. Indeed, the Ofcom Media Literacy Audit<sup>11</sup> of ethnic minorities (2008) showed that the four ethnic minority groups surveyed have higher take up than the UK average, as follows:

*Table 2: Internet take-up among ethnic minority groups*

	%
Indian	76
Pakistani	72
Black Caribbean	64
Black African	69
<b>UK Adults Total</b>	<b>62</b>

Source: Ofcom (2008)

Moreover ethnic minority owned businesses, a significant proportion which tend to be more entrepreneurial small businesses, would be set to benefit from improvements to digital connectivity.

Ethnic minority audiences may also benefit from the proposed changes to the Channel 4 Television Corporation's (C4C) functions. C4C has a strong reputation for provision for minority groups and interests and has good representation of diversity and alternative

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<sup>11</sup> Ofcom (2008) Media Literacy Audit: report on UK adults from ethnic minority groups. This report can be accessed at: [http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/medlitpubrss/ml\\_emg08/ml\\_emg.pdf](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/ml_emg08/ml_emg.pdf)

viewpoints, especially of ethnic minority audiences. C4C's new functions will require them to provide services on a wider range of delivery platforms. C4C will also be required to provide content that appeals to the tastes and interests of a culturally diverse society, promote alternative views and new perspectives, promote the interests of a well-informed and engaged society and challenge people to see the world differently. It is hoped these provisions will underpin C4C's commitment to diversity and equality.

### *Gender Equality*

We have considered the gender equality duty in section 76A of the Sex Discrimination Act 1975. In developing the policy on the Act, we have therefore had due regard to the need to:

- (a) eliminate unlawful discrimination and harassment, and
- (b) promote equality of opportunity between men and women.

Those we consulted on gender equality share our assessment that, it is unlikely the Act will have a significant impact in terms of gender equality. They suggested that our assessment would be strengthened by more data on the differences between women and men who used internet-mediated home working. Acting on their suggestion, we found the number of women that mainly work from home using both a telephone and a computer increased from 1.9% of total female workers in 1998 to 4.9% in 2008<sup>12</sup>. In the same period, the proportion of male workers who worked mainly from home using both a telephone and computer increased from 3.3% to 7.4% of total male workers. This indicates that the increased ability to work from home could help both genders take advantage of more employment opportunities, thus maintaining equality opportunities between men and women, and not promoting one gender over the other.

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<sup>12</sup> ONS (2008): *Labour Force Survey*

Although the Act has no significant impact on gender equality, it does complement the non-legislative implementation plans as set out in the Digital Britain White Paper, by facilitating improvements to the digital communications infrastructure. This will allow workers to work from home much more easily by having access to e-mail accounts and remote connections to their desktops. This could be a positive enabler for both men and women to find a better work-life balance.

### *Disability Equality*

We have considered the disability equality duty under section 49A of the Disability Discrimination Act 1995. In developing the policy on the Act, we have therefore had due regard to:

- (a) the need to eliminate discrimination that is unlawful under the Disability Discrimination Act 1995;
- (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
- (c) the need to promote equality of opportunity between disabled persons and other persons;
- (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
- (e) the need to promote positive attitudes towards disabled persons; and
- (f) the need to encourage participation by disabled persons in public life.

The Government estimates that there are over 10 million people with disabilities and long term health conditions<sup>13</sup> in Britain. In 2007 the Disability Rights Commission reported that of all people without any formal qualifications, over one-third were disabled, and that of all people of working age out of work 40% were disabled. As noted in the Digital Britain White Paper, Ofcom's annual consumer experience reports found that in 2008 only 42%, 32% and

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<sup>13</sup> *Disabilities and long term health conditions will be referred to as "disabilities" as shorthand.*

36% respectively of people with visual, hearing and mobility problems had broadband access at home, compared to around 60% of the general population. Therefore, the Government has considered the implications for people with a variety of impairments, specifically including vision or hearing difficulties, people with dyslexia, people with learning differences and people with restricted dexterity.

Research by the Office for Disability Issues (ODI), in 2007, found that only 40% of people with disabilities had used the internet compared to 67% of the general population. It has been suggested that lack of confidence about online usage was a problem among users with disabilities, and that special training may be required; many public sites fail to comply with accessibility guidelines and there is a lack of cultural and education material produced in accessible formats for users with disabilities.

The Government is aware that new technologies have real potential to help users with disabilities, and the roll out of these new technologies needs to have a greater focus on the needs of such users. This could include the physical ability to access such technology – for example, the need for computer equipment adapted to those with visual impairments and limited dexterity.

Therefore, through the Digital Britain White Paper, the Government has tasked the Consumer Expert Group (CEG) to report on the specific issues facing disabled people using the Internet. The CEG membership includes representatives from RNIB, Sense, Age Concern, Citizens Advice Bureau and Consumer Focus. The CEG report<sup>14</sup> was published in October 2009, and made a number of recommendations. The Digital Britain team met with CEG members in January 2010 to discuss the Government's draft response to their report in detail, and to talk through how the Government intends to investigate the issues raised with

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<sup>14</sup> *The Consumer Expert Group report into the use of the Internet by disabled people: barriers and solutions:*  
<http://www.culture.gov.uk/images/publications/CEGreport-internet-and-disabled-access2009.pdf>

the Industry and third sector partners. The Government response is expected to be published in Spring 2010.

The Government has considered whether any of the Act policies would be challenging for people with disabilities. On the policy of online infringement of copyright, the Government's view is that it is reasonable the legislation in this area should apply in the same way to everybody, but we recognise the point made in response to the consultation that, should account suspension ever prove necessary, this could have a proportionately greater impact on those with disabilities. This should not apply to the initial obligations, which require Internet Service Providers to notify their subscribers when they have been identified by rights holders as infringing copyright. In addition, the number of times each subscriber is identified will be noted, and that information (in anonymous form) will be made available on request to rights holders, enabling them (should they so choose) to apply to a court for release of the personal details of the most serious infringers listed. We do not expect to have to go further in order to reduce significantly the population of online copyright infringers. Should technical measures become necessary, and in particular temporary account suspension, we acknowledge that this could have a greater impact on the people with disabilities since some will have a greater reliance on their internet connection than the population as a whole. Nevertheless it is considered appropriate to treat all alleged copyright infringers in the same way and it is not felt necessary to take steps to address specifically the potentially greater impact of the measures on people with disabilities when notifications are sent, whether they are the subscriber themselves or are dependent on a connection where the subscriber is alleged to be infringing copyright. Nobody will be subject to such a sanction before repeated warnings that they are alleged to be infringing copyright and they will be able to avoid such sanctions by putting a stop to their infringing

behaviour. Their route of appeal will be made very clear, and we have included provision for the appeals body to be able to exercise a degree of discretion should the personal circumstances of a subscriber justify a different approach, as may be the case where the subscriber or another member of the household has a disability that leads to a greater dependence on the connection to the Internet. It is important to set this within the context of the economic harm being done to creators and rights holders by unrestrained unlawful copyright infringement.

The following sets out specific areas of the Act which will impact positively on people with disabilities, thus promoting equality of opportunity between persons with disabilities and other persons.

- Digital Audio Broadcasting (DAB): many people with disabilities are likely to be reliant on radio so it is important to ensure good coverage of DAB before FM services are switched off, and to address any accessibility requirements and needs in adapting to DAB sound quality and set design.
- Public Lending Right (PLR): by extending PLR to rights holders of books in non-print formats is likely to increase the choice of this material available to library users. This will particularly benefit the print disabled<sup>15</sup> who often prefer to 'read' fiction as an audiobook over tactile book formats, for example Braille. For this reason both Share the Vision and the RNIB support our intention to extend PLR to cover audio and e-books.

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<sup>15</sup> *A person who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability.*

## OFCOM DUTIES – REPORTING DUTIES

<b>Department /Agency:</b> Department for Business, Innovation and Skills (BIS)	<b>Title:</b> Impact Assessment of proposals to amend Ofcom's statutory duties under the 2003 Communications Act (Reporting Duties)	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 12 April 2010
<b>Related Publications:</b> Consultation on the proposed new duties for Ofcom (2009)		

Available to view or download at: <http://www.berr.gov.uk/files/file52538.pdf>

Contact for enquiries: Stephen Fernando

Telephone: 020 7215 6320

### What is the problem under consideration? Why is government intervention necessary?

In the Digital Britain Final Report, the UK Government set out ambitious objectives with respect to the communications and broadcasting infrastructure. To achieve these, the UK Government needs to ensure that the infrastructure is functioning properly and that any significant deficiencies in coverage, capability and resilience which might serve to hamper progress towards these goals are detected and resolved as quickly as possible.

The UK Government however does not have perfect information about the current state and performance of the communications infrastructure. It therefore needs Ofcom to alert it to any potential issues of major concern and provide it with detailed and accurate information which it can use to help inform appropriate remedial action.

### What are the policy objectives and the intended effects?

The Digital Britain Final Report set out the UK Government's ambitions to give Ofcom a statutory duty to monitor and report on the overall communications infrastructure in the UK on an ongoing basis. This should enable Ofcom to make informed and prompt decisions as to where remedial action is required.

As a result, there could be swifter and greater progress towards the goals set out in the Digital Britain Final Report with respect to the broadcasting and communication infrastructure which have the potential to deliver significant benefits to consumers and businesses as well as the wider economy and society.

### What policy options have been considered? Please justify any preferred option.

The UK Government has considered the following options:

Option 1: Do nothing

Option 2 (Preferred Option): Impose a statutory duty on Ofcom to:

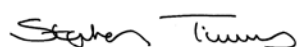
- Produce an initial snapshot of the position existing in the first year after the provision comes into force;
- Following the initial report, to report every three years to the Secretaries of State at BIS and DCMS giving an assessment of the UK's communications infrastructure;
- Write as necessary alerting the Secretaries of State to any matters of high concern regarding the developments affecting the communications infrastructure.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? A Post-Implementation review will be carried out within the next three to five years.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:



Date: 8 April 2010

## Summary: Analysis & Evidence

Policy Option: 2

Description: Impose additional reporting duties on Ofcom

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b>		
	£		<b>Total Cost (PV)</b> <b>£ Not Quantifiable</b>
<p><b>Other key non-monetised costs</b> by 'main affected groups' Costs to communication providers associated with complying with any additional information obligations and data requirements. Costs to Ofcom associated with gathering any additional market intelligence and producing initial snapshot and subsequent reports. Significant uncertainties mean that it is not possible to quantify them in this impact assessment.</p>			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b> <b>£ Not Quantifiable</b>
<p><b>Other key non-monetised benefits</b> by 'main affected groups' Possibility of swifter and greater progress towards the goals set out in the Digital Britain Final Report with respect to communications and broadcasting infrastructure if these proposals lead to more informed and swifter decisions as to where remedial action is needed to address identified deficiencies in the coverage, capability and resilience of the infrastructure.</p>			

**Key Assumptions/Sensitivities/Risks** There are significant uncertainties about what additional information will be required from communication providers and the precise scope of the reports which Ofcom will be required to produce. This makes it extremely difficult to quantify the likely costs to communication providers and Ofcom associated with these proposals.

Price Base Year	Time Period Years	<b>Net Benefit Range</b> (NPV) <b>£ Not Quantifiable</b>	<b>NET BENEFIT</b> (NPV Best estimate) <b>£ Not Quantifiable</b>
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			TBC		
Which organisation(s) will enforce the policy?			BIS		
What is the total annual cost of enforcement for these organisations?			£ 0		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			N/A		
What is the value of the proposed offsetting measure per year?			£ 0		
What is the value of changes in greenhouse gas emissions?			£ 0		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

**Impact on Admin Burdens Baseline** (2005 Prices) (Increase - Decrease)  
 Increase of    £ Unknown    Decrease of    £ Unknown    **Net Impact**    £ Unknown

Key:    Annual costs and benefits: Constant Prices    (Net) Present Value



## Evidence Base (for summary sheets)

### Background

The Office for Communications (Ofcom) is an independent regulatory body with responsibility, among others, for promoting competition and consumer interests in the UK broadcasting, telecommunications and wireless communications sectors. It was established under the Office of Communications Act 2002 and inherited the responsibilities previously held by the Office of Telecommunications (OfTel), the Broadcasting Standards Commission, the Independent Television Commission, the Radio Authority and the Radiocommunications Agency.

The Digital Britain Final Report emphasised the increasing importance of monitoring the national communications infrastructure, and the need for both Government and Ofcom to take a broad view of the nation's needs and any ways in which those needs may not be being met. In the Report, the Government announced its intention to give Ofcom a statutory duty to monitor and report on the overall communications infrastructure in the UK on an ongoing basis.

Over summer 2009, the UK Government consulted on proposals to amend Ofcom's general duties to include a requirement to alert the Government to any significant deficiencies in the coverage, capability and resilience of the UK's communication infrastructure, and to report every two years on the state of that infrastructure. This impact assessment updates the initial analysis published alongside that consultation taking into account the responses which were received from industry. We have also had subsequent discussions with Ofcom.

Since the publication of the Government response, and because of concerns that simply having the report every 2 years would impose an unreasonable burden on both Ofcom and operators, the Government laid an amendment for the reports to be prepared every 3 years

instead. This has subsequently been agreed by the House of Lords and the House of Commons.

### **Rationale for Government Intervention**

A well functioning communications infrastructure is of major importance to the economy, society and cultural way of life in the UK. It underpins all economic activity in the UK and can contribute to the competitiveness of UK firms in the global economy. It also has a key role to play in delivering public services – including the emergency services – and safeguarding the UK's wider infrastructure and strategic interests<sup>16</sup>.

In the Digital Britain Final Report, the UK Government set out a number of ambitious objectives with respect to the broadcasting and communications infrastructures. These included, but were not limited to:

- The delivery of universal broadband of 2Mb/s by 2012
- progress towards next generation access super-fast broadband to 90% of homes and businesses by 2017
- progress towards universal coverage in next generation mobile services
- a switchover to digital only radio by 2015.

These objectives are important because they can help the UK Government deliver wider public policy goals including greater social inclusion and improved provision of public services, particularly for local communities in more rural and remote areas of the country.

To achieve the goals set out in the Report, the UK Government needs to ensure that the broadcasting and communications infrastructure is functioning properly and that any

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<sup>16</sup> For example, radar, broadband and Global Positioning Systems (GPS) all play a vital role in air traffic control and military and defence systems.

significant deficiencies in coverage, capability and resilience which might serve to hamper progress, are detected and resolved as quickly as possible.

The UK Government however does not have perfect information about the current state and performance of the communications infrastructure. It therefore needs Ofcom to alert it to any potential issues of major concern and provide it with detailed and accurate information which it can use to help inform appropriate remedial action.

## **Policy options**

### ***Option 1: Do nothing***

Under this option, there would be no additional obligations on Ofcom to monitor and report on the UK's broadcasting and communications infrastructure. Assessments of the current state and performance of the infrastructure would continue to be published in the usual way (e.g. annual Communication Market Reports, consultation documents, ad hoc academic research etc). However, these assessments do not contribute to the Government's new objectives of identifying and addressing quickly any significant deficiencies in coverage, capability and resilience.

### ***Option 2: Impose additional reporting requirements on Ofcom***

Under this option, Ofcom would be given additional statutory obligations to:

- Produce an initial snapshot of the position existing in the first year after the provision comes into force
- Following the initial report, to report every three years to the Secretaries of State giving an assessment of the UK's communications infrastructure

- Write as necessary alerting the Secretaries of State to any matters of high concern regarding the developments affecting the communications infrastructure

The Digital Britain Final Report set out examples of the areas which the UK Government will require Ofcom to keep under review and report on<sup>17</sup>. These include:

- a) availability/coverage of the major communications platforms, to include fixed telecoms, cable, mobile, broadcasting and other platforms including core, backhaul, spectrum usage and access network capability
- b) an assessment of the mitigating actions taken to maintain and improve resilience and emergency preparedness to ensure the availability of networks
- c) the availability of satisfactory risk assessments carried out by network operators on infrastructure resilience and emergency preparedness, including measures planned to mitigate those risks
- d) services on offer over each platform, including details of wholesale arrangements and service competition
- e) an assessment of the standard of the different UK networks in comparison with electronic communications networks provided in a range of other countries, with particular regard to their coverage and capacity

In addition the following areas should also be covered by these reports:

- the extent to which UK networks share infrastructure
- the capacity of the different UK networks

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<sup>17</sup> Ofcom is believed to keep areas a) and d) under review, but not areas b), c) and e). On categories a) and d) Ofcom collects information on these on an ad hoc basis for different projects or investigations. In addition, Ofcom publishes an annual International Communications Market Report which compares the UK market with around 12 other countries around the world in terms of the size of the market, penetration of fixed, mobile and broadband networks and a comparison of revenues across communications markets.

- the extent to which the providers of the different UK networks allow other communications providers to use their networks to provide services
- the use of the electromagnetic spectrum for wireless telegraphy in the United Kingdom

Ofcom will also be required, if requested by the Secretary of State, to prepare a report on internet domain names. A separate Impact Assessment on the Digital Economy Act measures on internet domain names has been produced and is included as part of the whole package of Impact Assessments.

### *Costs*

It is not known at this stage as to the extent to which Ofcom will require any additional information from communications providers to help inform its assessment of the current state and performance of the broadcasting and communications infrastructure. It is possible that assessments of infrastructure resilience and emergency preparedness and associated mitigating actions are likely to need more information to be gathered from communication providers, if they are not available from other sources.

If further information is required, communication providers would likely incur additional administrative burdens associated with complying with any new information obligations and data requirements. Responses received from the consultation exercise noted that uncertainties regarding the scale and level of detail of the information which could be required by Ofcom make it extremely difficult to predict accurately the potential administrative burdens to communication providers at this time. For this reason, we do not attempt to quantify these costs in this impact assessment at this time.

Ofcom is likely to incur further costs associated with preparing the initial snapshot in the first year after the provision comes into force and the additional reports which must be

produced every three years. However, the Digital Economy Act 2010 sets out what network and services matters are to be covered in the report. If this requires the collection of new market intelligence or further research then this could serve to increase the costs incurred by Ofcom. It is also not clear at this time as to whether this reporting requirement would cover just the larger communication providers or all of them, which would raise the costs involved. For these reasons, we again do not attempt to quantify the potential costs to Ofcom in this impact assessment.

It is likely that the additional financial pressures for Ofcom caused by the new reporting duties any associated increase in staffing could be accommodated within the existing agreed expenditure cap.

### *Benefits*

Any additional information provided by communication providers may enable Ofcom to make a more detailed assessment of the current state of the UK communications infrastructure. In addition, any significant deficiencies in the coverage, capability and resilience of that infrastructure would be identified, because as noted in the discussion of the 'Do Nothing' Option current assessments do not lend themselves to this purpose.

This would enable Government and Ofcom to make informed decisions as to where remedial action is required. As a result, there could be swifter and greater progress towards the UK Government's goals set out in the Digital Britain Final Report with respect to infrastructure. If achieved, these have the potential to deliver significant economic benefits to consumers and businesses as well as the wider economy and society.

### **Competition Assessment**

Overall, we would not expect any specific competition issues resulting from this proposal. Communication providers might incur additional administrative burdens associated with providing any additional information that Ofcom might require. These costs may be disproportionately higher for small communication providers if they are not exempted.

In the event that they left the market as a result of these proposals, it is very unlikely that the level of competition in the market would change significantly. This is because the structure of the fixed and mobile telephony and broadband sectors are concentrated with the various markets dominated by a small number of larger communication providers<sup>18</sup>.

It is assumed that any new information which is commercially sensitive in nature is not published by Ofcom in a way which is potentially disclosive, as it is possible that some communication providers could try and use this information to gain a competitive advantage, thereby distorting competition in the industry. Therefore, Ofcom is empowered to exclude information from published reports which could be withheld in response to a Freedom of Information request. Provided that they did so, this would keep commercially confidential information out of the reports.

### **Small Firms Impact Test**

It is currently unknown as to whether small communication providers will be required to provide information for these reports. The Digital Economy Act 2010 requires Ofcom to include only information about, and analysis of, such networks, services and providers as they consider appropriate. If they are in these categories then it is possible that the

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<sup>18</sup> For example the mobile sector is dominated by five mobile network operators, the broadband sector is dominated by five internet service providers, while the fixed telephony sector is dominated by two network providers.

administrative burdens that they incur may be disproportionately higher than for larger firms.

### **Other specific tests**

Other specific tests have been considered including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Human Rights and Rural Proofing. After initial screening, it has been deemed that no significant impact is anticipated in any case.

The potential impact on race equality, disability equality and gender equality has also been considered. Again after initial screening it has been deemed that no significant impact is anticipated in any case.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# OFCOM REPORTS ON MEDIA CONTENT

Department /Agency: DCMS

Title: Requirement on Ofcom to Report on Media Content

Stage: Final

Version: Final

Date: 12 April 2010

**Related Publications:** Ofcom's second public service broadcasting review publications: Phase One – The Digital Opportunity, Phase Two – Preparing for the Digital Future and Putting Viewers First: Final statement and recommendations and Economics of audiovisual content production in the UK – Robin Foster Jan 28 2009

Available to view or download at: <http://www.ofcom.org.uk>

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**What is the problem under consideration? Why is government intervention necessary?** The UK public service media content sector which includes the traditional media, new media and film delivered across all platforms, is important for two reasons: firstly, it delivers social and cultural benefits for citizens of the UK, helping to secure a better informed educated society and reflecting and strengthening the cultural identity and diversity of the UK. Secondly, it contributes to the present and future success of the UK economy by creating jobs and providing a significant contribution to the UK's GDP. However, as the detailed evidence set out in the overarching public service broadcasting impact assessment suggests, investment in UK public service media content is stalling, in particular for certain types of content that meets public purposes but is not necessarily commercially attractive.

Government intervention is needed to address a current regulatory failure. The existing statutory framework gives Ofcom specific duties and powers in relation to public service media content but only when it is provided on linear television by specifically identified institutions – the existing public service broadcasters. As the definition of public service broadcasting is narrow, Ofcom's ability to take account of the wider delivery of public service media content is limited. The Digital Britain White Paper therefore announced that the Government would discuss with Ofcom how it could best take account of the wider delivery of public media service content in the future, as part of a series of wider measures aimed at securing plurality of UK public service media content. Market changes are also threatening the provision of public service media content. The rapid structural and cyclical diminution of the advertiser-funded model that has underpinned commercially-provided public service media content, the competition faced by the commercially funded public service broadcasters (PSBs) from multi-channel television and the increased levels of viewing on on-demand platforms are all leading to a reduction in investment in content that meets public purposes. It is therefore important that Ofcom is able to take action where appropriate to maintain plurality and to make recommendations to Government based on a more comprehensive assessment of the wider delivery of public service media content.

The Government believes that the best way to address this failure is to extend the scope of Ofcom's statutory review of the delivery of public service broadcasting on television to the delivery of public service media content on other platforms, such as on-line, on-demand and mobile, and beyond the traditional main PSBs, to include the PSBs' digital channels, Sky and others.

**What are the policy objectives and the intended effects?**

Extend Ofcom's duty to report on the delivery of public service television broadcasting to the delivery of public service media content on other platforms – intended effect – to allow Ofcom to take account of the fulfilment of the public service objectives across all platforms (beyond the existing public service broadcasters). Ofcom will then be in a position to make better informed recommendations to Government on the provision of public service media content and to better consider where regulatory intervention may be desirable in accordance with their existing duties under section 3 of the Communications Act 2003 to consider encouraging investment and innovation in relevant markets and promoting fulfilment of the public service television broadcasting purposes in the UK.

**What policy options have been considered? Please justify any preferred option.**

- **Do nothing** - discarded: Ofcom's reporting duty would continue to be limited to linear TV, increasing the discrepancy between market reality, consumers' behaviours and the statutory/regulatory framework, therefore increasing the risk of over/disproportionate regulation.
- **Amend the Communications Act 2003** – retained: amend section 264 of the 2003 Act to create a duty for Ofcom to review, as part of its five-year public service broadcasting review, the wider delivery of content that meets the public service objectives defined in section 264 of the 2003 Act.

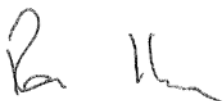
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

As the policy specifically links the new duty to Ofcom's obligation to review and report on the extent to which the PSBs have delivered on the public service broadcasting purposes, it will be reviewed as part of Ofcom's next public service broadcasting review. The most recent review was completed in January 2009 and the next is due to commence around 2013, at the latest.

**Ministerial Sign-off For SELECT STAGE Impact Assessments:**

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:



Date: 8 April 2010

## Summary: Analysis & Evidence

Summary: Analysis & Evidence					
Policy Option:		Description:			
COSTS	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'  The extension of Ofcom's public service broadcasting review duty to cover public service media content provided on other platforms will result in them incurring some minimal costs (staffing and other). However, it is extremely difficult to assess any additional costs on either industry or society in general as this will very much depend on any specific changes Ofcom may recommend to the regulatory framework in order to promote fulfilment of the public service objectives.		
	<b>One-off</b> (Transition)	Yrs			
	£ Minimal				
	<b>Average Annual Cost</b> (excluding one-off)				
	£ Minimal				
			<b>Total Cost (PV)</b>	<b>Minimal</b>	
Other <b>key non-monetised costs</b> by 'main affected groups'					
BENEFITS	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'  The change to Ofcom's duty should help to sustain provision of UK public service media content. Similar to the costs, the extent of the benefits will be determined by any specific changes Ofcom recommends as a result of its wider reviews.		
	<b>One-off</b>	Yrs			
	£ Not Quantifiable				
	<b>Average Annual Benefit</b> (excluding one-off)				
	£ Not Quantifiable				
			<b>Total Benefit (PV)</b>	<b>£ Not Quantifiable</b>	
Other <b>key non-monetised benefits</b> by 'main affected groups'					
Key Assumptions/Sensitivities/Risks					
Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £		
What is the geographic coverage of the policy/option?			United Kingdom		
On what date will the policy be implemented?			Royal Assent		
Which organisation(s) will enforce the policy?			Ofcom		
What is the total annual cost of enforcement for these organisations?			Minimal		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			n/a		
What is the value of changes in greenhouse gas emissions?			£n/a		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)	
Increase of	£ negligible	Decrease of	£ negligible	<b>Net Impact</b> £ negligible	
Key:				<b>Annual costs and benefits: Constant Prices</b>	<b>(Net)</b>

### 1. Rationale for Government Intervention

#### Background

The overarching impact assessment sets out the reasons why Government believes public service media content is important. It delivers social and cultural benefits to UK citizens – this is particularly true for content promoting civic understanding and informed debate on current affairs and news (national, international and regional), content with educational value, content on specific genres, such as science, religion and social issues and content which reflects the lives and concerns of the different communities and cultural interests which make up the UK. There are intangible benefits from having a well informed public, as it promotes democracy and citizens' engagement in society. These benefits are greater than the value which individual viewers place on the programmes that they watch. This value is harder to capture through subscription based services.

Public service media content contributes to the present and future success of the UK economy.

Evidence<sup>19</sup> shows that in 2007 the UK content sector spent around £5.5bn to £6bn a year on UK content in its varying forms. Ofcom data shows for example, that in 2007 around £3bn was spent on originated UK content, including news but excluding sport. The four main PSBs (BBC, ITV, Channel Four and Five) spent 85% of this. Other areas included around £900m from radio, £747m from the UK feature film sector and, according to Human Capita, around £480m on new media content). However, although advertising revenues for ITV in

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<sup>19</sup> Economics of audiovisual content production in the UK – Robin Foster January 28 2009

particular are forecast to increase this year, a number of challenges are threatening the sector and putting at risk this important contribution.

## **2. Why Further Intervention is Required**

The current regulatory framework was set up when digital media were only emerging and did not have the significant market impact they have today. Despite the 2003 Act's very strong commitment to convergence and digital television it needs updating to keep up with technological and consumer changes.

Evidence collated by Ofcom<sup>20</sup> shows that viewers now have access to an ever increasing number of channels, beyond the five PSBs, via an increasing number of media (internet, non-linear-TV, mobile devices).

The market therefore provides audiences with an increased choice – some of which meets public purposes such as providing impartial news or reflecting the UK culture and diversity through UK originated content. Ofcom<sup>21</sup> already recognises that multi-channel (non-PSB) broadcasters make a significant contribution to public service purposes in some genres, such as sport, entertainment and UK and international news, and that digital media has enabled access to a wider range of content, with the added benefit of interactivity.

Ofcom, at present, has no remit to take account of this wider delivery of public service media content or encourage its provision, even though it is vital in order to tailor and target specific actions and avoid market distortions. Ofcom's reporting duty set out in section 264

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<sup>20</sup> Ofcom's Communications Market Report 2009

<sup>21</sup> Ofcom's Communications Market Review 2009

of the 2003 Act applies only to public service media content provided on linear television by a limited and specified number of broadcasters (namely the BBC, ITV1, Channel 4, Five – and the public teletext service provider).

The Digital Britain White Paper made a strong case for extending Ofcom's reporting duty, with the intention of maintaining and strengthening the quality and wider delivery of public service media content in the UK. Rapid diminution of the advertiser-funded market that has funded commercially-provided public service media content and significant competition faced by the commercially funded PSBs from multi-channel television and the increased levels of viewing on on-demand platforms has led to irreversible structural changes to the broadcasting market, which are being significantly exacerbated by the current economic conditions. As mentioned above, digitalisation has also changed the way public service media content is provided.

The challenge for Government is how to support the opportunities for continued economic growth and development in the sector and how to open up new markets. However, in an era of limited funding it is critical to first assess how markets are maturing and developing to identify where plurality of supply is desirable and needs to be preserved before stating where to focus action.

### **3. Policy Options**

The options considered are listed below:

1. Do nothing. This option would not address the policy objectives set out in the Digital Britain White Paper and would risk a reduction in competition for the BBC and a loss of plurality of certain types of public service media content (see over-arching Impact Assessment). In simple terms a 'do-nothing' option will not address the regulatory failure identified above. It would mean that Ofcom continues to be restricted in its attempts to reverse the decline in investment identified because it is unable to take account of the wider delivery of public service media content when recommending or developing policy changes.
2. The Government believes that Ofcom is best placed to take account of the wider delivery of public service media content. Amending section 264 of the 2003 Act, will create a duty for Ofcom to review, as part of their five-year public service broadcasting review, the wider delivery of content that meets public purposes as defined in section 264.

#### **4. Preferred Options**

The proposed policy change set out in the Act is a provision amending section 264 of the 2003 Act, to create a duty for Ofcom to review, as part of its five-year public service broadcasting review, the wider delivery of content that meets public purposes as defined in section 264.

The **intended impact** of this policy option is to require Ofcom to consider public service media content provided on platforms beyond television and beyond the existing public service broadcasting institutions, which it is not required to do at present under its public

service broadcasting review. It will be required to report specifically on the contribution made by relevant material to the fulfilment of the public service objectives and, importantly, take this into account when identifying actions aimed at addressing the on-going decline in investment identified in the overarching public service broadcasting impact assessment.

## **5. Costs and benefits of option**

### **Costs of preferred option**

For Ofcom: We are simply extending Ofcom's existing reporting duty to cover public service media content provided on other platforms. As such, Ofcom will incur some minimal costs (staffing and other costs) relating to this new duty. However, we have attempted to estimate below the costs to broadcasters, new media companies and consumers and citizens.

For Broadcasters (both PSBs and Non PSBs) and New Media Companies: We would expect the impact on broadcasters and new media companies to be minimal, given that there are no direct changes to the legal requirements imposed upon them. However, this will depend largely upon how Ofcom chooses to implement its new duty and how HMG deals with any recommendations put forward. Ofcom will, of course, consider costs and benefits of their policy recommendations on an individual basis.

For Consumers and Citizens: The impact on consumers and citizens will depend on the extent to which this proposal has an impact, if any, on the level of competition and investment activity in the sector.



## **Benefits of preferred option**

For viewers: Will help to assess / establish where to focus action and to identify where plurality is desirable and needs to be preserved.

Commercial PSBs, Non-PSBs and new media content companies: Help to identify the gaps in the market / provision where action can then be targeted. This could result in new opportunities.

BBC: Will help Ofcom to assess where action may be needed to maintain competition to the BBC, which helps drive innovation and creativity.

Independent Producers: whose businesses rely, in part, upon commissions from commercially funded PSBs. This could help increase investment and ensure a variety of sources for different programmes.

	<b>Do Nothing</b>	<b>Amendments to section 264 of the 2003 Act</b>
<b>Output</b>	As of today	To amend Ofcom's duty to review the fulfilment of public service broadcasting purposes on television in order to allow them to consider the wider delivery of public service media content.
<b>Cost (£)</b>	Minimal	Minimal
<b>Other Costs</b>	<p>There may be opportunities that are missed by industry / market in the transition to digital.</p> <p>There is a risk that the challenges may be too great for industry / market to overcome effectively and they will simply not invest in certain types of public service media content. There would be a danger that certain genres of programming would not be produced.</p> <p>Ofcom's reviews will be too narrow in scope and could lead to disproportionate or ineffectual regulation.</p>	N/A
<b>Benefits</b>	The UK online market is still in its infancy and maintaining the status quo will provide businesses with the necessary freedom to innovate and continue exploring new	<p>Would not impact on / create tensions with Ofcom's other duties.</p> <p>Ofcom will be able to make recommendations to Government and take action where appropriate based on a more</p>

	opportunities without undue intervention or regulation.	<p>comprehensive assessment of the wider delivery of public service media content.</p> <p>This will help to maintain competition for the BBC, which will help drive innovation and creativity, and identify where plurality needs to be preserved.</p>
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## 6. Competition Assessment

Based on the four questions outlined by the OFT with regard to competition assessments:

In any affected market, would the proposal:

1. Directly limit the number or range of suppliers?
2. Indirectly limit the number and range of suppliers?
3. Limit the ability of suppliers to compete?
4. Reduce suppliers' incentives to compete vigorously?

We can confirm that, after careful consideration, the policies in this impact assessment do not raise any competition concerns. This is because they are designed to ensure a plurality of outlets, providers and commissioners in the future. We should note, however, that Ofcom does have a competition duty and will therefore consider competition aspects as part of the decision making process on individual policies.

## **7.Small Firms Test**

We have considered the impact of the proposed policy on small firms and have concluded that these new measures will have no specific impact. This is because amendments to Ofcom's duty will not directly impact upon either the business environment within which they operate or legal requirements imposed upon them.

## **8. Equality Impact Assessment**

After initial screening as to the potential impact of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both. Further analysis relating to these tests is contained in the general Equalities Impact Assessment.

## **9.Other specific impact tests**

Other specific impact tests have been considered, including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Race Equality, Disability Equality, Gender Equality, Human Rights, and Rural Proofing.

After careful analysis it has been concluded that no significant impact is anticipated in any case.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

<b>Department /Agency:</b> <b>Department for Business, Innovation and Skills (BIS)</b>		<b>Title:</b> <b>Impact Assessment of legislative proposals to tackle on-line copyright infringement</b>
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 12 April 2010
<b>Related Publications:</b> Consultation on legislative options to address illicit file-sharing (October 2008) Government response to consultation (January 2009) Digital Britain Interim and Final Reports (January and June 2009) Consultation on Legislation to Address Illicit P2P File-Sharing (June 2009) Government Statement (August 2009) Government response to consultation (November 2009)		

Available to view or download at: <http://www.berr.gov.uk/consultations/closedwithresponse/>

Contact for enquiries: Tim Hogan

Telephone: 020 7215 1628

**What is the problem under consideration? Why is government intervention necessary?**

File sharing – the exchange of content files containing audio, video, data or anything in digital format between users on a computer network – has increased significantly in the last few years. Government intervention is being proposed to address the rise in online infringement of copyright which might reduce the incentive for the creative industries to invest in the development, production and distribution of new content. Implementation of the proposed policy would allow rights holders to better appropriate the returns on their investment.

**What are the policy objectives and the intended effects?**

The policy objective is to make sure that investment in content is at socially appropriate levels by allowing investors to obtain fully appropriate returns on their investment. The Government is proposing legislation aimed at reducing unlawful downloading by making it easier for rights holders to bring targeted civil actions against suspected copyright infringers. The legislation would place an obligation on internet service providers (ISPs), when informed by right holders, to notify subscribers of their unlawful behaviour. It would also place a second obligation on ISPs to maintain anonymised records of the most frequent offenders, which would allow rights holders to take targeted legal action against these infringers.

**What policy options have been considered? Please justify any preferred option.**

The Government has previously consulted on a range of possible legislative actions including “do nothing.” The current proposal is based on the responses to that consultation and the assumption that notification against infringers allied with the threat of legal action would reduce online infringement of copyright by 70%. The legislation would be accompanied by a code of Practice which would include agreed standards relating to the notification process, consumer protection, standards of evidence, cost sharing etc. Two options are considered in detail in the evidence sheets:

- o Option one: Do nothing
- o Option two: Preferred policy option outlined in Government Response (November 2009) to previous Consultation (June 2009)

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Progress on the high-level objective to reduce online infringement of copyright would be reviewed every 3 months by Ofcom with a full assessment every 12 months.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister:



Date: 8 April 2010

## Summary: Analysis & Evidence

**Policy Option: Option two**

**Description: Preferred policy option outlined in the Government response (November 2009) to previous consultation (June 2009)**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Costs to ISPs of complying with the legislation, including costs of notifying infringers, capital costs to ISPs, costs of setting up and running a call centre, annual capital and operating costs to mobile network operators.
	<b>One-off (Transition)</b>	<b>Yrs</b>	
	<b>£ 35 million</b>	1	
	<b>Average Annual Cost (excluding one-off)</b>		
	<b>£ 30-50 million</b>		<b>Total Cost (PV) £ 290-500 million</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Costs to low income/low valuation digital product consumers who would stop consuming digital content altogether rather than purchase it; costs to rights holders of identifying instances of copyright infringement and taking infringers to court. Possibility of higher broadband costs for consumers.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Benefits to rights holders of recovering displaced sales.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ N/A</b>		
	<b>Average Annual Benefit (excluding one-off)</b>		
	<b>£ 200 million</b>		<b>Total Benefit (PV) £ 1700 million</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Benefits to consumers in ensuring that investment in high quality and diverse creative content is at appropriate levels.			

**Key Assumptions/Sensitivities/Risks** Total costs are based on the assumption that all ISPs are covered by these proposals. Costs to digital product consumers are not monetised since this content is only available illegally; US evidence indicates that were this cost to be monetised it could outweigh the monetised benefits. There are uncertainties around the estimates of the sales displacement effect on rights holders, the costs to ISPs and MNOs, and the behaviour of notified infringers. The capital costs to ISPs given here are at the top end of the expected range, a number of scenarios for these costs are given as an illustration in the text.

Price Base Year 2008	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ 1.2-1.4 billion</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 1.2 billion</b>
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What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		2010		
Which organisation(s) will enforce the policy?		Ofcom		
What is the total annual cost of enforcement for these organisations?		£ TBC		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		TBC		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>		(Increase - Decrease)	
Increase of	£ 6.9m-22.6m	Decrease of	£ 0
		<b>Net Impact</b>	<b>£ 6.9m-22.6m</b>

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

### **Background**

Peer to peer (P2P) file-sharing is where users on a computer network share content files containing audio, video, data or anything in digital format by means of a series of ad hoc connections without the need of a central file server. File-sharing is becoming increasingly widespread, driven by increases in the number of households with broadband connections, quicker upload and download speeds, increasing bandwidth and improved connectivity and reliability of service. Although P2P has many legitimate uses, it is the most common form of on-line copyright infringement. The measures set out in the Digital Economy Act (clauses 3-16 inclusive) were designed specifically to address the particular characteristics of unlawful P2P file-sharing but could be applied to counteract other forms of on-line copyright infringement if deemed an efficient and effective way of doing so. However, for most other forms of on-line copyright infringement they are likely to prove less effective.

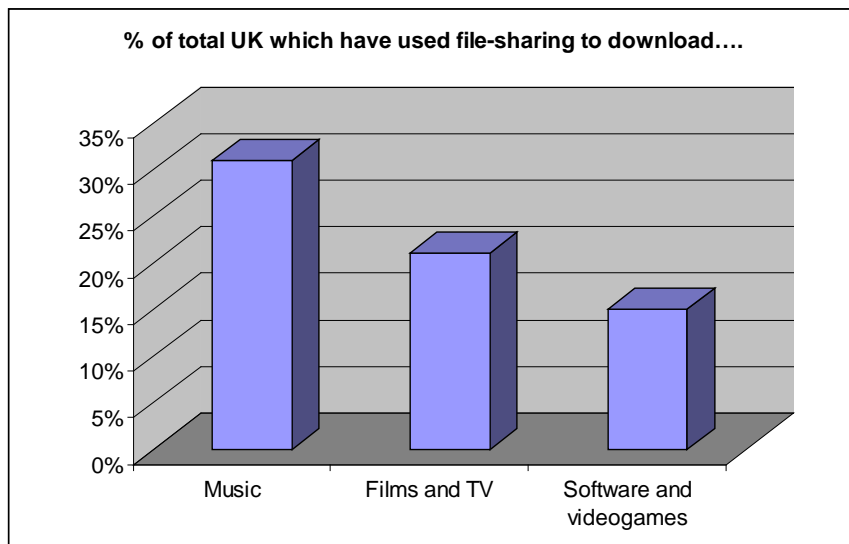
Under the Copyright, Designs & Patents Act 1988, making copyright material available for copying without the agreement or permission of the copyright owner is an offence, as is copying without permission. However it is only possible to identify the copyright infringer through personal data held by the ISP. Accessing this data requires a court order.

The sheer scale of online infringement of copyright means it is not practicable to take all those involved to court: rights holders estimate there are some 6.5 million people in the UK who are active unlawful file-sharers. Figure 1 shows that, at some point, 29% of the UK's



population have unlawfully shared music, 21% have unlawfully downloaded movies or TV content and 15% software or videogames.

Figure 1: P2P illegal downloading by industry



Source: Digital Entertainment Survey (2008)<sup>22</sup>

Furthermore, due to the nature of the technology and the way in which individual infringements are identified, it is not possible for rights holders to identify who are the most frequent or serious unlawful file-sharers, making targeted legal action extremely difficult if not impossible. Legislation is needed to require ISPs to notify subscribers that they appear to be engaged in unlawful activity so that they can alter their behaviour. It is also needed to help rights holders to take targeted action about the most serious infringers.

<sup>22</sup> [http://www.entertainmentmediaresearch.com/reports/DigitalEntertainmentSurvey2008\\_FullReport.pdf](http://www.entertainmentmediaresearch.com/reports/DigitalEntertainmentSurvey2008_FullReport.pdf)

## **Rationale for Government intervention**

An important feature of creative industries like the music, software and film industries is that they are characterised by strong intellectual property rights (IPR). Strong IPR creates an incentive to invest in the development of new and more innovative products since it permits individuals to capture the gains from the new products it creates.

However with online infringement of copyright the incentive to invest in new and mainstream artists is undermined because industry cannot capture all the gains generated from its investment. This is because the public goods<sup>23</sup> nature of file-sharing and its spillover effects<sup>24</sup> creates a free-riding problem whereby users may enjoy the benefits of file-sharing without paying the product's price<sup>25</sup>. The disincentive to invest in artists as a result of free-riding is a particular problem in the music, film and videogames industries because they are characterised by large investment costs and a relatively high risk of failure.

Content companies spend vast amounts of money investing in the success of a product (e.g. film, song or videogame). These costs are typically in production, marketing and promotion of creating and selling content to the consumer (advance payment to artists, advertising costs, retail store positioning fees, press and public relations to the artist, television appearances and travel, publicity and internet marketing). The industry is characterised by large fixed costs and low variable costs. The increasing trend for creative content to be traded digitally may have seen a change in the investment cost structure. Overall, some costs have remained high like marketing costs but distribution and production costs have

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<sup>23</sup> Public goods are those goods which are non-rival and non-excludable in consumption. Non-rival in consumption means that one person's consumption of a good or service does not reduce the amount which can be consumed by another person, and non-excludable means that it is not possible to prevent another person from consuming it.

<sup>24</sup> Spillover effects arise when one person's actions have an impact on a third party.

<sup>25</sup> A similar case arises with Research and Development (R&D) whereby a company cannot capture all the benefits of its R&D activity because it cannot fully retain the knowledge that it creates. Knowledge spills over to other companies through various mechanisms, including personnel changing jobs or copying.

decreased with an overall effect of increasing variable costs relative to fixed costs which may give small, relatively less known artists more room for manoeuvre.

Record companies, for example, take on considerable risk as not all the artists in whom they invest actually succeed. Typically less than 15% of all sound recordings released will break even and fewer return profits. However when a recording makes it big, the financial returns can be very large and this then goes towards financing the next round of investment. The small success rate is due to the nature of the mass-media market in which exposure to the public is scarce and firms maximise audience by selecting a relatively small number of potential one-size fits-all super star artists.

The industry has largely blamed file-sharing for declining sales. However, most commentators agree that the decline in sales, particularly in the music industry, cannot be wholly attributed to unlawful file-sharing, citing a host of other factors, including general macroeconomic conditions (e.g. consumer confidence, economic growth) and the substitution of traditional forms of entertainment for new activities such as video gaming, internet browsing, social networking and a growing trend for artists to release content for free.

The digital provision of content has a number of advantages for consumers compared to more traditional ways of consuming content. Namely, it allows consumers to sample the product before buying it; to discuss the quality of the product online (e.g. social networking); it has lower transaction costs (e.g. lower costs from searching, can purchase it from home realizing time savings); and, in the case of music, enables unbundling (i.e. purchasing a song rather than the whole album).

It has been argued that some resistance by the content industry to offer content digitally may have exacerbated the problem of consumers turning to unlawful downloading. Nearly 70% of unlawful music file-sharers agree that a basic reason for their behaviour is that legal downloading sources do not have the same range of content as unlawful sources<sup>26</sup>. The lack of supply of digital content may have led some consumers to use unlawful sources of digital consumption. In fact, only in recent years has the industry started to embrace the digital provision of their products as an opportunity rather than a threat (Figures 2 and 3).

Furthermore, it may be difficult to lead consumers back to legal sources of digital content once they have become familiarized with an unlawful one. For example, even though Radiohead’s album “In Rainbows” was offered for free in the band’s website, over 2 million consumers had downloaded the album via P2P within the first month of commercialization.

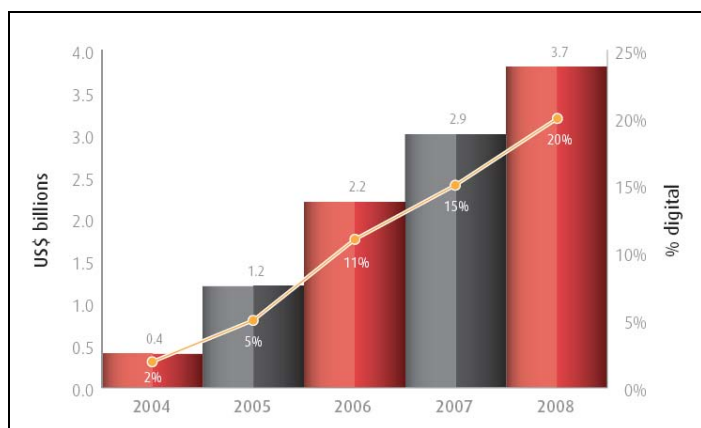


Figure 2: Global digital revenues, music industry

Source: Digital Music Report (2009)<sup>27</sup>

<sup>26</sup> 2008 Digital Entertainment Survey;  
[http://www.entertainmentmediaresearch.com/reports/DigitalEntertainmentSurvey2008\\_FullReport.pdf](http://www.entertainmentmediaresearch.com/reports/DigitalEntertainmentSurvey2008_FullReport.pdf)

<sup>27</sup> <http://www.ifpi.org/content/library/DMR2009.pdf>

Figure 3: Global digital revenues by industry

	Digital share
Games	35%
Recorded music	20%
Newspapers	4%
Films	4%
Magazines	1%

Source: PWC Global Entertainment and Media Report (2008)<sup>28</sup>

### Options considered

The earlier consultation (“Consultation on legislative options to address illicit peer-to-peer (P2P) file-sharing”, July 2008) included various options and an initial Government preferred option. The Government response to the consultation in January 2009 stated that after reviewing the responses to the consultation, it now proposed that legislation should “require ISPs to take direct action against users who are identified as infringing copyright through P2P”.

Over Summer 2009, the UK Government issued a further consultation and included an impact assessment setting out the costs and benefits of a revised set of proposals. This final impact assessment updates the cost-benefit analysis, taking into account additional evidence received from industry during the consultation period.

<sup>28</sup> [http://www.pwc.co.uk/eng/publications/global\\_entertainment\\_media\\_outlook\\_2008\\_2012.html](http://www.pwc.co.uk/eng/publications/global_entertainment_media_outlook_2008_2012.html)

This impact assessment has been updated to reflect the consequences of changes to the Act resulting from House of Lords amendments and from additional information on costs becoming available.

## **Scope of proposals**

The business sectors affected by the proposed legislation are:

- Internet Service Providers (ISPs) and Mobile Network Operators (MNOs), including both fixed and mobile broadband service providers<sup>29</sup>. There are over 450 fixed ISPs in the UK which jointly generate revenues in excess of £3 billion a year, with the top 6 ISPs<sup>30</sup> accounting for around 90% of the market share<sup>31</sup>. Currently all ISPs are in scope. However, the Bill allows the underpinning code to introduce a qualifying threshold based on the number of copyright infringement reports (CIRs) an ISP gets in a given period, where only ISPs that exceed this number will be in scope. The code is a matter of discussion, consultation and agreement between the key stakeholders and Ofcom, and therefore whilst it is expected that the code will include a threshold level it is not known what it might be. However, it is expected that the five biggest fixed ISPs, accounting for over 90% of the UK broadband market, would be in scope at the very least.

Mobile broadband connections are increasingly becoming widespread. The latest available data indicates that there are over 13 million subscribers to mobile

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<sup>29</sup> The assumption is that unlawful file-sharing by dial-up internet subscribers is negligible since only broadband users are able to use P2P networks at reasonable speeds.

<sup>30</sup> BT, Virgin, Talk Talk/AOL, Sky, Tiscali and Orange (Tiscali is in the process of being bought and ultimately merged with Tiscali)

<sup>31</sup> Ofcom estimates

broadband connections<sup>32</sup> in the UK, with new subscriptions to mobile broadband being already higher than new subscriptions to fixed broadband.

- The creative content industries (right holders). More specifically, those creative industries that supply or distribute goods or services susceptible of being copied digitally. The main industries affected are Films and TV (including sports rights), Music, Videogames and Software. Films, TV, videogames and music generate joint annual revenues of over £15 billion. They are all part of the creative industries sector, which accounts for 6.2% of UK GVA<sup>33</sup>.
- To a lesser extent, the publishing industry would also be affected. Even though magazines and books are increasingly being traded digitally, the digital share of revenues in the publishing industry is still small due to strong consumer resistance to non-printed forms of reading (Figure 3). However, the publishing industry is not completely immune to online infringement of copyright as indicated by the increasing availability of high quality electronic readers (e.g. Amazon's Kindle) and some anecdotal evidence showing that downloading of textbooks by young people has recently increased.

At Report Stage on 3 March 2010, the House of Lords introduced two significant amendments.

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<sup>32</sup> Mobile broadband connections include internet connection through either dongles (an electronic device that attached to a computer provides mobile broadband connection) or handsets

<sup>33</sup> DCMS (2010): Creative Industries Economic Estimates;  
[http://www.culture.gov.uk/reference\\_library/research\\_and\\_statistics/4848.aspx](http://www.culture.gov.uk/reference_library/research_and_statistics/4848.aspx)

The first removed the original clause 17 (the power to amend the Copyright, Designs and Patents Act, 1988), the second introduced a new clause 18 which inserts a new provision into the Copyright, Designs and Patents Act 1988 giving the High Court power to grant an injunction against an information service provider, requiring it to block access to specific websites for the prevention of online copyright infringement.

At Committee stage on 7 April 2010, the House of Commons removed the new clause 18 and introduced two new clauses, which give the Secretary of State the power to make new regulations that would enable a court to grant a blocking injunction in respect of a location on the internet for the prevention of online infringement of copyright. This has a number of important safeguards, including the requirement for a consultation process, which will be accompanied by an Impact Assessment.

## **Policy options**

### ***Option 1: Do nothing***

If no action is taken, we estimate costs for the creative content industries<sup>34</sup> to be in the region of £400 million per annum in displaced sales (see Figure 4)<sup>35</sup>. This figure includes estimates provided by the music, film and TV industries and our own estimate of the impact on the entertainment software and videogames industry under the assumption that the sales displacement effect is similar to that of the TV and film industry.

Figure 4 shows how the demand for legal digital content decreases as a result of some consumers shifting to online infringement of copyright. The graph shows how the demand shifts from its original level at DD1 to a lower level at DD2. As a result the new market equilibrium (i.e. the intersection of demand and supply) produces lower total revenues for

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<sup>34</sup> Including TV, cinema, music, entertainment software and videogames.

<sup>35</sup> See Option 2 for a more extended discussion.



the digital content industry. This reduction (i.e. the sales displacement effect) is represented in Figure 4 by the striped area.

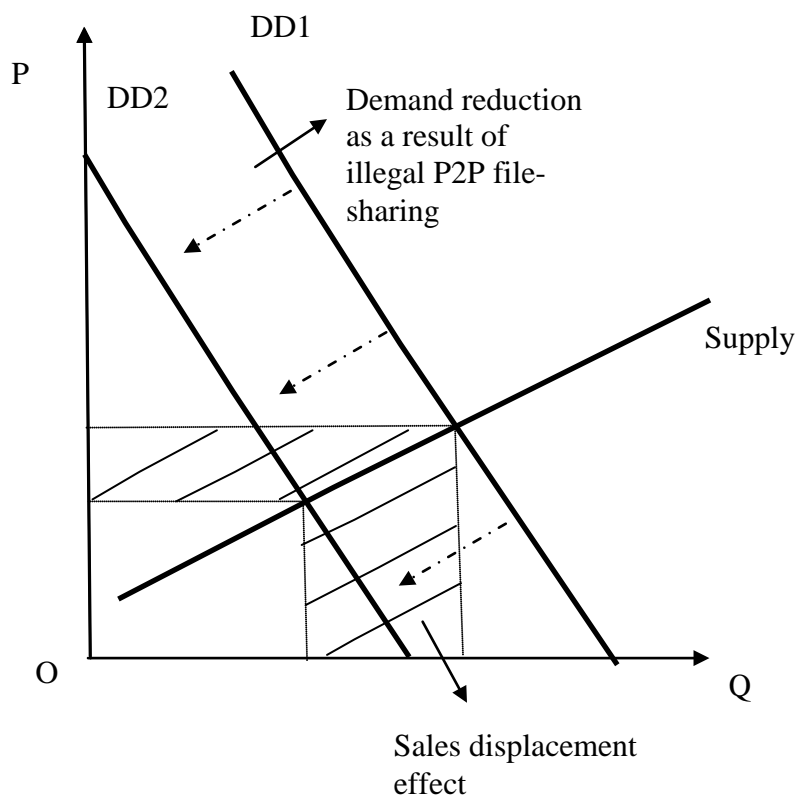


Figure 4: Sales displacement effect. Lawful digital content market

IPSOS (2007)<sup>36</sup> estimates a sales displacement effect of £152 million for the film and TV industry in 2007; Jupiter Research (2007) estimates a sales displacement effect of £160 million for the music industry in 2007. Research by the Digital Entertainment Survey (2008) suggests that levels of file-sharing in videogames and software are lower than those in music, TV and films. It is therefore reasonable to assume that the sales displacement effect for videogames is in the worst case scenario as large as that of the film and TV industry. Assuming a sales displacement effect of 2%, the leisure software and videogames industry

<sup>36</sup> [http://www.ukfilmcouncil.org.uk/media/pdf/g/m/Ipsos\\_Piracy\\_UK\\_2007.pdf](http://www.ukfilmcouncil.org.uk/media/pdf/g/m/Ipsos_Piracy_UK_2007.pdf)

lost approximately £80 million due to P2P downloading in 2007. It follows that the total sales displacement impact on the creative content industries is of approximately £400 million (£152+£160+£80).

There are reasons to believe that this figure may not be a completely accurate estimate of the displacement effect. In the first place, we have not been able to fully assess the reliability of the methodology used in the music, TV and film studies. Even though both estimates fall into the range of values generally found in the literature (Table 1), estimates are proven to be very sensitive to the methodology used. Finally, this figure may be underestimating the effects of illegal file-sharing by not including the impact of online infringement of copyright on publishing and live sports broadcasting.

File-sharing is likely to increase further in coming years driven by faster download speeds, additional bandwidth and improved reliability of services. This may lead to a rise in unlawful activity and a further increase in lost revenue and reduced investment in artists and new material since right holders are not currently able to reap all the benefits derived from their investment.

In the long-run, these costs could outweigh the welfare enhancing attributes of online infringement of copyright such as:

- Enable consumers with low income or low willingness to pay for creative content to reap the benefits of consuming entertainment at a low or zero cost<sup>37</sup>
- Users have a wider choice of content since they are able to access music from less well-known artists (increasing consumer welfare)
- Easier access to a greater number of sources of information on content than previously possible

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<sup>37</sup> See Option 2 for a more extended discussion.

- Stimulating competition by providing a less expensive means of obtaining different forms of media, potentially reducing the physical formats and the market power of key players in the music film, software and computer games industries
- Increasing social welfare by helping to deliver broader social objectives such as improvements in media literacy

However, there is much uncertainty as to the long-run impact of online infringement of copyright as it is still a relatively new phenomenon. It is possible that industry and internet service providers (ISP) may respond to revenue losses by adopting new business models which can reduce the size of any revenue losses (e.g. Spotify for the music industry). Alternatively, new and improved technologies like DRM (Digital Rights Management) may be more effective in reducing the size of any revenue losses.

*Option 2: Require ISPs to take direct action against users identified by right holders as infringing copyright through P2P*

## Benefits

### *Benefits to right holders*

Rights holders have estimated there are at least 6.5 million unlawful file-sharers in the UK. With the increasing popularity of digital music, some file-sharers may have substituted legal purchases for unlawful downloads, reducing legal sales. The expected effect of the legislation is to increase the revenues of the content producing industries by reducing unlawful file-sharing.

Under the assumption that 70% of infringers would stop downloading illegally following notification by letter of their unlawful activity<sup>38</sup>, and based on trial data from the Memorandum of Understanding which indicates that this would reduce the volume of unlawful downloading by 55%<sup>39</sup>, we estimate industry annual revenues could increase by approximately £200 million<sup>40</sup>.

However, the theoretical impact of online infringement of copyright on sales is disputed. Even though some file-sharers will have substituted legal purchases for unlawful downloads, there are positive spillover effects from file-sharing that may increase sales of the creative content industries. These positive spillovers would be lost when implementing legislation.

There are two main spillover effects:

- Sampling effects: File-sharing enables consumers to learn about new music, films or videogames by exploring and sampling new content at a zero cost. When consumers discover new content that they like they may decide to purchase it legally<sup>41</sup>.
- Network effects: A product has network effects when consumers value a product more when the number of users increases. For example, on-line gamers benefit from the fact that more users are playing a videogame. Since file-sharing increases the number of users, the experience of video gaming improves and the willingness to pay for new games increases as well. This may lead to an increase in the number of legal units purchased.

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<sup>38</sup> Results of the Digital Entertainment Survey (2008) suggest that 70% of infringers would stop unlawful P2P downloads after being notified by their ISP.

<sup>39</sup> Aggregate statistics of letters sent to individuals during the trial suggest that 30% of infringers account for 45% of total unlawful downloads. This suggests that those infringers downloading the most will be more resistant to stop their unlawful behaviour.

<sup>40</sup> approximately 55% of £400 million

<sup>41</sup> RD Gopal, S Bhattacharjee, GL Sanders (2006): "Do artists benefit from online music sharing?"; The Journal of Business, 2006

With no clear theoretical prediction, the impact of online infringement of copyright on sales is an empirical question. Table 1<sup>42</sup> presents a selection of independent studies from industry and academia that have attempted to estimate the displacement effect on sales. Estimates of sales displacement range from 0% to 20% of total revenues since figures are very sensitive to the methodology used and the country and industry analysed<sup>43</sup>.

*Table 1: Selection of studies estimating the sales displacement effect*

<b>Studies on the effect of unlawful p2p downloading on industry revenues</b>	<b>Sales displacement effect (as % of total revenues)</b>	<b>Industry</b>	<b>Country</b>	<b>Method</b>
Oberholzer-Gee & Strumpf (2007), Journal of Political Economy	0%	Music	US	Actual downloads data
Blackburn (2004), mimeo	0%	Music	US	Actual downloads data
IPSOS (2007)	2%	Film and TV series industry	UK	Survey data
Zentner (2006), Journal of Law and Economics	8%	Music	7 European countries, including the UK	Survey data
Rob & Waldfogel (2006), Journal of Law and Economics	9%	Music	US	Survey data
Hennig-Thurau, Henning & Henrik Sattler (2007), Journal of Marketing	9%	Film industry	Germany	Downloads proxies data
JupiterResearch (2007)	17%	Music	UK	Survey data
Peitz and Waelbroeck (2004), mimeo	20%	Music	16 countries, including the UK	Downloads proxies data

### *Benefits to consumers*

Implementation of the proposed policy will allow right holders to better appropriate the returns on their investment, subsequently fostering further investment in content and ensuring the long term sustainability of the industry. This will ensure that high quality and diverse content is available to consumers.

Online infringement of copyright undermines the positive effects that intellectual property rights (IPR) play in the economy. Creative content products have characteristics of public goods and can be copied at a very low cost, which makes free-riding (i.e. piracy) very easy.

<sup>42</sup> Far from being an exhaustive review, the table provides an illustration of the variety of results that are obtained when using different methodologies.

<sup>43</sup> If the displacement effect of P2P downloading on sales is zero, as a number of studies find (see Table 1), the costs of implementing legislation would outweigh the benefits, which would be negligible. Nevertheless, there would still be a case to be made around implementing the legislation if it is considered that the benefits surrounding a better long term sustainability of the industry outweigh the costs in welfare loss that new digital content consumers would experience.

Copyright laws enable businesses which invest in creative content to appropriate the profits that derive from it by granting a monopoly to the exploitation of the product for a number of years. In a hypothetical extreme situation where everyone free-rides investors would not be able to appropriate any returns and investment in creative contents would cease.

### *Benefits to Government*

Part of the revenue regained by the industry will be realized in increased VAT revenue for the exchequer. We estimate these revenues to be in the region of £35 million from 2010<sup>44</sup> onwards. This VAT revenue does not add up to the total amount of annual benefits described in the right holders section but it refers to a fraction of the recovered sales which would be appropriated by Government through taxation.

### Costs

#### *Cost to ISPs and MNOs*

##### a) Cost of compliance (ISPs and MNOs)

Evidence from the earlier consultation indicates that the costs of notification (identification of the infringer, postal costs, development of the letter, staff time and training) are in the region of between £3-10 per letter.

Results from the Digital Entertainment Survey (2008) indicate that 70% of copyright infringers would stop downloading digital products if they received a call or letter from their ISP. The policy objective is to achieve this reduction within 2 years. Assuming that this objective is achieved by sending one letter to the 6.5 million copyright infringers in the UK

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<sup>44</sup> VAT rate of 17.5% from 2010.

during one year, we estimate a range of one-off costs for the ISP industry between £20 and £65 million<sup>45</sup>.

There may be additional costs if right holders ask ISPs to send further letters to those infringers that keep on downloading digital content unlawfully after being notified of their unlawful behaviour. According to the Digital Entertainment Survey (2008)<sup>46</sup>, 30% of infringers would not stop unlawfully downloading content after receiving notification by the ISP, prompting further letters to be sent at a total cost of between £6 and £20 million per year<sup>47</sup>. Over a period of 10 years annual average costs are likely to be in the region of between £7.5m-24.5m.

Compliance cost figures are very sensitive to the underlying assumptions. If only 50% instead of 70% of infringers stopped, annual costs of compliance would increase from a range of £6-20 million to a range of £10-30 million. If instead of one letter a year right holders required two letters a year to be sent to serious infringers, the costs would double.

This cost would mostly fall on the 5 largest ISPs, with average one-off costs between £3-10 million for each of these ISPs and annual costs from sending further letters in the region of £1-3 million per ISP.

Because this policy involves a third party information obligation requiring ISPs to incur administrative burdens (as defined by the Standard Cost Model) when they notify infringers, we estimate the administrative burdens to the ISPs - at this time - as £6.9m - £22.6m per

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<sup>45</sup> Calculated by multiplying the cost of sending a letter (£3-£10) by the total number of letters sent (6.5 million)

<sup>46</sup> See footnote 5

<sup>47</sup> Calculated by multiplying the cost of sending a letter (£3-£10) by the total number of letters sent to the remaining infringers (30% of 6.5 million). The assumption is that such letters are sent once a year. It may obviously be the case that some downloaders stop infringing copyrights after receiving a second letter; or that more than one letter is sent to the same infringer in a given year.

year<sup>48</sup>. The administrative burdens are likely to materialise following the implementation of the policy.

b) Cost of running a call centre/hotline (ISPs and MNOs)

A fraction of the infringers will want to contact the ISPs to query the letter and find out about legal implications. According to preliminary results from the Memorandum of Understanding trial, 1.5% of infringers did reply to the notification either by e-mail or telephone<sup>49</sup>.

We assume that ISPs jointly set up a call centre to deal with the expected flow of calls (hence avoiding duplication costs). Cost estimates provided by industry suggest that the one-off cost to an ISP of setting up and training a team of advisors could be in the region of £20-30,000. If we also assume that every call or e-mail reply is going to occupy an average of 10 minutes of an ISP operator's time, we estimate that the total amount of hours of staff required to deal with the level of calls derived from sending the first letter would be approximately 15,000 hours<sup>50</sup>, representing an initial cost to the ISP industry as a whole to be in the region of nearly £200,000<sup>51</sup>. Under the assumptions we are using, these costs would be reduced in following years to under £65,000<sup>52</sup> per annum.

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<sup>48</sup> Calculated by deflating the annual average costs of £7.5m - £24.5m to 2005 prices.

<sup>49</sup> Data provided by Ofcom

<sup>50</sup> Total number of hours of work by staff is calculated by multiplying the total number of calls (1.5% of 6.5 million) by the average 10 minutes that we assume a call lasts or an e-mail reply takes to write.

<sup>51</sup> Total cost is calculated by multiplying the total number of hours by the labour cost per hour of customer services occupation. . Cost estimates provided by industry indicate this figure to be around £13 per hour.

<sup>52</sup> Total cost is calculated by multiplying the total number of hours derived from sending a second letter (5,000 hours) by the labour cost per hour of customer services occupations. Cost estimates provided by industry indicate this figure to be around £13 per hour



### c) Capital and operating cost to ISPs

Three scenarios are presented here for capital costs to ISPs. Scenario One assumes that all ISPs in the UK invest in automation of the process of identification and notification of infringement, this is likely to represent the upper end of the possible costs. Scenario Two assumes that it is only economic for the 5 largest ISPs to invest in automation and that all of the smaller ISPs process each notification manually. Scenario Three assumes that all 20 of the wholesale internet providers, including the 5 largest ISPs, invest in automation and process the infringement claims on behalf of the resellers.

#### Scenario One

There are likely to be one-off capital costs to ISPs from the investment in the development of software and systems to automate the process of identification and notification of infringement. Preliminary indications by industry suggest that one-off capital costs could be in the region of £80,000 per ISP. Assuming that these capital costs are fixed for all ISPs, we estimate fixed costs from implementing the preferred policy option to be in the region of £35 million<sup>53</sup>.

#### Scenario Two

It may not be economical for all ISPs to invest the estimated £80,000 in the development of software and systems for automatic identification and notification of infringement. The average market share of the 450 niche ISPs is approximately 0.013%<sup>54</sup>. Assuming the number of CIRs an ISP receives is proportional to their market size, each of the niche ISPs

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<sup>53</sup> Calculated under the assumption that there are approximately 450 ISP which have fixed costs of £80k each.

<sup>54</sup> NERA Economic Consulting, *The Costs and Benefits to ISPs of Proposed Measures to Curb Illegal File Sharing*, December 2009

can expect to receive 2888 CIRs over the first two year period<sup>55</sup>. The cost of matching an IP address to its account holder for an ISP that has not invested in automation is £3.14, and using this, the total cost to niche ISPs would be £9,070, far less than the £80,000 to invest<sup>56</sup>. Automation will only be economical for the largest ISPs who receive more than a threshold number of CIRs. If it is assumed that the niche ISPs spend an average of £9,070 and that only the 5 largest ISPs invest £80,000 then the total cost would be £4,481,500. This is made up of a capital cost of £400,000 for the 5 large ISPs investing in automation and the smaller ISPs paying a cost of £3.14 for each CIR they process.

### Scenario Three

There are about 20 operators who run are also wholesale providers; this includes the 5 largest ISPs. It may be the case broadband resellers, who rebrand and sell the services offered by the wholesale providers, need not invest because the wholesale providers do so on their behalf<sup>57</sup>. It is difficult to say how many wholesale providers would automate and process CIRs on behalf of the smaller ISPs; therefore it is assumed that all 20 do so as not to underestimate the costs. If this is the case the costs to ISPs of investing would be £1.6million.

ISPs have indicated that there would be further costs derived from keeping the records of infringers as requested by the proposed legislation. It is not possible to provide an estimate of such expenditures at this time.

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<sup>55</sup> NERA Economic Consulting, *The Costs and Benefits to ISPs of Proposed Measures to Curb Illegal File Sharing*, December 2009

<sup>56</sup> NERA Economic Consulting, *The Costs and Benefits to ISPs of Proposed Measures to Curb Illegal File Sharing*, December 2009

<sup>57</sup> NERA Economic Consulting, *The Costs and Benefits to ISPs of Proposed Measures to Curb Illegal File Sharing*, December 2009

#### d) Capital and operating cost to MNOs

ISPs offering mobile broadband services will have additional costs due to technical difficulties arising from detecting infringers using mobile technologies.

Identification of infringers is technically more complex for mobile network operators. A single customer does not use a unique IP address as in fixed broadband networks. Instead, an IP address is shared by multiple costumers, therefore making it very difficult to distinguish the real infringers from the rest of users. Additionally, in order to identify infringers mobile network operators must monitor all the data activities undertaken by their subscribers. This implies that the costs are going to be necessarily higher and that there could also be data protection implications.

Capital and operating costs of designing and developing a system to link up IP addresses through mobile broadband are estimated to be in the region of £35 million<sup>58</sup> for the five mobile network operators<sup>59</sup> as a whole in its first year. This figure would be reduced to approximately £17.5 million per annum<sup>60</sup> from the second year onwards. Over a period of 10 years this represents annual average costs of approximately £19 million.

Additionally, it may not be feasible to detect some infringers since personal details of mobile broadband users are not necessarily registered with the ISP (pay-as-you-go costumers). Industry sources indicate that approximately 70% of mobile broadband costumers are pay-as-you-go, where registration of personal details is not compulsory. Therefore, even if the mobile ISPs are able to identify the IP address of the infringer, there

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<sup>58</sup> Cost estimates provided by industry sources

<sup>59</sup> Vodafone, O2, T-Mobile, Orange, Hutchinson 3G

<sup>60</sup> Cost estimates provided by industry sources

may not be a way to match these IP address with a user's name, making legislation ineffective to tackle such users.

#### e) Cost to consumers

Under the assumption that ISPs fully pass down to consumers the annual increase in costs, we expect broadband retail prices to increase between 0.2% and 0.6%<sup>61</sup>. Studies on the price elasticity of demand have shown that demand for broadband is not very sensitive to price increases. Nonetheless, we estimate that this cost would have a relatively small but permanent effect of reducing demand for broadband connection between 10,000- 40,000<sup>62</sup>. This would represent additional revenue lost by the ISP industry between £2 and £9 million per annum.

Additionally some consumers, especially those with low income or those that derive a relatively low welfare from creative content, only consume creative content at a price of zero or close to zero<sup>63</sup>. As a result it is likely that the policy will have an impact on equality (i.e. those on the lowest incomes are likely to lose the most). However, it must be noted that the impact will only be to those that were unlawfully downloading digital content.

These consumers will experience a net welfare loss as a result of the proposed policy option since they will stop consuming creative content altogether. It is not possible to estimate such welfare loss with current data availability, but estimates for the US<sup>64</sup> show that this

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<sup>61</sup> According to the OECD, the average monthly broadband retail price in 2007 in the UK was about £20, £240 annually. Broadband Stakeholder Group estimates that the number of UK broadband connections in the same year was of 14.5 million. Following our assumption that annual costs to ISPs increase by £6-£20 million per year and that this cost is fully transferred to consumer prices, broadband retail prices would increase between £0.40 and £1.40 per year. This represents an increase of the annual price between 0.2% and 0.6%.

<sup>62</sup> Calculated by assuming a long term price elasticity of demand of -0.43 as estimated by a study of SPC Network (2008); [www.spcnetwork.co.uk/uploads/Broadband\\_Elasticity\\_Paper\\_2008.pdf](http://www.spcnetwork.co.uk/uploads/Broadband_Elasticity_Paper_2008.pdf)

<sup>63</sup> For example, a consumer that derives a monetised welfare of £1 from a CD is now able to download it illegally at a cost of zero but would not purchase a legal copy if it had to pay a legal price of £10 (Peitz and Waelborek, 2003: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=466063](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=466063)).

<sup>64</sup> Rob & Waldfogel (2006): <http://www.journals.uchicago.edu/doi/abs/10.1086/430809>

welfare loss could be twice as large as the benefit derived from reducing the displacement effect to industry revenues.

There is also the possibility of distress to consumers who are incorrectly identified as infringers and receive warning letter. This cost has not been quantified.

f) Cost to right holders

Copyright holders will incur a cost in identifying instances of copyright infringement, in compiling the CIRs and passing the information onto the ISPs. There is also the cost of any legal action they decide to take. To a certain extent these costs are at the individual copyright owners discretion although it is recognised there is an implicit expectation that copyright owners as a whole will generate high levels of CIRs and undertake some high profile legal action.

We do not have information on the costs associated with any legal action. However we have been provided with some cost estimates for detecting infringements and generating CIRs<sup>65</sup>:

2 million CIRs	£0.8m
4 million CIRs	£1.6m
6 million CIRs	£2.8m

The NERA report estimates that there will be approximately 21.5 million CIRs in the first two years of the policy being implemented<sup>66</sup>.

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<sup>65</sup> Estimates provided by industry

<sup>66</sup> NERA Economic Consulting, *The Costs and Benefits to ISPs of Proposed Measures to Curb Illegal File Sharing*, December 2009

g) Cost to Government regulators of monitoring and reviewing legislation

There will be costs to Ofcom to set up, enforce and monitor the development of the Code of Practice. Until the design of the Code of Practice is finalised, we are unable to monetising these costs at this stage.

As a guide, similar proposals to tackle on-line infringement of copyright in France are budgeted at £5-6m in the first year, although an exact comparison is not possible. This is because the French "Hadopi" will operate under a different legal basis and takes a much more central role than it is envisaged for Ofcom and they face an infringement level almost three times as great as in the UK (17m annual infringements in France against 6-7m in the UK). However, Ofcom has a reporting role which Hadopi does not seem to have.

h) Costs and Benefits of the Introduction of the New Clauses on the Power to make Provision about Injunctions Preventing Access to Locations on the Internet

These clauses have not been subject to prior consultation and due to the limited time between the introduction of the clauses and the finalisation of the impact assessment, it has not been possible to assess the impact of these costs and benefits. Those who might be affected by the provision include copyright owners, ISPs, website and other web service providers and consumers. The potential costs and benefits would, however, be assessed in an Impact Assessment accompanying a consultation on Government proposals for any new regulations regarding this provision.

On an initial analysis, the provision raises several significant cost issues including:

- The cost to ISPs of blocking the websites
- The costs of any communication service provider in blocking access to the websites
- Any legal costs of ISPs in seeking to contest the High Court action
- Costs to business and subscribers who used these websites as part of their legitimate business
- Damage caused to the owners and operators of the websites concerned
- Legal costs of owners and operators of the websites in seeking to contest the Court action
- Costs to the copyright owners of seeking the injunctions
- The losses to copyright owners caused by such sites at present
- Costs to the Secretary of State if he wishes to make representations on national security grounds
- Costs to the court system

Similarly there are significant issues around the nature and level of any benefits such action might have in reducing online copyright infringement.

This is an entirely new measure to tackle on-line copyright infringement and as set out above, information on the nature and level of the costs and benefits involved is not available at this stage. However, the BPI (the trade association for the UK record industry) estimates that around a third of online copyright infringement happens via such sites<sup>67</sup>.

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<sup>67</sup> Harris Interactive 2009

Table 2: Policy costs<sup>68</sup>

Type of cost	Amount
One-off capital cost to ISPs	£35m
Annual average costs of notification	£7.5-24.5m
Annual average costs of running a call centre	£60k
Annual average costs to consumers	£2-9m
Annual average capital and operating cost to mobile network operators	£19m
Annual average operating costs to ISPs	Not quantifiable

Source: BIS estimates

## Competition assessment

### MNOs vs fixed ISPs

MNOs increasingly compete directly with ISPs in the broadband market due to their competitive speeds, large take-up of mobile broadband handsets amongst users, and growing popularity of dongles. The growth of mobile broadband market share over the last 3 years has been substantial, with annual growth rates of approximately 100%<sup>69</sup>. This has had an overall positive impact on competition in the broadband market.

Cost estimates indicate that the impact of legislation could be disproportionately high for MNOs as compared to ISPs, which could place the latter with a competitive advantage.

<sup>68</sup> These figures are based on the assumption that all ISPs will be covered by these proposals

<sup>69</sup> Ofcom



MNOs could be forced to increase prices which could result in a reduction in the increasingly strong competition in the broadband market.

It has been suggested that MNOs could potentially be excluded from such obligation. Reasons for that include not only the disproportionate cost that MNOs would face but also the difficulty of implementing the legislation to MNOs (see Costs section). However, it is likely that such exclusion could also place MNOs in a competitive advantage compared to ISPs, not only because of not having to potentially bear the costs of implementing the legislation but also through the possibility of offering a more competitive product to costumers which could allow online infringement of copyright without the risk of being prosecuted legally.

#### Small vs Large ISPs

It has been suggested that ISPs of smaller size may be excluded from the obligation to notify subscribers of their unlawful behaviour due to the higher costs per connection that they would face (i.e. de minimus legislation).

This exemption may place small ISPs in a position of competitive advantage over larger ISPs. ISPs excluded from the legal obligation would be able to offer a lower subscription price to customers than larger ISPs since they would not need to bear the costs of implementing the legislation.

Additionally, smaller ISPs could offer a differentiated product potentially more valued by consumers than larger competitors. Broadband connections of small ISPs (or those ISPs such as mobile operators which could potentially be excluded from the obligation) would allow subscribers that wish to do so to keep on using P2P networks to unlawfully download digital products with a higher legal security.

These advantages could potentially lead to an artificial displacement of broadband subscriptions from larger ISPs to smaller ISPs. The large number of copyright infringers in the UK suggests that exempt ISPs could attract a large number of subscribers.

However any significant shift in subscribers to a smaller ISP would have two impacts. First, if sufficient subscribers switched this could lead to the ISP breaching the de minimus threshold and thereby liable to follow the legal obligations with associated costs. Second, it would have an impact on the volume of traffic over the network (it is generally recognised that the most active P2P file-sharers do take up a large volume of bandwidth). This would have implications for the effective operation and management of the network – and potentially higher costs.

Finally, any ISP gathering significant volumes of unlawful P2P traffic and users would soon be identified. One option is for the obligations to apply to specific ISPs and in such a case an ISP with a predominance of copyright infringers would soon have the obligations applied to them.

### **Small Firms Impact Test**

If ISPs have to assume capital costs to automate the process of detecting infringers, these costs would have a disproportionate impact on SMEs in a per unit basis. Approximately 450 ISPs have an average turnover of less than £1 million each. If capital costs are high, these would have a disproportionately high impact on such businesses compared to the impact on the 6 largest ISPs. For example, assuming that fixed costs are £80k per ISP, fixed costs would represent nearly 10% of the turnover for an average SME in the first year of implementation of the legislation. This compares with a nearly negligible effect on larger ISPs.

Ensuring that disproportionate costs are not incurred by small ISPs is one of the main arguments in favour of having a code establishing a threshold of notifications before the obligations apply.

A complicating factor is the involvement of some very large firms (e.g. Tesco, Royal Mail) who offer broadband services. In terms of overall size, such firms are not SMEs. However the scale of purely broadband operations they offer could be considered small (in terms of subscribers or turnover).

There is also a potential impact on SMEs in the right holders industry. Since the process of identifying infringers falls on right-holders, were the process to involve large fixed costs these costs would disproportionately affect small producers and distributors (e.g. costs of implementing the technology that enables right-holders to detect IP addresses).

If fixed costs to right-holders are high some smaller size firms may not be able in practice to reap the benefits derived from the policy, namely reducing the sales displacement effect. This would place such businesses in a disadvantageous competitive situation with larger right-holders. This is particularly relevant considering the general industry trend of lower distribution costs which has allowed smaller competitors to directly compete with larger businesses (e.g. distribute digital content to a worldwide market).

### **Other specific impact tests**

Other specific impact tests have been considered, including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Race Equality, Disability Equality, Gender Equality, Human Rights and Rural Proofing.

After careful analysis it has been concluded that no significant impact is anticipated in any case.

### **Monitoring and enforcement**

Ofcom will be responsible to monitor and enforce the policy. Specifically they will be required to place obligations on ISPs to require them:

- to notify alleged infringers of rights (subject to reasonable levels of proof from rights-holders) that their conduct is unlawful; and
- to collect anonymised information on serious repeat infringers (derived from their notification activities), to be made available to rights-holders together with personal details on receipt of a court order.

If the Secretary of State concludes that the obligations and targeted legal action scheme has proved to be insufficient to dissuade serious infringers, then he may require ISPs to impose specified technical measures against infringing individuals, and order Ofcom to administer and enforce a code that incorporates rules and procedures for applying such technical obligations.

The initial code could be prepared by industry and approved by Ofcom, or written by Ofcom. In either event the code must be approved by the Secretary of State. Any code required to underpin technical obligations will be written by Ofcom.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

## DOMAIN NAMES

<b>Department /Agency:</b> Department for Business, Innovation and Skills (BIS)	<b>Title:</b> Impact Assessment of reserve powers to regulate Internet domain names	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 12 April 2010
<b>Related Publications:</b> Digital Britain Final Report (2009)		

Available to view or download at: [http://www.culture.gov.uk/what\\_we\\_do/broadcasting/6216.aspx](http://www.culture.gov.uk/what_we_do/broadcasting/6216.aspx)

Contact for enquiries: Tim Hogan/ Colette Beaupré

Telephone: 020 7215 1628/1650

### What is the problem under consideration? Why is government intervention necessary?

The domain name system is a crucial element in the Internet economy. However, the UK Government is becoming increasingly concerned about reported abuse of the domain name system. First, it can have a detrimental impact on Internet users as they can be exposed to the risk of financial loss and emotional distress as a result of mistakenly accessing a fake site similar to the one they intended. Second, it can prevent the Internet economy functioning efficiently because it raises the costs to business – especially small businesses - of securing the domain name that they want and the costs to consumers because it makes it more difficult to find the web site of the firm they are looking for. As a result, further growth in e-commerce may be hampered. Government intervention would be required in the case that current self regulation fails.

### What are the policy objectives and the intended effects?

We are proposing reserve powers to regulate the allocation and registration of domain names by UK-based registries (and their registrars) and misuse of domain names by registries, registrars and end-users where the Government believes self regulation is at risk of failure. The Secretary of State will have the power to notify a registry if he is concerned about a serious failure in relation to that registry (such as misuse of domain names by registrars or end users) which has caused a risk of adversely affecting the reputation of the UK's internet economy, and, if necessary, will have power to take enforcement action to allow the system to run effectively. Tackling domain name abuse will help ensure a level playing field, helping UK businesses retain their competitiveness in the global marketplace by helping protect their on-line presence and 'intellectual property' in terms of trade marking, the ability to innovate, and helping minimise consumer detriment from e-commerce activity by entities using unauthorised domain names. These reserve powers take forward a Digital Britain commitment.

### What policy options have been considered? Please justify any preferred option.

The UK Government is considering two options

Option 1: Do nothing - allow the Internet domain name industry to remain self-regulated.

Option 2: Allow the industry to remain self-regulated but have reserve powers in case Government intervention is required to protect consumers and UK Internet users, including businesses.

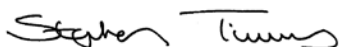
This is the preferred option.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Before the powers are used a consultation will take place. A Post Implementation Review will be carried out 3-5 years after implementation of legislation.

### **Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:



.....Date: 8 April 2010

## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Continue with self-regulation but have reserve powers in case Government intervention is required**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition)	Yrs	
	<b>£ Not quantifiable</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
<b>£ Not quantifiable</b>		<b>Total Cost (PV)</b>	<b>£ Not quantifiable</b>
<p>Other <b>key non-monetised costs</b> by 'main affected groups' Potential compliance costs to members of registries if they have to comply with a request from the Secretary of State to the registry to remedy the serious failure(s) identified. Costs may also be incurred by the registry and its members if the Government was to ask Ofcom to prepare a report on specified matters under the Act's separate Ofcom reporting duty provisions.</p>			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	Yrs	
	<b>£ Not quantifiable</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
<b>£ Not quantifiable</b>		<b>Total Benefit (PV)</b>	<b>£ Not quantifiable</b>
<p>Other <b>key non-monetised benefits</b> by 'main affected groups' There is the potential for benefits for consumers and business as a result of the behaviour of registries being positively influenced by the existence of the Government's reserve powers. For example, increased consumer welfare due to reduced exposure to risk of financial loss and distress associated with mistakenly accessing a fake site similar to the one they were intending and access to better delineated disputes procedures. Businesses are better protected from lost sales, brand dilution and may benefit from potentially not having to pay for dispute resolution.</p>			

### Key Assumptions/Sensitivities/Risks

Price Base Year N/A	Time Period Years N/A	<b>Net Benefit Range (NPV)</b> <b>£ Not quantifiable</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ Not quantifiable</b>
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			2010 estimated		
Which organisation(s) will enforce the policy?			BIS		
What is the total annual cost of enforcement for these organisations?			Not quantifiable		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			N/A		
What is the value of changes in greenhouse gas emissions?			N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	No	NO

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b>	£ 0

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

### Background

#### *The Domain Name System*

Every server and computer on the internet is identified by a unique string of digits analogous to a phone number called an Internet Protocol (IP) address and it is this number which is used to route the internet traffic to and from the service or computer. IP addresses are stored in the Domain Name System (DNS) which acts as the address book for all devices, computers and servers connected to the internet.

A top level domain (TLD) name in the DNS is the last element of a web-address. Two broad categories of TLDs exist: country code TLDs (such as .uk and .fr) and generic TLDs (gTLD) such as .com, .tel. and .org.

Each TLD is operated by a TLD registry. It is their task to link new domain names to the unique numerical IP address of their computer, which is then used to route the traffic via servers. In the UK, a company called Nominet, a not-for-profit organisation, operates the registry that oversees the distribution of domain names ending in .uk and maintains the authoritative register of such names. Nominet's membership is roughly 3000 strong and is comprised of ISPs, web-hosting organisations, brand protection organisations, domainers, website designers and systems interpreters. The .uk TLD is considered by Government to be an important asset for the UK's internet economy. Other TLD registries in the UK are the .tel gTLD registry operated by a company called Telnic Ltd and the .gb domain registry run by JANET (UK). We also believe the registry for the uk.com second level domain operated by a company called CentralNic is based in the UK.



## *The .uk domain name market*

The .uk domain name market has grown significantly since 2000, according to Nominet's domain name industry report<sup>70</sup>. In 2008, there were over seven million .uk domain names registered (see Figure 1 below), making it the fourth largest TLD globally.

*Figure 1: Size of the .uk register*



Source: Nominet (2009)

This trend reflects the rapid growth in e-commerce and the increase in the number of firms with a website since 2002. Figure 2 shows that sales over the internet by UK businesses have raised, from around £20bn in 2002 to over £160bn by 2007.

<sup>70</sup> Nominet (2008) *Domain name industry report* Available at: [http://www.nominet.org.uk/digitalAssets/32856\\_Domain\\_name\\_industry\\_report2008.pdf](http://www.nominet.org.uk/digitalAssets/32856_Domain_name_industry_report2008.pdf)

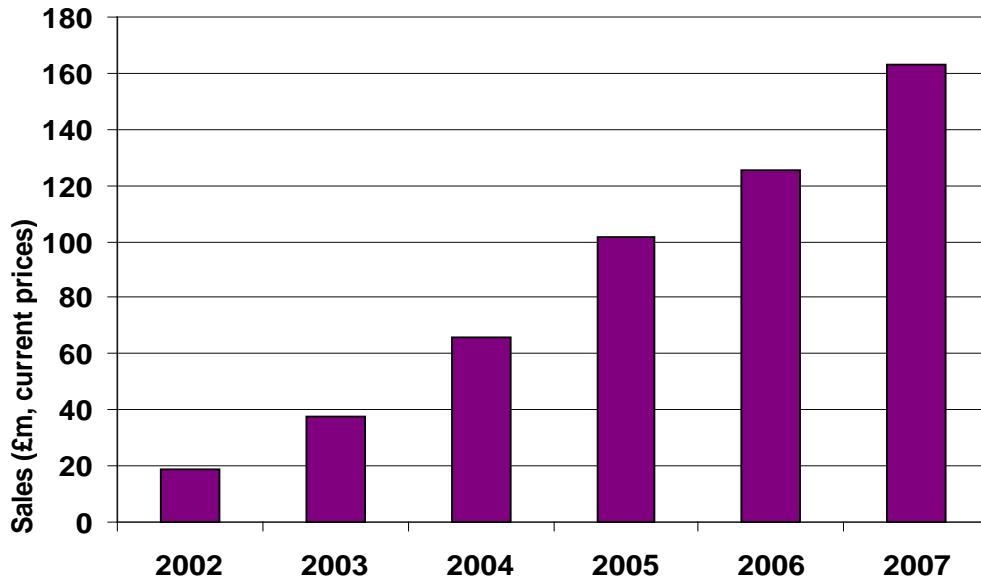
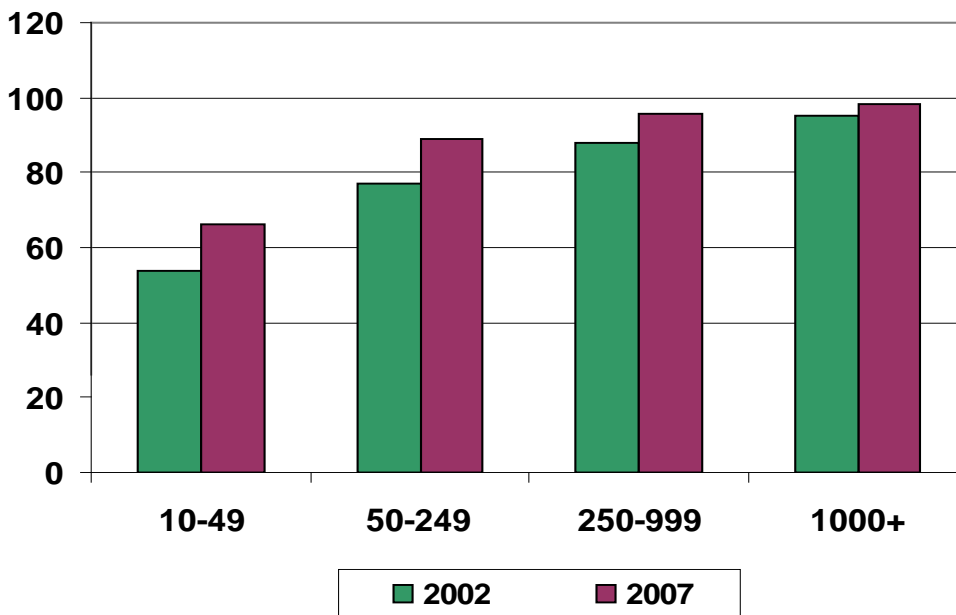


Figure 2: Sales over the internet by UK businesses

Source: ONS, E-commerce Survey, 2008

In 2007, two thirds of small businesses at least 90% of medium and large businesses in the UK had a website (see Figure 3).

Figure 3: Percentage of UK businesses, by size, with a website, 2007



Source: ONS, E-commerce Survey, 2008

## **Rationale for government intervention**

There is no specific UK legislation covering the Domain Name System. Apart from where general consumer, competition, intellectual property and company law may impact upon its operation, the DNS industry including the .uk TLD has been self-regulated in the UK since it was created.

This has previously been considered to have worked well. However, the UK Government is now becoming increasingly concerned by the number of reported abuses of the Domain Name System. For example, Nominet's Dispute Resolution Service received 235 complaints between July and December 2008 and 622 in 2009. Nominet currently estimate that 1 in 3000 .uk domain name registrations are subject to a complaint. Particular abuses include:

- *Cyber-squatting* – applying to register domain names which are of economic value to other people and then charge them high prices to buy them.
- *Scams* – using a domain name to set up a website in order to sell fake tickets to events.
- *Phishing* – use of a domain name that is confusingly similar to another one (usually of a well known brand) in order to dupe members of the public to enter the site and reveal personal data which is then used for fraudulent purposes.

The UK Government is concerned by these reported abuses as they could, in the absence of intervention, have a detrimental impact on Internet users through potential exposure to the risk of financial loss and emotional distress as a result of mistakenly accessing a site similar to the one they intended. An example of domain name abuse is seen in the landmark ruling between Apple Inc. vs CyberBritain Group Ltd in 2005. CyberBritain had registered

itunes.co.uk and diverted the domain name to Napster.co.uk soon after Apple launched the *iTunes* service in 2004.

If allowed to go unchecked, these abuses may also serve to prevent the Internet economy functioning efficiently which may create costs for the wider economy. For example, it may hamper further growth in e-commerce because of the additional costs to firms associated with securing the rights to use a particular domain name, and to consumers who may incur higher search costs because of the difficulties locating the website of the firm they are looking for. In June 2009 Internet security was the joint second biggest concern with internet services<sup>71</sup>, although the level of concern has decreased.

While domain name registries do have mechanisms which help deter abuses of the Domain Name System, these may not always be deemed sufficiently effective. For these reasons, the UK Government set out its intention in the Digital Britain Final Report that on a precautionary basis, it would seek powers in any appropriate forthcoming legislation to regulate against the risk of the internet economy failing to function effectively.

Some other European countries, for example Finland, Sweden and France, already have in place legislation governing the country code top level domain name.

## **Policy options**

### ***Option 1: Do nothing – Allow the Internet Domain Name Industry to remain self-regulated***

Under this option, the Government would allow the internet domain name industry to remain self-regulated, with little power to intervene if necessary.

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<sup>71</sup> Ofcom, The Consumer Experience, December 2009

As a result, Internet users would continue to be exposed to a potential risk of financial loss and distress if the mechanisms in place fail ,while the Internet economy itself may not function as well as it could do, hampering further growth in e-commerce.

*Option 2: Allow the industry to remain self-regulated but have reserve powers in case Government Intervention is required. This is the preferred option.*

Under this option, the Government is proposing reserve powers which could be used to enable it, in certain circumstances, to regulate the allocation and registration of domain names by registries established within the UK's jurisdiction, including Nominet and JANET (UK). This will include top level domain name registries where the domain itself is UK - related.

The provisions give certain powers to the Secretary of State in circumstances where there has been a serious failure of a registry because either (a) the registry itself, its end-users (owners of, or applicants for, domain names) or registrars (agents of end-users) have been engaging in unfair practices (such as cyber-squatting and phishing) or misusing domain names (such as deliberately registering misleading domain names), or (b) because the registry does not have adequate arrangements for dealing with complaints in connection with domain names. In each case these will be prescribed in regulations made by the Secretary of State following consultation.

The powers will only be used where there is a serious failure adversely affecting the reputation of the UK's Internet economy or where such adverse effects are already occurring. It is hoped that this option will provide an incentive for registries to ensure that there are no serious failures so that the Government will not need to use these reserve powers.

The powers will only apply in relation to registries which are constituted as companies or as limited liability partnerships. It is considered unlikely that the international body which authorises registries globally, ICANN, will authorise any other kind of UK entity to operate a registry within the UK because of their relative lack of accountability.

In addition to these powers there is a separate duty in the Digital Economy Act 2010 on Ofcom, if requested by the Secretary of State, to prepare a report on domain names, which may, in particular, include the allocation and registration of internet domain names and the misuse of internet domain names.

### *Costs*

If the UK Government were to make use of its powers the registry itself and members of the particular registry may incur compliance costs. It is difficult to predict accurately what these costs could be and for this reason are not quantified here.

### *Benefits*

There is the potential for improved consumer welfare as a result of increased protection for example, against the risk of financial loss and distress associated with mistakenly accessing a fake site similar to the one they were intending, as a result of the behaviour of registries being positively influenced by the existence of the Government's reserve powers. Hence, growth in e-commerce may also increase as a result of a better functioning internet economy and the UK's reputation as a safe and secure platform for e-commerce will be helped. Moreover, intellectual property and brand ownership will be better protected.

## **Competition Assessment**

If the reserve powers are used, there is unlikely to be any impact on the number of domain name registries allowed to operate in the UK providing they are well run. Competition between registries should be unaffected.

Competition between businesses, especially small firms that use the internet to do business may increase if it becomes easier for businesses to secure the rights to the domain name they want and for consumers to find it. However, this is unlikely to be significant.

## **Small firms**

Small firms who rely on the internet to do business should be among the main beneficiaries. Any Government regulation should provide more confidence that the domain name system will be run efficiently. Business whose principle activity is in registering and trading domain names will find themselves more closely monitored for signs of domain name abuse.

## **Other specific impact tests**

Other specific impact tests have been considered including the Small Firms Impact Test, legal Aid, Sustainable Development, Other Environment, Carbon Assessment and Rural Proofing. After initial screening it has been deemed that no significant impact is anticipated in any case.

We have also considered the potential effects of these proposals on race, disability and gender equality. Again, after initial screening it has been deemed that no significant impact is anticipated in any case.

## **Monitoring and Enforcement**

It is hoped that the threat of Government intervention would allow self-regulation to continue in a way which ensures that consumers are better protected and allows the domain name system to run efficiently with resultant benefits to the economy. In this way, self-regulation will hopefully ensure that activities do not continue which could serve to negatively affect the reputation of e-commerce in the UK.

However, if the Secretary of State is concerned about an alleged serious failure of a registry he can ask Ofcom to report to him using the separate powers proposed. That report could be used by the Secretary of State to determine whether enforcement action is required and thus whether the enforcement provisions should be brought into force.

Enforcement action could take the form of the Secretary of State appointing a manager of a registry and/or applying to court to alter a registry's constitution. The role of a manager would be to take over any or all of the functions of the directors (re companies) or members (re limited liability partnerships (LLPs)) in order to ensure the failures/consequences are remedied. Alternatively, or concurrently, the Secretary of State could apply to court for an order amending a company's articles or an LLP's limited liability partnership agreement, or preventing them from making amendments to their constitution, if the court was satisfied that this is necessary in order to remedy the failures or consequences.

A Post Implementation Review will be carried out three to five years after the implementation of the secondary legislation prescribing unfair practices and complaint handling requirements.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

## PUBLIC SERVICE CONTENT: AN INTRODUCTION

This impact assessment sets out the rationale and purpose of the package of Public Service Content policy changes in the Digital Economy Act 2010. It is intended to offer some important background information about Public Service Content and explain why Government intervention is necessary. The costs and benefits, and further detail about the impact of each of the policies are set out in the individual impact assessments.

### **Related Publications**

- Digital Britain: The Final Report, BIS & DCMS, 16 June 2009  
[http://www.culture.gov.uk/what\\_we\\_do/broadcasting/6216.aspx](http://www.culture.gov.uk/what_we_do/broadcasting/6216.aspx)
- Ofcom Communications Market Report 2009  
<http://www.ofcom.org.uk/research/cm/cmr09/cmr09.pdf>
- Overview of Ofcom's First and Second Reviews of Public Service Broadcasting Television  
[http://www.ofcom.org.uk/tv/psb\\_review/](http://www.ofcom.org.uk/tv/psb_review/)
- Ofcom's Second Public Service Broadcasting Review, Phase 2: Preparing for the Digital Future [http://www.ofcom.org.uk/consult/condocs/psb2\\_phase2/psb2\\_phase2.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf)
- Ofcom's Second Public Service Broadcasting Review, Phase 1: Preparing for the Digital Future [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf)
- Ofcom Public Service Broadcasting Annual Report 2009  
[http://www.ofcom.org.uk/tv/psb\\_review/annrep/psb09/psbrpt.pdf](http://www.ofcom.org.uk/tv/psb_review/annrep/psb09/psbrpt.pdf)

## SECTION A

### GOVERNMENT INTERVENTION IN PUBLIC SERVICE BROADCASTING

#### What is Public Service Broadcasting?

The term Public Service Broadcasting (PSB) refers to broadcasting that is intended for the public benefit, rather than for purely commercial purposes.

Ofcom's first PSB review<sup>72</sup> set out the following purposes and characteristics of public service broadcasting:

#### PSB purposes

**Informing our understanding of the world** - To inform ourselves and others and to increase our understanding of the world through news, information and analysis of current events and ideas

**Stimulating knowledge and learning** - To stimulate our interest in and knowledge of arts, science, history and other topics through content that is accessible and can encourage informal learning

**Reflecting UK cultural identity** - To reflect and strengthen our cultural identity through original programming at UK, national and regional level, on occasion bringing audiences together for shared experiences

**Representing diversity and alternative viewpoints** - To make us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities, both within the UK and elsewhere

<sup>72</sup> [http://www.ofcom.org.uk/tv/psb\\_review/](http://www.ofcom.org.uk/tv/psb_review/)

### PSB characteristics\*

- **High quality** - well-funded and well-produced
- **Original** – new UK content rather than repeats or acquisitions
- **Innovative** – breaking new ideas or re-inventing exciting approaches, rather than copying old ones
- **Challenging** – making viewers think
- **Engaging** – remaining accessible and attractive to viewers
- **Widely available** – if content is publicly funded, a large majority of citizens need to be given the chance to watch it

\* *Trust*, although not defined as a characteristic in the review, is also regularly considered alongside those outlined above.

These characteristics are most likely to be delivered if there are a range of different providers – to encourage competition and to ensure we have access to a reasonable plurality of views and perspectives.

It is recognised that some programming genres (e.g. news, current affairs, UK and European originated content and children’s content) have positive externalities; they are good for democracy or society; they inform citizens about their local and regional area; they provide a voice for communities and contribute to representing and strengthening the UK cultural identity and diversity. Whilst they have cultural, social and democratic benefits, the public service considerations requiring the content to contain certain characteristics can make these genres less commercially attractive.

The BBC is the cornerstone of PSB in the UK, with special responsibility for investing in distinctive content and always striving to meet PSB purposes and characteristics. The overall public purposes of all its public services are set out under its Royal Charter and Agreement with Government, and all of its UK television channels<sup>73</sup> have to make a contribution to public service broadcasting. S4C and Channel Four, which are public entities and Channel 3 and Channel 5 licensees (i.e. ITV1, STV, UTV and Five), which are commercially owned and commercially funded, have historically been required to fulfil public service obligations in return for certain rights such as access to spectrum.

Although the PSB channels are expected together to fulfil the purposes and characteristics, within the PSB system, it is acknowledged that each PSB channel has a different remit (with access to different funding sources and different institutional approaches). As such all PSBs have specific programming and production obligations e.g. in relation to independent production and regional production.

## **Reasons for Government intervention in PSB**

Ofcom's Public Service Broadcasting reviews have discussed in detail the historic reasons for Government intervention in PSB<sup>74</sup>, considering both social and economic driven approaches. Overall, the discussion has found that the 'social values' and 'market failures' arguments are not, in fact, so different. Both are essentially concerned with whether or not the market will provide the socially desirable outcomes encapsulated within PSB.

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<sup>73</sup> The BBC PSB channels are BBC One, BBC Two, BBC Three, BBC Four, CBBC, CBeebies, BBC News and BBC Parliament.

<sup>74</sup> [http://www.ofcom.org.uk/consult/condocs/psb/psb/sup\\_vol\\_1/concept/historic/](http://www.ofcom.org.uk/consult/condocs/psb/psb/sup_vol_1/concept/historic/)

It is thought that a number of the market failure arguments, although strong in a five-channel analogue world, are of diminishing relevance in a fully digital world. Nevertheless, there are some enduring market failures, which may provide a coherent and measurable justification for continued intervention in the television market.

The most recognised of these is the **presence of externalities**. As outlined above, an individual's viewing can have additional benefits for society as a whole, for instance through his or her engagement in the democratic process as a more educated citizen. However, each individual may not account for such benefits when making viewing choices. The market will therefore tend to under-provide programming that yields this kind of broader social benefit.

Other areas of possible market failure in public service content provision that have been discussed are outlined briefly below. Please refer to the relevant Ofcom material for full consideration of each of these arguments.

- i. **A tendency towards monopoly/oligopoly.** Economies of scope and scale are inherent in broadcasting and will tend to encourage the concentration of ownership in large, often vertically-integrated companies. The result of an unregulated market might therefore be reduced competition, less choice for viewers and either higher prices or lower quality than would be available in a competitive market.
  
- ii. **A lack of consumer information.** Programmes are 'experience goods' – it is argued that viewers cannot make informed decisions about whether to watch

programmes they have not yet seen. Without regulation, broadcasters would tend to respond by supplying a narrow range of tried and trusted, immediately recognisable programme types rather than taking risks.

- iii. **The provision of merit goods.** Individuals themselves can get more value from a programme, for example in terms of news and information, than they realise. However, because they do not always appreciate that value, they would not necessarily choose to pay for such a programme in an open market. Again, the market, left to itself, would tend to under-provide this sort of programming, since the individual does not recognise its full value when exercising consumer choice.
- iv. **Programmes are 'public goods'.** Providing a broadcast programme to **someone** makes it possible, without additional cost, to provide it to **everyone**. Once a programme is made and broadcast, it is available to be watched by additional viewers at little or no extra cost to the broadcaster, which causes problems for the market mechanism.

### **Availability and access to public service content**

Ofcom have set out three general principles<sup>75</sup> of availability and access to public service content:

- Core public service content should remain widely available, free-to-view, through provision on a range of platforms – at minimum, terrestrial and satellite. This should include all current designated public service linear channels;

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<sup>75</sup> [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf) (paragraph 6.34)

- The value of public service content will be maximised if it is provided without additional payment. If content is paid for with public funding, audiences should have at least one opportunity to access it without any such payment. However, if the cost of subsequent distribution exceeds the public value, it may be appropriate to charge consumers some or all of that cost;
- Use of paid-for platforms and services to deliver some public service content is appropriate if those platforms can deliver greater reach or impact among a particular target audience than free-to-view platforms do.

### **Justifying intervention**

Defining the purposes and characteristics of public service content is different from justifying public intervention. Any large intervention in the market is likely to be expensive, to distort the market for commercial provision and to divert public resources from other potentially valuable uses. This perspective implies that intervention to support consumer and citizen interests must also satisfy the following criteria:

- It should result in content that would not necessarily be delivered by commercial operators;
- The policy and regulatory tools available must be able to secure its provision;
- Once provided, it must be effective (that is, enough people must watch and be influenced by it);
- Its costs, including costs due to market distortions, should not be disproportionate to the benefits.



## What is plurality and why is it important?

Ofcom's reports on Public Service Broadcasting define plurality in public service broadcasting as the provision by a range of producers, broadcasters and distributors of content which meets public service purposes and characteristics; and the option for people to choose between different broadcasters and distributors for any particular kind of content.

Ofcom's PSB review survey<sup>76</sup> showed that audiences value plurality highly in public service broadcasting. The majority of people (of all ages, socio-economic groups and ethnicity) thought that plural supply was important. Ofcom's deliberative research also showed that the vast majority of the audience value plurality, as it provides choice and a range of voices. The importance that people attach to plurality varied by genre and, therefore, by purpose. Plurality of news and current affairs emerged above all other genres as a vital element for audiences.

Ofcom's reports on PSB<sup>77</sup> propose that plurality in PSB delivers benefits to audiences in three respects:

- It guarantees access to a range of voices and perspectives;
- It enhances the reach and impact of public service content;
- It acts as a competitive spur, helping to ensure that public service content remains relevant and focused on meeting audience needs

<sup>76</sup> [http://www.ofcom.org.uk/consult/condocs/psb2\\_1/annex5.pdf](http://www.ofcom.org.uk/consult/condocs/psb2_1/annex5.pdf) (chapter 5)

<sup>77</sup> Ofcom's Second PSB Review, Phase 2, p18, paragraph 2.49

## **Plurality in PSB outlets**

Ofcom, in their second PSB review, identify the need to maintain the BBC's role and funding for its programmes and services at the heart of the overall PSB system as a priority.

However, the importance of provision of public service content from alternative providers (alongside the BBC) is also highlighted.

A plurality of providers contributing to PSB purposes is necessary to create competition for quality across a full range of programming. In recent years, for example, the scale and scope of drama, news and current affairs programming on commercial PSB channels has helped to focus the BBC on improving its own provision. If competition for quality programming which contributed to PSB purposes did not exist, pressure on the BBC to raise its game would be reduced.

A plurality of PSB providers also prevents any single institution becoming the monopoly arbiter of taste or opinion in any one area of programming, and allows benchmarking exercises between similar distributors to compare how well they are meeting PSB purposes and their respective value for money.

If many channels are producing quality programming which reflects PSB purposes and characteristics, it is more likely that it will remain a core part of broadcasters' schedules and prevent challenging programming from being marginalised in schedules.

Different broadcasters are able to reach a wider range of viewers in different demographic and socio-economic groups. There is every reason to expect that in the digital age, the reach of PSB programming would be higher if it were distributed by a range of suppliers. Similarly, different TV channels provide content attractive to different audiences, even within the same genres. Channel 4's approach to current affairs or Five's programming for younger children are distinctive from that which the BBC provides.

Research commissioned by Ofcom as part of the first review of PSB assessed the value of institutions and plurality in PSB supply<sup>78</sup>. It concluded that having PSB largely or exclusively limited to one institution would have a number of undesirable effects:

- It would tend to be identified with what that institution produces, undermining any attempt to develop an independent analytical conception of PSB;
- It would not be subject to the pluralistic competition of other institutions operating within a broadly similar remit;
- The gulf would grow between PSB values and those of the rest of a market overwhelmingly driven by a commercial logic; and
- It would make the future sustainability of PSB more vulnerable because everything would hang on the fate of the BBC.

### **Plurality in commissioning**

Commissioners are accountable to viewers and have an incentive to buy the best ideas available. But relationships matter in TV commissioning and if there was only one

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<sup>78</sup> <http://www.ofcom.org.uk/consult/condocs/psb2/psb2/psbwp/wp2schles.pdf>

commissioner for producers of PSB programming to approach, it is likely that some good ideas for programmes would not be produced. A plurality of commissioners is therefore important for ensuring that good ideas which contribute to PSB purposes reach our TV screens. It also creates broader competition for ideas between channels, and adds to the likelihood that the best PSB programmes make it onto the screen. Producers have also said that they place a great value on the existence of a range of commissioners in different institutions.

### **Plurality in production**

Plurality in production of PSB could readily be achieved with only the BBC receiving funding for PSB. So long as its commissioning system were to choose the best ideas from a range of producers, BBC dominance of funding should not, in itself, affect the production sector or the BBC's contribution to PSB purposes. But it would rely on the BBC developing a transparently meritocratic commissioning system. If not, the contribution to PSB would also be adversely affected by dominant supply at the production level.

### **Audiences value plurality**

Ofcom's analysis suggests plurality is essential to meeting public purposes, but that it has associated costs. The BBC has suggested that, despite valuing plurality, audiences were not willing to pay these costs. It has published quantitative research concluding that public support for PSB on ITV1, Channel 4 and Five declines sharply when confronted with the cost of intervening to achieve it.

However, even in the BBC's own research, on balance participants preferred to pay more to retain plural provision than to accept a diminished contribution by commercial providers – which is consistent with Ofcom's own deliberative research.

Ofcom have carried out further quantitative research on this issue for the second phase of the second PSB review. This found that there was significant readiness amongst the public to pay for public service broadcasting beyond the BBC. The results showed that approximately three quarters of adults were prepared to pay for public service programming on ITV1, Channel 4 and Five up to an average value of £3.50 per month - in addition to the current licence fee. This equates to £42 per household per annum; or over £800 million per annum aggregated across all households willing to pay for plural provision.

### **Ofcom's overall assessment**

Although some voices in the industry believe that the importance of plurality has been overstated, the importance to viewers of public service broadcasting and UK originated content is widely accepted. Audiences value the BBC very highly, but virtually nobody favoured it becoming the only provider of public service content. There are compelling arguments and strong audience support for alternative public service provision to complement the BBC.

### **Conclusion**

As set out above, evidence gathered by Ofcom has shown that competition for viewers without competition in the supply of PSB content is unlikely to encourage the best possible

PSB programming on the BBC. There is little evidence to suggest that the existence of more than one PSB provider has resulted in the duplication of content in any genre. Leaving PSB provision to the BBC alone is likely to lead to complacency, inefficient production, lack of innovation, lower quality programming, a narrowing of perspectives and the loss of PSB programming for certain groups. If possible, competition should be sustained at all points in the value chain: production, commissioning and PSB outlets.

## SECTION B

### WHY IS FURTHER GOVERNMENT INTERVENTION NECESSARY?

Digital and technological progress, patterns of consumer behaviour and the resulting structural changes in the broadcasting market mean that the market failures set out above continue to exist and in some cases become more significant.

#### **Commercial PSBs under pressure**

The most recent BBC licence settlement, which runs until 2013, has provided the organisation with a solid and certain financial basis in order to ensure that it continues to fulfil its public service role effectively in the digital age. However, beyond the BBC, the opportunities brought about by the growth of digital media represent significant challenges to the traditional funding model for the UK's commercially funded public service broadcasters (Channel 4, the ITV network, Five and Teletext).

**Audience fragmentation** - Recent figures<sup>79</sup> show that Digital television (DTV) take-up is continuing to rise and reached 89.2% at the end of the first quarter of 2009, an increase of 2.1 percentage points on a year earlier. This increase means that 22.8m UK homes now receive DTV on their main set. Digital terrestrial television (DTT) remained the most widely used service on main sets – 9.8m homes in Q1 2009 (38.5% of all homes). Freesat, the free-

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<sup>79</sup> Ofcom Communications Market Report 2009: <http://www.ofcom.org.uk/research/cm/cmr09/cmr09.pdf>

to-air digital-satellite television platform owned by the BBC and ITV, had attracted 300,000 customers by the end of Q1 2009.

This means that viewers have access to an ever increasing number of channels, providing a more diverse choice of programmes – Freeview offers up to 50 channels, Sky offers over 200 free-to-air channels and Virgin offers 45 channels on its basic package and 160 channels on its premium package<sup>80</sup>.

The proliferation of digital television channels have led to structural changes in the communications markets, emphasised by current cyclical difficulties, meaning a greater fragmentation of audience and a year on year decline in audience share for the five main networks - in 2008 the five main networks' audience share declined to 60.8% down by 2.7 percentage points or 4.3% year on year. Since 2007 ITV1 and Five's share each fell by 4%.

**Technological convergence** - increasingly blurs the distinction between television (which faces a large number of regulatory restrictions on content, advertising time etc.) and other audiovisual media (especially online, which is almost entirely unregulated). We are seeing increased viewing on on-demand platforms. Ofcom figures show that take-up of digital video recorders (DVRs) is continuing to grow with 27% of individuals claiming to have access to this technology at the end of March 2009 – equivalent to 7 million homes. This figure rises to nearly a third (31%) in multi-channel homes. We are not yet at the stage of many consumers regarding their library of recorded content as the 'default', with 88% of those with a DVR choosing instead to review the availability of content on live television 'always' or 'mostly' before turning to their programme archive. That said, DVRs pose a

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<sup>80</sup> Freeview: <http://www.freeview.co.uk/freeview/Channels>, Sky: <http://packages.sky.com/see/>, Virgin: <http://allyours.virginmedia.com/html/tv/what-is-virgin-tv.html>



specific challenge to the free-to-view advertiser-funded business model, with Ofcom research showing that 76% of those who watch recorded content claiming to fast-forward through advertisements 'always or almost always' when watching recorded programmes on DVRs.

**Falling advertising revenues and platform migration** - Ofcom's Public Service Broadcasting Annual Report 2009 showed that television advertising, the primary source of revenue for the commercial broadcasters, is falling and is expected to drop further in the coming years.

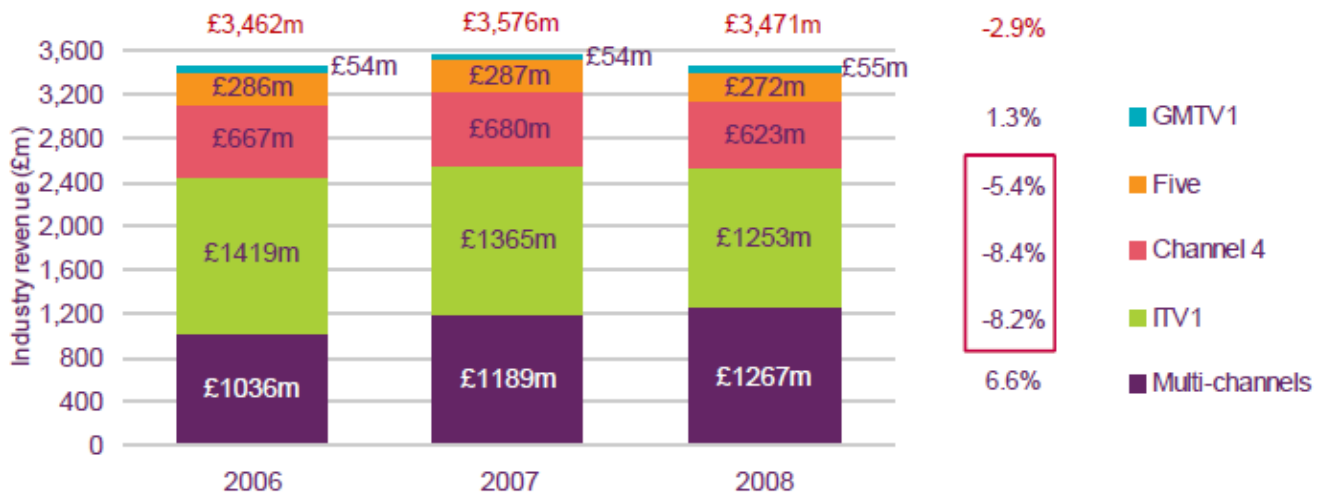
In fact data from the Advertising Association shows that in 2008 television advertising revenues stood at £3.82bn. This was down 5.1% on the figure in 2007. Television advertising revenues are expected to fall further to £3.54bn in 2009, lower than the value of the market in 2003.

Further research by Oliver & Ohlbaum suggests that television advertising revenue may continue to decline sharply, by close to 20% in total in real terms, from 2006 to 2012. The decline, in the short-term, is likely to be greatest for the commercial public service channels, although this will be partly offset by revenues to their portfolio commercial channels which are likely to increase in real terms.

Ofcom's PSB Annual Report figures show, however, that there has been a continued growth in internet advertising, where spend grew to reach £3.3bn in 2008. As such, last year was the first time that advertising on the internet accounted for over one in every five pounds (20%) of total UK advertising spend. This share has grown 17 percentage points since 2003.

Figure 1 below shows that between 2007 and 2008 ITV1 and Channel 4 saw television advertising revenues fall over 8% while Five's dropped more than 5% over the same period. Amongst PSB providers, only GMTV saw an increase (1%). Early indicators suggest that advertising revenue has dropped further in 2009.

Figure 1: Net advertising revenues amongst television broadcasters<sup>81</sup>



These structural changes in TV consumption patterns and content funding, which are emphasized particularly in the current economic downturn, mean that the commercial PSBs' business model is coming under increasing pressure. Regulation is becoming outdated and inappropriate for market conditions.

### The market is unlikely to fill the gaps

Although the rest of the market does provide content that has some of the characteristics of public service (e.g. Sky Arts, Sky News), in the absence of further intervention commercially run operators operating in this market would no longer have the commercial incentive to provide a sufficient scale and range of public service content. There are various

<sup>81</sup> <http://www.ofcom.org.uk/research/cm/cmr09/cmr09.pdf>

reasons for this. In particular, in the absence of public intervention private firms may not have regard to the positive externalities of public service broadcasting (that are outlined earlier) and therefore may tend to ignore content that does not deliver large audiences. Without a strong PSB sector, private firms are also likely to provide lower quality output. Public and private sectors set the standards for each other while operating under different constraints - their coexistence is therefore mutually beneficial.

Supporting this, Ofcom's Public Service Broadcasting: Annual Report 2009 showed that spend by the five main PSB channels on first-run originated output has decreased from £3,064 million in 2004 to £2,697 million in 2007 and £2,620 million in 2008. Oliver & Ohlbaum's projections state that there could be a further reduction in investment in original programming of up to £375 million per annum by 2012. Spend on Children's programming by the commercial PSBs is down from £42m in 2004 to £11m in 2008 and is likely to continue to fall without intervention<sup>82</sup>. As a result, their contribution to public service output is falling and this trend will continue into the future. Whilst channels such as Nickelodeon, Disney et al will invest some money into producing UK originated content this represents around only 10% of total investment in new programmes and will not cover the drop in spend from the PSBs.<sup>83</sup>

If the Government does not intervene, public service media content is expected to decline considerably, with the positive externalities which go alongside it.

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<sup>82</sup> from Ofcom's Public Service Broadcasting: Annual Report 2009

<sup>83</sup> from Ofcom's Research Report: The Future of Children's Programming

## **Threats to plurality**

Without intervention, there is also a threat to the plurality of public service media content beyond the licence fee funded BBC, especially in key public service genres like news and current affairs or innovative, risk-taking content. There is a risk that the BBC will become both the sole substantial provider of public service content and the sole public service commissioner of scale. As set out above, this would be to the disadvantage of both audiences and producers of public service content (especially UK originated content).

## **Current regulatory failure**

The current regulatory framework for public service broadcasting is no longer appropriate for the changing market conditions set out above. Regulation was set up when digital media were only just emerging and did not have the significant market impact they have today. As such, and despite its very strong commitment to convergence and digital television, current regulation reflects the "linear world", where few large scale linear channels were competing for audiences and revenues. This means that the framework set out in current legislation is limiting the commercially funded PSBs ability to adapt to this new non linear environment and their ability to maintain their levels of investment and compete effectively with the BBC, and operate as efficiently and effectively as they could do.

Further detail of the regulatory failures being addressed by specific policy interventions is outlined in the individual impact assessments for each policy.

## SECTION C

### **Policy objective**

The Digital Britain White Paper set out a renewed commitment to public service content in the Digital World<sup>84</sup> and the various specific changes have been identified that need legislative action.

#### **The objectives of these changes are to:**

##### **Secure plurality of provision of public service content**

Ensure that there is not a monopoly provider of high quality public service content, in particular in key areas such as news and current affairs where plurality of views is necessary to a well-informed, healthy democracy.

##### **Secure plurality of commissioning**

Ensure that a range of commissioners working for different organizations in the market stimulate competition and innovation.

##### **Secure the right regulatory environment to encourage investment in UK PSB and non PSB content**

Ensure that regulation is proportionate and that the market is able to invest and innovate in PSB and non-PSB content and services.

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<sup>84</sup> [http://www.culture.gov.uk/images/publications/chpt5\\_digitalbritain-finalreport-jun09.pdf](http://www.culture.gov.uk/images/publications/chpt5_digitalbritain-finalreport-jun09.pdf)

## **Range of options considered**

### *Option 1 – Do nothing*

For the reasons outlined above, this option has been discounted in favour of further Government intervention.

### *Option 2 – Package of specific interventions*

A package of proposals has been considered - aimed at future proofing the provision of public service content in the UK as well as securing a market environment which incentivises innovation and investment.

There are five elements of the preferred package –with the exception of Independently Funded News Consortia<sup>85</sup>, each is considered in detail individually in separate mini impact assessments.

1. Updating Channel 4's remit
2. Updating commercial PSB Licensing Procedures
3. Gaelic Programming on Channel 3 in Scotland
4. Creating a new, specific duty for Ofcom to promote investment in public service content

## **Assessing the impact on competition**

An assessment of the impact on competition is set out within each of the individual impact assessments.

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<sup>85</sup> Independently Funded News Consortia is not part of the Digital Economy Act 2010.

# CHANNEL 4 CORPORATION FUNCTIONS

<b>Department /Agency:</b> DCMS	<b>Title:</b> Impact Assessment – Update of the Channel 4 Television Corporation’s Functions	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 12 April 2010
<b>Related Publications:</b> Digital Britain White Paper, Chapter 5		

Available to view or download at:

Contact for enquiries: Robert Wallich

Telephone: 020 7211 6449

**What is the problem under consideration? Why is government intervention necessary?**

As set out in the overarching IA, digital communications are radically changing the way people consume audiovisual services, with digital channels and internet take-up increasing rapidly. In contrast, there is currently a statutory remit only for the linear TV<sup>86</sup> channel, Channel 4, but not for anything else the Channel 4 Television Corporation (C4C) does. This does not reflect the full range of C4C’s public service activities nor does it provide the right incentives for C4C to take full advantage of the potential of new media to deliver public services in new formats and on new platforms, with enhanced impact and reach. As audiences shift over time, so may the balance of C4C’s activities, to maximise its reach, impact and public value. This is all the more necessary as the digital age is also putting pressure on the commercial public service broadcasters’ advertising-funded TV business model, posing a risk for the future plurality of public service content beyond the BBC.

**What are the policy objectives and the intended effects?**

**Policy objectives:** clarify C4C’s objectives in the digital age; provide for a more robust accountability framework adapted to this new environment and for C4C’s public service output to be provided on all platforms and media rather than only via the traditional linear TV channel (Channel 4).

**Intended effects:** to enhance C4C’s impact and reach, develop its contribution to digital take-up, and sustain the plural provision of high quality UK-originated content in key public service genres, particularly in innovative multi-media content.

**What policy options have been considered? Please justify any preferred option.**

- **doing nothing** – discarded: balance of Channel 4’s priorities would reflect less and less audiences’ expectations and behaviours, with the risk that C4’s overall impact and public value diminish;
- **making C4C more commercial** – discarded: would risk losing C4’s specific contribution to public service content at a time where the contribution of commercially owned PSBs is likely to decline progressively, threatening the plurality of public service provision;
- **updating the regulatory framework for all the commercial public service broadcasters** – discarded: would risk overly constraining and regulating commercially run PSBs on all digital media, contrary to the long-term vision set out in Ofcom’s PSB review and the Government’s White Paper that they should instead be progressively liberalised;
- **updating C4C’s public service functions** – chosen option.

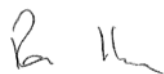
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

An annual review mechanism is built into the new arrangements. In addition, assessments of C4C’s delivery of its new functions will be included in Ofcom’s public service reviews under s264 of the Communications Act 2003.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:



Date: 8 April 2010

<sup>86</sup> Linear TV channels consist of fixed schedules, where the broadcaster rather than the individual viewer determines what is broadcast, and when.

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Ofcom estimate minimal start-up and ongoing resource implications, which will be absorbed into existing resources. C4C have indicated that the new arrangements will not have material cost implications for them over and above current plans.
	One-off (Transition)	Yrs	
	C Marginal	1	
	Average Annual Cost (excluding one-off)		
	£ Marginal		
<b>Total Cost (PV)</b> <b>c£ Marginal</b>			
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Although there is no guarantee of future spend, C4C's 2008 spend on content to be covered by the new functions (excluding hosting/streaming costs, which are not significant) was: Original content on digital channels - £32m; Other digital media content (e.g. online) - £7m; Digital media projects for 14-19-year-olds - £5m; Film4 investment - £12.6m <sup>87</sup>
	One-off	Yrs	
	£ N/A		
	Average Annual Benefit (excluding one-off)		
	£56m		
<b>Total Benefit (PV)</b> <b>£ 56.6m</b>			
Other <b>key non-monetised benefits</b> by 'main affected groups' Benefit to UK audiences of additional impact and reach of C4C public service content. Benefit to content producers (both on digital channels and in new media) from C4C commissions.			

### Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b>
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What is the geographic coverage of the policy/option?		United Kingdom			
On what date will the policy be implemented?		Royal Assent			
Which organisation(s) will enforce the policy?		C4C Board, Ofcom			
What is the total annual cost of enforcement for these organisations?		£ Marginal			
Does enforcement comply with Hampton principles?		N/A			
Will implementation go beyond minimum EU requirements?		N/A			
What is the value of the proposed offsetting measure per year?		£ N/A			
What is the value of changes in greenhouse gas emissions?		£ N/A			
Will the proposal have a significant impact on competition?		No			
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		N/A	N/A	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ negligible	Decrease of	£ negligible
<b>Net Impact</b>		£ negligible	

Key:    Annual costs and benefits: Constant Prices    (Net) Present Value

<sup>87</sup> Source: C4C Report and Financial Statements, 2008 - Public Impact Report



## Evidence Base (for summary sheets)

C4C are already well on the way to delivering various aspects of their new functions under their 'Next on 4' vision, published in 2008, in particular new media provision and the introduction of a new framework for assessing C4C's public impact. The new functions formalise C4C practice, enable C4C to move some of their now marginal activities into the mainstream; help them to be more responsive to market developments and safeguards these activities for the future. The new provisions will also introduce a new accountability framework for these activities, including a role for Ofcom.

### **Rationale for Government's intervention**

#### *Background*

Channel 4's specific role is to address market failure in public service content provision.

The overarching public service content impact assessment sets out the rationale for Government's intervention in public service content. C4C, which is a publicly owned but commercially funded entity, plays a unique role in the public service content landscape. Channel 4's public service remit, set out in section 265(3) of the Communications Act, emphasizes innovation, experiment and creativity; cultural diversity and programming of an educational nature and distinctive character. As a commissioner of programming from over 300 independent producers, spending nearly £400m per year in external first-run commissioning (more than any other broadcaster – Ofcom Communications Market Review 2009) it plays a specific role in nurturing new talents and providing alternative, challenging

perspectives, also making a vital contribution to the UK creative industries. Channel 4's role is to support and provide risk-taking content that more mainstream broadcasters do not offer to audiences.

The Digital Britain White Paper confirmed the Government's belief that Channel 4 has a continued and unique role to play in the provision of public service content that the market could not deliver without intervention.

*Why further Government intervention is necessary: the need to address a regulatory failure*

As set out in the overarching Public Service Content Impact Assessment, the way in which audiences consume audiovisual content and services has been transformed by digital and online technologies and continues to evolve rapidly, along with audience expectations to decide when, where and how they access and interact with content and services.

These changes are not, however, reflected in the regulatory framework for the commercial public service broadcasters (PSBs) - the Channel 3 licensees, Channel 4 and Five – which, in contrast to the BBC, still relates exclusively to linear television. At present, C4C's primary functions are (i) to secure the continued provision of Channel 4, strictly defined in statute as a linear TV channel, and (ii) to fulfil the public service remit of Channel 4.

The Government accepts that the contribution of the commercially owned PSBs - Channel 3 licensees and Five - to a wide range provision of public service content is likely to decline over time (some changes are detailed in separate impact assessment - licensing). The Government's long term vision is that these networks should, over time, be allowed greater flexibility and proportionate regulatory obligations, consistent with their commercial incentives. The Government therefore has no plans to introduce additional public service obligations on new media platforms for these organisations.

Channel 4, by contrast, is a publicly owned entity and the Government believes it should continue to deliver public service content in the long term, to guarantee there is competition to the BBC. The Government therefore considers that it is necessary to reflect in

C4C's statutory functions the need to embrace digital media and C4C's role in delivering public value on these platforms.

The Channel 4 remit, though it offers useful flexibility, relates only to linear television, ignoring other digital media and other types of content consumption.

C4C has general powers to carry out other activities appropriate to and connected with its primary functions, under subsection 199(1) of the Communications Act 2003, and, in addition to its suite of digital TV channels, already offers a range of new media content and services. Indeed, in its *Next on Four* strategy, C4C set out a clear commitment to increase its presence on these platforms, as audiences are using them increasingly to access content. But C4C's new media operations are not part of its public services under the current statutory framework. There is no requirement for C4C to continue to provide such content and services in the future, nor to ensure that such activities have a public service focus. The current framework therefore no longer strikes the right balance between C4C's activities, nor does it provide C4C with strong enough incentives to deliver public service content across digital media, for example online. Overall this constrains C4C's delivery of public value and audience impact, by reducing its incentive to take advantage of the potential of new media to deliver public services and so limiting its delivery of substantive public service competition to the BBC across platforms.

For example, the existing regulatory framework does not provide the incentive to develop public service content and services for older children on the internet, although they increasingly tend to use this medium to access content, often instead of linear TV. Ofcom's 2007 report 'The Future of Children's Television Programming' showed that among children with internet access, internet and mobile phone were the media activity 12-15s would miss

the most (respectively 30% and 26%) ahead of TV (24%). The report also showed that children's total viewing of television had declined for each age group between 2002-2006, with older children (10-15s) experiencing the sharpest decline (e.g. -11% for 13-15s). The latest Communications Market Report, in August 2009, showed that television reach had declined by 2% among children under 16 (from 92% to 90%) and by 4% among 16-24s (from 86% to 82%) between 2003 and 2008.

This is a source of particular concern, as provision of high quality, UK-originated content, especially in key public service genres and long-form content, is limited online: for instance, whilst 10 to 15% of time spent on the internet in the UK is spent streaming video content, only 10 to 20% of that content is produced by UK broadcasters (the majority of which is accessed via the BBC iPlayer). The popularity of the BBC's online services shows the demand for high quality, UK-originated online content, and the merits of a trusted brand and guide. C4C's new functions will encourage it to complement the BBC's new media provision, commissioning content and services from a range of providers. Decisions about the most appropriate platform for specific content and services will be a matter for C4C, subject to general guidance from Ofcom.

## Policy options considered

- **Doing nothing – discarded:** over time, the gap would widen between, on the one hand, C4C's statutory remit and consequently its priorities and the delivery of its public services, and, on the other, audiences' expectations and behaviour, with the risk that C4C's overall impact and public value would diminish. This would risk leaving the BBC as the only commissioner and provider of scale of public service content on digital media, in particular the internet. That is contrary to the policy objective of retaining plurality of public service provision and commissioning set out in the Digital Britain White Paper and explained in the overarching public service content impact assessment, and would be to the disadvantage of both audiences and producers;
- **Making C4C more commercially oriented – discarded:** this would not address the regulatory failure identified above, i.e. that C4C's statutory framework is increasingly out of line with audience expectations and patterns of consumption. In addition, even a minority privatisation would risk losing C4C's specific contribution to public service content at a time where the contribution of commercially owned PSBs is likely to decline progressively. The policy objective set out in the overarching public service content impact assessment, that plurality of provision and commissioning should be retained, would not be achieved, at the expense of audiences and producers;
- **Updating the regulatory framework for all the commercial public service broadcasters – discarded:** it would risk overly constraining and regulating commercially run PSBs on all digital media, contrary to the long-term vision set out

in Ofcom's PSB review and the Government's White Paper that they should be progressively liberalised;

- **Updating C4C's public service functions – chosen option.**

The new provisions will add to C4C's existing primary functions of securing the continued provision of Channel 4 (and fulfilling the public service remit for that channel) a number of additional functions.

The new provisions will require C4C to provide a broad range of high-quality audio-visual content that appeals to the tastes and interests of a culturally diverse society, and broadcast or distribute such content on a range of different delivery platforms. This content must include news and current affairs, content for older children and young adults and feature films. C4C will also be required to participate in the making of high quality films.

In performing their duties, C4C must support talent and innovation, support and stimulate well-informed debate, promote alternative views and perspectives and help to inspire change in people's lives.

The new provisions also require C4C, in the performance of their duties, to have regard to the desirability of:

- working with cultural organisations;
- encouraging innovation in methods of content delivery; and
- promoting access to and awareness of services provided in digital form.

C4C's new functions will not be subject to quotas in relation to the volume of, or spend on, specific types of content. C4C will, however, be required to publish an annual statement of content policy (SoCP) setting out how they propose to fulfil their functions, and to include in that statement a report on its performance against its previous SoCP. In preparing the SoCP, C4C will be required to follow guidance to be issued by Ofcom, and to consult Ofcom.

In the event of C4C failing to comply with these new obligations, a range of sanctions will be available to Ofcom, including a power to issue directions to C4C; a power to vary the Channel 4 TV licence and, if C4C fail to produce an SoCP, a power to fine C4C. Assessments of C4C's fulfilment of their obligations will also be included in Ofcom's reports on the fulfilment of the public service remit under section 264 of the Communications Act 2003.

### **Policy objectives**

The Government's policy objectives are:

- to make the provision of public service content on all platforms a function of C4C rather than restrict their public service role to the old linear TV model;
- to clarify and strengthen C4C's role in the commissioning and the provision, across platforms including new media, of specific public service genres such as news and current affairs, innovative and risk-taking content, content for older children, and film.
- to adapt C4C's accountability framework to the digital world;
- to help drive the take-up of, and engagement with, digital media;

The intended effects are:



- To enable C4C to maximise the impact and reach of their content and services.
- To ensure continued public service competition to the BBC, in both provision and commissioning in key public service genres, in particular news and current affairs, innovative and risk-taking content across platforms including new media, content for older children, and film.
- To sustain investment in high quality UK-originated programming, commissioned from a wide range of independent producers.
- To retain key features of Channel 4's remit, e.g. innovation, experiment and creativity; cultural diversity and distinctiveness, while embracing new content formats and multiplatform distribution.
- To ensure accountability for the delivery of C4C's new functions, via transparent reporting arrangements monitored in the first instance by the C4C Board, with guidance from and back-stop powers for Ofcom.

## **Cost and Benefit**

### *Costs of preferred options*

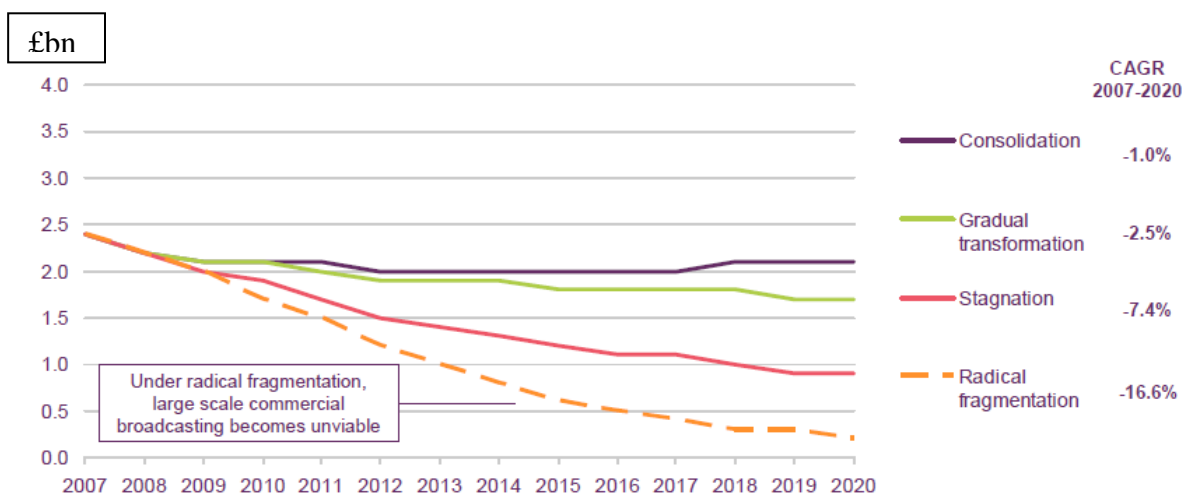
#### Background

The resources available to C4C will depend on market developments, and in particular on the television advertising market. This, together with changes in audience behaviour and the level of public service content supplied by other providers, will determine the balance between C4C's expenditure on television and new media. None of these factors are known

or can be estimated with certainty. However, the activities contained in the new functions will be at the core of C4C's purposes, rather than peripheral. C4C's expenditure in 2008 on activities that will be covered by the new remit was £56.6m.

Phase 1 of Ofcom's second review of public service broadcasting, published in April 2008, noted significant uncertainty in the prospects for the television advertising market. However, research commissioned by Ofcom forecast declines in advertising revenue in 2008 and 2009 with further reductions in commercial broadcasters' revenues, under all scenarios considered, in the event of a more protracted economic downturn. The range of potential outcomes was very broad, as key factors tend to be self-reinforcing; that is, if revenue begins to fall, investment in programming will also be reduced, leading to smaller audiences, and therefore less pricing premium in the market and lower revenues in total.

Figure 1: Commercial PSB Revenues, by Scenario, from Ofcom's Second Public Service Broadcasting Review, Phase 1: The Digital Opportunity, April 2008



Source: Oliver & Ohlbaum

C4C's revenue from all sources in 2008 was £906m, compared with £945m in 2007, a fall of 4.1%.

Current advertising market forecasts from independent analysts range considerably, as indicated by the following year-on-year forecasts:

	<b>2009</b>	<b>2010</b>	<b>2011</b>
Enders Analysis	-15%	-8%	0%
Group M	-14%	-3%	n/a
Zenith Optimedia	-14%	-2%	+1%
Goldman Sachs	-15%	+3%	+6%

### Other content and service providers, including TV and new media:

As indicated above, the balance of C4C's TV and new media activities under the proposed new functions will be determined by the evolution of the TV advertising market, consumer trends and the level of public service content supplied by other providers. Given the uncertainties around each of these factors, and especially the prospects for the TV advertising market, it would be wrong to speculate in detail on the potential costs of the new C4C functions to other content and service providers, whether on TV or new media. However, the new functions could mean enhanced competition for both broadcasters and new media providers, if Channel 4 were to pursue a more commercial schedule and deliver more high quality content on new media to maximise its public service impact and reach.

### ***Benefits of preferred options***

#### Audiences:

Confirmation of Channel 4's long-term public service role; enhanced provision of public service content across a variety of platform, maximising impact of Channel 4's public service content and ensuring plurality of public service content alongside the BBC. This was identified by both the Ofcom PSB review and the Digital Britain White Paper as crucial, especially in key genres such as news and current affairs; enhanced competition between content producers across platforms (e.g. between TV and online), with greater stimulation of innovation and creativity; clarification of Channel 4's specific role in relation to certain types of content e.g. news and current affairs, films, content and services for older children.

### Content producers:

Enhanced C4C role in commissioning content and services over a range of platforms, stimulating competition between producers and platforms for creativity and innovation; clarification of Channel 4's specific role in relation to certain types of content e.g. news and current affairs, films, content and services for older children.

## Comparison between preferred options / Counterfactual

	Do Nothing	Amend C4C's functions
<b>Output</b>	C4C's public service provision remains focused on Channel 4.	Statutory functions of C4C reflect clear priorities (e.g. commitment to innovative content across platforms, to news, older children's content and films);  Statutory functions of C4C reflect market realities and new ways to produce, provide and consume content and services.
<b>Cost (£)</b>	Not quantifiable	Not quantifiable
<b>Other Costs</b>	Reduce Channel 4's impact and public value, reduce competition to the BBC	
<b>Benefits</b>		Enable C4C to maximise the impact and reach of their content and services; ensure continued public service competition to the BBC, in both provision and commissioning in key public service genres, in particular news and current affairs, innovative and risk-taking content across platforms including new media, content for older children, and film
<b>Legislation</b>	N/A	Need for legislation

## Competition Assessment

As explained above, the scale of C4C's TV and new media output under the new functions will depend, to a large extent, on the evolution of the TV advertising market and, subject to this, on consumer trends and the level of public service content supplied by other providers. C4C are doing, and will continue to do, most of what is in the proposed new functions

under existing powers, although they would be constrained in their ability to pursue digital rebalancing by their existing TV-centric obligations. The new functions do not impose quotas in relation to the various obligations. The precise impact will therefore depend on decisions that will need to be taken by C4C in the context of the new SoCP framework, in which they will need to have regard to guidance prepared by Ofcom.

## **Stakeholders**

Updating C4C's public service functions could have an impact on the following stakeholders:

- The BBC
- Other commercial broadcasters
- Independent producers (TV)
- New media providers
- Producers of new media content
- Independent film producers

### The BBC

The BBC could face increased competition from C4C for audiences and in the commissioning of public service content.

### Other commercial broadcasters

Potential increased competition from a stronger C4C brand able to deliver enhanced public service content across all platforms.

### Independent producers (TV)

The proposals will not directly limit the number or range of suppliers. Channel 4 currently commissions programmes from 300 independent producers. Any funds redirected from TV programmes on Channel 4 to content and services on other platforms would not be available for commissioning TV content. However, C4C already commission new media content under their existing powers. Future allocation of resources to new media commissions will be a matter for C4C, dependent on C4C revenues, audience behaviour and the level of public service content from other providers, and subject to guidance from Ofcom.



### New media providers

The proposals will not affect the number of suppliers. C4C will shift some of their spending to new media, though much if not all of this is likely to happen irrespective of the change in the remit and the impact is likely to be small in relation to the overall volume of online content. Moreover, C4C's activities in digital content online are focused on areas which would not be provided by commercial competitors, so their impact on the market is likely to be minimal. While other new media providers are likely to face increased competition from C4C for content and audiences, there is no evidence that the competition already posed by C4C's online presence has had negative effects on this market.

As indicated in the summary analysis above, C4C's total spend on digital media content excluding TV, and on digital media projects for 14-19-year-olds was £12m in 2008.

### Producers of new media content

Additional spend by C4C on new media would benefit new media producers and be likely to enhance competition for quality. The impact of the new functions will be positive for producers of new media content and services, as they will secure C4C's role as a commissioner of such content and add greater incentives for C4C to increase its activity in this area. C4C's spend on new media content in 2008 was £7m.

### Independent film producers

The new remit will secure C4C's future commitment to investment in film. However, the level of C4C's investment will depend on decisions that will need to be taken by the Corporation in the light of its overall revenues. Film4's investment in film in 2008 was £12.6m.

### **Small firms impact test**

The new measures will not apply directly to small firms. However, many of the 300 independent producers from whom Channel 4 commissions programmes are small firms. Any shift of spend on UK-originations by C4C to other platforms would be likely to increase competition for the reduced spend on Channel 4 while providing increased opportunities for new media companies. The scale of any reallocation of resources will be a matter for C4C, subject to the proposed regulatory role for Ofcom.

### **Equality**

The existing public service remit for Channel 4 includes 'the provision of a broad range of high quality and diverse programming which'... 'appeals to the tastes and interests of a culturally diverse society' and Channel 4 has a strong tradition of provision for minority groups and interests. Ofcom's review of public service broadcasting noted that Channel 4 was appreciated for its innovative content and representation of diversity and alternative viewpoints, in particular by ethnic minority audiences, as well as younger viewers [Source: Putting Viewers First, 2009, and PSB Review Phase 1 deliberative research, 2007].

The above requirements will continue to apply to the Channel 4 TV service. C4C's new functions will include providing content across a range of delivery platforms, including digital media that has appeal to a wide range of audiences. The new provisions will replicate the requirements to provide content that appeals to the tastes and interests of a culturally diverse society. C4C will also be required to promote alternative views and new perspectives and support and stimulate debate on a wide range of issues, in particular by challenging

established views. The Government believes that these provisions will underpin a continued commitment by C4C to diversity and equality.

### **Other specific impact tests**

Other specific impact tests have been considered, including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Race Equality, Disability Equality, Gender Equality, Human Rights and Rural Proofing.

After careful analysis it has been concluded that no significant impact is anticipated in any case.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# PUBLIC SERVICE BROADCASTING LICENSING PROCEDURES

Department /Agency:  
DCMS

Title: Commercially Funded Public Service Broadcasters – Licensing Procedures

Stage: Final

Version:  
Final

Date: 12 April 2010

**Related Publications:** Ofcom's second public service broadcasting review publications: Phase One – The Digital Opportunity, Phase Two – Preparing for the Digital Future and Putting Viewers First: Final statement and recommendations

Available to view or download at: <http://www.ofcom.org.uk>

Contact for enquiries: Laura Warren

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## What is the problem under consideration? Why is government intervention necessary?

As made clear in the overarching impact assessment, historically commercially funded and run public service broadcasters (PSBs) (e.g. ITV plc and Five) have been required to fulfil public service obligations in return for certain rights and privileges - allocation of analogue spectrum, access to digital terrestrial capacity and due prominence on Electronic Programme Guide (EPG) listings. Due to a number of factors detailed in the overarching impact assessment that model has become unsustainable. Although ITV plc announced in March 2010 a return to profit during 2009 following their financial losses in 2008, structural changes in the communications markets have led to greater fragmentation of audiences and advertising revenue, and the value of the regulatory assets that commercial PSBs benefit from in exchange for the fulfilment of specific production and programming obligations is declining. These factors threaten the provision of public service content by PSBs, with the risk that some types of public service content are not provided beyond the BBC. The current legislative framework is adding to the problem by limiting Ofcom's ability to adjust the commercial PSB licences to market realities. It also limits Ofcom's ability to maximise, in the medium term, the commercial PSBs' contribution to public service by ensuring that the obligations in their licences are focused appropriately. Addressing this issue requires amendments to the legislative framework by primary legislation.

## What are the policy objectives and the intended effects?

**Allow public service licences to be adapted to market realities– intended effect** – to give the Secretary of State the flexibility to adapt conditions that Ofcom must include in PSB licences (set out in sections 277, 278, 279, 286 and 287 of the Communications Act 2003) according to current and future market conditions. To also provide Ofcom with a duty to assess the future viability of the public teletext service and taking this assessment into account, allow the Secretary of State to decide whether Ofcom should continue to do all it can to secure the provision of teletext.

## What policy options have been considered? Please justify any preferred option.

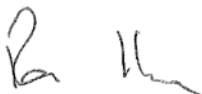
- Do nothing: would not address the policy objective and would risk an accelerated drop in public service contribution;
- Allow complete liberalisation of all commercial PSB licences: plurality would be lost at one step to the detriment of audiences and producers (see the overarching Impact Assessment for the value of plurality);
- Introduce more flexibility in the Act by (i) permitting the extension of the initial expiry date of the Ch3, Ch5 and public teletext service licences, (ii) allowing Ofcom to change the Channel 3 licences map in order to permit there to be one single licence holder in England and one in Scotland, (iii) allowing greater flexibility for the SoS to remove or impose short term variations to public service obligations on the Ch3, Ch4, Ch5, public teletext and radio licences and (iv) adjusting the duty on Ofcom, set out in the 2003 Act, to do all it can to secure the provision of the public teletext service. It is our view that these changes will increase the value and attractiveness of commercial PSB licences to the market, bring stability and scale at a time when there are difficulties in operating commercial PSB licences by ensuring their value remains relevant to current and future market conditions. It will give Ofcom the required flexibility around the teletext licence, whilst ensuring the final decision on its future rests with Government.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Will be reviewed as part of Ofcom's next PSB review. The most recent review was completed in January 2009 and the next is due to commence around 2013. That review will assess our interventions against the desired effects. There will also be a review of ITV and Five's licences, which are due to terminate in 2014.

## Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:



Date: 8 April 2010

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	<p>Description and scale of <b>key monetised costs</b> by 'main affected groups'</p> <p>The policies outlined within this impact assessment will not bring any net costs to broadcasters, although there will be minimal staffing costs to Ofcom, which we cannot speculate upon. This is because the policies will only apply either to channel 3 and 5 licence holders with their consent or will be temporary changes to the public service obligations contained within the relevant licences that will simply reflect market value. There will also be a cost to Ofcom of preparing a report on the future of the public teletext service.</p>		
	One-off (Transition) <span style="float: right;">Yrs</span>			
	<b>£ Negligible</b>			
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ Negligible</b>	<b>Total Cost (PV)</b>	<b>Negligible</b>	
<p><b>Other key non-monetised costs</b> by 'main affected groups' Allowing the Secretary of State to alter the conditions which must be included in the PSB licences would lead to a potential reduction of public service media content, but this will be to a lower extent than otherwise, without intervention, where we would see a complete loss of certain genres. The potential disappearance of the public teletext service would lead to a loss of value to viewers of those services.</p>				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	<p>Description and scale of <b>key monetised benefits</b> by 'main affected groups'</p> <p>By allowing flexibility around licence obligations these provisions will ensure that the costs of licences reflect their true market value. This should allow licence holders to make cost savings based on short term variations to public service obligations and plan for the future more effectively.</p>		
	One-off <span style="float: right;">Yrs</span>			
	<b>£ Not Quantifiable</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ Not Quantifiable</b>	<b>Total Benefit (PV)</b>	<b>£ Not Quantifiable</b>	
<p><b>Other key non-monetised benefits</b> by 'main affected groups'</p> <p>These provisions will future proof the provision of channel 3 and channel 5 services by enhancing the value of the licence should it become necessary. This would limit the reduction in public service output that we would expect to occur without intervention. This would help sustain plurality and competition for quality.</p>				

### Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	United Kingdom			
On what date will the policy be implemented?	Royal Assent			
Which organisation(s) will enforce the policy?	Ofcom			
What is the total annual cost of enforcement for these organisations?	£ Negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ Negligible			
What is the value of changes in greenhouse gas emissions?	£ Negligible			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase of	£ negligible	Decrease of	£ negligible	<b>Net Impact</b>	£ negligible

Key: Annual costs and benefits: Constant Prices (Net) Present Value

### **Background**

The most recent BBC licence settlement, which runs until 2013, has provided the organisation with a solid and certain financial basis in order to ensure that it continues to fulfil its public service role effectively in the digital age. Beyond the BBC, the opportunities brought about by the growth of digital media represent significant challenges to the traditional funding model for the UK's commercially funded public service broadcasters, particularly those that are commercially owned (the ITV network and Five).

PSBs have historically been required to fulfil public service obligations in return for certain rights and privileges.

The Communications Act 2003<sup>88</sup> requires them to meet specific production and programming obligations. Ofcom is tasked with setting the appropriate targets to ensure that they deliver upon their public service remit.

### **Rationale for Government Intervention**

Due to the irreversible structural changes in the broadcasting market (set out in the Over-arching PSB Impact Assessment) the value of the regulatory assets from which PSBs benefit is decreasing and the cost of the obligations set upon PSBs will outweigh the value of the benefits of the PSB licence very soon (in some cases from 2010). This has already led to a drop in investment for UK originated content by PSBs. Without intervention commercially owned PSBs will continue to cut back on investing in content with low or uncertain

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<sup>88</sup> [http://www.opsi.gov.uk/ACTS/acts2003/ukpga\\_20030021\\_en\\_1](http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1)

profitability. The Government accepts Ofcom's analysis in the second PSB review<sup>89</sup>, that the commercial PSBs' obligations should be progressively reviewed and liberalised in the long-term to reflect the irreversible changes in the market.

A phased liberalisation will allow Ofcom to make adjustments as the market changes and develops in order to ensure that the licences reflect the market. Of course, whilst this flexibility does not completely rule out for reductions in the production of certain types of public service media content (for example, content made outside of the M25 etc) it will ensure that any reduction is managed and is not too disruptive for the viewer.

### ***Key challenges faced by the commercial PSBs***

As discussed in detail in the over-arching impact assessment, due to digital and technological progress, changing patterns of consumer behaviour and the resulting changes to the broadcasting ecology, there are a number of key challenges facing the commercial PSBs in the run up to 2014 and beyond. These challenges include greater competition from multi-channel television, advertising migration, increased viewing via on demand platforms and a drop in audience share.

### **Drop in use of Teletext**

In addition, evidence from Ofcom shows that the number of viewers using the PSB text services has declined considerably since 2004. Average weekly reach to individuals of the services in 2008 were:

- BBC Ceefax: BBC One 2.5m, BBC Two 1.1m – (2004: BBC1 just over 5m and BBC2 approximately 2.5m).

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<sup>89</sup> Putting Viewers First: Final statement and recommendations



- Teletext PSB service: ITV1 1.7m, Channel 4 0.8m - (2004: ITV over 4m and Channel 4 just over 2m).
- Teletext commercial service: Five 0.3m – (2004: Five just under 1m).

The previous holder of the public teletext service licence, Teletext Ltd, was unable to find a viable business model in these circumstances. Teletext Ltd therefore ceased providing the public teletext service in December 2009 and Ofcom have accordingly revoked the licence.

### *Why current regulatory environment is not fit for purpose*

Meeting our policy objective (to allow public service licences to be adapted to market realities) requires a degree of flexibility in the legislative framework that is not currently available. The framework was set up when digital media were only emerging and did not have the significant market impact they have today. As such, and despite its very strong commitment to convergence and digital television, the framework needs some updating to reflect the speed of technological change.

The framework set out in current legislation limits Ofcom's ability to adapt the commercial PSBs' obligations to the new market realities, and its ability to maximise the value of the PSB licences. This is specifically due to limited flexibility around the public service broadcasting licensing process, specifically where the duration of licences, their territorial application and the substance of the relicensing process are concerned. This has a negative impact on the commercially funded PSBs ability to maintain their levels of investment and compete effectively with the BBC.

Unless Government takes the decision to update the current statutory framework, we would be in danger of the BBC becoming the sole provider of PSB, which would lead to:

- A loss of plurality in programming – with certain content or services not being provided.
- A loss of plurality in commissioning and production.

The proposed policy, therefore, is to introduce additional flexibility into the licensing process to enhance the value of the PSB licences, in order to make them more appealing and ultimately able to deliver public benefits.

There are also a number of licensing processes in the Broadcasting Act 1990<sup>90</sup> and the Communications Act 2003 which Ofcom believe are not fit for purpose and which require alteration prior to 2014, when the PSB licences expire. In particular, the ability of Ofcom to only award new licences up to 2014 (section 224 of the Communications Act 2003) and conditions preventing Ofcom from providing single Channel 3 licences for the entirety of England or the entirety of Scotland (section 14(7) of the Broadcasting Act 1990).

### **Areas to be addressed by Policy**

#### Restricted flexibility to adapt licences

The Communications Act 2003 has allowed the Secretary of State to require Ofcom to make some changes to ITV's obligations in order to ensure the benefits of holding the licence are not outweighed by the costs. However, the current legislation needs updating in order to provide the Secretary of State with sufficient flexibility to allow any additional changes that could be required to reduce costs. For example, the prescriptive nature of the regional

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<sup>90</sup> [https://www.hmsso.gov.uk/acts/acts1990/Ukpga\\_19900042\\_en\\_1](https://www.hmsso.gov.uk/acts/acts1990/Ukpga_19900042_en_1)

news obligations (which are by far the most significant cost of ITV's PSB status – the biggest single PSB cost attributable to the Channel 3 network is the production of regional news which is estimated at £68m in 2010<sup>91</sup>) does not allow for a quota of zero (i.e. Ofcom cannot state that ITV does not have to produce any regional news). This means that even if quotas were reduced a minimum spend would still be required to meet these thresholds.

As such, greater flexibility is needed for the Secretary of State to adapt the public service obligations that Ofcom must include in the Channel 3 and Channel 5 licences according to current and future market conditions and to address the concerns outlined above.

### Licensing Process

A failure to address the licensing issues set out above at this juncture would have a negative impact on the value of the PSB licences when they expire or if Ofcom are required to re-license them.

At present, all PSB licences expire on 31 December 2014. A new provision allowing the Secretary of State to extend the duration of licences is simply designed to make the licences more attractive to potential bidders, if and when Ofcom come to re-licence. Present statute also requires Ofcom to award at least two licences in England and two in Scotland (though potentially to the same provider, as today). We believe that altering legislation to allow Ofcom, if it believes it would be beneficial to do so, to create a single English licence and a single Scottish licence will bring stability and scale at a time when there are difficulties and challenges in operating the Channel 3 network, as set out above.

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<sup>91</sup> 'Sustainable independent and impartial news; in the Nations, locally and in the regions' - Ofcom's public response to the DCMS Consultation

## Teletext Licence

With regard to the public teletext service, the previous licence holder stopped provision of the PSB service in December 2009 after being unable to find a commercially viable business model. Ofcom have now revoked the public teletext licence. Government accepts Ofcom's view that the service currently expected to be provided – with public service obligations in national and regional news and regional non-news information – may be no longer commercially viable and that the costs of the obligations are likely to outweigh the benefits of the licence by 2010.

Under current statute Ofcom will be required to re-advertise the licence, which is a long and costly process (it is likely to take one year and cost between £200,000 and £300,000).

Given the financial uncertainty around the public teletext service there might be little (if any) interest in the market securing it when the licence is re-tendered. The commercially funded service was being severely challenged by proliferation of other news sources, particularly on-line and by other broadcast platforms. However, the Government believes that it would be too significant a step to simply abandon the concept of a public teletext service. Until its cessation, the service was still serving sections of the population, including some of the more vulnerable members of society. The Government considers that there is also a need for robust evidence to be specifically gathered and publicly discussed to show whether a service which is delivering public value cannot be commercially sustained.

The Government therefore considers that the most appropriate way forward is to adjust the duty on Ofcom (section 218 of the Communications Act 2003<sup>92</sup> – “to do all it can” to

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<sup>92</sup> [http://www.opsi.gov.uk/ACTS/acts2003/ukpga\\_20030021\\_en\\_21#pt3-ch2-pb3-l1g218](http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_21#pt3-ch2-pb3-l1g218)

secure provision of a public teletext service), so that in the event of the licence coming to an end by whatever means, it must produce and publish a report to the Secretary of State on the public value and viability of the public teletext service. Dependent upon the recommendation in that report (either that Ofcom will deem the licence remains viable or not), it will be for the Secretary of State to make the final decision on the future of the licence. If the Secretary of State deems the licence to be unviable he would make an affirmative order removing Ofcom's duty to re-advertise the licence; this order would then be subject to parliamentary debate.

This approach will ensure that viewers have the opportunity to express their views on the future of the service, will provide evidence on the public value and viability of the service and will ensure the appropriate level of parliamentary scrutiny and debate.

The changes might also potentially alleviate Ofcom of the licence award process costs, as outlined above.

### **Policy Options**

We considered a range of legislative options as part of the Digital Britain process, building on the analysis undertaken by Ofcom, as part of its most recent PSB review, and the responses submitted to the Interim Report by interested stakeholders. The options considered, which ranged from "do nothing" to full scale licence alteration, are set out below:

- Do nothing: Discarded – would not achieve Government policy, as set out in Digital Britain White Paper and would potentially result in the BBC becoming the sole provider

of PSB, leading to a loss of plurality in programming – with certain genres not being provided and a loss of plurality in commissioning and production (see over-arching Impact Assessment on Public Service Content which sets out the value of plurality).

- Allow complete liberalisation of all commercial PSB licences: plurality would be lost at one step, negatively impacting on audiences and producers;
- Introduce more flexibility in the Act by (i) permitting the extension of the initial expiry date of the Ch3, Ch5 and public teletext service licences, (ii) allowing Ofcom to change the Channel 3 licences map in order to permit there to be one single licence holder in England and one in Scotland, (iii) allowing greater flexibility for the SoS to remove or impose short term variations to public service obligations on the Ch3, Ch4, Ch5, public teletext service and radio licences and (iv) adjusting the duty on Ofcom, set out in the 2003 Act, to do all it can to secure the provision of the public teletext service. It is our view that these changes will increase the value and attractiveness of commercial PSB licences to the market, bring stability and scale at a time when there are difficulties in operating commercial PSB licences by ensuring their value remains relevant to current and future market conditions and give Ofcom the required flexibility around the public teletext licence, whilst ensuring the final decision on its future rests with Government.

### *Counterfactual / Do Nothing Option*

As part of our deliberations we considered making no changes and leaving the market to develop independently without any form of Government intervention.

For some, this policy has its advantages. If the market is allowed freedom, it is likely to invest more in the programmes that viewers want to consume (e.g. large scale entertainment formats) and less in other programmes (current affairs, regional news programming) that are not as popular. This would mean that all commissioning decisions would be based on the profitability of such programming.

As examined in the over-arching Impact Assessment on Public Service Media Content, Government does not consider this is the correct outcome. Without intervention, broadcasters will automatically respond by supplying a narrow range of tried and trusted, immediately recognisable programme types, rather than taking risks on high end drama and new comedy formats and those genres where consumers may get more value (the merit goods argument outlined in the over-arching Impact Assessment) than they realise, such as news and current affairs).

This would increase the threat that the BBC would become both the sole substantial provider of public service media content and the sole public service commissioner of scale and would be to the disadvantage of audiences (who have consistently responded to Ofcom consultations by saying that they do not want the BBC to be the only choice, particularly as the commercial PSBs are trusted and valued providers, particularly with regards to regional news on ITV and children's programming on Five) and producers of public service media content (especially first-run UK originated content) and to the BBC itself.

Doing nothing would also not address the need, set out in the Digital Britain White Paper, to establish a sustainable PSB model for the digital age, which would balance the benefits and service obligations for the ITV network. The Government is fully aware of the difficult

economic circumstances, highlighted by the analysis in Ofcom's PSB review, in which commercial broadcasters are operating. And that is why we set out in the White Paper a strong case for the progressive liberalisation of the Channel 3 licensees in order to allow them to move towards becoming fully commercial networks, serving the interests of their shareholders whilst continuing to deliver a focused, sustainable public service commitment centred on original productions and news. This would allow them to continue to provide highly valued popular entertainment, alongside a range of other public service programming.

Doing nothing to address this progressive decline in ITV's licence and the need to maintain a clear public service remit, proportionate to the value of the regulatory assets made available to ITV, would not commercially incentivise them to remain a commercial PSB and would result in cuts to PSB content, potentially leaving them open to sanctions from Ofcom.

As such, doing nothing will not achieve the Government policy, set out in Digital Britain White Paper.

### *Preferred Options*

- To make provision to permit the extension of the initial expiry date of the PSB licences.

**Intended Impact** - Should it become appropriate or necessary, Ofcom could advertise the licence with a longer duration, therefore increasing its value and attractiveness to the market.

- To make provision to permit a change in the Channel 3 licences map in order to permit there to be one single licence holder in England and one in Scotland. **Intended Impact**



- To bring stability and scale at a time where there are difficulties in operating the Channel 3 network. It would also ensure that there is a service in all the necessary regions.
- To allow greater flexibility for the Secretary of State to remove or impose short term variations to public service obligations on the Channel 3, Channel 4, Channel 5, public teletext service and radio licence holders. **Intended Impact** – To ensure that the obligations attached to the licences can be made relevant to current and future market conditions.
- To adjust the duty on Ofcom, set out in the 2003 Act, to do all it can to secure the provision of the public teletext service. **Intended Impact** – To allow Ofcom to conduct a public review of the commercial sustainability and public value of the public teletext service and, if it were proved not to be commercially viable **or** able to deliver public value, to seek the Secretary of State's consent to not re-licence the service.

### **Costs and benefits of preferred options**

#### *Costs of preferred options*

Current Channel 3 and Channel 5, and any future public teletext service licence holders – negligible – the changes related to the licence duration and the licence map would only apply to them with their consent. The temporary changes to their public service obligations would reflect the market value of their licence and would not bring any net costs.

Ofcom - The changes to Ofcom's duty regarding the public teletext service licence would result in the additional cost of producing and publishing a report for the Secretary of State. However, this would be weighed against the cost savings of potentially not having to carry out the process of re-advertising the licence.

Other PSBs - More valuable Channel 3/Channel 5 licences (by bringing more certainty and stability, potentially allowing for costs savings, economies of scale and better future planning). This would result in sustained / increased competition for programming, driving up costs.

Other non-PSB broadcasters (including potential bidders for C3 / C5 licences): the changes in the regulation, if enacted, would increase the value of licences and therefore increase competition for obtaining them.

Viewers: There would be a potential reduction of public service media content via allowing the Secretary of State to make variations to the PSB licences, but this will be to a lesser extent than otherwise, without intervention, where we would see a complete loss of certain genres. The potential disappearance of the public teletext service would lead to a loss of value to viewers of those services.

### ***Benefits of preferred options***

For viewers: These provisions will seek to future proof the provision of Channel 3 and Channel 5 services by enhancing the value of the licence should it become necessary. This

would limit the reduction in public service output that we would expect to occur without intervention. This would help sustain plurality and competition for quality.

By adjusting Ofcom's duty around securing the provision of a public teletext service we will be ensuring that viewers have their say on the future of the service and that there is appropriate parliamentary scrutiny and debate.

#### Future licence holder

Greater stability, certainty, more ability to make cost savings and plan for the future.

#### Current Channel 3 and Channel 5 Licence Holders

Potentially more flexibility around PSB obligations, ensuring that licences remain in balance. This should allow licence holders to make cost savings based on short term variations to public service obligations and plan for the future more effectively.

## Comparison between preferred options / Counterfactual

	<b>Do Nothing</b>	<b>Provision to permit the extension of the initial expiry date of the PSB licences</b>
<b>Output</b>	As of today	Should it become appropriate or necessary, would allow that Ofcom could advertise the licence with a longer duration – currently 31 December 2014.
<b>Cost (£)</b>	Negligible	Negligible
<b>Other Costs</b>	Reduce value and competition for licences.	
<b>Benefits</b>	n/a	Longer duration would increase value and attractiveness of licence to the market.  Increase competition for obtaining licence

	<b>Do Nothing</b>	<b>Provision to permit a change in the Channel 3 licences map in order to permit there to be one single licence holder in England and one in Scotland</b>
<b>Output</b>	As of today	Alter legislation to allow for a single licence holder in England and one in Scotland.
<b>Cost (£)</b>	Negligible	Negligible
<b>Other Costs</b>	Potential loss of services in certain areas.	
<b>Benefits</b>	n/a	Bring stability and scale at a time when there are difficulties and challenges in operating the Channel 3 network.

	<b>Do Nothing</b>	<b>Allow greater flexibility for the SoS to remove or impose short term variations to public service obligations on the Channel 3, Channel 4, Channel 5, public teletext service and radio licence holders</b>
<b>Output</b>	As of today	Increase flexibility and allow Secretary of State to remove or re-impose public service obligations.
<b>Cost (£)</b>	Negligible	Negligible
<b>Other Costs</b>	Total loss of certain genres, if market left to decide.  Reduce outlets for the ideas of Independent Producers.	Reduction in public service media content, but at minimal and managed level to ensure continued delivery and plurality of providers and programming
<b>Benefits</b>	n/a	Ensure that the obligations attached to the licences can be made relevant to current and future market conditions.  Help to incentivise current licence holders to remain PSBs.  Retains power in the hands of Government.  Debate in Parliament.

	<b>Do Nothing</b>	<b>Adjust the duty on Ofcom, set out in the 2003 Act, to do all it can to secure the provision of the public teletext service</b>
<b>Output</b>	As of today	Allow Ofcom to decide, following a public review of the commercial sustainability and public value of the public teletext service, to seek the Secretary of State's consent to formally not re-licence the service if it was proved not to be commercially viable <b>nor</b> able to deliver public value.

<b>Cost (£)</b>	Approximate cost for Ofcom of £300,000 to conduct re-licensing process (which could prove fruitless).	Negligible
<b>Other Costs</b>	Definite loss of service for low income, elderly and vulnerable members of society.	Cost to Ofcom to undertake consultation.  Loss of competition to the BBC – monopoly argument.  Loss of plurality of regional news text based information.
<b>Benefits</b>	Decision will ultimately be made by the market.  Text based information will still be available on digital platforms (Sky) and via BBC Ceefax (who will provide regional news information).	Will ensure that Ofcom produces evidence to support view that licence is commercially unviable, will be little interest in securing it etc.  Retains power in the hands of Government to ultimately decide future of the public teletext service.  Will ensure Parliamentary debate.  Will provide viewers and potential service providers to identify value in service.

### **Competition Assessment**

Based on the four questions outlined by the OFT with regard to competition assessments:

In any affected market, would the proposal:

5. Directly limit the number or range of suppliers?

6. Indirectly limit the number and range of suppliers?

7.Limit the ability of suppliers to compete?

8.Reduce suppliers' incentives to compete vigorously?

We can confirm that, after careful consideration, the policies in this impact assessment do not raise any competition concerns. This is because they are designed to promote and encourage rivalry between organisations and to ensure a plurality of outlets, providers and commissioners in the future. In addition, Ofcom will consider all competition arguments when it makes any individual decisions or recommendations.

The organisations affected by our proposed legislative options are:

The Commercially Funded Public Service Broadcasters - The proposals outlined will directly impact upon the future of ITV, Five and any future public teletext service provider as they are designed to help alleviate the structural pressures brought about by the migration to a fully digital world. In turn this will incentivise them to remain PSBs and provide competition to the BBC.

The BBC - The BBC, which is established by a Royal Charter and funded by a licence fee paid by UK households, has always made it clear that it believes that competition is welcome because it drives creativity and keeps the BBC innovating. Therefore, managing the transition of the commercially funded PSBs will help to ensure plurality at least until 2014 and will help prevent risks of a monopsony/monopoly, which would not be in the BBC's best interests.

Independent Producers: Particularly screen based content producers in the television sector whose businesses rely, in part, upon commissions from commercially funded PSBs. At present we have a fixed 25% quota for independent producers for all PSBs for the purposes of ensuring that production companies that are independent of broadcasters have access to the mainstream channels. Our policies will ensure that this variety of sources for different programmes will remain. This will ensure independent production companies retain a valuable revenue source and outlet for their programmes and the broadcasters will continue to compete for the best ideas and best programmes, improving quality and choice for the viewer.

### **Equalities Assessment**

After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both. With regards to the future of the public teletext service licence, Ofcom will consider the equality question as part of its consultation and report for the Secretary of State into the public value and viability of the licence.

### **Other specific impact tests**

Other specific impact tests have been considered, including Legal Aid, Small Firms, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment and Rural Proofing.

After careful analysis it has been concluded that no significant impact is anticipated in any case.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# GAELIC BROADCASTING

<b>Department /Agency: DCMS</b>	<b>Title: Impact Assessment on Gaelic Programming on Ch3 in Scotland</b>	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 12 April 2010
<b>Related Publications:</b> Digital Britain: The Final report, June 2009, Digital Britain: The Interim report, January 2009, Ofcom's second public service broadcasting review: Putting Viewers First: Final statement and recommendations, 21 January 2009, Milne Report on Gaelic broadcasting (2000)		

**Available to view or download at:**

<http://www.culture.gov.uk>

**Contact for enquiries:** Chris Dawes

**Telephone:** 020 7211 6461

**What is the problem under consideration? Why is government intervention necessary?**

The Government will intervene to lift the regulatory burdens on the Scottish Channel 3 licensees to reflect the fact that Gaelic content is now being provided via a dedicated service.

It has been a long-term Government policy to ensure that there is appropriate broadcasting provision for people in the United Kingdom who speak minority languages. The 2001 census showed the number of Gaelic speakers to have dropped by 11% over 10 years to a figure of 58,650 which is too small a number to sustain a Gaelic service commercially.

A dedicated service – BBC Alba - providing Gaelic content has now been secured (not limited to broadcasting delivery) and this was launched in September 2008. In the light of that, and in line with the conclusions of the second Ofcom PSB review that the Gaelic obligations on Channel 3 were becoming financially unsustainable and should be removed as soon as adequate alternative provision was available, it is necessary to remove some of the relevant statutory requirements on the Scottish Channel 3 licences and allow for the reduction of others.

**What are the policy objectives and the intended effects?**

The policy objective is to address **regulatory failure** and allow Channel 3 licence holders in Scotland to cease to carry Gaelic content, if they so wish. As adequate alternative provision of Gaelic content has now been secured, via BBC Alba, the Gaelic obligations imposed on Scottish channel 3 licensees will no longer be necessary. The objective of this policy is therefore to remove redundant regulation which is placing significant and unnecessary compliance costs on businesses. Currently, in the light of the above changes, and the continuing financial pressures on Channel 3 licensees, Ofcom have reduced the public service broadcasting obligations on Channel 3 licensees in Scotland. The intention now is therefore to remove the remaining obligations on the Channel 3 licence holders in Scotland to fund their own Gaelic programming and to show Gaelic programming in peak time. The removal of the other obligations (high-quality, wide-ranging Gaelic programmes of at least 1 hour a week to be shown) is dependent on all viewers in Scotland being able to receive a digital Gaelic service. This will not be the case until after digital switchover in Scotland (due by June 2011).

**What policy options have been considered? Please justify any preferred option.**

During the preparation of the Digital Britain White Paper the Government considered whether current legislation is sustainable.

The planned proposal is based on Ofcom's Review of Public Service Broadcasting (2) which it consulted on the findings of the Digital Britain project.

The two options we considered in detail were

- Option one: Maintain the status quo.

- Option two: Preferred policy option to allow for the removal of obligations on the Channel 3 licence holders in Scotland to broadcast Gaelic programming.

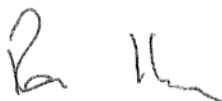
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

Ofcom's next PSB Report under section 264 of the Communications Act 2003 will review the impact.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:



.....Date: 8 April 2010

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	<b>Yrs</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'  Small loss of income to production community	
	<b>One-off (Transition)</b>			
	<b>n/a</b>			
	<b>Average Annual Cost (excluding one-off)</b>			
	<b>negligible</b>		<b>Total Cost (PV)</b>	<b>£ negligible</b>
Other <b>key non-monetised costs</b> by 'main affected groups' There will be a cost to viewers in terms of a reduction in plurality of Gaelic programming as the BBC will be left as a sole provider. However, due to the small number of viewers and small amounts of programming this loss is minimal.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	<b>Yrs</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'  STV will benefit from (i) increased advertising revenues from broadcasting more commercial content in place of Gaelic in peak time; (ii) saving on the cost of Gaelic production;(iii) a further benefit to commercial revenues following switchover. (See section on 'Benefits of option 2').	
	<b>One-off</b>			
	<b>£ n/a</b>			
	<b>Average Annual Benefit (excluding one-off)</b>			
	<b>£ 87,000</b>		<b>Total Benefit (PV)</b>	<b>£ 331,000 over 4 yrs</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Ofcom would benefit from less staff time being spent on programme returns from STV submitted as part of the licensee's obligations to fulfil its regional licence requirements.				

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 4	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> <b>£331,000 over 4 yrs</b>
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What is the geographic coverage of the policy/option?	United Kingdom								
On what date will the policy be implemented?	To be confirmed								
Which organisation(s) will enforce the policy?	Ofcom								
What is the total annual cost of enforcement for these organisations?	£ n/a								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	No								
What is the value of the proposed offsetting measure per year?	£ Not applicable								
What is the value of changes in greenhouse gas emissions?	£ Not applicable								
Will the proposal have a significant impact on competition?	No								
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> <tr> <td style="text-align: center;">Yes/No</td> <td style="text-align: center;">Yes/No</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> </tr> </table>	Micro	Small	Medium	Large	Yes/No	Yes/No	N/A	N/A
Micro	Small	Medium	Large						
Yes/No	Yes/No	N/A	N/A						
Are any of these organisations exempt?	Yes/No    Yes/No    N/A    N/A								

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of    £ negligible	Decrease of    £ negligible	<b>Net Impact</b> £ negligible

Key: Annual costs and benefits: Constant Prices (Net) Present Value

### **Background**

Ofcom's Public Service Broadcasting Review phase one survey identified that 53% of people in Scotland believe Gaelic provision is important and the Government has committed to ensuring appropriate broadcasting provision for people in the United Kingdom who speak minority languages by way of ratification of the Council of Europe's Charter for Regional or Minority Languages in 2001.

Because of the small number of Gaelic speakers (58,650 in the 2001 census) a commercial service would not be viable. Therefore, various public policy interventions have been embarked on over the years to provide a Gaelic broadcasting service:

- through provision by the BBC;
- through direct production funding (now the responsibility of the Scottish Executive);
- by placing a specific statutory obligation on the Scottish channel 3 licensees (both licences are now held by STV) to make and show Gaelic programming, including in peak time, at levels determined by Ofcom.

There has been significant pressure for a dedicated Gaelic service to be established in support of Government policy in Westminster and Edinburgh to seek to reverse the decline in the use of the language and loss of associated cultural diversity. A report in 2000 by the Gaelic Broadcasting Task Force chaired by the former BBC Director-General Alasdair Milne recommended a dedicated TV channel costing some £44 million (at 2000 prices). The 2001 census showed the number of Gaelic speakers to have dropped by 11% over 10 years.

In September 2008 a dedicated service was launched – BBC Alba, which is not limited to broadcasting delivery. The service is available by satellite and is expected soon to be available on cable. It is not yet available on Freeview – this is dependent on a decision by the BBC Trust, in the light of a Public Value Test. There is a separate statutory obligation on the SDN multiplex to carry half an hour a day of Gaelic programming on Freeview (in fact they carry an hour under the name TeleG) and the BBC make some programming available on BBC2. BBC Alba is run jointly by the BBC and MG Alba (formerly the Gaelic Media Service).

### **Rationale for Government Intervention**

Given the availability of BBC Alba, the public policy objective of equity has been achieved for some of the audience and is in sight of being achieved for the remainder.

The second Ofcom PSB review recommended that the Gaelic obligations on Channel 3 were becoming financially unsustainable and should be removed as soon as adequate alternative provision was available. Ofcom have already reduced the public service broadcasting obligations on Channel 3 licensees in Scotland to a minimum (30 minutes a year of peak and of STV-funded programming and an hour a week of other programming) but the statutory requirements set out in the Broadcasting Acts 1990 mean that they cannot be removed entirely without primary legislation.

In line with Ofcom's recommendations and in the light of the Gaelic provision by BBC Alba, this legislation will now remove the remaining obligations on the Channel 3 licence holders

in Scotland to fund their own Gaelic programming and to show Gaelic programming in peak time.

The removal of the other obligations (a range of high-quality Gaelic programmes of at least 1 hour a week to be shown) is dependent on viewers on all broadcasting platforms in Scotland being able to receive a digital Gaelic service. This will not be the case until after digital switchover in Scotland (due by June 2011).

To retain the obligations on Channel 3 licensees would therefore represent a form of **regulatory failure**. It would continue to impose costs on Channel 3 licence holders in Scotland, at a time when the costs of their public service obligations already exceed the value of their public service broadcaster status, when obligations are no longer necessary to deliver the Government's equity objectives which have been achieved, to a significantly greater extent, by alternative means in the provision by BBC Alba.

### **Policy options: Costs and Benefits**

Option one: Maintain the status quo.

Option two: Preferred policy option to allow for the removal of obligations on the Channel 3 licence holders in Scotland to broadcast Gaelic programming.

#### ***Option 1: maintain the status quo***

##### *Costs*

The costs include the cost to STV of funding the making of 30 minutes of Gaelic programming a year; the opportunity cost to STV of showing 30 minutes of Gaelic programming in peak; the

opportunity cost of showing an hour a week of other Gaelic programming in non-peak; the net loss of advertising revenue during and after (as a result of audience loss) Gaelic programming; the cost to BBC Alba of supplying Gaelic programming for these slots (disaggregated if possible); and the compliance costs to all parties.

It is recognised that the opportunity costs of these obligations to STV are limited given that the obligations have already been reduced by Ofcom to the minimum level consistent with current statutory requirements. Nevertheless, given that Ofcom's second PSB review has argued that the costs of STV's PSB obligations will exceed the value of its PSB status before the completion of digital switchover in Scotland in 2009/2010, the remaining obligations should be removed as the policy objectives have been met by alternative means.

### *Benefits*

The benefits are the value of commissions to Gaelic programming producers and the retention of Gaelic programming on Channel 3 for C3 viewers.

Given the level of remaining obligations on STV, the benefits of option 1 are similarly limited.

### *Option 2: Removed obligations on Channel 3 license holders (preferred option)*

#### *Costs*

#### Viewers:

There will be a loss of 30 minutes of Gaelic programming made by STV and 30 minutes broadcast in peak time each year.

## Plurality

Research from Ofcom's Second Public Service Broadcasting Review found that, for many viewers, plurality was of real importance. Plurality helps to ensure that people are better informed on any given issue and promotes higher standards resulting from competition. Although implementing this option will result in some loss of plurality for Gaelic viewers, however, the impact of the reduction in plurality will be minimal, given the low volume of programming involved. Implementation of the option is not expected to result in viewers being less well informed or any drop in standards.

## Producers

The reduction in STV's obligation to produce 30 minutes a year of Gaelic programming represents a small loss to the production community (though STV have already largely withdrawn from new Gaelic commissions).

## *Benefits*

### The Channel 3 Licence Holder:

There will be some limited benefits (£7,000) gained from the ability to generate increased advertising revenues from broadcasting more commercial content in place of the Gaelic programming in peak and from the saving on cost of half an hour a year of Gaelic production (£11,000). When the obligation to carry any Gaelic programming can be removed (at switchover) there will be a further limited opportunity benefit of £69,000, since more popular programming can be scheduled, though since this programming is currently scheduled in late night slots there will be a limited impact on commercial revenues.



Removal of the remaining Gaelic obligations will also represent the removal of unnecessary regulation on STV and of the compliance costs associated with that regulation.

#### Viewers:

The audience for English-language programming is greater than that for Gaelic, so there will be a small net benefit for Scottish viewers in the greater availability of English programming; and the increased competition for audience could increase the quality of programming on competing channels. The loss to Gaelic viewers noted above is more than compensated for by the large increase in Gaelic programming on BBC Alba for satellite and, shortly, cable viewers. There is already an hour of Gaelic programming available on TeleG on Freeview and if and when BBC Alba is available to viewers across Scotland on Freeview (once DSO is complete in Scotland and providing that the BBC Trust determine that BBC Alba should be broadcast on DTT) viewers will receive a similar amount of BBC Alba output to satellite viewers.

Producers: The Gaelic production sector has benefitted from the increase in BBC commissions in Gaelic and the wider production sector could benefit from by the extra availability of slots for programmes in English.

#### **Competition Assessment**

The Office of Fair Trading's *Guidance for Policy Makers* advises that the proposal is tested against the following four questions.

In any affected market, would the proposal

1. Directly limit the number or range of suppliers?
2. Indirectly limit the number or range of suppliers?
3. Limit the ability of suppliers to compete?
4. Reduce suppliers' incentives to compete vigorously?

After initial screening, it has been deemed that these proposals would not have a significant impact on competition. Although implementation of the policy and the lessening of the regulatory burden would result in financial savings to STV, which would make STV marginally more competitive, the financial sums involved are small and there is no significant impact on the market.

### **Equality Impact Assessment**

After initial screening as to the potential impact of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both. Further analysis relating to these tests is contained in the general Equalities Impact Assessment.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

# DIGITAL RADIO NETWORKS

Department /Agency:

Department for Culture,  
Media and Sport  
(DCMS)

Title:

Impact Assessment of Radio Legislation

Stage: Final

Version: Final

Date: 12 April 2010

## Related Publications:

Digital Radio Working Group – Interim and Final Reports

An Independent Review of the Rules Governing Local Content on Commercial Radio

## Available to view or download at:

Contact for enquiries:

John Mottram

Telephone: 020 7211 6414

## What is the problem under consideration? Why is government intervention necessary?

Current regulatory frameworks are imposing significant costs on the industry, specifically by imposing a higher percentage of fixed costs, and preventing the structural changes needed to improve DAB coverage and reception. Government intervention is needed to update the regulatory framework to ensure that the market operates effectively, ensuring that broadcasters, manufacturers and listeners are able to invest and innovate with confidence.

## What are the policy objectives and the intended effects?

The intention of the changes is to relax the regulatory regime to allow for a) local radio stations to take advantage of economies of scale and reduce fixed costs b) greater flexibility for multiplex operators to re-structure and consolidate and c) the investments needed to support the Digital Radio Upgrade programme.

## What policy options have been considered? Please justify any preferred option.

The Government has worked closely with the radio industry and other related stakeholders over the last 18 months, including commissioning an independent review of the current local radio licensing rules. The current proposals reflect the recommendations of the Digital Radio Working Group and the Digital Radio Delivery Group, which supported the Digital Britain programme. Two options are considered in detail in the evidence sheets:

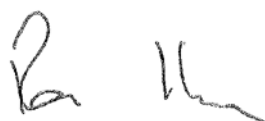
- Option 1 – Do nothing
- Option 2 – Preferred policy option of amending the multiplex and analogue licensing regimes as outlined in the Digital Britain White Paper

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** We will consider the impact of these policies alongside the wider reviews of the Digital Radio Upgrade programme, the first of which will take place in Spring 2010. The Government has also committed to a full Cost Benefit Analysis of the Digital Radio Upgrade programme before any Digital Radio Upgrade date is set.

## **Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:



Date: 8 April 2010

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	As the measures are deregulatory no costs will be directly imposed upon firms. However, to take full advantage of the new regulations broadcasters and multiplex operators will need to incur some one-off costs.
	<b>One-off</b> (Transition) <span style="float: right;">Yrs</span>	
	£	
	<b>Average Annual Cost</b> (excluding one-off)	
	£	
<b>Total Cost (PV)</b>		£
Other <b>key non-monetised costs</b> by 'main affected groups'		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	There will be significant potential for reductions in fixed costs for broadcasters and multiplex operators. The benefits of co-location for broadcasters will vary depending on station size but could be as high as 24% of pre tax and interest profits per annum for certain stations.
	<b>One-off</b> <span style="float: right;">Yrs</span>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
	£	
<b>Total Benefit (PV)</b>		£
Other <b>key non-monetised benefits</b> by 'main affected groups'		

Key Assumptions/Sensitivities/Risks
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Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	UK wide
On what date will the policy be implemented?	Summer 2010
Which organisation(s) will enforce the policy?	Ofcom
What is the total annual cost of enforcement for these organisations?	£ Unknown
Does enforcement comply with Hampton principles?	No
Will implementation go beyond minimum EU requirements?	Yes
What is the value of the proposed offsetting measure per year?	£ Unknown
What is the value of changes in greenhouse gas emissions?	£ Unknown
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro      Small      Medium      Large
Are any of these organisations exempt?	Yes/No      Yes/No      N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of	£ negligible	Decrease of
	£ negligible	<b>Net Impact</b>
		£ negligible

Key:

Annual costs and benefits: Constant Prices	(Net) Present Value
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### Background

#### *The UK Radio Industry*

The UK radio industry is primarily made up of three parts: the BBC, commercial radio and community radio.

The BBC provides five national analogue radio services: Radios 1, 2, 3, and 4 on FM and Radio FiveLive on Medium Wave (MW). Since the late 1990s it has also broadcast five digital only services: 6Music, BBC 7, Asian Network, 1Xtra and FiveLive Extra. In addition, the BBC provides 41 Local radio stations in England and 6 Nations services (BBC Wales, BBC Cymru, BBC Scotland, BBC Nan Gaidheal, Radio Foyle and Radio Ulster). All the BBC's analogue services are also available on a range of digital platforms.

Since its introduction in the early 1970s commercial radio has grown to more than 350 stations in the UK, these are primarily local, covering either cities/towns or large rural areas. The exceptions are the three national commercial licences, currently held by Classic FM, TalkSPORT and Absolute Radio, the latter two broadcasts on MW.

Ofcom has awarded more than 200 community radio licences. Community radio services are required to deliver social gain and local content to the communities they serve. The Digital Britain White Paper proposed a number of changes to the community radio regulatory framework; these were implemented by the Community Radio (Amendment) Order 2010 and are, therefore, not considered in this document.

The BBC's radio stations are regulated by the BBC Trust, under the terms of the BBC Charter and Agreement, the most recent of which came into force in 2007. The allocation of spectrum, licences and regulation of content for the commercial and community sector is the responsibility of the independent regulator, Ofcom.

### *Digital Radio technology*

Digital broadcast technologies were first adopted in the UK during the 1990s. Digital radio is the conversion of multiple audio signals (radio stations) into digital bits (zeros and ones) which is then compressed at the point of broadcasting into a single radio frequency (multiplex), the compressed signal is then de-compressed and decoded by the digital receiver.

One of the benefits of digital radio is that it occupies very little capacity, and as such can co-exist on a wide range of digital platforms. This has allowed digital radio to be delivered via satellite, cable, DTT (Digital Terrestrial Television), alongside other digital services. While the flexible nature of digital radio has been a driver for its take-up, the Digital Britain White Paper stated that non-radio specific platforms are unlikely to fully meet the needs of radio broadcasters and listeners. For example, digital TV and fixed line platforms will not support efficient and reliable portable delivery. This is one of the reasons why the Government has committed to support a broadcast specific platform for radio.

There are a number of broadcast technologies which are specifically designed to deliver digital radio. In the UK, the technology adopted is Digital Audio Broadcasting (DAB), which is one of the Eureka 147 family of international broadcast standards.

DAB is delivered by national and local multiplexes, each with capacity to carry around 10 services. A multiplex consists of a number of DAB radio stations bundled together to be

transmitted digitally on a single frequency in a given transmission area. There are currently 2 national multiplexes (one commercially owned and one BBC) and 46 local commercial multiplexes currently broadcasting (a further 13 have been licensed but are not yet on-air), carrying in total around 300 digital radio stations – many of which are “simulcasts” (ie simultaneous broadcasts) of analogue stations.

### *Digital Radio*

Chapter 3b of the Digital Britain White Paper stated the Government’s view that radio needed a digital future if it were to continue to compete in an increasingly digital media landscape. The scarcity of the analogue spectrum has shaped the current radio landscape, limiting brand and content to their frequencies and commercial revenues to local markets. Digital technologies, on the other hand, offer radio the opportunity to develop, innovate and engage interactively with its audience. The delivery of new content and functionality, such as scrolling text, one-to-one traffic information and listen again, can connect listeners and radio in new ways, provide gateways to online businesses and open up new revenue streams to the commercial market.

The White Paper noted the considerable success of digital radio in the UK, where we lead the world in the take-up of digital radio receivers, but that uncertainty about the future of digital radio was a barrier to further growth and innovation. With this in mind, and taking account of the recommendations made to Government by the Digital Radio Working Group at the end of 2008, the White Paper set out for the first time the Government’s intention to deliver a Digital Radio Upgrade programme, which should be completed by the end of 2015.



The Digital Radio Upgrade programme will be similar to the digital switchover programme for TV. However, the costs for developing a digital platform for radio are much smaller – the £10s of millions compared to the £billions required for television and other media such as mobile communications and broadband. We suggested in the Digital Britain White Paper that the Upgrade occur on a single date, announced at least two-years in advance, although the legislation provides for the Upgrade to be implemented in a staggered manner should that be considered more appropriate at the time. By the date nominated for the Upgrade it would be expected that all radio stations carried on DAB would cease to broadcast on analogue. At the same time all services on MW/AM, not broadcasting on DAB, would upgrade to FM. These stations would form a new tier of ultra-local radio on FM.

The costs currently borne by stations paying for both an analogue and a digital presence would be significantly cut with the digital upgrade. The Digital Radio Upgrade will also provide an opportunity to re-structure the industry so it can operate more effectively by establishing three distinct tiers of radio; national, regional and local, which will provide distinct markets in which radio stations can operate, compete and we believe flourish. The opportunities for greater revenue streams through new functionality and content also have the potential to impact positively on those stations suffering financially during the current difficult economic times.

While the overarching Digital Radio Upgrade programme provides the rationale for many of the changes considered in this impact assessment, the Upgrade itself will not be specifically considered in this report except where the legal changes specifically relate to the implementation of the Upgrade. The Government has committed to a full impact

assessment, including a Cost Benefit Analysis, of the Digital Radio Upgrade before a decision is made whether or when to set an Upgrade date.

### **Rationale for Government intervention**

This Digital Britain White Paper identified two areas where Government intervention is necessary. First, to address regulatory barriers which are preventing efficiencies in the commercial radio market and delaying the roll-out of DAB networks. In addition, the White Paper noted that market uncertainty was contributing to a slowing in the growth of digital radio to the detriment of businesses and consumers.

#### *Falling revenues in the commercial radio sector*

Commercial radio revenues reached a peak of £750 million in 2000, having grown more than three fold since 1990. However, since then revenues have fallen significantly year-on-year, Industry estimates suggest total revenue fell to £500 million in 2009.

There are a number of possible reasons for this decline. While total radio listening has on the whole remained constant, at around a billion hours every week, commercial radio's share of listening has fallen 14% between Q1 2000 and Q1 2009<sup>93</sup>. More generally, changes in advertising trends have seen advertising spend move away from traditional media, such as radio, to 'new media'. For example, online advertising grew by 40% in 2007, now accounting for around 20% of advertising spending in the UK, overtaking spending on TV, radio and newspapers. It is unlikely that this trend will be reversed and commercial

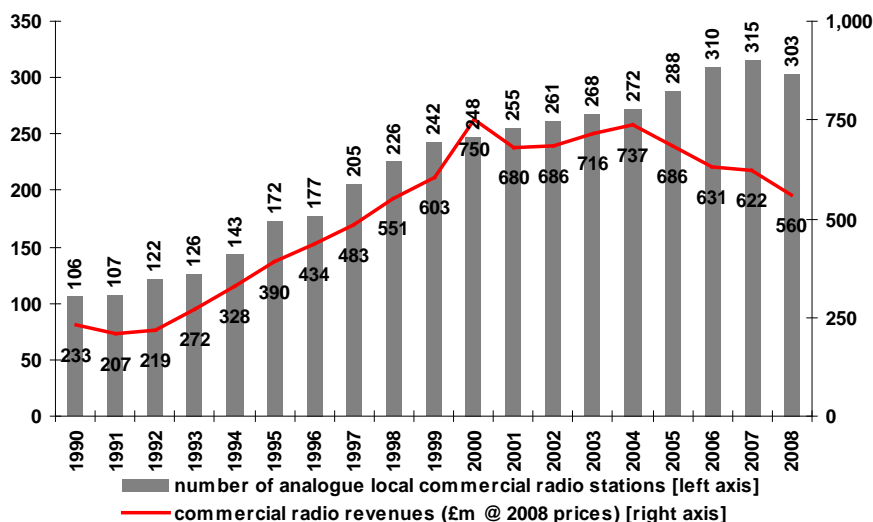
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<sup>93</sup> Source – Radio Joint Audience Research (Rajar) – quarterly listening figure

radio businesses will need in the future to both seek out new revenue streams and reduce their overall costs.

Conversely while the sector's revenues have fallen the number of commercial radio stations have continued to increase. The relaxation in the ownership rules following the Communications Act 2003 has provided for some market consolidation, the two largest commercial radio companies now account for 39% of commercial radio stations. However, the sector remains significantly made-up of small companies.

Figure 1 – Commercial station growth versus total sector revenues<sup>94</sup>



Recent research conducted for Ofcom suggests that while on average small local stations, those covering less than 300,000 adults, made a marginal profit in 2008/09 the majority were in a fact loss making. Our own independent research suggested that even larger stations are seeing falling margins, with 80% of local radio stations serving under 700,000 adults currently either loss-making or generating a profit of less than £100,000<sup>95</sup>.

<sup>94</sup> Source – An Independent Review of the Rules Governing Local Content on Commercial Radio, John Myers (2009).

<sup>95</sup> Source – An Independent Review of the Rules Governing Local Content on Commercial Radio by John Myers was commissioned as part of Digital Britain and can be viewed at: [http://www.culture.gov.uk/reference\\_library/publications/6053.aspx](http://www.culture.gov.uk/reference_library/publications/6053.aspx)

Commercial radio stations generally face high fixed costs, including copyright fees, transmission costs and programming, making up around 70% of total costs. This means a station's profitability is particularly vulnerable to changes in revenues. The commercial radio industry has argued for some time that the current licensing framework is contributing to the high level of fixed costs and regulatory barriers which are preventing commercial stations from operating as efficiently as they could do, as it prevents the sector exploiting economies of scale. It is the industry's view that changes in the regulatory framework, specifically to the localness rules which require stations to be located within the areas they serve, could enable commercial stations to reduce the value of their fixed costs, promote efficiency and become more profitable.

*Figure 2 – % typical breakdown of costs of a local radio station<sup>96</sup>*

<b>VARIABLE COSTS</b>	<b>30%</b>	
sales commissions		13%
royalties		15%
other direct costs		2%
<b>FIXED COSTS</b>	<b>70%</b>	
staff (non-programming)		25%
marketing		5%
transmission		5%
programming		20%
premises		10%
administration		5%

However, the Digital Britain White Paper was clear that local content, which was locally produced and relevant, should continue to be an important characteristic of local radio and any de-regulation would need to balance commercial interest with the needs and expectations of listeners. Ofcom's 'Radio: the implications of Digital Britain for localness regulation' consultation includes research into the impact of the proposed de-regulation of the localness requirements. This research suggests that without this de-regulation the smallest stations' (coverage of below 300,000 adults) profits before interest and tax will fall

<sup>96</sup> Source – An Independent Review of the Rules Governing Local Content on Commercial Radio, p26, figure 8.

from -8% to -16% based on a 10% decline in advertising revenue in 2009, and to -26% if advertising revenues fell by 20%. A similar pattern applies to medium and large stations. This could result in up to 50<sup>97</sup> stations closing in the next two years.

A further factor in the decreasing profitability of commercial radio is the increased cost of delivery on multiple platforms. Last year commercial radio spent approximately £31.7 million on DAB transmission alone; many broadcasters also bear the cost of carriage on Digital TV and online. These digital radio stations do not, generally, generate new income because listening remains lower than the analogue equivalent and as a result advertising is often sold at a discount. The proposed Digital Radio Upgrade is intended to reduce the overall cost of transmission because it removes the costs of analogue transmission. The partial Cost Benefit Analysis conducted by Price Waterhouse Cooper (PWC) for the Digital Radio Working Group, which is available on the DCMS website, suggests the Digital Radio Upgrade could reduce the total transmission costs for the radio industry from £87.9 million to £64 million.

### *Extending DAB infrastructures*

DAB currently covers approximately 90% of the population in the UK. The roll-out of DAB coverage, with the exception of the BBC's national multiplex, has been determined by the multiplex operators based upon the commercial viability of the coverage area; the audience size reached versus the cost of the infrastructure needed. It is generally accepted that current coverage levels are broadly in line with commercial market demands. However, the Digital Britain White Paper was clear that the Upgrade could only be implemented once

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<sup>97</sup> Source – An Independent Review of the Rules Governing Local Content on Commercial Radio, p11

DAB coverage was comparable to FM. The Government, following consultation with transmission and multiplex providers, estimates the costs of extending DAB networks to FM levels are between an additional £10 million and £16 million per annum.

*Figure 3 – Example of FM and DAB coverage based upon BBC Radio 2 (as of 2008)<sup>98</sup>*

<b>CURRENT COVERAGE (% of population) – BBC Radio 2</b>					
	UK	<i>England</i>	<i>Scotland</i>	<i>Wales</i>	<i>N. Ireland</i>
Stereo FM	97.1	97.3	96.3	93.9	98.3
Mobile DAB	92.2	94.1	85.6	73.6	87.6
Indoor DAB	82.2	83.7	77.8	63.3	78.0

<sup>98</sup> Source Digital Radio Working Group - Spectrum sub-group

One of the advantages of delivering radio via a multiplex, rather than analogue, is that the cost of transmission, the building and maintenance of the transmitter network, are shared amongst all the services carried. However, it is equally true that the cost of transmission is fixed; the costs are the same whether one or ten services are carried. Therefore, where the capacity of a multiplex exceeds demand these fixed costs are divided between fewer broadcasters, meaning either higher carriage costs for broadcasters or lower profits, if any, by multiplex operators. This situation is true of a number of local multiplexes, particularly in areas where population is sparse, and there is a view that if left unresolved it could force the closure of some local multiplexes.

More generally there is a risk that without greater regulatory flexibility the roll-out of DAB to match FM levels will be delayed, possibly even be unachievable. There is then a high risk that households in some areas would not be able to benefit from digital radio and the increased choice, services and functionality which the rest of the country currently enjoys.

### *Digital Radio Policy*

Since the first digital radio multiplex licence was awarded in late 1998 the UK radio industry has made significant investments in digital; the commercial sector alone claims to have invested around £180 million in the last ten years. This investment has helped position the UK as a world leader in digital radio. However, such investment will not continue indefinitely and broadcasters, manufacturers and consumers need certainty about the future of digital radio if previous growth is to be sustained. As was the case for Digital TV, the Government can have a key role in providing such certainty. The Digital Radio Upgrade Programme, alongside the legislative changes needed to implement it, is essential

to provide confidence to the radio market and unlock the investment needed to build a digital radio sector which is capable of replacing analogue.

## **Policy Options**

### ***Option 1 – Do nothing***

If no action were taken, we believe it would result in the closure of a greater number of local commercial stations, reduce the range of services available to listeners and delay significantly improvements in coverage and signal quality of DAB.

As we set out in section 2.2 the falling revenues of the commercial sector are likely to result in station closures in the coming months. The 'do nothing' scenario prohibits the removal of the existing regulatory barriers which are preventing greater economies of scale, and is likely to result in a greater number of station closures. This in turn will reduce the plurality of radio services available to listeners and reduce the provision of local radio content.

While a 'do nothing' option would not entirely prohibit the consolidation of DAB multiplexes, necessary to reduce the overall costs of building out DAB and encourage the extension and improvement of DAB, opportunities would be limited and less appealing to multiplex operators. Consolidation and extension of multiplexes is likely to require investment by operators and without the incentive such investments are unlikely. Without such changes over-supply of capacity will continue in some markets meaning higher carriage costs for broadcasters and an inevitable delay in the roll-out of DAB to FM comparable levels.



For each year beyond 2015 broadcasters will be bear addition transmission costs, dual analogue and digital broadcasting costs, estimated to be an additional £38.9 million<sup>99</sup>.

## *Option 2 – Implement policy options in Digital Britain White Paper – Preferred option*

### Part 1 – Analogue licensing regime

This section considers the benefits and costs of the following legislative changes set out in the Digital Britain White Paper:

- de-regulation of localness rules to allow greater flexibility for co-location within pre-determined regions;
- new legislation to grant Ofcom the power to terminate all new licences with two-years' notice and without the licence holder's consent; and
- amend the terms of the analogue licence renewal regime, to allow a further renewal of up to 7 years and greater flexibility to renew regional services against the provision of a national DAB service.

### *Benefits*

We noted in section 2.1 that the falling advertising revenues of the commercial radio sector, were part of a wider change in the pattern of advertising spend and unlikely to be reversible. As a result commercial radio companies will need to seek out new revenues streams and, at the same time reduce costs. We believe that key to reducing costs, particularly fixed costs, is greater regulatory flexibility to co-locate stations and promote economies of scale.

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<sup>99</sup> Transmission costs are approximate based upon information submitted by Arqiva, Ofcom and the BBC.

Co-location is permissible under the current licensing regime, but opportunities are limited and broadcasters are required to seek approval from Ofcom for any such change. The change to allow co-location within defined regions, rather than by their individual licensed areas, will increase the opportunities to realise the cost savings from economies of scale and remove the requirement to seek regulatory approval before any such change. Assuming that stations take full advantage of the new powers Ofcom's research<sup>100</sup> estimates that large stations (covering in excess of 750,000 adults) could see profits before interest and tax (PBIT) rise from 6% to 24% assuming a 10% fall in advertising revenues, or from 6% to 7% assuming a 20% fall in advertising revenues. Similar trends apply, although to a lesser extent, to the smaller stations.

**Figure 4 - Estimated impact by station size on PBIT of co-location and full merger under different revenue projections<sup>101</sup> 2009 estimate (assuming revenues down 20%)**

Population (MCA)		>750k	300-750k	<300k
No. of stations in sample		2	9	17
2008 Actuals	PBIT %	6	5	-8
Assuming 10% fall in advertising revenues	PBIT %	0	2	-16
	PBIT % with co-location	5	2	-7
	PBIT % with full merger	24	11	7
Assuming 20% fall in advertising revenues	PBIT %	1	-11	-26
	PBIT % with co-location	7	-7	-16
	PBIT % with full merger	7	4	-1

The main benefits of the extension of the analogue renewal regime will be realised by the existing commercial radio broadcasters. All broadcasters granted a renewal will benefit

<sup>100</sup> Ofcom commissioned independent review of the impact of a change in the localness rules, based on a sample group of 30 stations. Benefits from a full merger were assumed to include premises, programming, and sales costs, as well as general and administration costs, marketing etc.

<sup>101</sup> Source – 'Radio: the implications of Digital Britain for localness regulation'- page 49

from greater certainty of their future business, beyond their existing licence period, which will allow for longer term business planning and greater confidence to invest with the knowledge that returns can be achieved. In the specific case of the national commercial licence holder these changes will supersede the current requirement to award new national licences via a blind auction. There is no real precedent for such an auction process and industry estimates of the value of these licences range from between £10 million and £73 million. Ultimately, the value of these licences will be determined by the length of the licences, the growth of listening to national digital stations and the expected date of the Digital Radio Upgrade. Whatever the final value of national licences, it is likely that in a market of falling revenues such additional costs would be raised through cost cutting in programming and staffing.

The new two-year termination power clause proposed will be an essential part of delivering the Digital Radio Upgrade programme. This new power will allow Government to create a common-end to licences on analogue and allow for a re-planning of the analogue frequencies. Importantly, this new mechanism is a key part of providing certainty to the market, both around the nature and duration of future licences and the Government's commitment to the Digital Radio Upgrade programme.

### *Costs*

At a high level the proposals set out in this option will result in voluntary rather than imposed costs. For example, the new localness and renewal regimes introduced by these changes will not be imposed on broadcasters; the extent to which they are adopted will be determined by the individual licence holders. However, for the broadcasters who adopt

these changes there are likely to be some upfront costs. In the case of co-location this might include the cost of re-locating studios and reducing staffing. It is difficult to monetise these costs, as it will depend on the number of stations and extent of co-location adopted, but generally we believe any such short-term costs will be counter-balanced with the cost-savings over the medium to long term.

One area of this option which will result in costs is the extension of the licence renewal regime. This will result in a direct cost to Government, specifically the possible revenue which might have been raised via the 'blind auction'. As stated above, there is no precedent for such an auction and so it is difficult to accurately estimate its value, but there is a general view from the radio industry that it could be in between £10 million and £73 million. In addition, this decision will, in effect, reduce the opportunity for new entrants to the analogue commercial industry, therefore potentially reducing competition.

## **Grant Ofcom the power to amend multiplexes licences**

### Part 2 – Multiplex licensing regime

This section considers the benefits and costs of the following legislative changes set out in the Digital Britain White Paper:

- new legislation granting Ofcom the power to alter multiplex licences which agree to merge; and
- take the power to extend multiplex licences until 2030, if as part of a wider plan to extend DAB coverage.

## *Benefits*

The principle benefits of these changes are to a) reduce the cost of increasing DAB coverage, b) provide a more sustainable local multiplex business model and c) improve access to digital services for listeners.

As we noted in section 2.2 above in some areas multiplex capacity exceeds the demand from broadcasters, resulting in a business model which is in some cases both unsustainable and unfair. The change proposed will grant greater flexibility to Ofcom and multiplex operators to consolidate multiplexes and to form a new larger multiplex with a full line-up of services. For example:

There are currently three local multiplexes which serve the West Country, one covering Cornwall, one covering Plymouth and one covering the Exeter and Torbay area. Each multiplex carries approximately 7 stations, around 5 of which, including XFM, Kiss and Traffic radio, are carried on all three platforms. For the purposes of this example we shall assume that the Plymouth multiplex is carried on frequency 1, Cornwall on 2 and Exeter and Torbay on 3. The greater flexibility we now propose will allow the three multiplex operators to merge the three multiplexes and form a new single multiplex network across the whole of the West Country.

The benefits of forming a such a multiplex is that each individual multiplex is full, providing appropriate and consistent revenue for multiplex operators, while at the same time allowing the transmission costs to be more equally shared amongst all the services carried.

The Digital Britain White Paper pointed to another specific example of how these new powers could benefit multiplex operators. There are currently 6 "regional" multiplexes and 3 London-wide multiplexes. Taken together, these 6 regional multiplexes and one of the London-wide multiplexes collectively provide DAB coverage to around 60% of the

population. The new powers would permit these larger multiplexes to, in effect, merge, by aligning services and frequencies, and extend to form a new national multiplex. This would provide for up to an additional 10 national DAB services, with the added benefit of regional opt-outs of programming and advertising. This would allow broadcasters to sell advertising either nationally or on a region by region basis depending upon which was the most valuable.

Historically, parts of the country not covered by DAB multiplex, 'white spaces', have been filled by the licensing of a new multiplex. However, the size of the remaining 'white spaces' are now so small (in population terms) that a new multiplex would not be viable in itself. The changes proposed will allow multiplex operators to extend the coverage of existing multiplexes to areas currently un-served by DAB, improving the access of digital services for listeners.

Finally, investment will be needed in extending coverage if it is to reach levels comparable to FM and trigger the Digital Radio Upgrade process. In the first instance such investment will need to be made by the multiplex operators, with the additional costs passed on to the broadcasters by higher carriage costs. The benefits of taking new powers to extend multiplex licences are that these additional costs to broadcasters can be spread more widely over a long period of time. It also rewards multiplex operators by extending the opportunity to see a return on their additional investment.

## *Costs*

Again these changes will not, in themselves, impose any new financial burden on businesses, because they are primarily de-regulatory in nature and are optional. However, in such instances where operators do take advantage of these new powers they are likely to incur additional costs for implementation. For example, both consolidating multiplexes and extending into 'white spaces' will require new investment in transmitters and multiplex equipment. However, it is likely that an application under these new powers will only be made if such investment results in a more sustainable business in the longer term.

Multiplex licence changes are likely to incur an administrative cost for the regulator, particularly where a request is made to amend frequencies; in such an instance Ofcom will need to consider the impact of such a change on other frequencies. These costs will be small and will likely be recovered by Ofcom either via the Spectrum Efficiency Fund or directly from broadcasters, via general fees.

These changes should not incur any direct costs for Government from these amendments. However, while we have not signalled an intention to raise revenues, by auctioning multiplex licences, extending multiplex licences would prolong the period before any such policy could be introduced.

## **Consumer Impact**

The preferred option set out above is expected to result in a number of benefits for consumers; these benefits are three-fold. First, by supporting greater investment in DAB infrastructure a greater number of consumers will have access to DAB and the quality of

reception will improve. Secondly, consumers will benefit from access to a wider range of services, specifically new national stations and functionality, such as pausing and rewinding live radio. Finally, the released analogue spectrum will allow for a greater range of community radio stations, as well as possible non-radio services. The PWC partial CBA for the Digital Radio Working Group suggests the value of these benefits could be in the region of £1.1 billion, over a period from 2009 to 2030.

More generally the commitment to a Digital Radio Upgrade programme, and certainty of a timetable, will provide clarity on the future life-span of analogue radio receivers, allowing more informed consumer buying decisions. We also believe that without a clear and achievable Upgrade timetable manufacturers will be less likely to scale-up production of DAB receivers, limiting the opportunities for greater economies of scale and competition, resulting in higher retail prices for DAB receivers.

The preferred option is not expected to directly result in any new costs for consumers; however, we acknowledge that as a whole the Digital Radio Upgrade programme will. These costs will be considered in detail before any decision is made to implement the Upgrade, but for the sake of the narrative they are worth noting. The significant consumer costs of the Digital Radio Upgrade in the non-voluntary conversion of analogue sets to digital, including the cost of in-car conversion. The PWC report suggested the cost of such conversion to be in the region of £800 million, again over the period from 2009 to 2013.



## **Competition**

In general terms the legislative changes set out above allow for greater regulatory flexibility for Ofcom and in the application of these new rules, Ofcom will need to have regard to their general duties for competition.

The notable exception is the extension of the analogue licence renewal regime. The decision to grant existing licence holders a renewal of their licences, by virtue of their carriage on digital, may be argued to harm competition because it limits the opportunities for new market entrants. However, we believe that any such reduction in competition is appropriate and justifiable in the context of the Digital Radio Upgrade. We also note that market entry can be achieved through the purchase analogue licences, as has often been the case to date, and there are of course significant opportunities to launch services on digital.

## **Small Firms Impact Test**

The preferred option detailed above is not expected to impose a greater regulatory burden on small firms. In fact, the relaxation of the localness regime to allow greater economies of scale is expected to have a greater benefit to small stations; this is detailed in figure 4 above. The extension of the licence renewal regime will also benefit small firms, which are broadcasting on digital and analogue, by providing business certainty and the ability for business planning over a longer period. In both these cases any costs associated with implementing the new regimes are expected to be out-weighed by the benefits to small businesses.

We recognise that the proposal to provide Ofcom the power to terminate all new licences with two-year's notice may have a negative impact on those small radio businesses which are not broadcasting on digital. It could be argued that these businesses, which are not now, or are expected in the future, to broadcast on DAB are unnecessarily disadvantaged by the increased licence uncertainty of the termination clause. However, we believe that the decision to apply these new powers broadly is justified in the pursuit of achieving the Digital Radio Upgrade and the benefits this will bring to the industry as a whole.

### **Other specific impact tests**

Other specific impact tests have been considered, including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Human Rights and Rural Proofing.

After careful analysis it has been concluded that no significant impact is anticipated in any case. Further information can be found in the Digital Economy Act 2010 Equality Impact Assessment.

### **Equality Impact Assessment**

After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both. More widely, the equality impact of the Digital Britain White Paper proposals are considered in the separate Equality Impact Assessment.

More generally the equality impact of the Digital Radio Upgrade will be considered as part of the wider impact assessment which the Government is committed to complete before a date can be set.

### **Monitoring and evaluation**

We have proposed a number of review points to monitor the effects of these changes and whether they are contributing to the overall Digital Radio Upgrade timetable. The first of these, which will specifically consider the impact of changes to the multiplex licensing regime, will take place in Spring 2010. As we previously stated, we are also committed to a full Cost Benefit Analysis of the Digital Radio Upgrade strategy, including the timings and costs to consumers; this is likely to begin by the end of 2010.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# WIRELESS TELEGRAPHY ACT

Department /Agency:  
Department for Business,  
Innovation and Skills  
(BIS)

Title: Impact Assessment on proposals to amend the  
Wireless Telegraphy Act 2006 designed to facilitate  
the implementation of the ISB (Independent Spectrum  
Broker) proposals

Stage: Final

Version: Final

Date: 12 April 2010

**Related Publications:** Report from the Independent Spectrum Broker: findings and policy proposals (2009); Application of spectrum liberalisation and trading to the mobile sector: A further consultation (Ofcom, 2009); Consultation and Impact Assessment on proposals to direct Ofcom to implement the Wireless Radio Spectrum Modernisation Programme (BIS, *forthcoming*); Ofcom (2004) Spectrum Pricing: a consultation on proposals for setting wireless telegraphy licence fees. Consultation document.

Available to view or download at:

Contact for enquiries: Stephen Fernando

Telephone: 0207 215 6320

## What is the problem under consideration? Why is government intervention necessary?

The UK Government is proposing to implement a package of measures brought forward by the Independent Spectrum Broker (ISB) aimed at achieving the release, liberalisation and wider spread of spectrum including sub-1GHz spectrum between mobile network operators. This is necessary in order to make progress towards the goals set out in the Digital Britain Final Report with respect to wireless infrastructure. Amendments to the Wireless Telegraphy Act are however first needed. If these are not made, there exists the possibility of regulatory failure in that the regulatory framework underpinning the market for radio spectrum may prevent it from functioning as well as it could do. This could have the effect of hampering progress towards the goals set out in the Final Report.

## What are the policy objectives and the intended effects?

Proposals put forward by the ISB require a number of amendments to be made to the Wireless Telegraphy Act 2006 to give them effect. If these are made then the market for radio spectrum may be better able than it is presently to allocate this scarce resource quickly and efficiently between mobile network operators.

This should help ensure that the ISB's proposed solution, should it be implemented, is able to have the maximum possible effect in terms of facilitating progress towards the goals set out in the Digital Britain Final Report with respect to wireless infrastructure.

## What policy options have been considered? Please justify any preferred option.

Two policy options have been considered:

Option 1: No change to the Wireless Telegraphy Act

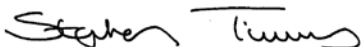
Option 2: Amend the Wireless Telegraphy Act as follows: a) Allow Ofcom to impose penalties on operators in respect of a breach of licence conditions where these licence conditions are imposed pursuant to a direction by the Secretary of State; b) Allow Ofcom, in specific circumstances, to apply annual charges to licences allocated by auction; and c) Authorise payments between operators in relation to licences auctioned under s14 WTA.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Under proposed amendments to the Communications Act 2003 Ofcom would be required to carry out an assessment of the communications infrastructure every two years.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister:



.....Date: 8 April 2010

## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Amend Wireless Telegraphy Act 2006**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' It is extremely difficult to try and quantify accurately the size of the potential costs associated with the proposed amendments. For this reason, we have not quantified them in this impact assessment.	
	<b>One-off (Transition)</b>	<b>Yrs</b>		
	<b>£ Unknown</b>			
	<b>Average Annual Cost</b>			
	<b>£ Unknown</b>		<b>Total Cost (PV)</b>	<b>£ Unknown</b>
<p><b>Other key non-monetised costs</b> by 'main affected groups' Some operators may incur costs arising from additional licence conditions imposed by Ofcom. Payments made by operators in relation to licences auctioned under s14 of the Act and annual charges applied to licences allocated by auction represent transfers and are not included in the cost-benefit analysis.</p>				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Potential benefits will be considered as part of the Impact Assessment accompanying the Government response to the consultation on a Direction to Ofcom to implement the Wireless Radio Spectrum Modernisation Programme, which was published on 9 March 2010.	
	<b>One-off</b>	<b>Yrs</b>		
	<b>£ Unknown</b>			
	<b>Average Annual Benefit (excluding one-off)</b>			
	<b>£ Unknown</b>		<b>Total Benefit (PV)</b>	<b>£ Unknown</b>
<p><b>Other key non-monetised benefits</b> by 'main affected groups' Market for radio spectrum may be better able than it is presently to allocate this resource quickly and efficiently between mobile network operators. This will help to ensure that the ISB's proposed solution, should it be implemented, is able to have the maximum possible effect in terms of facilitating progress towards the goals set out in the Digital Britain Final Report which has the potential to deliver significant benefits to consumers, businesses as well as the wider economy and society.</p>				

**Key Assumptions/Sensitivities/Risks** This impact assessment should be read in conjunction with the impact assessment accompanying the consultation document on proposals to implement the Wireless Radio Spectrum Modernisation Programme which was published on 16<sup>th</sup> October 2009.

<b>Price Base</b> Year	<b>Time Period</b> Years	<b>Net Benefit Range (NPV)</b> <b>£ Unknown</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ Unknown</b>
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What is the geographic coverage of the policy/option?	United Kingdom			
On what date will the policy be implemented?	TBC			
Which organisation(s) will enforce the policy?	Ofcom			
What is the total annual cost of enforcement for these organisations?	£ TBC			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase	£ Unknown	Decrease of	£ Unknown	<b>Net Impact</b>	£ Unknown

Key: Annual costs and benefits: Constant (Net) Present Value

## Evidence Base (for summary sheets)

*It is recommended that this impact assessment is read in conjunction with the impact assessment accompanying the Government response on the consultation on proposals to implement the Wireless Radio Spectrum Modernisation Programme which was published on 9 March 2010.*

### **Background**

The Digital Britain Final Report set out the UK Government's objectives with respect to wireless infrastructure. These were:

- A rapid transition to next generation high-speed broadband
- Progress towards universal coverage in 3G and Next Generation Mobile
- Maintaining a highly competitive mobile market

Key to achieving these goals is the liberalisation and possible re-allocation of radio spectrum currently used to deliver second generation mobile services (900, 1800 and 2100MHz) and the release of new spectrum from the digital dividend (800MHz) and the so-called third generation extension band (2600MHz).

Mobile network operators (MNOs) need a mixture of low and high spectrum frequencies in order to deliver next generation mobile (NGM) services. Lower frequencies such as 800 and 900MHz are good for achieving wide coverage with a small number of base stations and in-building penetration while higher frequencies such as 2100 and 2600MHz are good for providing capacity for large numbers of end-users in dense (urban) environments.

The Digital Britain Interim Report identified a number of obstacles hampering this process. These included the differing circumstances and conflicting incentives of the existing mobile

network operators as well as continuing legal and regulatory uncertainties around the use of spectrum.

In response to the lack of progress, the UK Government announced in the Interim Report that as part of a proposed Wireless Radio Spectrum Modernisation Programme<sup>102</sup>, it would be seeking a solution either through a voluntary industry consensus or an imposed Government solution and appointed an Independent Spectrum Broker (ISB) to assist in this process. The ISB initial set of proposals were published on 13<sup>th</sup> May 2009. Following further rounds of discussions with the mobile network operators and other interested parties, the ISB presented a revised package of proposals in his final report to Government in September 2009. The Government has proposed to direct Ofcom to give effect to these proposals and has completed a consultation on them. The Government has now decided to direct Ofcom to give effect to these proposals (with some amendments in response to the consultation and taking account of the recent announcement on the joint venture between Orange and T-Mobile) and the Order was laid in Parliament on 9 March 2010.

### **Rationale for government intervention**

Follow up work by the ISB with the mobile operators and other interested parties, including Ofcom, have revealed that a number of amendments to the Wireless Telegraphy Act 2006 need to be made prior to implementing the ISB's final set of proposals.

If these amendments are not made, there exists the possibility of regulatory failure in that the regulatory framework underpinning the market for radio spectrum may prevent it from

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<sup>102</sup> The Wireless Radio Spectrum Modernisation Programme which was announced in the Interim Report comprises five elements: establishing whether there could be a voluntary spectrum trading solution between the existing mobile network operators to allow the seamless liberalisation of use of the existing 2G radio spectrum; making more spectrum available through the release of the 2600MHz spectrum and the Digital Dividend 800MHz spectrum; greater investment certainty; allowing more network sharing and seeking a significant contribution to the proposed broadband universal service commitment. Fuller details of the Programme can be found on page 29 of the Digital Britain Interim Report at [http://www.culture.gov.uk/what\\_we\\_do/broadcasting/5944.aspx](http://www.culture.gov.uk/what_we_do/broadcasting/5944.aspx)



functioning as well as it could do. Therefore, elements of the ISB's proposed solution could not be implemented and thus serve to undermine progress towards the goals set out in the Digital Britain Final Report with respect to wireless infrastructure.

### ***Breach of licence conditions under the Wireless Telegraphy Act***

It is intended that the Secretary of State will use the Wireless Telegraphy Act to direct Ofcom to take particular actions to implement the Digital Britain report in relation to the wireless spectrum. This is likely to include a requirement on Ofcom to impose conditions on licences held by operators including the mobile network operators. These include:

- Access conditions (i.e. allowing other operators to use the frequencies on commercial terms) so that certain frequencies can be opened up to more competition, to eliminate any unfair economic advantage which has been obtained by the holders of 800 and 900 MHz
- Coverage obligations in relation to geographical coverage of services
- Obligations to release spectrum within a given time in the event that operators who successfully bid for new spectrum exceed the agreed caps.

Under current legislation, in the event that an operator fails to comply with its licence conditions, Ofcom has two powers of enforcement: to revoke the licence or to prosecute. These powers may be disproportionate and could serve to significantly hamper progress towards the policy objectives set out in the Digital Britain report.

Revocation may be disproportionate if, for example, an operator fails to provide appropriate coverage for a specific period of time and may also be legally challengeable in court which could prove costly for all parties concerned.

Prosecution may also not be ideal particularly if it is dragged out by an operator, to the detriment of other operators. For example, an operator may decide not to comply with the licence conditions by delaying the release of spectrum to other operators if by doing that it undermines the capacity of other operators to provide services to their customers. Even if the infringement is clear, it may take a relatively long period of time before such situation is reverted through the course of justice. In the interim period, competition may be damaged with potential knock-on effects to consumers in terms of higher prices and lower quality of service.

The Government is therefore proposing to allow Ofcom to fine operators in the event that they fail to meet licence conditions. Monetary penalties are seen as a more flexible and immediate enforcement tool than revocation or prosecution.

### *Application of annual charges and payments between operators*

Under current legislation, annual charges do not apply to spectrum awarded by auction on the basis that by the very nature of auction, those operators that place the greatest value on spectrum will bid the most in order to acquire it.

However, in the interim Digital Britain report, the Government proposed making 3G licences indefinite, subject to a revocation period, in order to provide greater investment certainty to 3G operators and encourage further investment and innovation. In addition, it was proposed that annual licence fees would be paid for this spectrum from the end of the initial term, reflecting the full economic value of the spectrum. Ofcom will determine this fee closer to the time of the licence expiry.

At present, Ofcom's powers to charge annual fees for a licence do not extend to licences issued through auction. The amendments to the Act will allow this charge to be applied, where the Secretary of State consents.

At the same time, under current legislation, there is no provision for payments between operators in relation to licences that have been auctioned. The ISB proposals may require a spectrum holder to relinquish spectrum to remain within spectrum caps that will be set. In those circumstances, the ISB has proposed that an additional payment be made between the entity purchasing the spectrum and the entity that has relinquished it. At present any sums paid in respect of auctioned spectrum have to be made to Ofcom, who in turn are obliged to pass it to the Consolidated Fund. The proposed amendment will allow Ofcom to make regulations that will allow payments to be made between companies. Certain cases will require the Secretary of State to consent before the charges can be applied

## **Policy Options**

### ***Option 1: Do nothing***

Under this option, no amendments would be made to the Wireless Telegraphy Act. As a result, some of the ISB proposals cannot be implemented. In this event, it is possible that the Direction to Ofcom to implement the Wireless Radio Spectrum Modernisation Programme will proceed, but with a subsequent delay to the roll-out of next generation mobile services and a failure to achieve the Digital Britain objectives with respect to next generation mobile broadband services.

## *Option 2: Amend the Wireless Telegraphy Act 2006*

Under this option, the following amendments would be made to the Act:

- 1. Allow Ofcom to impose penalties on operators in respect of a breach of a wireless telegraphy licence conditions*
- 2. Allow Ofcom, in specific circumstances, to apply annual charges to wireless telegraphy licences allocated by auction.*
- 3. Authorise payments between operators in relation to licences auctioned under s14 of the Act*

### *Costs*

Under this option, it is possible that some operators may incur additional costs arising from additional licence conditions imposed by Ofcom, such as coverage conditions. However, the expectation would be that operators would take into account the likely cost of meeting such a condition in making their bids.

Operators who fail to comply with their licence conditions will incur a monetary penalty. These costs are not included in the cost-benefit analysis since they would not arise under full compliance.

Operators acquiring newly released or newly awarded spectrum either from auction or other operators would also be required to make payment either in part or in full to Ofcom, the Exchequer or the relinquishing operator. Since these payments constitute transfers between different parties in the economy, they are not included in the cost-benefit analysis.

It is extremely difficult to quantify accurately the size of the potential costs associated with the proposed amendments to the Wireless Telegraphy Act. For example, the size of the transfer payment paid by operators acquiring spectrum will depend on the frequency and

amount of spectrum being traded. Given these significant uncertainties, we do not attempt to quantify the possible costs in this impact assessment.

### *Benefits*

If these amendments are made to the Wireless Telegraphy Act 2006, then the market for radio spectrum may be better able to allocate this scarce resource quickly and efficiently between mobile network operators than it is presently.

This will help ensure that the ISB's proposed solution, should it be implemented, is able to have the maximum possible effect in terms of facilitating progress towards the goals set out in the Digital Britain report which have the potential to deliver significant benefits to consumers, businesses as well as the wider economy and society. This is discussed in greater detail in the impact assessment accompanying the forthcoming consultation on implementing the Wireless Radio Spectrum Modernisation Programme.

These benefits are likely to still arise even if the proposed amendments to the Wireless Telegraphy Act were not made. However there is a risk that they may be less than the maximum achievable if operators which place the greatest value on spectrum and have the potential to generate the greatest possible economic benefits cannot acquire spectrum quickly or in the quantities that they need.

The potential benefits associated with the proposed amendments are not quantified in this impact assessment. Instead, they will be considered as part of a more detailed analysis of the potential costs and benefits of the ISB's proposed solution which is expected to be carried out over the coming months. It is hoped the results will be published in an updated impact assessment in the first half of 2010.

## **Competition assessment**

These proposals are likely to have a pro-competitive effect. For example, it would ensure that spectrum is released and exchanged quickly and efficiently enabling operators to acquire the spectrum that they need in order to offer competing services to consumers.

These proposals would also help to ensure that the ISB's proposed solution, should it be implemented, has the maximum possible effect in terms of promoting and sustaining competition in the mobile sector. This is discussed in greater detail in the impact assessment accompanying the forthcoming consultation on implementing the Wireless Radio Spectrum Modernisation Programme.

## **Other specific impact tests**

Other specific impact tests have been considered including the Small Firms Impact Test, Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, and Rural Proofing. After initial screening it has been deemed that no significant impact is anticipated in any case.

We have also considered the potential effects of these proposals on race, disability and gender equality. Again, after initial screening it has been deemed that no significant impact is anticipated in any case. Further information can be found in the Digital Economy Act 2010 Equality Impact Assessment.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# VIDEO RECORDINGS – VIDEO GAMES CLASSIFICATION

<b>Department /Agency:</b> <b>Department for Culture, Media and Sport (DCMS)</b>	<b>Title:</b> <b>Impact Assessment of re-classification of Video Games</b>	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 12 April 2010
<b>Related Publications:</b> 'Safer Children in a Digital World': Review by Dr. Tanya Byron, published 27 <sup>th</sup> March 2008; 'Digital Britain Report': Joint DCMS/ BIS publication, published 16 <sup>th</sup> June 2009		

Available to view or download at:

<http://www.dcsf.gov.uk/byron/review>

Contact for enquiries: enquiries@culture.gov.uk

Telephone: 0207 211 6200

**What is the problem under consideration? Why is government intervention necessary?**

In September 2007 the Prime Minister asked Dr Tanya Byron to carry out a review of the risks to children of the internet and video games. Dr Byron concluded that the classification system currently applied to video games is confusing. She recommended that a consultation be carried out into a reform of the classification system so that parents and children could be clearer about the content of individual games and the existing statutory scheme be extended so that all games rated 12+ must be properly age classified and sold/supplied according to this classification.

**What are the policy objectives and the intended effects?**

To put in place a classification system that is more meaningful and effective, and that consequently affords better protection to children and young adults. This would mean an extension of the existing statutory scheme to all games rated 12+. Currently only video games containing gross violence, sexual activity, certain criminal activity and games with film content that is not integral to the game are caught under the statutory scheme.

**What policy options have been considered? Please justify any preferred option.**

\* a hybrid classification system; \*an enhanced BBFC option which would see BBFC as the statutory classifications body for all video games while retaining its right to refuse certification; \*an enhanced PEGI option giving a UK body designated statutory authority to run PEGI in the UK and the power to refuse to certify a game and; \* a voluntary Code of Practice for industry and suppliers (with no changes to the existing statutory scheme).

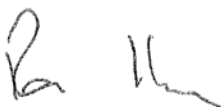
The enhanced PEGI option was selected because it best meets all the key criteria set out by Dr Byron in her report, will offer excellent protection to children and has the least negative impact on industry.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Three years following the implementation of the policy.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister:



Date: 8 April 2010



## Summary: Analysis & Evidence

Policy Option: 3

Description: Enhanced PEGI Option

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' The costs refer to the fees and the administrative burden of the enhanced PEGI option on video games publishers, and represents the lowest of all the options considered. The £250,000 transition cost refers to local authorities updating their guidance.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 0.25m		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 5.44m	10	<b>Total Cost (PV)</b> £ 45.5 m
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Government's clear view is that the benefits of moving to a system which offers greater protection to children outweigh the costs identified. However, we were unable to monetise the benefits of any of the options.
	<b>One-off</b>	<b>Yrs</b>	
	£ 0		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 0		<b>Total Benefit (PV)</b> £ 0
Other <b>key non-monetised benefits</b> by 'main affected groups' This option best meets the range of key criteria that are required to ensure that a video games classification system is most effective. These are detailed in the evidence base but essentially this system will provide most protection to children now and in the long term.			

**Key Assumptions/Sensitivities/Risks** (i) new system will apply indefinitely: costs are based on a 10 year horizon (ii) exchange rates are sensitive and vulnerable to change.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ -45.5m	<b>NET BENEFIT (NPV Best estimate)</b> £ -45.5m
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What is the geographic coverage of the policy/option?				UK
On what date will the policy be implemented?				October 2010
Which organisation(s) will enforce the policy?				Trading Standards
What is the total annual cost of enforcement for these organisations?				£
Does enforcement comply with Hampton principles?				Yes
Will implementation go beyond minimum EU requirements?				Yes
What is the value of the proposed offsetting measure per year?				£ Nil
What is the value of changes in greenhouse gas emissions?				£ Nil
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)
Increase of £ 1.76m	Decrease of £ 0	<b>Net Impact</b>	£ 1.76m

Key: Annual costs and benefits: Constant Prices (Net) Present

## Evidence Base (for summary sheets)

### Evidence Base

This document is divided into a costs analysis, including fees and administrative burdens and a benefits analysis.

Both sections compare the four options we put forward in our consultation against a series of criteria – the costs analysis is mainly quantitative and the benefits analysis mainly qualitative. We then reach our conclusion as to the best option going forward as outlined in the summary document above.

### Options

The options were:

#### *Option 1 – Hybrid Classification System*

The BBFC would rate all games that are only suitable for players over the age of 12, with PEGI continuing to rate all 3+ and 7+ games. The BBFC logos would appear on the front of all boxes, with the PEGI logos on the back.

The Government would extend the BBFC's statutory powers to cover games from 12+, bringing it into line with the classification system used for DVDs/videos and building on parental awareness and understanding of what those ratings mean. This system will work best if BBFC and PEGI come to an agreement on their logos and age classifications so that a more integrated approach can be adopted.

### *Option 2: Enhanced BBFC System*

The BBFC would act as the sole statutory classifications body for all video games, applying its ratings from U to 18. It would retain its power to refuse to classify games it feels are potentially harmful based on its public consultations.

### *Option 3: Enhanced PEGI System – This is the chosen option*

A UK-based organisation (possibly the Video Standards Council) would be the designated statutory classification body for video games, applying the PEGI ratings which would be enforceable in law. The VSC (or other UK body chosen) would need to sign up to this new role and any other legislative duties required of it. All video games would be rated using the PEGI system and the only role for the BBFC would be in classifying film or video content which is not integral to the game.

### *Option 4: Voluntary Code of Practice*

There would be no changes made to the legislation so BBFC and PEGI would continue to classify games as they currently do. The current system of dual classification and labelling would continue to exist. The Government would then ask retailers and suppliers to sign up to a voluntary Code of Practice to ensure that they adhered to the classification system when selling or supplying video games to children aged 12 or above, even though a statutory offence would not be committed if they broke the Code. This Code of Practice would focus on classification, consumer protection, and consumer education and it would follow the guidelines outlined in the Review. There would be no extension to the statutory

basis of the classification system to 12+ games but this proposal would aim to achieve compliance by voluntary means and an agreed system of good practice.

## **Costs**

### *Fees Analysis*

This Section is broken down into three sections:

- Calculating the baseline (2007) figures
- Comparing the options
- Analysis

### Calculating the baseline (2007) figures

#### *BBFC*

The fee charged by the BBFC for the classification of video games is not a flat rate and depends on the complexity and scale of the game and the breadth and depth of the classification issues. The average cost overall of classifying a game in 2007 was £1,649.22. Cost is calculated on the basis of a £300 handling charge plus £6 per minute examination time. A single BBFC classification is valid across all platforms provided the content is essentially the same.

In 2007, BBFC received 276 games for classification of which it classified 262 (the remaining 14 were either incomplete or were withdrawn by the publisher). These 262 broke down into the following categories:

Table 1

Classification	Number	Percentage of whole
U	28	10.7
PG	37	14.1
12	40	15.27
15	95	36.26
18	62	23.67

*Note: During this period BBFC also received up to ten interactive games submitted on Blu ray discs by DVD distributors rather than games publishers. 2008 saw an increase in the number of such submissions)*

Of the games BBFC classified in 2007, 21% were not straightforward original submissions and included demos, samples and ports etc while the PEGI figures do not include these.

For the six months running from December 2007 to May 2008 the average time taken by the BBFC to allocate a classification to a game submitted to them was:

Table 2

December 2007	6.3 calendar days
January 2008	11.1 calendar days
February 2008	7.2 calendar days
March 2008	7.5 calendar days (excluding Manhunt 2 which involved litigation)
April 2008	8 calendar days
May 2008	7 calendar days

These figures factor out any delays that were due to incomplete submissions.

The average sampling/playing time examiners spend on a game was:

*Table 3*

Category	Average sampling time, playing the game (minutes)
U	110
PG	150
12	165
15	230
18	250

The average cost per game is set out in Table 4:

Table 4

Classification	Average Cost (handling charge £300 plus £6 per minute)
U	£960
PG	£1,200
12	£1,290
15	£1,680
18	£1,800

Note that these figures represent the timings in minutes of non-linear game examination and do not include linear material.

## PEGI

Fees are linked to product category and rate track. A product can be categorised as:

- New Game (one that has never been rated under the PEGI system before)
- Additional Platform (a game that has already been rated under PEGI as a New Game on one platform and which is then rated on another platform)
- Local Product (This applies where a rating is requested for a limited number of countries. The maximum number of countries is four. If the group of selected countries includes either the UK or France the local product category does not apply.)

Fees will also vary according to the rate track that is selected by the games publisher:

- Fast track – this guarantees a rating within five working days of submitting a rating request for a 12+, 16+ or 18+ game. The normal period is ten working days. The

rating approval period starts running after the materials required for examination have been received by the VSC / NICAM. (NICAM is the Netherlands Institute for the Classification of Audiovisual Media.) The final licence will not be awarded until the necessary payment has been transferred to ISFE (Interactive Software Federation of Europe)

- Normal Rate Track – for all 3+ and 7+ ratings (standard period of three working days after payment transferred to ISFE). 12+, 16+ and 18+ ratings for which the normal rate track has been selected are guaranteed to be processed within ten days after all conditions have been met by the publisher although in practice this is generally quicker.



Table 5

Product	Standard Fee	Fast Track Fee
New Game	€1000	€1500
Additional Platform	€500	€750
Local Product	€100	€150

From 1 January 2007 to 31 December 2007 PEGI awarded the classifications in Table 6.

Table 6

Classification	Number	Percentage of whole
3+	604	49.1
7+	175	14.2
12+	250	20.3
16+	97	7.9
18+	4	0.3

(Figures relate to games not platforms)

In addition, VSC referred 101 games to BBFC during this period (8.2% of whole) 50 of which were referred under the Video Recordings Act 1984. (The remaining 51 were referred because they contained linear content.) Of the 50 referrals 29 were rated 18, 19 were rated 15 and 2 were rated 12 by the BBFC.

### Comparing the Options

The pricing structures of the BBFC and PEGI differ quite considerably which makes direct comparisons of costs quite difficult to achieve. We have made some changes to our assumptions since our interim impact assessment following receipt of more detailed information.

To calculate the BBFC actual costs, we multiplied the total number of games rated at each level in table 1 by the average cost of rating games at the corresponding level in table 4. In order to calculate the PEGI actuals, we took the number of games rated at each level in table 6 multiplied them by €1250 (assuming half at fast track €1500 and half at standard rate €1000 in table 5) and then added the extra costs to equate to being released on two and five platforms. All figures were converted to Pounds Sterling using the average exchange rate over the last 12 months (ending March 2009) of 0.81777. This figure has risen since the interim impact assessment.

For the purposes of the following calculations we have assumed that:

- the average exchange rate for the last 12 months (ending March 2009) applies to all PEGI charges so that we can compare all costs in Sterling. (Given that the PEGI charges are made in Euros, the cost figures are sensitive to changes in exchange rates.); and
- the ratings systems broadly align so that a U rating will translate to a 3+ and a PG to a 7+. We did receive further information which showed that this is not always the case sometime the BBFC give a higher rating and sometimes PEGI give a higher rating, but for simplicity of calculation we have kept the assumption the same.

Since the interim impact assessment we can now say that:

- 95% of games rated by PEGI were charged the standard rate fee and 5% were charged the more expensive fast track fee;
- the average number of platforms on which a video game is released is two; and

- all but 7 games released in the UK were released in at least one of the countries that apply PEGI.

### *New Cost Structures*

Since the interim assessment we have received information from both the BBFC and PEGI about changes to their fee structures. The new figures for the four options (although not for the 2007 baseline) reflect these changes. The PEGI system will double its fees to pay for the additional work associated with enhancing the system and carrying out the Statutory functions, while the BBFC have said that they will be able to reduce their handling charge from £300 to £200 due to economies of scale if options 1 or 2 are selected. Therefore we have amended the figures accordingly in the tables below.

Table 7 summarises the cost to Industry of the different options.

*Table 7*

	Fee Costs	Admin Costs	Total
<b>Actual - 2007</b>	£1,972,013	£1,531,200	£3,503,213
<b>Hybrid</b>	£3,738,579	£1,912,900	£5,651,479
<b>Enhanced BBFC</b>	£4,450,519	£2,769,800	£7,220,319
<b>Enhanced PEGI</b>	£3,917,433	£1,526,800	£5,444,233
<b>Code of Practice</b>	£1,972,013	£1,531,200	£3,503,213

This table demonstrates that option 4: Code of practice is the least expensive of the four options. However, as we will go on to demonstrate in the Benefits analysis this option performs badly against most of the key criteria. **Of the first 3 options, which all are much closer than option 4 to meeting the key criteria, option 3: enhanced PEGI generates the least additional burden to industry.** This is largely explained by the fact that currently, the

majority of games are classified by the PEGI system for most of Europe; the hybrid and the Enhanced BBFC options would see a significant number of those games also being rated by the BBFC which means that not only will individual game titles have to pay two sets of fees to release across the markets, but will also incur additional marketing, administration and shipping costs as a result.

What follows is an explanation of how we reached these costs.

*Which organisation would do the ratings under each option?*

This is important because currently not all games fall under the requirements for statutory regulation. In some of our options many games which are not currently rated by the BBFC would have to be. **Table 8** demonstrates the changes in who will rate which video games, using the 2007 actual figures as a baseline. The Europe column shows the additional number of titles that games companies will have to pay to be classified (over and above that which already takes place under the current classification system) if the same game is to be released in one or more of the countries covered by the PEGI system in Europe. In 2007 this happened in all but 7 cases.

Table 8

Number of Ratings	2007 Actual Figures		Option 1: Hybrid		Option 2: Enhanced BBFC		Option 3: Enhanced PEGI		Option 4: Code of Practice	
	UK	Europe	UK	Europe	UK	Europe	UK	Europe	UK	Europe
U	28	n/a	28		632				28	n/a
PG	37	n/a	37		212				37	n/a
12	40	n/a	290		290				40	n/a
15	95	n/a	192		192				95	n/a
18	62	n/a	62		62				62	n/a
3+	604	n/a	604			604	632		604	n/a
7+	175	n/a	175			175	212		175	n/a
12+	250	n/a		250		250	290		250	n/a
15+	97	n/a		97		97	192		97	n/a
18+	4	n/a		4		4	62		4	n/a
Total	1392		1388	351	1388	1130	1388		1392	
Combined total	1392		1739		2518		1388		1392	

Table 9

Costs	2007 Actual Figures		Option 1: Hybrid		Option 2: Enhanced BBFC		Option 3: Enhanced PEGI		Option 4: Code of Practice	
	UK	Europe	UK	Europe	UK	Europe	UK	Europe	UK	Europe
<b>U</b>	£26,880	£0	£24,080		£543,520				£26,880	£0
<b>PG</b>	£44,400	£0	£40,700		£233,200				£44,400	£0
<b>12</b>	£51,600	£0	£345,100		£345,100				£51,600	£0
<b>15</b>	£159,600	£0	£303,360		£303,360				£159,600	£0
<b>18</b>	£111,600	£0	£105,400		£105,400				£111,600	£0
<b>3+</b>	£843,426	£0	£1,560,746			£1,560,746	£1,633,099	£0	£843,426	£0
<b>7+</b>	£244,370	£0	£452,203			£452,203	£547,812	£0	£244,370	£0
<b>12+</b>	£349,100	£0		£646,004		£646,004	£749,365	£0	£349,100	£0
<b>15+</b>	£135,451	£0		£250,650		£250,650	£496,131	£0	£135,451	£0
<b>18+</b>	£5,586	£0		£10,336		£10,336	£416,027	£0	£5,586	£0
<b>Total</b>	£1,972,013	£0	£2,831,589	£906,990	£1,530,580	£2,919,939	£3,842,433	£0	£1,972,013	£0
<b>Additional costs</b>							BBFC charge for linear material	£75,000		
<b>Combined total</b>	<b>£1,972,013</b>		<b>£3,738,579</b>		<b>£4,450,519</b>		<b>£3,917,433</b>		<b>£1,972,013</b>	

## Fees Analysis

**Table 9** demonstrates that the voluntary code of practice option would generate the least amount of additional burden on the video games industry because we would not be changing who classifies any of the titles. The next best option in terms of fees is the Enhanced PEGI option despite the increase in their charges. This is because it will mean only one organisation being responsible for classifying games in much of Europe. This also takes into account the additional costs of running the VSC as a statutory authority. BBFC currently operate the statutory function as relates to 18 classifications and consequently already have the internal mechanisms (for example, appeals systems) in place to support this. As indicated earlier, the BBFC have stated that they can reduce their handling charge from £300 to £200 through economies of scale if they rate all titles suitable for people aged 12 and above.

We also assume that with the enhanced PEGI option the BBFC will continue to rate any film or video content found on video game discs that is not integral to the game, as they currently do. This costs approximately £75,000 per year.

As the market develops and in the situation where a video game is released separately as well as in a joint package with a film, we would expect the game to be rated by PEGI and the Film by the BBFC for their separate releases – whichever was the highest age rating would prevail, although the packaging would have to be designed so that both rating systems appeared.

## **Administrative Burden Analysis**

We have been mindful of the administrative burden placed on video games companies as a result of having to have their products classified. Table 8 showed how many actual ratings are required under each of the options and this is useful when calculating how this affects the administrative burden.

We held fairly detailed discussions with several representatives from different video games companies, as well as with the BBFC and the VSC, to inform this impact assessment. We were provided with evidence to show that the cost of working hours to produce the paperwork and gather together the necessary supporting evidence is approximately £500 which equates to one day per system. There didn't seem to be any evidence that this is different for each system. So the real difference between the options comes down to the duplication of effort.



	2007 Actual Costs	Option 1: Hybrid	Option 2: Enhanced BBFC	Option 3: Enhanced PEGI	Option 4: Code of Practice
Administration costs (at £500 per games rating application)	£696,000	£869,500	£1,259,000	£694,000	<b>£696,000</b>
<b>Packaging costs (at £600 per game title), including design, proofing and admin.</b>	<b>£835,200</b>	<b>£1,043,400</b>	<b>£1,510,800</b>	<b>£832,800</b>	<b>£835,200</b>

*Table 10*

(Admin includes 3 resources: Game Producer, to compile all the submission documentation, Game Engineer, to compile and burn correct game build for submission and Game Tester, to run a test pass on the game build to be submitted for rating.)

There were two further areas of administrative burdens that could be affected by these changes; the cost of packaging including design, proofing and admin and also product assembly costs. The evidence shows that the packaging costs equate to £600 per title. Table 10 shows the estimated administrative burdens of obtaining a classification and of packaging.

The industry estimate that due to economies of scale on a combination of factors concerned with product assembly, including size of print run for inlay printing, disc printing

and shipping, their costs would represent an increase of up to £0.1 per Unit should Options 1 or 2 be implemented in the UK. For example the shipping costs will increase with the number of stock keeping units and there are several markets (Belgium, Greece, Luxembourg, Netherlands and Portugal) where English language discs are distributed. Therefore, having two separate ratings systems for the same product incurs additional costs.

While we accept that these factors would impact upon the cost to industry of having separate systems operating in the UK and Europe, the exact figures are difficult to calculate as they are dependent on the number of game units released for all games across Europe. The variance is too great to estimate an average number of units as, though the industry indicated that 88% of the games sell fewer than 200,000 units, there are games that sell many more, for example Grand Theft Auto IV sold 631,000 units in its first day of release and though this is an exceptional case it does demonstrate the market extremities when it comes to the bigger releases.

We can however use an industry example of the cost differentiation between a small and larger Game Build Run, to show the likely significant extra costs required with a UK only classification system. The example shows how dividing a Game Build Run of 130,000 (to cover the English language games shipped to the UK and a number of European countries simultaneously, under Option 3) into two smaller Runs (to cover English language games shipped just to Europe and those shipped just to the UK) creates a cost differential of £2,755, as it costs more per unit to build the smaller run. We accept that although exact figures cannot be produced the extra cost to industry, particularly affecting the smaller

companies, would be a significant amount if two separate classification systems were operating in Europe and in the UK.

In addition, some PEGI-rated games would need to carry a BBFC classification (and therefore incur additional time and human resource costs) where they included video content not integral to the game. As the industry already has to provide this information for the products they produce this should not increase the administrative burden required.

Under option 4, the Voluntary Code of Practice option, there would be no change to the industry in terms of the number of ratings required. The retail industry told us that they already go to great lengths to share information and best practice in terms of informing consumers about the existing ratings systems and do have an existing code of practice relating to them.

With the statutory power extended to all games rated for people aged 12 and above, local authorities may need to amend their guidance documents for trading standards officers which could be roughly estimated to be no more than £1000 per local authority. We estimate that this would likely be £250,000 in total. This would be the case for all options except option 4.

### **Benefits Analysis**

We used the key criteria as set out by Prof. Byron to measure the relative benefits of the four options. These are grouped together under the following set of six headings:

## A trustworthy, uniform and clear set of symbols

Currently, two sets of symbols can be found on video games in the UK; BBFC and PEGI. Much has been made of the relative merits of both of these. A widely held view (though contested by some) is that the BBFC symbols are more recognisable and well trusted, due partly to their classification of cinema and video works. Some argue that PEGI symbols are better understood by parents with younger children while others value them both and preferred the hybrid option as it gives parents access to both information sets therefore providing more information.

Many respondents, including regulators, games industry, children's groups and retailers felt that while the hybrid option could work, it is quite complicated and could be more confusing than either the enhanced BBFC or the enhanced PEGI systems. There was very little support for the voluntary code of practice option.

There was some criticism of the PEGI logos and symbols during the Byron review process and so PEGI are redesigning their age symbols. Part of this includes adding one word descriptors to the pictograms to make their meaning clear. We held some focus groups with parents and they showed a clear preference for PEGI – parents liked the added support of the new Pictograms and found them more useful than the lines of text offered by the BBFC.

Generally there was more support among non industry responses to the consultation for the existing BBFC logos although some felt that "U" was not as helpful as 3+ to parents of younger children.

The video games industry is committed to funding an extensive public awareness and education campaign should the enhanced PEGI option be chosen as the way forward for the UK. The BBFC argue that their system would require less education because of the immediate recognisability of the symbols and the extensive media literacy work and extended consumer information that they provide to parents, children and students on their websites. There is no doubt that the work done by the BBFC in this area is excellent.

On balance both the enhanced BBFC and the enhanced PEGI options would provide a trustworthy, clear and uniform set of symbols.

**A statutory basis for games suitable of people aged 12 and above, but not for games suitable for children under 12. The statutory power should include the ability to refuse to certify certain products**

Video games do not fall within the statutory classification regime set out in the Video Recordings Act 1984 unless they contain gross violence or sexual content, and if so, they must be classified by the BBFC. This means that the BBFC currently administers statutory functions for all video works (i.e. DVDs and video games).

Options 1 – 3 are all designed to ensure that all these criteria are met. Option 4 would retain the BBFC's power to refuse to classify certain games, but would not alter the statutory basis for selling games.

Under the Hybrid Classification system and the Enhanced BBFC system, the BBFC would continue to carry out the functions they currently do. Under the enhanced PEGI system we would give authority to the Video Standards Council who would oversee the PEGI system of classification for all video games in the UK. The VSC will create a mechanism to ensure an element of separation from the administration of PEGI to enact the UK specific statutory functions including the maintenance of a full archive to support law enforcement.

It is worth noting that Prof. Byron indicated that once a games classification system was fully understood by the public, the need to ban games may become less of an issue as people would understand that 18 rated games are not for people under that age.

Options 1, 2 and 3 would all offer this extension of statutory control, however option 4, the voluntary code of practice would not.

***Be flexible and future proof; be able to translate into online gaming***

One of the key factors in making this decision is that the system we end up with not only works in the future but will continue to be used and continue to be relevant. This partly means that, in an industry that is increasingly taking advantage of the new technologies and delivery mechanisms available, it will translate easily to the online environment.

Both systems have the capacity to be successfully delivered in an online environment – the existing PEGI Online for video games, and BBFC online for film content demonstrates that

well.

There were various discussions about either system's ability to cope with the demands of an increasingly online media. However, we concluded that either organisation would expand with increasing demand as both fee structures enable the respective organisation to cover costs.

Several respondents to the consultation thought that having a system that works across borders would be more effective in the online environment and we believe that to be true. The Digital Britain interim report said that online content regulation should combine effective enforcement of the law of the land, constructive use of technology and self regulation. It is this last point that is the most pertinent; the games industry developed a self regulatory regime, not just in one territory but across much of Europe. This creates an international solution to address what is an increasingly global issue and means that UK consumers will be familiar with the ratings system and symbols used across Europe. If they are buying or playing games from websites across Europe they will understand the content within them, and UK parents can look out for those trusted symbols in the games that their children play. We believe that building on this system and strengthening it with the added layer of UK statutory control creates the system that will work best for UK consumers now and in the future.

This system was designed for games and as the next section shows, the games industry signs up to it completely – this also means that it has a greater chance of being used in the online world. This is particularly important as more content is being generated online. As

new ways of developing interactive video game content develop, we think that a system which is strongly supported by the industry will have greater flexibility to adapt.

The option which has the most flexibility for the future and more chances of being successfully adopted in an online self regulatory environment is option 3, Enhanced PEGI.

### *Work for the games industry*

The respondents to the consultation were very clear on this section, the Enhanced PEGI option is the one preferred by the video games industry and the one that they say works best for video games. It was designed for video games and has worked well in the UK and in much of Europe since its inception in 2003. Currently the majority of video games are rated under the PEGI system in the UK.

The issues mentioned earlier – about the transition to the online world formed a significant part of the reasoning but there were other factors too – not least the impact on industry in financial terms outlined in the costs section above.

The Code of Practice option does not address this criterion as it will maintain the status quo about who rates what, and means that it is harder for the games industry to promote their messages about safe gaming as there are two systems to describe. This argument also translates to the hybrid option which also will use two systems, but with additional burden for the games industry.



There were more fundamental points made about the different approaches made by both systems, although we need to be clear that both systems are effective at producing appropriate ratings for video games. The main difference seems to be between the fairly clear cut set of standards set out in the PEGI questionnaire compared with the BBFC guidelines which the industry argue are less clear and so harder to judge content against. Where the latter causes problems for the industry is the expense and effort involved in making cuts to products once they have been completed. In film, cuts work very effectively. In video games, cuts are much harder, and more expensive to achieve as they involve amending the software codes.

Therefore games developers need a sharper sense of what is and is not appropriate at the margins of the age ratings when they are developing the game. Particularly in the current economic climate, a games company wants to feel comfortable that it is going to be able to sell a game to the market it has specified in its projections. Thus the studio wants to limit the potential for producing a game that does not then get the rating it expected; neither does it want to have to make cuts if it can be avoided. This would mean wasting coding and art that cost a great deal of money to produce in the first place. It does seem that games companies are more confident with PEGI than the BBFC in this respect although the BBFC themselves state that they carry out initial discussions with games companies when this is requested, giving advice ahead of the final submission.

The PEGI system has been strengthened over the last year: they are exploring new ways of providing extended advice to consumers and have improved their symbols to the point where the parents in our independent focus groups preferred them over the BBFC

information. PEGI is more than just a tick box system; the first stage remains a company led questionnaire, and this is followed by a PEGI administrator playing the game and checking that the game meets the requirements of the guidelines. PEGI are working to improve this process further.

The Enhanced PEGI system will build on these improvements and strengthen them further with the oversight of a robust UK statutory authority. We believe that this option, above the others works better for the games industry.

### ***Support retailers***

Different people had different views as to the impact each of the options would have on retailers. Crucially the retailers themselves said that they would prefer a single system, so either Enhanced BBFC or Enhanced PEGI, as communicating to their customers would be simpler as would the provision of information about the symbols.

### ***Reflect evidence of potential harm***

Prof. Byron recommended that games rated 12 and above should come within the statutory framework. She considered 12 to be the age at which games become demonstrably more violent and also the age below which children are more vulnerable to the content found within them. In that sense options 1 – 3 all equally address this point.

Very few respondents directly referred to this issue in their responses to the consultation but the Child Exploitation and Online Protection Centre (CEOP) favoured both Enhanced

BBFC and Enhanced PEGI – though not the Hybrid or the Voluntary code of practice option.

The way in which the age ratings are determined differs for the BBFC and PEGI. While the BBFC take context into consideration and have an arguably more sophisticated approach to determining the right age, PEGI do not, and their guidelines are clearer cut. This has the effect of quite a few games receiving different ratings in each system, some are rated higher by PEGI, and some are rated higher by BBFC.

On balance we believe that the first three options all equally reflect the evidence of potential harm, while the voluntary code of practice option does not due to the lack of statutory backing for all games rated 12 or above.

### *Conclusion*

From all the available evidence, we believe that the Enhanced PEGI option is the best solution to the key criteria set out by Prof. Byron in her Report. Not only that but it combines the strength of a UK statutory body with the flexibility and consistency of approach across Europe and online.

It is a close call, both the BBFC and PEGI could do this job well, and there are compelling arguments for both, but the ability to make a change now that will see parents and children better protected in the future is an important consideration.

Additional policy objective

During the Bill's passage through the House of Lords the Government has added a new section to the Video Recordings Act 1984. This gives a Regulation making power to the Secretary of State to amend Section 2 of the Video Recordings Act 1984. This will allow changes to the content criteria which bring otherwise exempted video works back within the scope of the Act. This is to reflect the changing nature of content in video works and to ensure that the child protection purpose of the Act is properly undertaken. This section will not have any impact in itself, but at the point at which the power is used there could be an impact. The Government will give a commitment to review the wording of Section 2 by the Autumn 2010 and this review will include a consultation and a full impact assessment.

### **Small Firms Impact Test**

In order to receive a rating in the UK, a video game publisher must pay the classification rating body a classification fee and cover related administration costs.(For a break down of all costs for each option consulted on, see Evidence Base). There are approximately 60 video games publishers ranging in size from 2 staff to over 100 and they provide for this requirement before the release of a game accordingly. From the information the industry provided, in response to the public consultation and also to specific requests for evidence, the main concerns industry have expressed are in relation to the duplication of flat rating fees and administration costs. Under the chosen option no duplication would occur as the same ratings submission process would apply across Europe with no separate system for the UK.

Concerns around the ratings process prior to final submission have also been raised by industry. They have experienced delays with the process and a lack of clarity on classification criteria, which they are worried may continue under some of the options.

Delays to games' release dates can have a significant impact on costs, which may have a serious impact on the smaller publishers. Development companies may also be affected should the ratings body recommend changes need to be made to the game before a particular classification can be awarded. There are approximately 170 games developers in the UK, some of which are facing endemic financial challenges, and if they have to assign resource to alter the game coding after the game has been submitted for classification this would be an extra financial burden.

The chosen Enhanced PEGI option has the confidence of the industry that it will not unduly add to their costs, both in terms of time, resources or financially.

## **Equality**

The chosen classification system will award ratings on the basis of criteria drawn from research into national (and Europe wide) public sensibilities. In this way, the classification system will take account of the diverse viewpoints held by UK citizens and appropriately reflect cultural sensitivities.

The criteria the system uses also specifically consider elements of content such as racial or other discrimination, for which the highest rating can be awarded should the game contain elements of intolerance or other public offence. The new system will also have useful pictograms accompanying the age rating symbols and text content description, taking into consideration people living in the UK but who do not have English as their first language.

## **Human Rights**

The new system will make powers to ban particular games available to the statutory classification body. The Human Rights Act 1998, Article 10 sets out the right to freedom of expression, which is of relevance to the power to ban a particular cultural creation. However, as a qualified right, the law states that this right requires a balance between i) the rights of an individual to hold opinions and to receive/impart information and ideas and ii) the needs of the wider community in a democratic society to protect interests such as the prevention of crime and the protection of health/morals. The statutory classification body for video games would only exercise its power to ban a game should that game contain unacceptable content, the definition and parameters for which to be set out in the relevant legislation. The current classification body already has this power and so it would not represent a change to this particular aspect of the system other than a refinement of the banning criteria.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	No	No

# MATCHED PENALTIES

Department /Agency:  
**Intellectual Property Office**

Title:  
**Equalisation of penalties for online and offline intellectual property (IP) offences**

Stage: Final

Version: Final

Date: 12 April 2010

Related Publications: <http://www.ipso.gov.uk/pro-policy/policy-information/policy-notices.htm>  
<http://www.ipso.gov.uk/pro-policy/consult/consult-closed/consult-closed-2008.htm>  
<http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf>

Available to view or download at:

<http://www.ipso.gov.uk/londoneconomicsreport.pdf>

Contact for enquiries: Paul Worthington

Telephone: 01633 813650

**What is the problem under consideration? Why is government intervention necessary?**

Copyright infringement is a serious economic crime; it is estimated that the loss from piracy to the UK film, TV and music industries is over £630m and some 26% of all software on PCs in the UK is unlicensed (IP Crime Report 2008/09). It is important that the penalties available are proportionate to the harm caused to UK industries and that they act as an effective deterrent. There is also evidence of widespread unlicensed dissemination of copyright material over the internet. The policy follows through on the Government's agreement to take forward the recommendations of The Gowers Review of IP; Gowers Recommendation 36 called for equalisation of penalties for online and offline copyright infringement.

The existing intervention in the market, which is that of establishing intellectual property rights, allows the market to operate efficiently. However, further intervention is required to ensure the continued effectiveness of the intellectual property regime given the presence of new technology.

**What are the policy objectives and the intended effects?**

To ensure that the courts hand down effective penalties for online copyright offences given the increased opportunities for copyright infringement that technology offers. Copyright offences are usually committed for economic gain and the Government wants to ensure that the courts have effective remedies to deny offenders the profits of their crimes.

**What policy options have been considered? Please justify any preferred option.**

The IPO in August 2008 published a consultation document offering 3 options:

- Make no change to the law and rely on the Proceeds of Crime Act 2002 to provide a means of depriving offenders of the profits of IP crime
- Increase the statutory maximum fine which could be imposed through summary proceedings to £50, 000 for a number of offences under the Copyright, Designs and Patents Act 1988 (CDPA)
- Introduce an exceptional statutory maxima of £50, 000 for all IP offences

Option 3 would give the courts the ability to take account of profits made from infringement, and was therefore seen as the preferred option. In addition, a majority of the responses to the consultation supported the approach set out in Option 3. Two areas of legislation require amendment and the proposal is therefore to introduce a £50, 000 exceptional statutory maxima for copyright infringement in s.107 and for use of illicit recordings in s.198 of the CDPA.

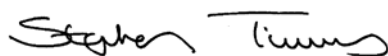
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

5 years from the introduction of the first regulations under the power(s).

**Ministerial Sign-off** For final proposal/ implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a)it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister:



.....Date: 8 April 2010



## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b> Equalisation of penalties for online and offline intellectual property offences
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;"><b>One-off</b> (Transition)</td> <td style="width: 30%; text-align: center;"><b>Yrs</b></td> </tr> <tr> <td style="background-color: #ffffcc;">£</td> <td></td> </tr> </table>				<b>One-off</b> (Transition)
	<b>One-off</b> (Transition)	<b>Yrs</b>			
	£				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;"><b>Average Annual Cost</b> (excluding one-off)</td> <td></td> </tr> <tr> <td style="background-color: #ffffcc;">£</td> <td></td> </tr> </table>	<b>Average Annual Cost</b> (excluding one-off)		£		
<b>Average Annual Cost</b> (excluding one-off)					
£					
<b>Total Cost (PV)</b>		<b>£ Unknown</b>			
<p><b>Other key non-monetised costs</b> by 'main affected groups'</p> <p>There will potentially be some additional costs incurred by enforcement agencies and the courts. This would be as a result of any increased workload in identifying and prosecuting offenders. However, it is not possible at this stage to estimate this. There will also be costs incurred in updating sentencing guidelines to courts.</p>					

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;"><b>One-off</b></td> <td style="width: 30%; text-align: center;"><b>Yrs</b></td> </tr> <tr> <td style="background-color: #ffffcc;">£</td> <td></td> </tr> </table>				<b>One-off</b>
	<b>One-off</b>	<b>Yrs</b>			
	£				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;"><b>Average Annual Benefit</b> (excluding one-off)</td> <td></td> </tr> <tr> <td style="background-color: #ffffcc;">£</td> <td></td> </tr> </table>	<b>Average Annual Benefit</b> (excluding one-off)		£		
<b>Average Annual Benefit</b> (excluding one-off)					
£					
<b>Total Benefit (PV)</b>		<b>£ Unknown</b>			
<p><b>Other key non-monetised benefits</b> by 'main affected groups'</p> <p>There will potentially be benefits to the Exchequer through fines levied on those convicted of offences. Indirect benefits to business through a reduction in pirated goods and an increase in legal sales of their products.</p>					

**Key Assumptions/Sensitivities/Risks**  
It is not possible at this stage to estimate the benefits.

Price Base Year: 2009	Time Period Years : 10	<b>Net Benefit Range (NPV)</b> <b>£ Unknown</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ Unknown</b>
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	2011			
Which organisation(s) will enforce the policy?	Magistrates' Courts, Sheriffs' Courts			
What is the total annual cost of enforcement for these organisations?	Unknown			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	Yes			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes; will have a positive impact			
Cost (£-£) per organisation (excluding one-off)      £0	Micro	Small	Medium	Large
Are any of these organisations exempt?				

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>				(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	<b>Net Impact</b> <b>£ 0</b>

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

## Evidence Base (for summary sheets)

### Background

IP crime poses a serious challenge to the UK economy. The Rogers Review estimated that criminal gain from IP crime in the UK in 2006 was £1.3 billion. More specifically, there is evidence from industry and other IP crime data of widespread dissemination of unlicensed copyright material on a commercial basis over the internet. This is an infringement of s.16 and, in some circumstances, s.107 of the Copyright, Designs, and Patents Act (CDPA). S.16 outlines the rights which the owner of a copyright has in a work while s.107 defines the offence of unauthorised copying of protected works and relates to CDs and DVDs (music, film, software and games) publications, books etc.

It is also an offence to make an illicit recording available to the public under s.198(1A) S.198 relates to illicit recordings, that is to say the making of or dealing with recordings of a performance without the consent of the performer (often called 'bootlegging').

The right of making available, which is essentially the right to distribute a work online, was introduced into CDPA by the 2003 Regulations. These implemented Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 which was designed to harmonise certain aspects of copyright and related rights in the European Community.

In December 2005, the Government commissioned a review of IP led by Andrew Gowers examining all elements of the IP system. The Review, published in December 2006, found the system to be broadly satisfactory, but set out a range of recommendations for action which the Government agreed to take forward. Recommendation 36 stated that there should be equalisation of the penalties for online and offline infringement.

At present, there is a maximum 10 year sentence which could be imposed for other types of copyright infringement. However, it is Government policy that custodial sentences should be used primarily for serious and dangerous offenders and that sentences should only be as long as necessary for punishment and public protection. The Crown Courts already deal with the more serious IP offences under general law such as the Fraud Act 2006.

### **Rationale for Government Intervention**

The current law does not provide consistent penalties to deal with online and physical copyright infringement. Copyright infringement is a serious economic crime - the evidence from the IP Crime Report 2008/09 clearly supports this. It is important that the penalties available are proportionate to the harm caused to UK industries and that they act as an effective deterrent. The intended effect of the changes is to allow the courts to deal effectively with copyright infringement. Copyright offences are usually committed for economic gain and the courts need to be able to award appropriate fines to deprive offenders of the profits from such offences.

The Gowers Review identified that the Copyright, Designs and Patent Act 1988 (CDPA) does not currently provide fair and adequate penalties for copyright offences. In relation to those who commercially deal in infringing goods or those who distribute goods other than in the course of business to an extent which prejudicially affects the rights holder the maximum penalty is ten years' imprisonment. In contrast, those who commit online infringement by communicating the work to the public (whether commercial or otherwise) may be sentenced

up to two years imprisonment. The commercial showing or playing in public of a work carries a maximum of 6 months imprisonment or a level five fine.

In response to several submissions, the Gowers Review (2006) proposed that penalties for online and physical copyright infringement should be consistent. 'Creative Britain – New Talents for the new economy', published by the Government in 2008, referred to the Government's intention to consult on introducing exceptional summary maxima in the Magistrates' Courts for offences of online and offline physical copyright infringement.

The existing intervention in the market, which is that of establishing intellectual property rights, allows the market to operate efficiently. However, further intervention is required to ensure the continued effectiveness of the intellectual property regime given the presence of new technology.

### **Appraisal of Options**

The IPO and Ministry of Justice together examined ways in which Gowers Recommendation 36 could be carried forward. The IPO in August 2008 published a consultation document offering 3 options:

*Option 1: Make no change to the law and rely on the Proceeds of Crime Act 2002 to provide a means of depriving offenders of the profits of IP crime*

The existing legislation under the Proceeds of Crime Act 2002 (POCA) provides a powerful means of seizing the profits from IP crime and punishing offenders. POCA already makes provision for IP crime to be dealt with by summary conviction or conviction on indictment.

However, this Option has limitations as the fines are restricted to the statutory maxima (£5,000 in England and Wales and £10, 000 in Scotland).

***Option 2: Increase the statutory maximum fine which could be imposed through summary proceedings to £50, 000 for a number of offences under CDPA***

The introduction of an exceptional statutory maxima of £50, 000 for copyright offences would only allow the courts to take account of the profit that an offender has made from their crimes in a particular case. However, there were concerns in relation to this Option; courts should set the level of fine based on the facts of the individual case, rather than a level being set for all copyright offences.

***Option 3: Introduce an exceptional statutory maxima of £50, 000 for all IP offences***

Many prosecutions are often pursued in relation to goods that both incur copyright and trade mark offences. Again for this option it might be appropriate to apply different maxima for different offences. However, adopting this Option and setting a maxima of £50,000 for all offences will allow the courts to take full account of the "profits" made by an offender from his crimes and award an appropriate fine.

Option 3 would give the courts the ability to take account of profits made from infringement, and was therefore seen as the preferred option. In addition, a majority of the responses to the consultation supported the approach set out in Option 3. However, in order to address the discrepancies between online and offline infringement, only 2 areas of legislation required amendment. Those are a £50, 000 exceptional statutory maxima for

copyright infringement in s.107 and for use of illicit recordings in s.198 of the CDPA. The proposal is therefore to introduce a £50, 000 exceptional statutory maxima for copyright infringement in s.107 and for use of illicit recordings in s.198 of the CDPA.

An increased financial penalty would serve as a stronger deterrent for these crimes, which supports the increase in the maximum fines that can be imposed under s.107(4A)(a) and s.198(5A)(a) from the current statutory maximum of £5, 000 in England and Wales and £10, 000 in Scotland to £50, 000. This would also reflect the rapid growth in digital accessibility and the parallel growth in online IP crime, and enable the courts to deal effectively with both online and offline copyright offences.

### **Benefits**

IP infringement is a significant cost to the creative economy, software industry and the research and development sector:

- It is estimated that 26% of software installed in the UK in 2007 was unlawful. A 10% reduction in software piracy in the UK would generate 30, 000 jobs and contribute £11bn to the official UK economy (British Software Alliance).
- The total industry loss from piracy (Film & TV series) in the UK was estimated to be £486 million in 2007, up from £459 million in 2006 (IP Crime Report 2008/09)
- The total annual value of lost sales to UK industry through music piracy is estimated to be £165 million, with an estimated 45% of UK pirate purchases resulting in a lost sale (IP Crime Report 2008/09).

The policy aims to reduce the level of piracy and therefore UK business would benefit. There will also potentially be a benefit to the Exchequer through fines levied on those convicted of offences.

The exceptional statutory maxima does not introduce any new criminal offences, nor does it extend the scope of any existing criminal offences. However, it does increase the maximum fine that may be issued for existing criminal offences in relation to copyright, and serve as a stronger deterrent. This will prove beneficial to the enforcement regime supporting IP rights.

### **Costs**

There are no anticipated costs to business.

There will be costs incurred in transition, including the costs of man-hours required to enact a change in the law, and to enforcement agencies and the courts in identifying and prosecuting offenders. However, it is not possible at this stage to estimate these costs.

### **Competition Assessment**

We have considered the questions posed in The Office of Fair Trading competition assessment test and conclude that the introduction of matched penalties for copyright infringement is unlikely to hinder the number or range of suppliers. There may be a positive impact on competition as firms would have less concern about IP crime and may therefore be more willing to develop.

### **Small Firms Impact Test**

The financial penalties would have a positive impact for small firms as it would provide them with strengthened support for IP rights in copyright.

### **Equality Assessment**

*Race equality* – No known differential impacts by race.

*Disability equality* – No known differential impacts related to disability and equality.

*Gender equality* – No known differential impacts by gender.

Further information can be found in the Digital Economy Act 2010 Equality Impact Assessment.



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

## PUBLIC LENDING RIGHT

<b>Department /Agency:</b> Department for Culture, Media and Sport (DCMS)	<b>Title:</b> Impact Assessment of Public Lending Right amendments	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> 12 April 2010
<b>Related Publications:</b>		

Available to view or download at: [www.culture.gov.uk](http://www.culture.gov.uk)

Contact for enquiries: Abigail Smith

Telephone: 020 7211 6124

### What is the problem under consideration? Why is government intervention necessary?

Currently only printed books can be registered for Public Lending Right (PLR) payment. In 2008-09 authors received £6.6 million of £7.4 million in grant-in-aid, the remainder was used to administer the Scheme. Lending rights for non-print formats are conferred and protected by copyright law, but it is for rights holders and library services to make appropriate arrangements to license loans. We believe regular formal licensing arrangements are rarely achieved to the satisfaction of libraries or rights holders. The market has not and cannot of itself be expected to deliver an efficient outcome or overcome co-ordination failure. These proposals would extend eligibility for compensation under PLR to rights holders of non-print book formats, including authors, narrators and producers.

**What are the policy objectives and the intended effects?** Extending eligibility of the PLR Scheme to non-print book loans, extending PLR to lending rights holders in respect of these non-print works and expanding the definition of a 'loan' to also include digital media loans from library premises will provide more equitable compensation for similar categories of rights holders, and will update the 1979 PLR legislation to keep abreast of the growth of non-print book loans. It will remove the need for individual or national negotiations between libraries and rights holders to enable lawful loan of non-print books under copyright legislation. It will simplify arrangements for adequate payment and protection for such rights, demonstrate the government's commitment to innovation in publishing, and support the growth of non-print lending.

### What policy options have been considered? Please justify any preferred option.

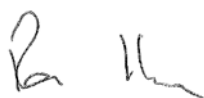
- Option 1 - Status Quo
- Option 2 - Nationally or individually negotiated licensed lending
- Option 3 - Extension of PLR to all right holders of non-print book formats (preferred)

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** 2013 (We would need at least one full year's operation to have reliable data. Expansion could only be implemented through secondary legislation following further consultation and only when funding could be guaranteed).

### **Ministerial Sign-off** For final proposal/ implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a)it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

*Signed by the responsible Minister:*



Date: 8 April 2010

## Summary: Analysis & Evidence

<b>Policy Option: 3</b>	<b>Description: Extension of PLR to all rights-holders</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' Exchequer funding of approximately £300,000 may be required as additional grant for payments to rights-holders of non-print books. One off set up costs of £60,000. Costs of ongoing administration expected to be absorbed within existing arrangements
	<b>One-off (Transition)</b> <b>Yrs</b>	
	<b>£ 60,000</b>	
	<b>Average Annual Cost (excluding one-off)</b>	
	<b>£ 300,000</b>	<b>Total Cost (PV)</b> <b>£ 360,000</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Rights Holders no longer able to negotiate individually. Required to register on central scheme. Libraries to provide data on non-print book loans (negligible) PLR required to administer addition registrations and scheme.		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' Rights holders of non-print books could benefit from up to £300,000 in additional payments.
	<b>One-off</b> <b>Yrs</b>	
	<b>£ -</b>	
	<b>Average Annual Benefit (excluding one-off)</b>	
	<b>£ 300,000</b>	<b>Total Benefit (PV)</b> <b>£ 300,000</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Removes need for libraries and rights holders to contract lending individually. Library users may have greater choice and availability of non-print books		

**Key Assumptions/Sensitivities/Risks** That costs of administering the expanded scheme will be met from within existing resources by PLR after year one. That funding will be made available to extend payments under the scheme. That libraries will continue to loan print and non-print books, albeit with potential for fluctuation in the market.

<b>Price Base</b> Year: 2009	<b>Time Period</b> Years : 10	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	UK/EEA <sup>103</sup>								
On what date will the policy be implemented?	2011 <sup>104</sup>								
Which organisation(s) will enforce the policy?	PLR Office <sup>105</sup>								
What is the total annual cost of enforcement for these organisations?	c£360,000 <sup>106</sup>								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	Yes								
What is the value of the proposed offsetting measure per year?	£ Not applicable								
What is the value of changes in greenhouse gas emissions?	£ Not applicable								
Will the proposal have a significant impact on competition?	No								
Cost (£-£) per organisation (excluding one-off)      £0	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Micro</td> <td style="width: 25%;">Small</td> <td style="width: 25%;">Medium</td> <td style="width: 25%;">Large</td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">N/A</td> </tr> </table>	Micro	Small	Medium	Large	N/A	N/A	N/A	N/A
Micro	Small	Medium	Large						
N/A	N/A	N/A	N/A						
Are any of these organisations exempt?	N/A								

<b>Impact on Admin Burdens Baseline (2005 Prices)</b>		(Increase - Decrease)
Increase of      £	Decrease of      £	<b>Net Impact</b> £

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

<sup>103</sup> The PLR Scheme provides payment in respect of loans of books from UK libraries, but it is open to any author living within the European Economic Area (EEA).  
<sup>104</sup> Following enactment of legislation, PLR will need to consult on any proposed scheme prior to its introduction.  
<sup>105</sup> The Public Lending Right office is based in Stockton on Tees. Overall responsibility for PLR lies with the Registrar, and he is supported by 12 members of staff providing Author Services and Corporate Services.  
<sup>106</sup> Registration for PLR is voluntary and not, therefore, enforced. In 2008-09 the PLR received £7.4 million pounds in grant-in-aid, of which £6.6 million was distributed to authors. Remaining GIA (c£800,000) was used to administer the Scheme. No net increase in GIA will be required to administer an expanded Scheme after year one but £300,000 would be needed to cover additional payments to rights holders.

### **Why does PLR exist**

In 1979 Parliament recognised that authors should be compensated for loss of income caused by the free loan of their printed books from public libraries in the UK and established the Public Lending Right (PLR) to coordinate payments to authors. PLR has since been recognised by Directive 2006/115/EC on rental right and lending right and 28 other countries now have PLR payment schemes.

The 35,000 EEA resident authors registered for PLR at March 2009 includes writers and other contributors (e.g. illustrators/photographers, translators, editors) and around 24,000 of them qualify for payment annually. While nearly 90% of payments made to authors in February 2009 were for less than £500, research shows that many authors come to rely on their PLR money as an essential part of their income. The continuation of PLR demonstrates Government commitment to the development of literature and creativity.

### **Why should PLR be extended**

PLR legislation has not been amended to reflect the growing market for books in non-print formats such as audio and e-books. Libraries are meeting consumer demand for books in other formats but only authors of printed and bound books receive PLR payments. There is no coordinated compensation for creators of non-print books. Instead, they must negotiate compensation for their lending rights independently with the 210 library authorities in the UK.

The extension of PLR has a number of benefits (explored in more detail below) but these are primarily:

- The changes will smooth the process of digital lending for libraries (within the library premises) and remove the need for libraries to negotiate individual contracts with publishers. This is therefore likely to encourage digital lending.
- Authors will receive an appropriate return on their work regardless of the format in which it is produced because remuneration processes will function more effectively, and
- A wider selection of books in non-print formats may become available to library users, ensuring libraries remain relevant to users in the digital age and potentially more attractive to children and young people.

### **Impact of taking no action**

It is our understanding that regular formal licensing arrangements are not always achieved to the satisfaction of libraries or rights holders and consequently the current system may not be adequately protecting rights holders. Extending PLR to non-print book formats would ensure that lending could not contravene the Copyright Designs and Patents Act 1988. The library sector is the main market for unabridged audiobooks. It is possible that creators may be reluctant to enter a market which does not compensate them sufficiently and that this may consequently be restricting growth in unabridged audiobook production.

### **Benefits of extending PLR**

The extension of PLR to creators of audiobooks presents an efficient solution to the existing co-ordination failure by transferring responsibility to an established central body (the PLR) which is already equipped to capture data and make payments to authors. This would

ensure horizontal equity of the intellectual property in non-print books with that of print book creators and would relieve the significant burden non-print rights holders or their representatives are under to negotiate licences individually. Expansion may also have the effect of standardising and simplifying contracts, ultimately saving money for small firms, and eliminating the risk of rights going unprotected and unenforced through unlicensed loans.

We suspect, but have been unable to confirm as yet, that a percentage of the sale price paid by the library to publishers may currently be passed on to rights holders as compensation for loss of income realised through lending. It is therefore possible that, once rights holders are being compensated through PLR instead, the retail price of these products could fall. This guaranteed source of income might incentivise rights holders to enter the market who would otherwise be put off by the bureaucratic complexity of licensing negotiations. This could in turn encourage investment in product development and, as more titles become available in more and newer formats (e.g. on CD, as digital download within the library or loaded and loaned on hardware etc), demand for this material in libraries could increase, stimulating increased sales at more competitive prices leading to improved consumer choice.

We know that, in order to recoup the costs of provision, most libraries currently charge customers for loan of audiobooks if they are not entitled to price concessions. The national average charge is not known, but checks of library websites suggest a charge of £1.50 per item is common. We predict that, if the retail price of this material falls, it may become possible to review the policy of charging for audiobook loans.

### **Burdens on local government**

The PLR Scheme requires the Registrar to reimburse library authorities for costs incurred while participating in the PLR library sample. There are consequently no financial burdens on authorities of compliance.

### **Current arrangements and costs**

In 2007-08, UK libraries made approximately 308 million book loans.

In 2007-08 around 24,000 authors who had registered under PLR received payments totalling £6.6m in accordance with how often a selected sample of UK Public Libraries lent out their books. Payments are made to applicants who have registered titles which have recorded sufficient borrowing to receive a payment.

The rate per loan for books borrowed in 2008-09 was 5.98 pence. A minimum payment threshold of £1 applies and payments of less than £50 were made to 66% of authors. This accounted for 5% of the author fund. No author may earn more than the maximum payment of £6,600 in one year. 27% of the author fund is distributed to around 1% of authors.

In 2007-08 public libraries in the UK lent 11 million audio books, but no payments were made to rights holders through PLR because the scheme does not extend to books in non-print formats.

If payments to rights holders of non-print books were calculated on a similar basis to the existing scheme, where the rate per loan increased to 6.29p for 2009-10, the estimated cost of extending the scheme could be in the region of £300,000.

### **Calculating cost**

Performers and producers of audiobooks are each conferred with their own exclusive lending rights under copyright law, in addition to those of writers. This reflects the view that

they play an important role in making these formats a new and unique creation, not just a different format of the same printed volume.

Extending PLR to non-print books will effectively remove the ability of rights holders to assign the lending rights for their work to libraries. To adequately compensate for this loss of contractual freedom the rate per loan paid to narrators and producers will need to reflect the level and volume of remuneration they receive from libraries under the current contractual market model.

If the market currently compensates authors, narrators and producers equally with the equivalent of an equal share of a 6.29 pence rate per loan, the maximum cost of extending the Scheme (based on 11 million loans of which 80% are eligible, that each rights holder is registered and no loans fall below or above the thresholds for payment) would be £554,000.

% rights holders registering	No. eligible loans	Additional GIA required based on 6.29p/loan
100	8,800,000	£ 554,000
75	6,600,000	£ 415,000
50	4,400,000	£ 277,000
40	3,520,000	£ 221,000
25	2,200,000	£ 138,000

In practice, while the number of titles, authors and loans can affect the value at which the rate per loan is set, the rate per loan must ultimately be affordable within the limits of grant-in-aid. Further consultation will follow which will establish the detail of the Scheme, including the share of the rate per loan paid per rights holder in respect of works in these



non-print formats prior to settlement via statutory instrument under the terms of the PLR Act 1979.

The market for audiobooks and e-books (generally as an alternative format to an existing printed work) is small in comparison with print publishing – 3,774 audiobooks and an estimated 6,000 e-books were published in the UK in 2008 compared to 120,947 printed titles – and this is reflected in library collections (2,588,846 audiobooks available for loan in 2007/08 compared to 75,809,658 printed books) so the number of registrations resulting from an extension of PLR to these formats would be relatively small.

We believe it is highly unlikely that the assumptions around eligibility of non-print books, registered authors and all loans falling within the eligibility threshold (please see next section) would materialise. Of the top 100 audio book loans for 2007-08, at least 20 authors would be ineligible for payments under PLR, even if the scheme was extended. In 2007-08 only 44% (134.5m) of the 308m print book loans were eligible for PLR funding. It may be reasonable therefore to estimate that up to 50% of audiobook rights holders would not be eligible to receive PLR payment.

We therefore estimate that the likely cost of extending the scheme would necessitate additional grant in aid of around £300,000 if expansion of the Scheme is to be achievable, though the figure could be less. Secondary legislation implementing the expansion of the Scheme would not be brought into force until adequate funding was available to make payments to additional rights holders in respect of the non-print book formats.

### **Eligibility**

At the time of application an author must have his/her only home or principal home in the UK or in any of the other countries within the European Economic Area (ie EC Member

States plus Iceland, Norway and Liechtenstein). The UK does not include the Channel Islands or the Isle of Man. If an author has more than one home, the principal home is the one where the author spent most time during the 24 months before his/her application.

A book is eligible for PLR registration provided that:

- it has an eligible contributor
- it is printed and bound (paperbacks counting as bound)
- copies of it have been offered for sale
- the authorship is personal (ie not a company or organisation)
- it has an ISBN (International Standard Book Number)

Books that are wholly or mainly musical scores, newspapers, magazines and journals, and Crown Copyright publications are not eligible for PLR.

To qualify for PLR an author should be named on the title page of the book they have registered or be entitled to a royalty payment from the publisher (but they do not have to own the copyright). When two or more contributors are involved they must divide the PLR between them. This is done on the basis of percentage shares which they must agree before applying for registration.

Every contributor named on the title page of a book needs to be consulted when agreeing percentage shares and the agreed division should reflect contribution. Each eligible contributor may then submit a separate application. The following types of contributor must be taken into account:

- Writers - share to reflect contribution

- Illustrators/photographers - share to reflect contribution even if paid by fee
- Translators - share fixed at 30%
- Original author - even if out of copyright or deceased a notional share should be allocated to reflect contribution
- Adaptors/Re-tellers - 80% of the text share (after the illustrator's share is allocated) where the original author is named on the title page or 100% of the text share where no original author is named
- Ghost writers - share to reflect contribution if named on the title page or entitled to royalties from the publisher
- Editors/compilers/abridgers/revisers - share to reflect contribution.

Audio and e-book files downloaded remotely i.e. from outside library premises, will not be eligible for PLR payment. Lending is defined as one loan to one reader of each electronic work held (unless the library has the appropriate permission to make concurrent loans of the work) and will ensure that lending is for a limited period only. Following amendment of the PLR Act 1979, the detail of the extension to books in other non-print formats will be implemented through secondary legislation following further consultation with stakeholders.

### **How information is gathered**

Under the PLR Scheme details of book loans are collected from a sample of around 30 of the 210 public library authorities throughout the United Kingdom. For the year July 2008 - June 2009 PLR collected data from 912 branches. From July 2009 PLR will be collecting data from approximately 854 branches. The number of branches varies depending on which

authorities are sampled. The loans data is collected by sample library computers over the period of a year (1 July - 30 June) and is transmitted to the PLR computer at regular intervals.

About 65% of public library authorities in the United Kingdom have participated in the PLR sample since the Scheme began in 1982. At least seven of the sample authorities are changed each year. Loans data is collected from several (or all) library branches within each authority.

PLR is restricted to loans of books from public libraries. Book loans from university, college, school and other libraries do not qualify for payment.

### **Number of Authors Registered**

Since registrations began in September 1982 about 1,200 new authors have been added to the Register each year, and an average of 15,000 shares in books registered. There are no signs of this annual increase in numbers diminishing. As of March 2009 there were over 35,000 registered authors, of whom around 24,000 qualify for payment each year.

The enhancements to PLR's electronic registration service have played a significant role in contributing to this growth (61% of first-time registrations are now received online and 67% of subsequent book registrations are also received electronically.) It is anticipated that with one off administrative costs of around £60,000 the scheme could be extended to include rights holders of non-print books.

## Payment distribution

Most recently available figures are as follows:

Table 2  
**Payment Distribution**

23,773 authors and assignees (23,940 in 2007-08) qualified for payments.  
The numbers of authors in the various payment categories were as follows:

	<b>2008-09</b>	<b>2007-08</b>
<b>Authors Earning:</b>	<b>26th Year</b>	<b>25th Year</b>
£6,000.00 - £6,600.00	269	277
£5,000.00 - £5,999.99	83	82
£2,500.00 - £4,999.99	379	375
£1,000.00 - £2,499.99	784	797
£500.00 - £999.99	932	897
£100.00 - £499.99	3,507	3,591
£50.00 - £99.99	2,150	2,190
£1.00 - £49.99	15,669	15,731
<b>No of Authors</b>	<b>23,773</b>	<b>23,940</b>
<b>Expenditure</b>	<b>6,630,381</b>	<b>6,657,280</b>

An analysis of the distribution of money for the twenty sixth year to authors by payment category shows:

	<b>£</b>	<b>%</b>
£6,000.00 - £6,600.00	1,763,805	27
£5,000.00 - £5,999.99	445,110	7
£2,500.00 - £4,999.99	1,343,193	20
£1,000.00 - £2,499.99	1,245,562	19
£500.00 - £999.99	664,438	10
£100.00 - £499.99	810,864	12
£50.00 - £99.99	153,250	2
£1.00 - £49.99	194,159	3
	<b>100</b>	

## Small Firms Impact

We are conscious that many of the authors that would benefit were PLR extended to books in non-print formats could be registered as 'micro' sized firms. Over 95% of VAT & PAYE based enterprises in the book publishing industry (SIC (2003) 22.11) employ fewer than 50 staff. These small-to-medium-sized publishing houses could have contracts with the author

micro businesses. This would place the impact of this proposal disproportionately on SME businesses.

However, we believe the impact of this proposal on micro or SME businesses would be positive, rather than negative because the burden of registering for PLR would be significantly smaller than the burden of negotiating licences to lend with all library authorities. We suspect that the burden on rights holders to negotiate licences with library authorities is so great that they simply do not do so.

Exactly how much more efficient this proposal will be at ensuring rights holders are satisfactorily remunerated is unknown as yet, but we understand that authors can register for PLR online in less than one hour, suggesting that the burden on micro-businesses will not be unreasonable. Furthermore, those rights holders who do not currently exercise their lending rights and who therefore do not receive remuneration will be compensated if PLR is extended to books in non-print formats. If current payment thresholds continue to apply, the most borrowed rights holders could benefit from additional income of up to £6,600 per year. PLR will reflect the market value of lending rights to ensure that any rights holders who do currently exercise their rights will not lose out financially if PLR is extended to books in non-print formats.

### **Equality Impact**

After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both. Extending PLR could particularly benefit visually impaired people, 62% of whom, according to a survey conducted in 2001, prefer to 'read' fiction as an audiobook over other

book formats, e.g.Braille. Further analyses relating to the impact on visually impaired people and other minority groups is contained in the EQIA accompanying the Digital Economy Act 2010.

Race, disability and gender equality will all be considered as part of the overall Equality Impact Assessment for the Digital Economy Act 2010.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	No	No



## List of Acronyms

2G	Second Generation Mobile services – see also GSM
3G	Third Generation Mobile services – see also UMTS
AAP	Association of American Publishers
ADSL	Asymmetric Digital Subscriber Line – a broadband technology using the copper phone network
AG	Authors Guild
AIP	Administrative Incentive Pricing – the annual charge on some spectrum licence holders aimed at ensuring efficient spectrum use
ASA	Advertising Standards Authority
AVMS	Audio Visual Media Services Directive
BBC	British Broadcasting Corporation
BBFC	British Board for Film Classification
BERR	Department for Business, Enterprise and Regulatory Reform
BFI	British Film Institute
BIS	Department for Business, Innovation and Skills (formerly BERR and DIUS, June 2009)
BPI	British Phonographic Institute
BSI	British Standards Institution
BTOP	Broadband Technology Opportunities Programme – a US Government project
C4/C4C	Channel 4/ the Channel 4 Corporation
CDPA	Copyright, designs and Patents Act 1988
CGI	Computer Generated Imagery, <b>or</b> Common Gateway Interface
CIO	Chief Information Officer
CPNI	Centre for the Protection of National Infrastructure
CRR	Contract Rights Renewal Remedy
DAB	Digital Audio Broadcasting
DACS	Design and Artists Collecting Society
DCFS	Department for Children, Schools and Families
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, Media and Sport
DIUS	Department for Innovation, Universities and Skills (now part

	of BIS)
DMB-A	A digital radio standard
DNS	Domain Name System
DOCSIS	Data Over Cable Service Interface Specification – a technology for next generation broadband services over the cable network
DQ	Directory Enquiries
DRM	Digital Rights Management
DSL	See ADSL
DSO	Digital Switchover (usually of TV)
DTT	Digital Terrestrial Television
DTV	Digital Television
DVLA	Driver and Vehicle Licensing Agency
DVR	Digital Video Recorder
DWP	Department of Work and Pensions
EC	European Commission
ECL	Extended Collective Licensing
ECRRG	Electronic Communications Resilience and Response Group
EDIMA	European Digital Media Association
EEA	European Economic Area
EPG	Electronic Programme Guide
EQIA	Equalities Impact Assessment
EU	European Union
FDD	Frequency Division Duplex - a means of managing radio spectrum for mobile services (see also TDD)
FTTC	Fibre to the Cabinet
FTTH	Fibre to the Home
GAC	Government Advisory Committee – an advisory body for ICANN
GHz	GigaHertz, a measurement of frequency in radio spectrum
GSM	Global System for Mobile, a 2G mobile technology
GSOL	<a href="http://www.getsafeonline.org">www.getsafeonline.org</a>
GVA	Gross Value Added
GW-h	GigWatt hours – a measure of energy consumption
H&SA	Health and Safety Executive
HDTV	High-definition Television
HE	Higher Education

HEIs	Higher Education Institutions
HSDPA	High-Speed Downlink Packet Access – an enhanced 3G service for data transfer
HSPA	High-Speed Packet Access – an enhanced 3G service for data transfer with greater symmetry between the up- and down link.
IA	Impact Assessment
IAB	Internet Advertising Bureau
ICANN	Internet Corporation for Assigned Names and Numbers
ICT	Information and Communication Technology
IGF	Internet Governance Forum
IP	Intellectual Property <b>or</b> Internet Protocol
IPR	Intellectual Property Rights
IPTV	Internet Protocol Television – television services delivered over the internet
ISB	Independent Spectrum Broker
ISDN	Integrated Services Digital Network – a data transfer technology using the copper phone network
ISP	Internet Service Provider
ITMB	Information Technology Management for Business degree
ITV	Independent Television Authority
JISC	Joint Intelligence Select Committee <b>or</b> Joint Information Systems Committee
Kbps	Kilobits per second
KTN	Knowledge Transfer Network
Ltd	Private Limited Company
LTE	Long Term Evolution – so-called 4G mobile services offering greater data rates
Mbps	Megabits per second
MHEG	Standard for delivery of multimedia information, developed by the Multimedia and Hypermedia Experts Group
MHz	MegaHertz – a measurement of frequency in radio spectrum
Misc 34	The Cabinet Sub-committee responsible for Digital Inclusion
MNOs	Mobile Network Operators
MoJ	Ministry of Justice

MoU	Memorandum of Understanding
MP3	Digital audio encoding format
NCB	National Children Bureau
NESTA	National Endowment for Science, Technology and the Arts
NGA	Next generation access – also known as next generation broadband, or superfast broadband
NGM	Next Generation Mobile – see LTE
NGN	Next Generation Networks – upgrades to the telecommunications infrastructure in the core and backhaul parts of the network
NTIA	National Telecoms and Information Administration – a US government body
OECD	Organisation for Economic Cooperation and Development
Ofcom	The Office for Communications
OFT	Office of Fair Trading
Oftel	Office of Telecommunications
OGC	Office of Government Commerce
OPSI	Office of Public Sector Information
P2P	Peer-to-Peer
PACT	Producers Alliance of Cinema and Television
PAYE	Pay As You Earn
PC	Personal Computer
PEGI	Pan-European Game Information – an age rating system for video games
Plc	Public Limited Company
PLR	Public Lending Right
POCR	Proceeds of Crime Act (2002)
PRS	Performing Rights Society
PSAs	Public Service Agreements
PSB	Public Service Broadcasting
PSBs	Public Service Broadcasters
PSN	Public Sector Network
PVR	Personal Video Recorder
R&D	Research and Development
RDA	Regional Development Agency
SABIP	Strategic Advisory Board for IP Policy
SDN	Commercial broadcast multiplex operator

SFA	Skills Funding Agency
SLC	Substantial Lessening of Competition
SME	Small and Medium Enterprises
SOCA	Serious Organised Crime Agency
SoCP	Statement of Content Policy
SoS	Secretary of State
SSC	Sector Skills Council
stv	Scottish television (Grampian TV and Scottish TV)
TDD	Time Division Duplex – a means of managing radio spectrum for mobile services (see also FDD)
TLD	Top Level Domain Names
TSB	Technology Strategy Board
UCAS	Universities and Colleges Admissions Service
UK CES	UK Commission for Employment and Skills
UKCCIS	UK Council for Child Internet Safety
UMTS	Universal Mobile Telecommunications System – a 3G mobile technology
USC	Universal Service Commitment
UTV	Ulster Television
VAT	Value Added Tax
VOA	Valuation Office Agency
VoD	Video on Demand
WEEE	Waste Electrical and Electronic Equipment Directive
Wimax	A wireless data transfer technology

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