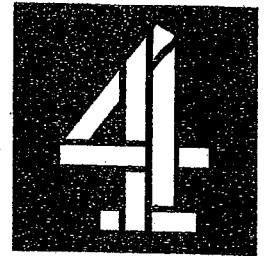


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cc : [Redacted]



Rt Hon Baroness Blackstone
House of Lords
London
SW1A 0PW

20 March 2003

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Dear Tessa,

Communications Bill – Second Reading

Channel 4 has welcomed the overall thrust of the Communications Bill and many of the amendments that have been made to it in its passage so far. However, we do have some outstanding concerns and observations that are set out in the accompanying briefing.

If you have questions about any aspect of the Bill with which you think we can help, please contact either myself on 020 7306 8615 or at jnewbigin@channel4.co.uk, or my deputy Martin Stott on 020 7306 8268 or at mstott@channel4.co.uk.

Yours,

[Redacted Signature]

John Newbigin
Head of Corporate Relations

Department for Culture, Media and Sport
20 March 2003

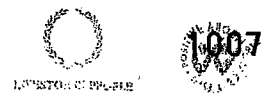
K. NEWELLS

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CHANNEL FOUR TELEVISION CORPORATION
WINNI IPEYES, CHAIRMAN, BARRY COX, DEPUTY CHAIRMAN,
MARK YOUNG, CHIEF EXECUTIVE, DAVID SCOTT, MANAGING DIRECTOR & DEPUTY CHIEF EXECUTIVE, ANDREW BARNES, SALES DIRECTOR,
TIM CARDEN, DIRECTOR OF TELEVISION, JANET VALYAN, DIRECTOR OF FINANCE AND BUSINESS AFFAIRS, ROB WOODWARD, COMMERCIAL DIRECTOR,
PETER JACKSON, HEAD OF SPANISH PURCHASES, MARTIN STOTT, JOE BRYOR,
LONDON



COMMUNICATIONS BILL

BRIEFING BY CHANNEL 4

Although the Communications Bill has already been the subject of much consultation and debate, parts of it received little attention during its Committee stage in the Commons and Channel 4 hopes there will be the opportunity for full and comprehensive debate in its passage through the Lords. This briefing sets out our views and major outstanding concerns with the Bill.

Channel 4 welcomes the general thrust of the Communications Bill, the creation of a single unified regulator in the shape of OFCOM, and the strong endorsement of the continued importance of public service broadcasting.

OFCOM's Competition Powers

Channel 4's over-riding concern is that OFCOM should have the necessary powers, resources and expertise to guarantee open and fair competition in advertising sales (the life-blood of our business) and, equally, open and fair competition in the programme supply market (as a publisher/broadcaster we are wholly dependent on programmes commissioned or bought from external suppliers). In practical terms, if the Bill's ambitions are to be realised, OFCOM must be able to match the legal and research resources of some of the most powerful corporations in the world. At the same time we are concerned that the Bill creates appropriate appeals procedures for the businesses and organisations which will be subject to OFCOM regulation.

Media Ownership

Channel 4 is concerned that changes to the media ownership rules set out in the Bill are likely to reduce rather than enhance diversity and plurality in the British media.

Clause 342 of the Bill proposes to end the present "20:20" ownership restriction with regard to Channel 5, but retain it for Channel 3. According to Paragraph 9.4.3 of the Policy Paper which accompanied the Draft Bill, this distinction is drawn on the basis that Channel 3 is "the only commercial public service broadcaster that currently has universal access to a mass audience".

This statement may be true only in the relatively short term, and for two reasons:

1. After analogue switch off, any distinctions between Channels 3 and 5 on the basis of universal access will cease to have any relevance.
2. If Channel 3's present decline and Channel 5's present growth were both to continue, and Channel 5 was to gain a greater share of the "mass audience" than Channel 3, the logic of the proposed arrangement would fall.

The underlying concern in the broadcast industry about this clause is, of course, that it allows News International to buy Channel 5 and, here again, there are two distinct issues:

1. Paragraph 9.4.3 of the Policy Paper accompanying the Draft Bill stated "National newspapers are the most editorially influential mass medium". If that is the case, it is surprising that the Bill makes possible the purchase of a major terrestrial free-to-air channel by a company which is the largest single owner of national newspaper titles in the UK.
2. The introduction to the Draft Bill by the Secretary of State for Trade and Industry and the Secretary of State for Culture stressed a commitment to "plurality" and "diversity" as two of its underlying principles. As well as owning national newspapers, News International, through BSkyB, has effective control of the dominant pay TV platform in the UK. Experience from the US and elsewhere suggests that when major pay platform owners and studio owners (which News International is through Fox) acquire free-to-air terrestrial broadcasters they turn them into shop windows whose primary purpose is to promote brands whose commercial potential can be realised on pay-channels and through ancillary services such as merchandising and video sales. The character of free-to-air channels tends to change when they cease to be stand alone businesses and become one element in a much larger and more varied distribution machine. Were this to happen to Channel 5, it would produce a profound change in the public service ecology of UK broadcasting. It would have a significant impact on other free-to-air broadcasters such as Channel 4. It would be impossible to see it as anything other than a significant reduction of "plurality" and "diversity" in UK media ownership and it is hard to see how it could be construed as being in the interests of consumers or of an open and competitive market.

The Broadcasting Minister argued in *Broadcast* magazine recently (14.3.03) that not to allow this relaxation of ownership for Channel 5 would be to blunt its future prospects. He was quoted as saying: "I want Five to flourish and become a real competitor to ITV and every other company broadcasting in this country". There is nothing in the present restrictions on Channel 5 ownership which prevents this happening. RTL, the majority shareholder in Channel 5, is a multi-national company, at least twice as large as the whole of ITV.

To retain the present "20:20" restrictions on ownership would not curtail Channel 5's ability to grow and compete. What it would do is help sustain both plurality and diversity by preventing Channel 5's purchase by the UK's major newspaper owner and dominant pay TV operator.

Delivery of the Public Service Remits

The Bill allows OFCOM to relax the public service obligations on particular broadcasters where economic or market circumstances so justify (Clause 266), but there is no corresponding mechanism to enable OFCOM to raise public service obligations in the event of sustained increases in audience share or advertising share of any commercially funded public service broadcaster. Rather than attempting to discriminate against any non-EU based channel owner by invoking

particular and swingeing requirements for UK origination, such an additional mechanism would mean that if a channel were able to significantly increase its share of audience and revenue, that channel would be expected to play a correspondingly greater role in maintaining the quality and diversity of original content available to viewers.

Channel 4 is concerned that the process set out in the Bill for OFCOM to review the fulfilment of overall public service obligations by all public service broadcasters, could allow obligations to migrate, over time, from ITV and Channel 5 (both privately owned) to the BBC and Channel 4 (both publicly owned). For Channel 4, the fact of public ownership does not in any way cushion the realities of the commercial market place. We must earn every penny of revenue in straight competition with privately owned commercial broadcasters.

Programme Supply

Channel 4 welcomed the Independent Television Commission's programme supply review, triggered by the Joint Scrutiny Committee on the Bill, which in turn has led to new clauses being added to the Bill. Channel 4's creative and commercial success rests entirely on an effective partnership with the hundreds of production companies from which we commission programmes because, unlike the BBC and ITV, we have no in-house production capacity.

Clause 280, added to the Bill at Commons Committee stage, gives OFCOM the power to enforce greater transparency in dealings between broadcasters and their programme suppliers. We welcome this and are confident that a new code of practice can be developed which works in the interests both of producers as originators of ideas and broadcasters as the developers and exploiters of those ideas.

We are concerned that the new programme supply clauses may prove unnecessarily prescriptive in respect of the new obligations on regional production set out in clause 283. Channel 4 is already required to produce a suitable proportion of programmes from outside the M25. The new clause stipulates that this production must also come from "a suitable range of ... production centres". Such detailed provisions could be interpreted as a need for minimum quotas from each nation and region of the UK, which would hamper the channel's ability to commission solely on the basis of quality. In fact, the channel's consistent practice, recently singled out for praise by the Independent Television Commission, has been to develop and nurture new production businesses right across the UK. This has been done on the basis of creative and commercial freedom. To restrict that freedom is unnecessary and may be potentially damaging.

Access to Services delivered by Satellite

The Bill places obligations on the public service broadcasters to make themselves available on the satellite platform at the time of digital switchover (Clauses 268, 269, 270). However, the lack of a corresponding 'must carry' obligation on Sky to provide conditional access services at a rate that takes due account of the special position of public service broadcasters means that those broadcasters can be charged large

fees with no possibility of choosing an alternative means of delivery and therefore without any room to manoeuvre. The BBC has estimated that not paying Sky's charges for conditional access services will save it £85 million over five years.

Channel 4 continues to believe there is merit in tighter policing of the terms on which conditional access services have to be offered. If public service channels are to be made universally available and be free to air on all platforms in order to guarantee viewers' access to them, then the regime under which they operate should reflect the characteristics of those channels.

Nominated News Provider

As a publisher/broadcaster, Channel 4 must commission its news from an external supplier. *Channel 4 News* has been supplied by ITN since Channel 4's launch twenty years ago.

Channel 4 supports the continuation of the nominated news provider ownership conditions, as set out in Clause 276, which limits any single shareholding to 40%. We would prefer not to have to commission our news from a company wholly owned by a competitor broadcaster. Furthermore, under the terms of the Bill, such a single owner could be bought by a non-EU media interest which might have significant news resources of its own and therefore no incentive to sustain a comprehensive, dedicated, UK-based news operation.

We welcome the proposal that the nominated news provider should commit what, in OFCOM's view, are the necessary resources to deliver a comprehensive high quality news service.

Comprehensive high quality television news is an expensive commodity and the benefit of the nominated news provider system is that it guarantees at least one major news provider independent of the BBC not owned by a rival commercial broadcaster. It is in the interest of a healthy democracy that British viewers continue to have access, without payment, to a genuine plurality of news providers.

OFCOM'S Procedures

Clause 320(3) would extend the current power of the regulator when considering complaints of fairness to allow OFCOM to demand all papers and other material that it thinks relevant. This leaves the matter of obtaining documents and other material solely at OFCOM's discretion and does not take proper account of legitimate protections such as legal privilege, recognised by all statutes that deal with disclosure of journalistic material from the Prevention of Terrorism legislation to the Data Protection Act. Nor does it take account of confidential material that the broadcaster may not wish to disclose because of undertakings of confidentiality to sources. There is a protection contained in Section 10 of the Contempt of Court Act 1981 that should be reflected in this subsection. Even the police do not have such wide powers to obtain journalistic material. Channel 4 cannot see the justification for giving OFCOM this new power.

Channel 4 is concerned that the Bill is not sufficiently explicit in requiring OFCOM to consult over the procedures it will follow in entertaining complaints about possible licence breaches (clause 233) and in entertaining complaints that may lead to the imposition of penalties clauses (clause 385). OFCOM should have fair, open and transparent procedures for dealing with such significant matters, and should be obliged to consult on those procedures in advance of adopting them.

Training

Channel 4 has a licence obligation to commit a minimum 0.5% of qualifying revenue to training. We have argued throughout the consultation on the Bill that OFCOM should have a specific power, on the face of the Bill, to set a comparable levy for other broadcasters if it considered that necessary for the well-being of the industry as a whole. In such a talent-driven industry the surest way to sustain quality is by giving real teeth to training obligations for all major broadcasters. At present a minority of broadcasters, one of them being Channel 4, bear a hugely disproportionate share of the training costs for the whole industry.

Channel 4's Remit and Purpose

There are a number of clauses dealing specifically with Channel 4, most of which have the channel's emphatic support.

A new remit for Channel 4 (clause 261 (3)) continues to place innovation and creativity at the heart of what the channel does, but adds new obligations to appeal to the tastes and interests of a culturally diverse society and to offer "programmes of an educational nature and other programmes of educative value" – a broad and inclusive education obligation which we welcome.

Channel 4 does not see the rationale for a borrowing limit, as set out in clause 199. Although a statutory corporation, Channel 4 operates entirely in the commercial marketplace, has no recourse to public funds and throughout its 20 year history has been able to borrow from the banks on a straightforward commercial basis when necessary. Clauses 196 and 197 (power to remove members of the Board) already provide a framework to ensure Channel 4 does not act "ultra vires".

Cultural Diversity

Channel 4 supports the proposal from a joint Broadcasting Standards Commission and Independent Television Commission working group to include in OFCOM's general duties (set out in Clause 3) a requirement to have regard to the interest of people of different ethnic origins and communities.

March 2003