

DIGITAL ECONOMY BILL

Impact Assessments

NOVEMBER 2009



IMPACT ASSESSMENT FOR THE DIGITAL ECONOMY BILL

Foreword	4
Executive summary	5
Introduction	5
Why the Digital Economy Bill is important	6
Summary of policy proposals included in this impact assessment	10
Equality Impact Assessment	25
Individual Impact Assessments	
Ofcom Duties – Promoting Investment	30
Ofcom Duties – Reporting Duties	46
Ofcom Duties – Investment in Content	54
Illegal Peer to Peer File Sharing	66
Domain Names	86
Public Service Content – Overarching	96
Channel 4 Corporation Functions	111
Public Sector Broadcasting Licensing	126
Independently Funded News Consortia	143
Gaelic Broadcasting	153
Digital Radio Networks	161
Amending the Wireless Telegraphy Act	179
Video Recording – Video Games Classification	188

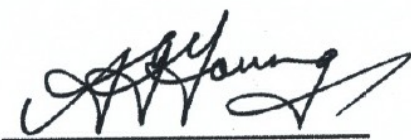
Copyright – Overarching	211
Copyright – Extended Collective Licensing	217
Copyright – Orphan Works	230
Matched Penalties	242
Public Lending Right	250
List of Acronyms	261

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 is looking to implement a number of the proposals included in the Digital Britain Final Report as legislation, and is bringing forward the Digital Economy Bill.

In line with better regulation principles the UK Government is publishing, alongside the Digital Economy Bill, Impact Assessments on the various proposals. These discuss in detail the rationale for Government action 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.

We have read the Impact Assessments and are satisfied that they represent a fair and reasonable view of the expected costs, benefits and impact of the policy measures contained in the Digital Economy Bill, and that the benefits justify the costs.



Lord Young of Norwood Green
Department for Business, Innovation and Skills



Lord Davies of Oldham
Department for Culture, Media and Sports

Executive Summary

Introduction

In June 2009, the UK Government published the Digital Britain White Paper¹. The report set out the Government's ambition for the UK to be at the forefront of the global move towards a digital knowledge economy and detailed policy proposals to achieve this goal. This built on the high level objectives outlined in the Digital Britain interim report, published in January 2009.²

Many of the measures outlined in the Digital Britain White Paper are being taken forward without legislation. However, the UK Government is looking to implement a number of the proposals included in the White Paper as legislation, and is bringing forward the draft Digital Economy Bill which this Impact Assessment accompanies. The bill seeks to maximise the benefits from the digital revolution by addressing four broad areas:

- **A competitive digital communications infrastructure:** to strengthen and modernise the country's communications infrastructure by enhancing Ofcom's duties in relation to investment in 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;
- **Creative industries in a digital world:** to make the UK one of the world's main creative capitals by taking action to tackle unlawful peer-to-peer file sharing, and updating the regulation of copyright licensing and public lending right for the digital age;
- **Public service content in Digital Britain:** to ensure the provision of engaging public service content by supporting the provision of news in the Nations, locally and in the regions, 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 Bill is important

¹ 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

² 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

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 20th 2009, the Government published its policy statement, *Building Britain's Future – New Industry, New Jobs*³. 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 and 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 specific policy actions and decisions included in the final report make a significant contribution to the government's New Industry, New Jobs agenda in two ways. The UK is looking to implement these policy actions and decisions in the Digital Britain Bill, which this Impact Assessment accompanies.

First, it 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, it 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.

Digital Britain and the Government's wider policy objectives

The specific policy proposals in the Digital Economy Bill may contribute to the delivery of a number of the government's wider economic, social and environmental objectives. These are

³ 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

set out in the form of Public Service Agreements (PSAs)⁴ – some of the high-level benefits of the move to a digital economy 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.

Broadcasting, the creative industries and the information and communication technology sector are of major economic importance in the UK

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 of 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 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, 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 (Centre for

⁴ 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

International Economics in Australia)⁵. 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 £125 billion in gross value added (GVA)⁶ in 2007 representing around 10% of UK GDP. In the same year, the digital economy employed over 1.8 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 gross value added and more than a fifth of total UK employment in 2007⁷. Accordingly the digital economy is of far greater importance to the UK economy than the estimates in Table 1 above suggest.

⁵ 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

⁶ 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.

⁷ 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)
ICT sector			
30	Office, accounting and computing machinery	1,277	24
31.3	Insulated wire and cable	414	9
32.1	Electronic valves and tubes and other electronic components	1,229	26
32.2	Television, radio transmitters and apparatus for telephony and telegraphy	1,547	21
32.3	Television and radio receivers, sound or video recording or producing apparatus and associated goods	676	14
33.2	Instruments and appliances for measuring, checking, testing and navigating and other purposes	3,012	56
33.3	Industrial process equipment	476	10
51.43	Wholesale of electrical household appliances	2,927	42
51.84 and 51.85 (previously 51.64)	Wholesale of machinery equipment and supplies	4,935	68
51.86 and 51.87 (previously 51.65)	Wholesale of other machinery used in industry, trade and navigation	7,989	134
64.2	Telecommunications services	27,942	217
71.33	Renting of office machinery and equipment including computers	673	5
72	Computer and related services	42,584	599
Digital content industries			
74.4	Advertising	6,061	92
22.32	Reproduction of video recording	18	2
74.81	Photographic activities	194	27
92.11	Motion picture and video production	1,196	28
92.12	Motion picture and video distribution	900	6
92.13	Motion picture projection	405	17
22.14	Publishing of sound recordings	179	3
22.31	Reproduction of sound recording	43	3
22.11	Publishing of books	1,354	30
22.12	Publishing of newspapers	2,894	52
22.13	Publishing of journals and periodicals	3,950	64
22.15	Other publishing	659	21
92.4	News agency activities	2,298	12
22.33	Reproduction of computer media	18	1
72.21	Publishing of software	447	10
72.22	Other software consultancy and supply	28,165	370
22.21	Printing of newspapers	78	2
22.22	Printing n.e.c	5,117	127
22.24	Pre-press activities	205	4
22.25	Ancillary activities relating to printing	507	12
92.2	Radio & TV (DCMS estimates)	2,055	78
TOTAL		123,812	1,806
% of UK economy		10	6

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 Bill brings forward a number of specific policy proposals, decisions and recommendations, most of which were first announced in the Digital Britain White Paper, published on 16th June 2009. The rationale for these different proposals, and their 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) Promoting investment

Significant new investment will be required to achieve the ambitious goals relating to the communications infrastructure set out by the UK Government in the Digital Britain White Paper. These include the delivery of universal broadband of 2Mb/s by 2012, next generation super-fast broadband to 90% of homes and businesses by 2017 and progress towards universal coverage in next generation mobile and mobile broadband.

The UK Government is proposing to give Ofcom an additional duty to promote efficient investment in communications infrastructure (where appropriate), alongside the promotion of competition, when furthering the interests of consumers. Such a duty will sit alongside the existing duty to further the interests of citizens in relation to communication matters.

Policy Area	Policy Proposal	Benefits	Costs
Ofcom Duties – Promoting Investment	Amend Ofcom’s statutory duties in section 3 of the Communications Act 2003 to change the way that Ofcom carries out its principal duty, in particular, in practice, the requirement to further the interests of consumers wherever appropriate by promoting competition.	This proposal is likely to improve Ofcom’s ability to further citizen and consumer current and future interests through promoting greater and accelerated investment by network operators. This would result in consumers and businesses experiencing relatively earlier the benefits of modern, efficient and competitive infrastructure.	Consumers and businesses might be negatively affected if the additional duty were to result in reduced clarity about Ofcom’s behaviour. Its consideration of the investment duty might result in a comparatively lower degree of competition in the short term, potentially limiting consumer choice and raising prices.

b) 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.

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.

Policy Area	Policy Proposal	Benefits	Costs
Ofcom Duties – Reporting Every 2 Years	Impose an additional statutory duty on Ofcom to: <ul style="list-style-type: none"> - Report every two years to the Secretaries of State at BIS and DCMS giving an assessment of the UK's communication infrastructure. - Write as necessary alerting the Secretaries of State at BIS and DCMS to any matters of high concern regarding the developments affecting the communications infrastructure. 	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 two years. Significant uncertainties mean that it is not possible to quantify them in this impact assessment.

Promoting Investment in Content

There are two issues which need to be addressed via Government intervention.

Current Regulatory Failure

The current statutory framework gives Ofcom specific duties and powers in relation to this type of 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 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 content in the future, as part of a series of wider measures aimed at securing plurality of provision and investment in UK public service content.

Market Conditions

The rapid diminution of the advertiser-funded market that has funded commercially-provided public service content, the competition faced by the commercially funded PSBs from multi-channel television and the increased levels of viewing on on-demand platforms is leading to a reduction in investment in content that meets public purposes. The Government believes that the best way to address these failures is to place content at the core of Ofcom's duties and extend the scope of its statutory review into the delivery of public service broadcasting on television to the delivery of public service 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.

Policy Area	Policy Proposal	Benefits	Costs
Ofcom Duty on Investment in Content	Provide Ofcom with a new, specific duty to promote investment in public service content in order to place content at the core of Ofcom's duties. This will allow them to take account of investment in public service 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 future proof investment in UK content and the provision of merit good programming. 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 cover investment in content 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 how Ofcom approaches this duty and any specific changes it may recommend to the regulatory framework in order to achieve its new primary goals.

2. *Illegal peer-to-peer file sharing*

Illegal 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 illegal downloading, the government is proposing to bring in legislation which makes it easier and cheaper for rights holders to bring civil actions against suspect illegal file-sharers.

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
Illegal peer to peer file sharing	Preferred policy option outlined in 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 peer-to-peer file sharing.	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 UK-based registries where the Government believes self regulation is at risk of failure. Ofcom will have the duty to require the registries to put in place a code of practice to correct these concerns and allow the system to run effectively.

Policy Area	Policy Proposal	Benefits	Costs
-------------	-----------------	----------	-------

Domain Names	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.	Consumers are better protected in terms of 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) Greater growth in e-commerce as a result of a better functioning Internet economy.	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 Bill's Ofcom reporting duty provisions.
---------------------	---	---	---

4. **Channel 4 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 TV⁸ channel, Channel 4, but not for anything else the 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.

⁸ Linear TV channels consist of fixed schedules, where the broadcaster rather than the individual viewer determines what is broadcast, and when.

Policy Area	Policy Proposal	Benefits	Costs
Channel 4 remit	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).	<p>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</p> <p>There will also be benefit to UK audiences of additional impact and reach of C4C public service content.</p> <p>And benefit to content producers (both on digital channels and in new media) from C4C commissions.</p>	<p>Ofcom estimate minimal start-up and ongoing resource implications, which will be absorbed into existing resources.</p> <p>C4C have indicated that the new arrangements will not have material cost implications for them over and above current plans.</p>

5. Public Service Broadcast Licensing

Historically, commercially funded and run public service broadcasters (PSBs) (e.g. ITV plc, Five and Teletext) 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 Public Service Content IA that model has become unsustainable. 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.

Policy Area	Policy Proposal	Benefits	Costs
-------------	-----------------	----------	-------

<p>PSB Licensing</p>	<p>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 and provide Ofcom with manoeuvrability to assess the future viability of the public Teletext service and make recommendations to the Secretary of State about its future provision.</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>	<p>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 a consultation and report on the future of Teletext.</p>
-----------------------------	--	--	--

6. *Independently Funded News Consortia (IFNCs)*

Broadcast regional news provided beyond the BBC in the nations and regions is at risk of diminishing or being dismantled by the commercial Channel 3 licence holders over the next few years unless measures are taken to secure plurality of provision that achieves cost relief and certainty for the Channel 3 licensees. Commercial public service broadcasters, reliant on television advertising, are suffering the combined pressure of audience fragmentation (with the expansion of digital channels and other media platforms), declining and shifting advertising revenue and the difficulties associated with the wider economic climate.

In order to (a) secure the plural provision of news broadcast on television for the immediate future; and (b) encourage wider synergies of news provision at the nations’ and regions level, Government is proposing to target the priority genre in those nations where broadcast news is under greatest threat (Scotland and Wales) whilst extending a *pilot* to one English region. This will be in the form of news consortia either built around the incumbent Channel 3 PSB licence holder in the nations or open to contestability.

Policy Area	Policy Proposal	Benefits	Costs
-------------	-----------------	----------	-------

IFNCs	To pilot independently funded news consortia (IFNCs) in 2 nations and 1 English region. These will either be built around the incumbent Channel 3 PSB licence holder in the nations or open to contestability. The objective is to have these pilots in place from 2010 and for them to run until 2012. The purpose is to test the scope of news consortia providing broadcast news but at the same time, also helping to ensure a seamless transition for licence holders and viewers alike.	A pilot based model will test the key elements to be included in fully contestable IFNCs whilst regional news is maintained across the Channel 3 schedule. Citizens will benefit from continuing to have choice in broadcast regional news and its contribution to democracy	One-off costs still need to be determined - contingent on how the pilots will be established on either a fully contestable basis or around an incumbent licence holder.
--------------	---	---	---

7. 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
Gaelic Broadcasting	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).	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). 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	Loss of 30 minutes Gaelic programming for viewers and small loss to the production community

		<p>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>	
--	--	---	--

8. 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,

Policy Area	Policy Proposal	Benefits	Costs
Digital Radio networks	<p>Analogue licensing regime</p> <ul style="list-style-type: none"> - De-regulation of localness rules to allow greater flexibility for co-location within pre-determined regions; - New legislation to insert a two-year termination clause into all new licences; 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. <p>Multiplex licensing regime</p> <ul style="list-style-type: none"> - 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. 	<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>

manufacturers and listeners are able to invest and innovate with confidence.

9. Amending the Wireless Telegraphy Act

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 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, 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 with respect to wireless infrastructure.

Policy Area	Policy Proposal	Benefits	Costs
Amending the Wireless Telegraphy Act	Amend the Wireless Telegraphy Act as follows: <ul style="list-style-type: none"> 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; 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. 	Potential monetary benefits will be considered as part of a more detailed analysis of the costs and benefits of the Wireless Radio Spectrum Modernisation Programme 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. 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.

10. 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
Video Games	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.

11. Copyright

a) *Extended Collective Licensing (ECL)*

The current rights clearance system involves multiple users and rights holders giving rise to co-ordination problems thus preventing rights holders and users from making optimal use of copyright works. Government intervention is required to help simplify this complex system and strengthen it to cope with volumes of rights used in digital platforms.

Collecting societies are unregulated entities with significant market power, the abuse of which can give rise to a reduction in consumer welfare. Government intervention is necessary to preserve the best interests of the consumer and to ensure that costs to businesses and consumers remain fair and competitive.

The policy objective is to make the problem of rights clearance in the digital age easier by streamlining licensing procedures.

Policy Area	Policy Proposal	Benefits	Costs
Extended Collective Licensing	Improve the efficiency of rights clearance by allowing established collecting societies to license works on an "opt out" rather than "opt in" basis, thereby extending their repertoire of rights managed.	The provisions in the Bill do not themselves create any monetised benefits. The licensing arrangements will be subject to full impact assessment during its development. Anecdotal evidence to suggest an estimated reduction in administration costs of 2-5%. Some of this could be passed on to rights holders, so possible increases in	The provisions in the Bill do not create any monetised costs. The licensing arrangements will be subject to full impact assessment during their development. One off costs to govt of granting authorisation. This plus ongoing costs of renewing authorisation will be recouped through

		royalties available for distribution. Users and rights holders benefit from simplification of the system. Users gain greater access through a simplified system. Rights holders and users have legal certainty.	cost of authorisation. Not mandatory to have ECL, so assume collecting society will only do so if it is a commercially viable decision.
--	--	--	---

b) Orphan Works

The number of copyright works and performers’ rights used in audio visual recordings and the widespread lack of definitive information regarding ownership of some rights in all types of media, has led to a large amount of historically and culturally valuable copyright material being orphaned and ‘locked up’ in archives, unable to be used. As copyright is an exclusive right, if the owner of a right cannot be identified or found to grant permission for use of their work, then that work cannot legally be used until the term of protection expires, except where the use is covered by one of the existing narrow exceptions (e.g. for certain educational purposes). This problem is especially prevalent in projects to digitise historical material, such as the Europeana Digital Library project and other smaller domestic initiatives.

As a result there is a missing market and a demand for orphan works which can only be satisfied through government intervention in the form of legislative changes.

The policy objective is to create a system to allow regulated use of orphaned rights on a legal basis, with fair recompense for the owners of those rights should they be identified subsequently (full details to be determined in secondary legislation). This will ‘unlock’ much of the vast quantity of culturally and commercially valuable material, currently unable to be legally exploited, improving access for consumers and realising dormant value.

Policy Area	Policy Proposal	Benefits	Costs
Orphan Works	Create a regulated process for licensing of orphaned rights.	Left blank because the provisions in the Bill do not create any monetised benefits. The authorisation arrangements will be subject to full impact assessment during their development. Consumers should benefit from greater access to cultural works. Organisations that currently make use of orphaned rights usually rely on an indemnity or hold funds in reserve to compensate any rights holder who subsequently comes forwards. This entails a small, but real cost in terms of interest/insurance premiums and a lost opportunity cost for the capital involved. The average number of orphaned works in public sector collections in the UK is estimated at 5-10% (JISC report – ‘In from the Cold’). However, as	The provisions in the Bill do not create any monetised costs. The authorisation arrangements will be subject to full impact assessment during their development. There would be a cost involved in granting permissions to run orphaned

		<p>the value of these works and the uses that they could be put to may vary considerably, it is impossible to estimate with any accuracy the value that might be unlocked, other than to say it will be a positive value.</p> <p>UK government will benefit from increased reputation within Europe if it is shown to have developed a workable solution to a problem that affects many other member states.</p>	<p>works licensing schemes. This will be borne by those wishing to run schemes.</p>
--	--	--	---

12. 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
Matched Penalties	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.

13. 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
Public Lending Right	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 £750,000 in additional payments.	Exchequer funding of approximately £750,000 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 Bill 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 Bill (“the Bill”), the Government can ensure by legislation that the benefits of the digital economy can be extended to all UK citizens.

There have been five consultations undertaken on the policy areas within the Bill. 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 Bill, 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 Bill 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 Bill 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 Audit⁹ of ethnic minorities (2008) showed that the four ethnic minority groups surveyed have higher take up than the UK average, as follows:

⁹ 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

Table 2: Internet take-up among ethnic minority groups

	%
Indian	76
Pakistani	72
Black Caribbean	64
Black African	69
UK Adults Total	62

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 Channel 4's functions. Channel 4 Corporation (C4C) has a strong reputation for provision for minority groups and interests and has good representation of diversity and alternative viewpoints, especially of ethnic minority audiences. C4C's new function will require them to provide services on a wider range of delivery platforms. C4C will also be required to champion alternative voices and fresh perspectives, promote the interests of a well-informed and engaged plural 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 Bill, 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 Bill 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 2008¹⁰. 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

¹⁰ ONS (2008): *Labour Force Survey*

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.

Although the Bill 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 Bill, 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 conditions¹¹ 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 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

¹¹ *Disabilities and long term health conditions will be referred to as "disabilities" as shorthand.*

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 report¹² was published in October 2009, and we are considering the barriers and solutions identified in their report.

The Government has considered whether any of the Bill 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 the potentially greater impact of the measures on people with disabilities. Nobody will be subject

¹² *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>

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. 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 Bill 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): 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 disabled¹³ 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.

OFCOM DUTIES – PROMOTING INVESTMENT IN INFRASTRUCTURE		
Department /Agency: Department of Business, Innovation and Skills (BIS)	Title: Impact Assessment of proposals to amend Ofcom’s statutory duties under the 2003 Communications Act (Promoting investment in infrastructure)	
Stage: Final	Version: Final	Date: 28 th October 2009
Related Publications: Digital Britain Final Report (2009). 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: Tim Hogan

Telephone: 020 7215 1628

¹³ A person who cannot effectively read print because of a visual, physical, perceptual, developmental, cognitive, or learning disability.

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

Investment in telecommunications infrastructure is costly and risky. Investment by telecommunication companies is highly sensitive to regulation and may be discouraged in two ways. First, regulation which seeks to promote competition by reducing prices may serve to lower the expected returns from investment. Second, regulatory and policy uncertainty may serve to increase the risk associated with further investment.

What are the policy objectives and the intended effects?

The UK Government is proposing to give Ofcom a new duty that requires it when considering its principal duty, which includes the duty to further the interests of consumers in relevant markets by promoting competition (where appropriate), to have particular regard to the need to promote appropriate levels of investment in communications infrastructure and in content. That investment is to be efficient wherever possible.

The intended effect of the change to Ofcom’s duties with respect to investment in infrastructure is that it will serve to increase and accelerate future investment in the UK communications infrastructure by strengthening the incentives for network operators to invest.

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

Two policy options are being considered:

Option 1: Do nothing.

Option 2: Amend Ofcom’s statutory duties in section 3 of the Communications Act 2003 to change the way that Ofcom carries out its principal duty, in particular, in practice, the requirement to further the interests of consumers wherever appropriate by promoting competition.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? A Post-Implementation Review looking at the actual impacts will be carried out in the space of 3 to 5 years time since publication of the Digital Economy Bill.

Ministerial Sign-off For 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:

Lord Young.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Amend Ofcom’s statutory duties

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by ‘main affected groups’
	One-off (Transition) Yrs	
	£	
	Average Annual Cost (excluding one-off)	
£	Total Cost (PV)	£ Not quantifiable
<p>Other key non-monetised costs by ‘main affected groups’ Consumers and businesses might be negatively affected if the additional duty were to result in reduced clarity about Ofcom’s behaviour. Its consideration of the investment duty might result in a comparatively lower degree of competition in the short term, potentially limiting consumer choice and raising prices.</p>		

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
£		Total Benefit (PV)	£ Not quantifiable
<p>Other key non-monetised benefits by 'main affected groups' This proposal is likely to improve Ofcom's ability to further citizen and consumer current and future interests through promoting greater and accelerated investment by network operators. This would result in consumers and businesses experiencing relatively earlier the benefits of modern, efficient and competitive infrastructure.</p>			

Key Assumptions/Sensitivities/Risks There are significant uncertainties about whether the level of competition and investment will change markedly given that Ofcom already must have regard to the desirability of encouraging investment and innovation in relevant markets where it appears to it to be relevant when performing its principal duty under the Communication Act 2003. It is also extremely difficult to assess the precise impact these proposals will have on consumers and businesses as well as the wider society.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ Not quantifiable	NET BENEFIT (NPV Best estimate) £ Not quantifiable
--------------------	----------------------	---	---

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?		Ofcom		
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?		Unknown		
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

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

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.

Ofcom's primary aims are set out under section 3(1) of the 2003 Communications Act which states that:

“3(1) It shall be the principal duty of Ofcom, in carrying out their functions;

(a) to further the interests of citizens in relation to communication matters; and

(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition

Ofcom aims to promote competition and the interests of consumers by, amongst other means, setting prices that reflect costs and risk and ensuring that the costs of production are minimised where appropriate.¹⁴ In this way, Ofcom seeks to achieve beneficial outcomes for consumers including lower prices, a higher quality of service, a wider range of products and choice of network and service providers, easier and greater access to services, and the introduction of new innovative services over time¹⁵.

The 2009 Budget stated that *‘in advance of the Digital Britain Final Report, the Government will review the powers and duties of Ofcom to ensure that it can strike the right balance between delivering competition and encouraging investment in the communications infrastructure.’*

In the Digital Britain Final Report, the Government concluded that there is a case for broadening what is referred to as Ofcom’s principal duty and set out its intention to put the promotion of investment in infrastructure alongside the promotion of competition as the means by which Ofcom should, where appropriate, further the interests of consumers in communications markets when exercising its functions.

Regulation and investment in the UK telecommunications sector

The main drivers of investment for any business are the level of expected returns and the degree of risk and uncertainty associated with those returns. A company will only choose to invest in a particular project if the expected returns to be made outweigh the costs involved. The higher and more certain the expected future returns are likely to be, the more willing the firm will be to invest in that project.

In the telecommunications industry, investment in infrastructure is both costly and risky. The upgrade and maintenance of existing networks tend to involve significant levels of capital expenditure while investment in new infrastructure (e.g. next generation super-fast broadband) involve high levels of risk because of the significant uncertainties surrounding future revenue streams. This means that telecommunications companies, and network operators in particular, require assurances of a higher return on investment on account of the greater degree of risk that they face compared to companies operating in other sectors of the economy.

¹⁴ It should be noted that there are instances when Ofcom has explicitly considered investment incentives when assessing whether to impose charge controls or cost-orientation obligations. See for example: <http://www.ofcom.org.uk/consult/condocs/wbamr07/statement/statement.pdf>

¹⁵ Ofcom (2004) *Strategic Review of Telecommunications, Phase 1 Consultation Document*. http://www.ofcom.org.uk/consult/condocs/telecoms_review1/telecoms_review/

Investment decisions by all firms including telecommunication companies are affected by a number of sector-specific and economy-wide factors¹⁶ one of which is regulation. Regulation can influence the willingness of telecommunications companies to invest in infrastructure by increasing or decreasing the expected returns and the degree of risk and uncertainty.

Regulation and the level of expected returns

In its 2004 Strategic Review of Telecommunication, Ofcom noted that regulation of the telecommunications sector involves a number of potential trade-offs. In particular, there is a possible trade-off between regulations which deliver lower prices in the short-term and regulations that create the right incentives for telecommunications to innovate and invest.

Regulations which aim to promote competition (e.g. by opening up the market to new telecommunication companies or reducing the rental prices network operators can charge service providers to access their infrastructure) might in some cases weaken the incentives to invest in infrastructure because they erode expected future returns, thereby making the business case for investment much less attractive, and in some cases commercially unviable¹⁷.

Regulation and the degree of risk and uncertainty

Regulatory uncertainty may also serve to discourage investment by telecommunications companies as it increases the degree of risk and uncertainty associated with the expected future returns of investment.

Telecommunication companies may be particularly deterred from investing if they believe the regulator may try to force down prices after investment has taken place knowing that the sunk costs of investment cannot be recouped. The fear that the regulator may behave in this opportunistic fashion, Ofcom (2004) notes, may create a situation in which telecommunications companies are unwilling to invest in infrastructure even though the regulator would have taken into full account the capital outlays involved and ensured a reasonable return on the investment could be earned.

Rationale for government intervention

¹⁶ See London Economics (2006) *An assessment of the regulatory framework for electronic communications – growth and investment in the EU e-communications sector*. Final report by London Economics in association with PricewaterhouseCoopers.
http://ec.europa.eu/information_society/policy/ecomms/doc/library/ext_studies/assessmt_growth_invst/investment.pdf

¹⁷ Some degree of competitive threat is likely to be conducive to investment and innovation. For a more detailed discussion of the relationship between regulation, competition and investment in the telecommunications sector see de Bilj (2004) *Competition, innovation and future-proof policy*
<http://www.tilburguniversity.nl/tilec/publications/report/policy.pdf> and Friederiszick et al. (2008) *Analysing the relationship between regulation and investment in the Telecom sector*
<http://www.econ.upf.edu/docs/seminars/grajek.pdf>

Although the promotion of investment is currently not one of its principal aims, Ofcom are already legally required under section 3(4)(d) of the Communications Act 2003 to have regard when considering its principal duty and where it appears relevant to it in the circumstances, to the desirability of encouraging investment in relevant markets.

Ofcom has repeatedly indicated in a series of published consultation papers and final statements the importance it attaches to the promotion of investment and how this can be best achieved by using regulatory policy to promote competition, particularly on the issue of delivering next generation super-fast broadband.

In its 2007 consultation document, *Future Broadband – Policy approach to next generation access*, Ofcom set out its aim to create a regulatory framework which strikes a balance between securing investment and promoting competition and outlined five regulatory principles to achieve this. These were contestability, maximising potential for innovation, equivalence, reflecting risk in returns, and regulatory certainty¹⁸.

In its final statement, *Delivering super-fast broadband in the UK: promoting investment and competition*¹⁹ Ofcom re-affirmed the relevance of these five regulatory principles and emphasised the particular importance of ensuring that any regulation takes into account the uncertainty and risk in investment faced by network operators (see Box 1 below).

Box 1: Providing regulatory certainty for investment in next generation access

In March 2009, Ofcom published its final statement '*Delivering super-fast broadband in the UK: Promoting Investment and Competition*'. The purpose of this document was to reduce some of the uncertainty surrounding next generation super-fast broadband and increase the likelihood of investment by providing greater certainty about the regulatory principles which Ofcom would apply.

In its statement, Ofcom re-affirmed its commitment to ensuring that its regulatory decisions would be '*clear, timely and consistent over the longer-term wherever underlying competitive conditions remain unchanged*' (p.21). It is also stated its commitment to striking the right balance between promoting investment and securing effective and sustainable competition in the longer-term, taking into account the significant risks and uncertainties surrounding super-fast broadband which may serve to discourage investment (p.22)

Following this statement, BT announced that it would be investing some £1.5bn in fibre-optic networks which would connect up to 40% of the UK population by 2012.

Source: Ofcom (2009) *Delivering super-fast broadband in the UK*

¹⁸ Ofcom (2007) *Future broadband – policy approach to next generation access*. Consultation document. http://www.ofcom.org.uk/consult/condocs/nga/future_broadband_nga.pdf

¹⁹ Ofcom (2009) *Delivering super-fast broadband in the UK: promoting investment and competition*. Final Statement http://www.ofcom.org.uk/consult/condocs/nga_future_broadband/statement/statement.pdf

Given the comparatively higher levels of investment and innovation, including R&D, which takes place in the telecommunications sector, ensuring that the regulatory framework is as clear and consistent as possible is perhaps even more important in telecommunications than other less technologically dynamic and capital intensive sectors of the economy.

Government policy is to change the way that Ofcom carries out its principal duty, in particular, in practice, the requirement that it further the interests of consumers wherever appropriate by promoting competition. It proposes to introduce a provision into the general duties requiring Ofcom to have particular regard in all cases to the need to promote appropriate investment in infrastructure when considering its principal duty. It is difficult to predict with complete certainty what the precise effect of this will be. At the very least Ofcom must in all cases, as opposed to where it seems appropriate to them, have regard to the need to promote investment in infrastructure whenever they consider, inter alia, whether competition is the appropriate means of furthering the interests of consumers in relevant markets. In this way, it could be argued that Ofcom may be able to reduce further the regulatory uncertainty which still exists and as a result, create a regulatory environment which is possibly even more conducive to investment.

In the context of the Digital Britain agenda, the new requirement on Ofcom may serve to help the UK Government deliver its ambitious aims to upgrade and extend the existing communications infrastructure. These include the delivery of universal broadband of 2Mb/s by 2012 and next generation access super-fast broadband to 90% of homes and businesses by 2017, progress towards universal coverage in next generation mobile services, and a switchover to digital only radio by 2015. To achieve these aims will require significant new investment.

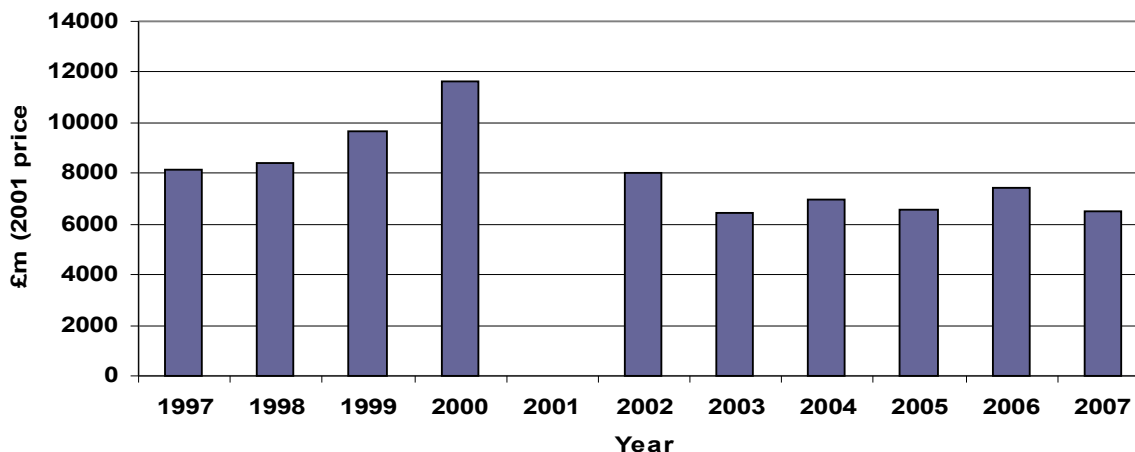
More broadly, amending Ofcom's regulatory framework so that the incentives for investment are strengthened is particularly important in the context of the New Industry, New Jobs Agenda, where increased investment in infrastructure is seen as playing a key role in helping the UK emerge from recession and place itself in a strong position in the global economy, able to exploit the new business and market opportunities which emerge²⁰.

UK Investment in communications infrastructure

It is difficult to gauge the extent to which there currently may be underinvestment in communications infrastructure in the UK. Compared to the late 1990s, UK investment in the telecommunication industry – defined as net capital expenditure – appears to have fallen back in real terms according to official statistics (see Figure 1 below).

²⁰ The *New Industry, New Jobs* policy statement identifies an effective, modern infrastructure as crucial to the competitiveness of the UK economy and British business. The paper can be found at: <http://www.berr.gov.uk/files/file51023.pdf>

Figure 1: Net capital expenditure in the UK telecommunications industry (SIC 64.2)



Source, Office of National Statistics ABI data, BIS estimates

The relatively higher levels of investment recorded in the second half of the 1990s reflects the large scale infrastructure projects which took place at that time²¹. To some degree, it can be argued that there was some overinvestment by telecommunication companies during this period driven by the dot.com bubble which created overly optimistic expectations about future growth in the sector and the potential returns which could be made on further investment. The relatively lower levels of investment which have been recorded in the last few years in the UK can be attributed to several factors²². These include:

- The collapse of the dot.com bubble in 2001 which led to reduced investor confidence and the subsequent economic slow down
- A natural decline in the investment cycle following completion of the infrastructure projects carried out in the late 1990s as telecommunication sought to consolidate their market position and increase revenues before embarking on further rounds of investment
- Increased indebtedness by some mobile phone operators as a result of securing the 3G licenses auctioned by the UK Government in 2000 which may have made access to finance more difficult hampering investment in 3G infrastructure

Compared to other industrialised countries such as the US, Korea, Japan, France and Germany, it is again difficult to judge whether there is underinvestment by telecommunications companies in the UK.

²¹ These include investment by BT in its digital infrastructure and by new entrants into the fixed telephony sector due to local loop unbundling as well as investment by mobile network operators in infrastructure to support second generation mobile telephony. See Ofcom's 2004 Strategic Review of Telecommunications (Phase 1) and London Economics (2006) for more information.

²² This is discussed in more detail in the report by London Economics in association with PricewaterhouseCoopers (2006)

Table 1 overleaf offers a snapshot of investment activity – measured crudely here in terms of capital expenditure as a percentage of revenue – by telecommunications companies in a number of OECD countries in 2005 and 2007.

However, it is not possible to make a direct comparison across firms and over time. There are several reasons for this. First, as noted above investment decisions by telecommunications companies depend on a variety of factors which may be specific to the company, the sector or the economy more widely. These factors – particularly those at the sector and economy-wide level – may vary from country to country.

Secondly, investment often occurs in phases. For example, following the large-scale infrastructure projects which took place in the UK in the late 1990s, investment by telecommunications companies in the UK has naturally declined as they seek to consolidate their market position and accumulate revenue in preparation for the next round of investment. If telecommunication companies in different countries are situated at different points in the investment cycle then this may give the impression that at a particular point in time one country is investing more – or less – than another country.

Table 1: Investment activity by telecommunication companies in various OECD countries

Company	Country	% (2007)	% (2005)
Telestra	Australia	21.8	18.9
Time Warner Cable	US	21.5	
Telenor	Norway	21.1	0.3
Comcast	US	19.9	
NTT	Japan	19.9	19.0
Telus Corp	Canada	19.5	16.2
Korea Telecom	Korea	19.5	15.3
Verizon	US	18.8	20.4
Swisscom	Switzerland	18.3	11.2
Rogers	Canada	17.7	14.8
Telecom Italia	Italy	17.6	17.3
BCE Inc	Canada	17.6	84.7
OTE	Greece	17.4	12.4
Telekom Austria	Austria	17.3	14.3
SK Telecom	Korea	16.2	
BT	UK	15.9	16.1
Sprint	US	15.7	14.2
AT&T	US	14.9	12.7
Portugal Telecom	Portugal	14.6	14.8
Vodafone (Group)	UK	14.5	9.7
KDDI	Japan	14.4	8.9
Telefonica	Spain	14.2	14.1
TDC	Denmark	13.2	
France Telecom	France	13.2	15.0
Cable & Wireless	UK	13.0	5.3
Virgin	UK	12.9	14.8 ¹
Deutsche Telecom	Germany	12.8	15.6
Bouygues Telecom	France	12.5	
Neuf Cegetel	France	12.4	32.8 ²
Wind	Italy	12.2	0.1
Qwest	US	12.1	11.6

AIITEL	US	12.0	14.2
TDS	US	11.7	18.2
America Movil	Mexico	11.1	20.9
KPN Telecom	Netherlands	11.0	3.2
Telmex	Mexico	10.6	14.1
Belgacom	Belgium	10.3	12.2
Tele 2AB	Sweden	9.8	7.3
TeliaSonera	Sweden	0.4	13.2
Turk Telecom	Turkey		6.3

1: NTL; 2: Cegetel

Source: OECD Communications Outlook, 2009

A third factor to consider is the heterogeneous nature of investment in communications infrastructure. For example, in the case of next generation access super-fast broadband, the level of investment being carried out by several countries will reflect the technology solution being used (e.g. fibre to the street or fibre to the home which involves considerably higher levels of capital expenditure), the scope for possible cost savings (e.g. by making use of existing duct access) and the extent to which public financial incentives have been made available²³. The amount of investment required will also depend on the degree of scale of the deployment and the extent to which the network is simply being upgraded or new infrastructure being roll-out.

In a market necessarily subject to regulation, it is a fundamental for long-term investment that market participants are as clear as possible about the regulatory framework and its implications. This entails providing the required degree of clarity as to how potentially conflicting objectives should be handled by the regulator. Based on the available evidence, the Government has deemed it necessary to evaluate whether it is appropriate to amend Ofcom's duties to clarify the emphasis that Government expects Ofcom to give to the promotion of investment in telecommunications infrastructure. The following options have been considered:

Policy options

Option 1: Do nothing

Under this option, there would be no change in Ofcom's duties. In the absence of any amendment to Ofcom's general duties, telecommunication companies may perceive that Ofcom will regulate to further the interests of consumers by promoting competition rather than by considering alternative methods of doing so. It is therefore unlikely that there will be a marked

²³ These factors are supported by modelling work carried out by Analysys Mason on the cost of rolling out next generation super-fast broadband on a national basis under different technology solutions. See Analysys Mason (2008) *The costs of deploying fibre-based next-generation broadband infrastructure*. Final report for the Broadband Stakeholder Group
http://www.broadbanduk.org/component/option,com_docman/task,doc_view/gid,1036/Itemid,63/

change, if any, in the willingness of telecommunication companies to invest, despite the recent steps taken by Ofcom to provide greater regulatory certainty.

Option 2: Amend Ofcom's statutory duties

The Digital Britain Final Report referred to the new investment duty sitting alongside the competition duty. Since publication of that report, Government has become concerned that amending the principal duty in the way suggested could have unintended consequences.

Rather than incurring this unnecessary risk, Government considers that its objective of requiring investment in infrastructure to be considered whenever Ofcom is considering competition in the context of its principal duty can be achieved by requiring Ofcom to have particular regard in all cases to the need to promote appropriate investment in infrastructure whenever it considers its principal duty.

Under this option, the Government would include the requirement for Ofcom, when considering its principal duty, to have particular regard in all cases to the need to promote appropriate levels of investment in infrastructure (as well as content²⁴). Such investment must be efficient wherever possible. This is a requirement on Ofcom to consider systematically the specific impact of its decisions/assessments on investment (today Ofcom is required to have regard to the desirability of encouraging investment when it appears to it to be relevant in the circumstances).

This will in practice, we expect, qualify *in particular* the requirement in the principal duty to further the interests of consumers by promoting competition, wherever appropriate: this amendment clarifies and substantiates the existing caveat ("*where appropriate by promoting competition*") by requiring Ofcom to consider the promotion of investment in every case, even in those circumstances where increased investment and competition might be at odds.

Given that Ofcom already has some regard to the promotion of investment when it considers competition and the future uncertainty about the cases it will need to evaluate, it is particularly difficult to predict what the actual impact of these proposals is likely to be. This will very much

²⁴ The effects of amending Ofcom's duties to include the promotion of investment in content are analysed in a separate impact assessment.

depend on how Ofcom alters its approach to regulating the sector as a result of amendment of its general duties and what specific changes it makes to the regulatory framework in order to perform its duties. It is equally important, in terms of potential impacts, how businesses expect Ofcom to perform its new duties when planning for future investment. Given these significant uncertainties, we speculate below on some of the possible effects on consumers, citizens and telecommunication companies.

Impact on telecommunication companies

We would not expect telecommunication companies to experience any direct change in costs as a result of these proposals, other than as a result of companies seeking advice on the full implications of these changes, for example, from their internal legal teams or from third parties. These costs may have already been undertaken as a result of the recent consultation.

Amendments to Ofcom's duties need not directly translate into higher operational or investment costs to market participants relative to the counterfactual of no changes being made. An increase in infrastructure access prices payable by user telecommunication companies would only be sanctioned under the new duties on the basis of additional and efficient levels of investment. Although this would result in short term costs to these operators, on a quality adjusted basis this need not result in higher prices paid by these companies over a relevant time period.

Decisions on whether or not to invest would continue to be made by companies on a commercial basis, on the expectation that returns will be commensurate to risks and the size of the investment. Under this option, any additional regulatory certainty created by amending Ofcom's duties in the proposed way may strengthen the incentives to invest (see Box 2 below)²⁵. Telecommunication companies subject to price regulation may now invest in infrastructure projects that were previously considered commercially unviable, increase the level of investment in existing programmes (new investment) or bring forward infrastructure projects which they had chosen to defer for commercial reasons (earlier investment).

²⁵ The regulatory change may, on a transitory basis, promote the opposite effect. The design of the revised duty attempts to minimise the likelihood of such an unintended consequence and is an additional reason why this regulatory change should be subject to continued monitoring and a post-implementation review.

Box 2: Weighted average cost of capital, risk and return

To invest in a particular project, a firm must be assured of a return which covers its weighted average cost of capital (WACC). The WACC is the return need to pay the owners of the capital it uses. This capital can be a mixture of debt capital (e.g. loans from banks on which the company must pay interest) and equity capital (shares owned by individuals and financial institutions on which they may be required to pay dividends)

The WACC is particularly influenced by the level of risk associated with the company and the market it operates in. The lower the level of company and market risk, the lower the WACC and hence the return needed for a company to proceed with the project.

In the current context, any additional increase in regulatory certainty brought about by the proposed amendments to Ofcom's duties may serve to further reduce the degree of market risk associated with the sector. This could have the effect of lowering the WACC of telecommunication companies, in some cases to the point where some investment decisions now become more attractive and commercially viable. As a result, greater investment in the sector may take place.

Impact on consumers and citizens

The impact on consumers and citizens will depend on the extent to which these proposals have an impact, if any, on the level of competition and investment activity in the sector. This is analysed further in the competition assessment below.

Competition assessment

In its 2004 Strategic Review of Telecommunications, Ofcom noted that there is a possible trade-off between regulation which delivers lower prices in the short-term and regulation that creates the right incentives for telecommunication companies to innovate and invest.

The argument follows that regulation which serves to promote competition by driving prices downwards and ensuring that they are closer to costs may weaken the incentive to invest in infrastructure because they erode expected returns making the business case for investment less attractive or even commercially unviable.

There is great uncertainty surrounding the potential impact of the proposed changes to Ofcom's duties on the level of competition and investment activity in the telecommunication industry. The precise effects will vary according to the regulatory intervention or decision being considered by Ofcom and the specific sector of the telecommunications industry to which it relates. Accordingly, an impact on competition must be assessed on a case by case basis.

To illustrate this, we consider below the possible competition effects of particular regulatory interventions in two broad sub-sectors of the telecommunications sector: fixed telephony and mobile telephony.

Fixed telephony

This sub-sector is characterised by high barriers to market entry and expansion. First, the costs of rolling-out new infrastructure are relatively greater for potential new entrants than incumbent operators²⁶. Second, there are economies of scale whereby the larger operators have a significant cost advantage over smaller operators²⁷.

As a result, in many parts of the UK, the incumbent operator, BT remains the only network provider despite the various steps taken to open this sub-sector to greater competition. In the absence of competition from alternative network providers, BT does not have a strong incentive to invest either in new infrastructure or the existing network.

One possible approach Ofcom could take to strengthen the incentives to invest may be to allow network providers such as BT to raise the prices they can charge at the infrastructure level. In the short-term this may have a negative effect on consumers in the form of higher retail prices. However in the longer-term competition may increase if alternative telecommunication companies are encouraged to roll-out competing infrastructure into those areas dominated by the BT, providing consumers and business with a choice of more than one network provider.

Mobile telephony

The mobile telephony sector is relatively more competitive than the fixed telephony sub-sector at both the wholesale and retail level. This is because compared to the fixed sub-sector where there is only one national fixed telecommunications infrastructure in the mobile sector there are five national mobile access networks.

In this sub-sector, investment in infrastructure has been driven by the strong competition which exists between the various Mobile Network Operators (MNOs)²⁸. For example, the recent entry of a fifth MNO, H3G, in 2003 meant that the incumbent MNOs could not delay their own 3G launches without risk of losing market share. It is possible that this could also happen with 4G networks.

Given the healthy level of competition and investment which already exists in this sector, further intervention by Ofcom aimed at promoting investment would be likely to be minor and have a minimal impact on competition in the sector

²⁶ More particularly, there are significant sunk costs (costs which cannot be recouped upon exit) associated with rolling out communications infrastructure. These can act as an effective deterrent to entry if new entrants believe that the post-entry profits which earn are insufficient to recoup these high sunk costs.

²⁷ The high cost of deploying communications infrastructure falls as the number of lines connected to each telephone exchange increases. By moving first, the incumbent operator is able to exploit these economies of scale. This can serve to deter competing network operators by making it much more difficult for them to reach the scale needed to operate efficiently.

²⁸ Mobile Network Operators (MNOs) are Vodafone, Orange, O2, T-Mobile and 3. These companies have their own spectrum allocation and use this to provide mobile telephony services over its wireless network.

At the time of writing, a proposed merger has been announced between the third and fourth MNOs of T-Mobile and Orange. It is currently unclear what impact, if any, this is likely to have on future competition in the sub-sector and accordingly the level of investment

Other specific tests

We have considered a number of other specific tests including Small Firms Impact Test, Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Human Rights and Rural Proofing. After an initial screening, and based on the consultation results, it has been deemed that no significant impact is anticipated in any case

With regard to race, disability and gender equality, we have complied with our statutory obligations in developing this policy.

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

OFCOM DUTIES – REPORTING DUTIES

Department /Agency: Department for Business, Innovation and Skills (BIS)	Title: Impact Assessment of proposals to amend Ofcom’s statutory duties under the 2003 Communications Act (Reporting Duties)	
Stage: Final	Version: Final	Date: 28 th October 2009
Related Publications: 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: Tim Hogan

Telephone: 020 7215 1628

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: 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, Ofcom will be required to report every two 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 at BIS and DCMS 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? Ofcom would be required to give an assessment of the UK’s communications infrastructure within two years of these proposals taking effect. A Post-Implementation Review looking at the actual costs and benefits will be carried out after Ofcom’s first report.

Ministerial Sign-off For 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.

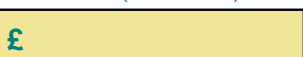

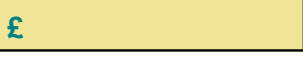
Signed by the responsible Minister:

Lord Young.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Impose additional reporting duties on Ofcom

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost		Total Cost (PV) £ Unknown
£			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		

£		Total Benefit (PV)		£ Unknown	
Other key non-monetised benefits 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.					
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	Net Benefit Range (NPV)		NET BENEFIT (NPV Best estimate)	
		£ Unknown		£ Unknown	
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?				Ofcom	
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?				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 (Ofcom), 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 it, 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 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.

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 interests²⁹.

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 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

²⁹ For example, radar, broadband and Global Positioning Systems (GPS) all play a vital role in air traffic control and military and defence systems.

potential issues of major concern and provide it with detailed and accurate information which it can use to help inform appropriate remedial action³⁰.

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).

Option 2: Impose additional reporting requirements on Ofcom

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

- to produce an initial snapshot of the position existing in the first year after the provision comes into force
- Following the initial report, Ofcom will be required to report every two 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 at BIS and DCMS to any matters of high concern regarding the developments affecting the communications infrastructure

The Digital Britain Final Report sets out examples of the areas which the UK Government will require Ofcom to keep under review and report on. 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

³⁰ At the present time, it is not known whether Ofcom has all the necessary information the UK Government is likely to require or whether further evidence will need to be collected from communication providers.

- 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

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 Bill provisions on internet domain names has been produced and is included as part of the whole package of Impact Assessments.

As part of these proposals, Ofcom will be given the power to require information from network operators to enable them to compile this report. Any information provided for this purpose will be fully exempt from disclosure under freedom of information legislation.

Costs

It is not known at this stage whether 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.

If further information is required, communication providers would likely incur additional administrative costs 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 costs to communication providers at this time. For this reason, we do not attempt to quantify these costs in this impact assessment.

Ofcom is likely to incur further administrative 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 two years. Again, there are considerable uncertainties surrounding the precise scope and objectives of the report which make it extremely difficult to quantify these costs accurately. For example, while the Digital Britain Final Report outlined some of the matters which it might require Ofcom to keep under review there could be additional ones which have not yet been identified. If this requires the collection of new market intelligence this could serve to increase the administrative costs incurred by Ofcom. It is also not clear 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 administrative costs to Ofcom in this impact assessment.

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 and where any significant deficiencies in the coverage, capability and resilience of that infrastructure might lie.

This may enable Government and Ofcom to make more 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, however, we would not expect any specific competition issues resulting from this proposal. Communication providers might incur additional administrative costs associated with providing any additional information that Ofcom might require. These costs may be disproportionately higher for small communicational 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 providers³¹.

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. If this were to happen, it is possible that some communication providers could try and use this information to gain a competitive advantage, thereby distorting competition in the industry.

Small Firms Impact Test

It is currently unknown whether small communication providers will be included in these proposals. If they are, then it is possible that the administrative costs they incur may be disproportionately higher than for larger firms.

³¹ 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.

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 DUTIES – INVESTMENT IN CONTENT

Department /Agency: DCMS		Title: New Duty on Ofcom to Promote Investment in Content	
Stage: Final	Version: Final	Date: 25th September 2009	
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>

Contact for enquiries: Aude Accary-Bonnery

Telephone: 0207 211 6916

What is the problem under consideration? Why is government intervention necessary? The UK content sector which includes the traditional media, new media, video games and film delivered across all platforms, is important for two reasons – First 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 PSB impact assessment suggests, this threat to UK public service content is stalling in particular for certain types of content, that meets public purposes but which is not necessarily commercially attractive.

There are two issues which need to be addressed via Government intervention. **1. Current Regulatory Failure** – The current statutory framework gives Ofcom specific duties and powers in relation to this type of 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 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 content in the future, as part of a series of wider measures aimed at securing plurality of provision and investment in UK public service content. **2. Market Conditions** - the rapid structural and cyclical diminution of the advertiser-funded model that has underpinned commercially-provided public service content, the competition faced by the commercially funded PSBs from multi-channel television and the increased levels of viewing on-demand platforms is leading to a reduction in investment in content that meets public purposes.

The Government believes that the best way to address these failures is to place content at the core of Ofcom’s duties and extend the scope of its statutory review into the delivery of public service broadcasting on television to the delivery of public service 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.

What are the policy objectives and the intended effects? Place the need to consider the promotion of investment in public service content as the principal qualifier to Ofcom’s principal duty– intended effect – to place content at the core of Ofcom’s duties, in order to allow them to take account of investment in public service content more widely across all platforms (beyond the existing public service broadcasters) and consider the areas where intervention may be required.

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

- Option 1: Do nothing** - discarded: Ofcom’s duties in relation to PSB 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
- Option 2: Amend the 2003 Act** – retained: amend section 3 of the 2003 Act to require Ofcom to always consider the need to promote investment in public service media content when performing its principle duty specified in subsection 3(1) of the 2003 Act. In parallel, 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 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 public service broadcasters have delivered on the PSB purposes, it 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, at the latest.

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:

Lord Davies.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option:	Description:
----------------	--------------

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by ‘main affected groups’ The extension of Ofcom’s PSB review duty to cover investment in content will result in them incurring some minimal costs (staffing and other).
	One-off (Transition) Yrs	
	£ Minimal	

	Average Annual Cost (excluding one-off)	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 to achieve its new primary goals.
	£ Minimal	Total Cost (PV) Minimal
Other key non-monetised costs by 'main affected groups'		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The change to Ofcom's duty should help to future proof investment in UK content and the provision of merit good programming. Similar to the costs, the extent of the benefits will be determined by how Ofcom approaches this duty and any specific changes it recommends.
	One-off Yrs	
	£ Not Quantifiable	
	Average Annual Benefit (excluding one-off)	
	£ Not Quantifiable	Total Benefit (PV) £ Not Quantifiable
Other key non-monetised benefits by 'main affected groups'		

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-----------------	-------------------	-------------------------------------	---

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

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

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

Evidence Base (for summary sheets)

Rationale for Government Intervention

Background

The overarching impact assessment on public service content sets out the reasons why Government believes investment in public service 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 citizen’s engagement in society and 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.

Second, investment in content contributes to the present and future success of the UK economy. Evidence of this can be found in both the Digital Britain White Paper and the report produced by Robin Foster in January 2009 – ‘Economics of audiovisual content production in the UK’.

However, through investment in content, positive and substantial economic benefits are generated for both the UK economy and UK society. Evidence³² 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, a number of challenges are now threatening the sector and putting at risk this important contribution.

Why Further Intervention is Required

The Digital Britain White Paper made a strong case for intervention aimed at delivering public service media content due to the rapid diminution of the advertiser-funded market that has funded commercially-provided public service media content, the significant competition faced by the commercially funded PSBs from multi-channel television and the increased levels of viewing on on-demand platforms. This has led to irreversible structural changes to the broadcasting market, which are being significantly exacerbated by the current economic conditions.

Objectives behind intervention

³² Economics of audiovisual content production in the UK – Robin Foster January 28 2009

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.

The Government believes that Ofcom is best placed to undertake this work. However, at present whilst Ofcom has a statutory obligation contained within s264 of the 2003 Act to regularly review and report (at least every five years) on the extent to which the purposes of public service television in the UK have been fulfilled they are under no duty to go any further and examine the wider delivery of public service content, beyond television and beyond existing public service broadcasting institutions (the BBC, ITV, Channel Four and Five). The Digital Britain White Paper therefore proposed to discuss with Ofcom how it could best take account of the wider delivery of public service content in the future.

The Regulatory Framework Failure

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 Communications Act's very strong commitment to convergence and digital television it needs updating to keep up with technological and consumer changes.

The key issues that need to be addressed in order to allow us to deliver the above mentioned policy are:

Regulation focused on Public Service Broadcasting

Ofcom's duties set out in the 2003 Act regarding public service content apply only to provided on linear television by a limited and specified number of broadcasters (namely the BBC, ITV1, Channel 4, Five – and Teletext).

However, the evidence collated by Ofcom³³ shows that viewers now have access to an ever increasing number of channels, beyond the five PSB, 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

³³ Ofcom's Communications Market Report 2009

through UK originated content. Ofcom³⁴ 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 content or encourage its provision, even though it is vital in order to tailor and target specific actions and avoid market distortions.

Despite greater choice and provision by the market of content that meets public purposes, there remain several areas vital to the delivery of public purposes where purely commercial players are unlikely to invest significantly because the returns are too low and the commercial risk is too great. For example, in regional news or in UK first-run originations Ofcom's Communications Markets report 2009 shows that 87% of the output on non-PSB channels (in hours) were repeats against 30-50% for PSBs channels (e.g. 31% on ITV1, 49% on Five) and first-run commissioning represented only 1% of non-PSB channels output in hours.

Similarly, for investment in high quality, UK-originated new media content³⁵, especially in key public service genres and long-form content, provision other than by the BBC is (a) limited and (b) widely dispersed, limiting the public benefits. 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 time is spent watching content produced by UK content providers.³⁶ The new duty is intended to enable Ofcom to take account of public service content when pursuing its duties and encourage investment in such content on a variety of platforms.

Policy Options

The options considered are listed below:

1. Do Nothing Option – **Discarded** –it 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 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

³⁴ Ofcom's Communications Market Review 2009

³⁵ DCMS evidence to the House of Lords Select Committee inquiry into the British film and television industries

³⁶ DCMS evidence to the House of Lords Select Committee inquiry into the British film and television industries.

wider delivery of public service content when recommending or developing policy changes.

2. Amending section 3 by inserting a new subsection would require Ofcom to consider the need to promote investment in public service media content when carrying out its principal duty to further the interests of both citizens and consumers. The positioning of the new subsection in section 3 would ensure that content is at the core of Ofcom's duties – **retained**.
3. That the investment duty should be complemented by an amendment to 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- **retained**.

Preferred Options

The proposed policy changes set out in the Bill are:

- The Digital Economy Bill should contain a provision amending section 3 of the 2003 Act to make it a duty for Ofcom consider the need to promote investment in content that meet public purposes when carrying out its principal duty to further the interests of citizens and consumers The should also be duty to ensure investment is efficient where possible.
- That the investment duty should be complemented by an amendment to 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 these policy options is to require Ofcom to take specific account of investment in content that meets public purposes, as part of its principal duty to further the interests of citizens and consumers. This means that Ofcom will have to consider public service 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 level of investment provided on these additional platforms and, importantly, take this into account when identifying actions aimed at addressing the on-going decline in investment identified in the overarching PSB impact assessment.

Costs and benefits of options

Costs of preferred option

Ofcom

Ofcom already has a statutory duty to review the delivery of public service broadcasting and we are simply extending this duty to cover investment in content. As such, Ofcom will incur some minimal costs (staffing and other costs) relating to this new duty.

It is, however, extremely difficult to assess what the impact of this new duty will be on either industry and society as this will very much depend on whether Ofcom alters its approach to regulating as a result of this amendment to its principal duty and, if so, what specific changes it will make to the regulatory framework in order to achieve its new primary goals. However, we have attempted to estimate below the costs to broadcasters, new media companies and consumers and citizens.

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.

Consumers and Citizens

The impact on consumers and citizens will depend on the extent to which these proposals have an impact, if any, on the level of competition and investment activity in the sector.

Benefits of preferred options

For viewers:

Will help to assess / establish where to focus action and to identify where plurality is desirable and needs to be preserved. This should help to future proof investment in UK content and the provision of merit good programming.

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:

Provide competition to the BBC, which will help drive innovation and creativity.

Independent Producers:

On 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.

	Do Nothing	Amendments to section 3 and s264 of the 2003 Act
Output	As of today	Place the need to promote investment in content as the principal qualifier of Ofcom's principal duty of furthering the interests of citizens and consumers, and to amend their duty to review the fulfilment of PSB purposes on television in order to allow them to consider the wider delivery of public service content.
Cost (£)	Minimal	Minimal
Other Costs	There may be opportunities that are missed by industry / market in this transition to digital. 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 content. There would be a danger that certain genres of programming would not be produced.	N/A

<p>Benefits</p>	<p>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 opportunities without undue intervention or regulation.</p>	<p>Acknowledges the social and cultural benefits that investment in UK originated content offers UK citizens and consumers, and places this at the core of Ofcom's duties.</p> <p>Would not impact on / create tensions with Ofcom's other duties.</p> <p>Could open up new revenue streams and help to establish new business models.</p> <p>Maintain competition for the BBC, which will help drive innovation and creativity.</p> <p>Increase investment and ensure a variety of outlets for the different programmes produced by the UK independent sector.</p>
------------------------	--	---

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 promote and encourage investment and 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.

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.

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.

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

ILLEGAL PEER TO PEER FILE SHARING

Department /Agency: Department for Business, Innovation and Skills (BIS)	Title: Impact Assessment of legislative proposals to address illegal file sharing	
Stage: Final	Version: Final	Date: 5 th October
Related Publications: Consultation on legislative options to address illicit file-sharing (October 2008) Government response to consultation (January 2009) Digital Britain Interim Report (January 2009)		

Available to view or download at:

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 unlawful peer-to-peer (P2P) file-sharing 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 fully appropriate returns on their investment. The Government is looking at the possibility of bringing in legislation aimed at reducing illegal downloading by making it easier and cheaper for rights holders to bring civil actions against suspected illegal file sharers. 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 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 illegal file-sharing 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:

- Option one: Do nothing
- Option two: Preferred policy option outlined in Government Response (January 2009) to previous Consultation (July 2008)

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 unlawful file-sharing would be reviewed every 6 months by Ofcom.

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:

Lord Young.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Preferred policy option outlined in the Government response (January 2009) to previous consultation (July 2008)

COSTS	ANNUAL COSTS		Description and scale of key monetised costs 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. Possibility of higher broadband costs for consumers
	One-off (Transition)	Yrs	
	£ 35 million	1	
	Average Annual Cost (excluding one-off)		
	£ 30-50 million		Total Cost (PV) £ 290-500 million
Other key non-monetised costs 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 infringing IP addresses and taking infringers to court.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Benefits to rights holders of recovering displaced sales
	One-off	Yrs	
	£ N/A		
	Average Annual Benefit (excluding one-off)		
	£ 200 million		Total Benefit (PV) £ 1700 million
Other key non-monetised benefits 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 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.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ 1.2-1.4 billion	NET BENEFIT (NPV Best estimate) £ 1.2 billion
-------------------------	-------------------------	--	--

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?		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?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 14.7m	Decrease of	£ 0
		Net Impact	£ 14.7m

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

Evidence Base (for summary sheets)

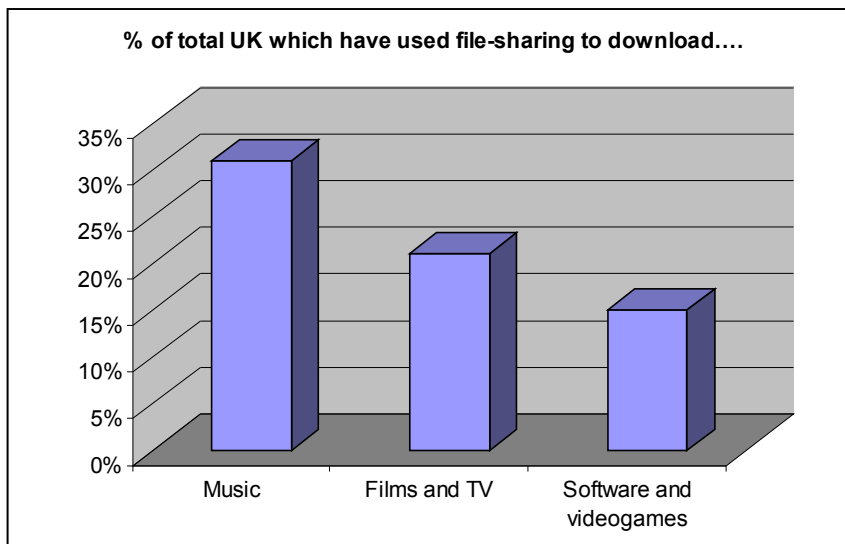
Background

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.

Under the Copyright, Design & Patents Act 1998 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 P2P file-sharing means it is not practicable to take all those involved to court: right-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% in the UK have illegally shared music, 21% have downloaded movies or TV content and 15% software or videogames.

Figure 1: P2P illegal downloading by industry



Source: Digital Entertainment Survey (2008)³⁷

Further, 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 file-

³⁷ http://www.entertainmentmediaresearch.com/reports/DigitalEntertainmentSurvey2008_FullReport.pdf

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.

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 illegal file-sharing 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 good³⁸ nature of file-sharing and the spillover effects³⁹ which exist creates a free-riding problem whereby users may enjoy the benefits of file-sharing without paying the product's price⁴⁰. The disincentive to invest in artists as of 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 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 which they invest money in 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 to finance the next round of investment. The small

³⁸ 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.

³⁹ Spillover effects arise when one person's actions have an impact on a third party.

⁴⁰ 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.

success rate is due to the nature of 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 illegal 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.

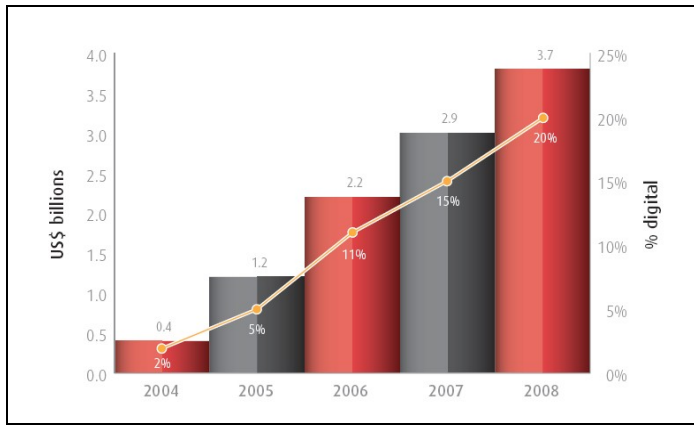
The digital provision of content has a number of advantages for consumers compared to more traditional ways of consuming content. Namely, it allows consumers to sample the product before buying it; to discuss the quality of the product online (e.g. social networking); it has lower transaction costs (e.g. 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 illegal downloading. Nearly 70% of illegal music downloaders agree that a basic reason for their unlawful behaviour is that legal downloading sources don't have the same range of content as illegal sources⁴¹. The lack of supply of digital content may have led some consumers to use illegal sources of digital consumption. In fact, only in recent years the industry has 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 illegal 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

⁴¹ 2008 Digital Entertainment Survey;
http://www.entertainmentmediaresearch.com/reports/DigitalEntertainmentSurvey2008_FullReport.pdf



Source: Digital Music Report (2009)⁴²

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)⁴³

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 on 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.

Scope of proposals

The business sectors affected by the proposed legislation are:

⁴² <http://www.ifpi.org/content/library/DMR2009.pdf>

⁴³ http://www.pwc.co.uk/eng/publications/global_entertainment_media_outlook_2008_2012.html

- Internet Service Providers (ISPs) and Mobile Network Operators (MNOs), including both fixed and mobile broadband service providers⁴⁴. There are over 450 fixed ISPs in the UK which jointly generate revenues in excess of £3 billion a year, with the top 6 ISPs⁴⁵ accounting for around 90% of the market share⁴⁶.

Mobile broadband connections are increasingly becoming widespread. The latest available data indicates that there are over 13 million subscribers to mobile broadband connections⁴⁷ 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 6.4% of UK GVA⁴⁸.
- 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 illegal p2p downloading 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 amongst the youngest has recently increased.

Policy options

Option 1: Do nothing

⁴⁴ 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.

⁴⁵ BT, Virgin, Talk Talk/AOL, Sky, Tiscali and Orange (Tiscali is in the process of being bought and ultimately merged with Tiscali)

⁴⁶ Ofcom estimates

⁴⁷ Mobile broadband connections include internet connection through either dongles (an electronic device that attached to a computer provides mobile broadband connection) or handsets

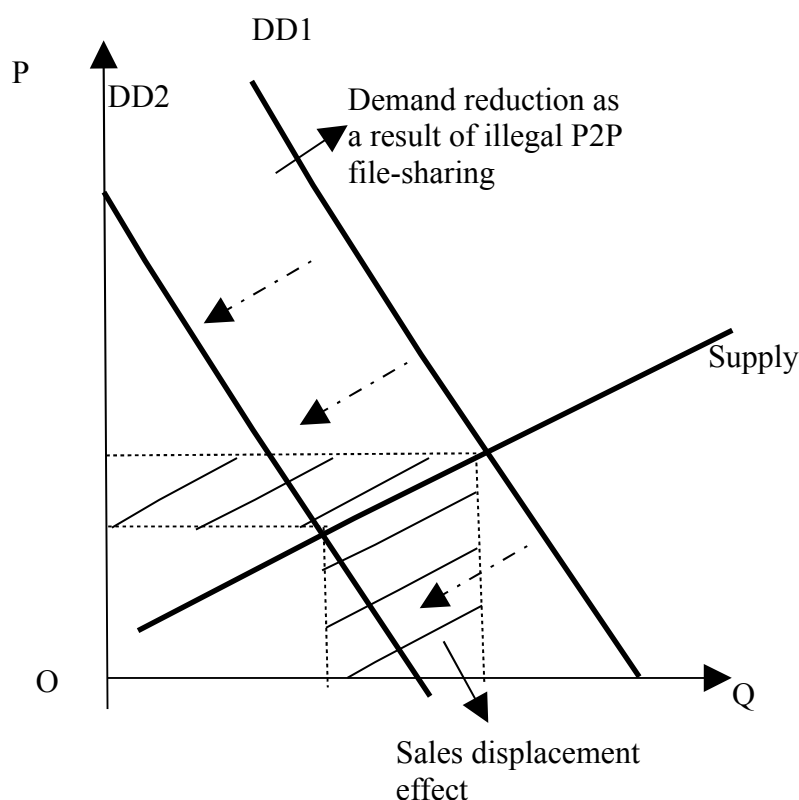
⁴⁸ DCMS (2009): Creative Industries Economic Estimates;

http://www.culture.gov.uk/reference_library/research_and_statistics/4848.aspx

If no action is taken, we estimate costs for the creative content industries⁴⁹ to be in the region of £400 million per annum in displaced sales (see Figure 4)⁵⁰. 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 illegal P2P downloading. 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 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)⁵¹ estimates a sales displacement effect of £152 million for the film and TV industry in 2007; JupiterResearch (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

⁴⁹ Including TV, cinema, music, entertainment software and videogames.

⁵⁰ See Option 2 for a more extended discussion.

⁵¹ http://www.ukfilmcouncil.org.uk/media/pdf/g/m/Ipsos_Piracy_UK_2007.pdf

displacement effect of 2%, the leisure software and videogames industry 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 haven't 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 illegal P2P file-sharing 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 illegal downloading 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 P2P file-sharing 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 cost⁵².
- 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
- 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 illegal downloading 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

⁵² See Option 2 for a more extended discussion.

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 illegal file-sharers in the UK. With the increasing popularity of P2P downloading some file-sharers may have substituted legal purchases for illegal 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 activity⁵³, and based on trial data from the Memorandum of Understanding which indicates that this would reduce the volume of illegal downloading by 55%⁵⁴, we estimate industry annual revenues could increase by approximately £200 million⁵⁵.

However, the theoretical impact of P2P downloading on sales is disputed. Even though some file-sharers will have substituted legal purchases for illegal 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 legally⁵⁶.
- 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 videogaming 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.

⁵³ Results of the Digital Entertainment Survey (2008) suggest that 70% of infringers would stop illegal P2P downloads after being notified by their ISP.

⁵⁴ Aggregate statistics of letters sent to individuals during the trial suggest that 30% of infringers account for 45% of total illegal downloads. This suggests that those infringers downloading the most will be more resistant to stop their unlawful behaviour.

⁵⁵ approximately 55% of £400 million

⁵⁶ 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 illegal file-sharing on sales is an empirical question. Table 1⁵⁷ 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 analysed⁵⁸.

Table 1: Selection of studies estimating the sales displacement effect

Studies on the effect of unlawful p2p downloading on industry revenues	Sales displacement effect (as % of total revenues)	Industry	Country	Method
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.

Illegal P2P downloading 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. 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

⁵⁷ Far from being an exhaustive review, the table provides an illustration of the variety of results that are obtained when using different methodologies

⁵⁸ 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.

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 2010⁵⁹ 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 unlawful P2P file-sharers would stop downloading digital products if they received a call or letter from their Internet Service Provider. 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 illegal downloaders in the UK during one year, we estimate a range of one-off costs for the ISP industry between £20 and £65 million⁶⁰.

There may be additional costs if right holders ask ISPs to send further letters to those infringers that keep on downloading digital content illegally after being notified of their unlawful behaviour. According to the Digital Entertainment Survey (2008)⁶¹, 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 year⁶². 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.

⁵⁹ VAT rate of 17.5% from 2010.

⁶⁰ Calculated by multiplying the cost of sending a letter (£3-£10) by the total number of letters sent (6.5 million)

⁶¹ See footnote 5

⁶² 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.

This cost would mostly fall on the 6 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.

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 telephone⁶³.

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 hours⁶⁴, representing an initial cost to the ISP industry as a whole to be in the region of nearly £200,000⁶⁵. Under the assumptions we are using, these costs would be reduced in following years to under £65,000⁶⁶ per annum.

c) Capital and operating cost to ISPs

There will likely 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 £80k 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 million⁶⁷.

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 since no cost estimates have been provided by the industry at this stage of the consultation process.

⁶³ Data provided by Ofcom

⁶⁴ 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

⁶⁵ 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.

⁶⁶ 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.

⁶⁷ Calculated under the assumption that there are approximately 450 ISP which have fixed costs of £80k each

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 customers, 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 million⁶⁸ for the five mobile network operators⁶⁹ as a whole in its first year. This figure would be reduced to approximately £17.5 million per annum⁷⁰ 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 customers). Industry sources indicate that approximately 70% of mobile broadband customers 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 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%⁷¹. 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- 40,000⁷². This would represent additional revenue lost by the ISP industry between £2 and £9 million per annum.

⁶⁸ Cost estimates provided by industry sources

⁶⁹ Vodafone, O2, T-Mobile, Orange, Hutchinson 3G

⁷⁰ Cost estimates provided by industry sources

⁷¹ 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%.

⁷² 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

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 zero⁷³. 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 illegally 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 US⁷⁴ show that this 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

We expect there may be a cost to right holders to identify illegal P2P downloads of copyrighted digital products and further costs were right holders to decide to take forward legal actions. It is not possible at this time to estimate these costs with the information that has been provided to us.

g) Cost to Government regulators of monitoring and reviewing legislation

There may be additional costs to Ofcom to set up, enforce and monitor the development of the Code of Practice. Current uncertainties around the final design of the Code of Practice prevents us from monetising these costs at this stage.

Table 2: Policy costs

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	-

Source: BIS estimates

⁷³ 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).

⁷⁴ Rob & Waldfogel (2006): <http://www.journals.uchicago.edu/doi/abs/10.1086/430809>

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%⁷⁵. 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. MNOs could be forced to increase prices which could have as a result that the increasingly strong competition in the broadband market could be reduced.

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 unlawful P2P file-sharing 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 wouldn't 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 illegally download digital products with a higher legal security.

⁷⁵ Ofcom estimates

These advantages could potentially lead to an artificial displacement of broadband subscriptions from larger ISPs to smaller ISPs. The large number of illegal downloaders 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. Secondly 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 unlawful P2P users 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.

A de minimus exclusion of ISPs from the obligation is being considered to alleviate this problem, but more information is required in order to make an informed decision.

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. Further information can be found in the Digital Economy Bill Equality Impact Assessment.

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 Ofcom is satisfied that the obligations and targeted legal action scheme has proved to be insufficient to dissuade serious infringers, then it will have a power to require ISPs to impose specified technical measures against infringing individuals. In deciding whether to exercise that power, Ofcom will have regard to all its relevant duties (including, for example, its general duties and the Community requirements in sections 3 and 4 of the Communications Act 2003) and any other relevant legal requirements (for example in privacy and data protection legislation). It will also have to be satisfied that the imposition of technical measures by ISPs is objectively justified, proportionate, transparent and does not unduly discriminate against particular persons or particular groups of persons.

Finally Ofcom will be placed under a duty to ensure that there is a code of practice, with which ISPs will be under a legal obligation to comply (and Rights holders to follow if they wish to trigger action under the Code).

The expectation would be for this code to be prepared by an industry self-regulatory body and approved by Ofcom. In the absence of an industry code that Ofcom is able to approve (or if an existing industry code is revoked) Ofcom will be obliged to provide a code itself.

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

Department /Agency: Department for Business, Innovation and Skills (BIS)	Title: Impact Assessment of reserve powers to regulate Internet domain names	
Stage: Final	Version: Final	Date: 28 th October 2009
Related Publications: Digital Britain Final Report (2009)		

Available to view or download at: 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 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. 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

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 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:

Lord Young.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Continue with self-regulation but have reserve powers in case Government intervention is required
-------------------------	---

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'							
	<table border="1" style="width: 100%;"> <tr> <td style="width: 60%;">One-off (Transition)</td> <td style="width: 40%; text-align: center;">Yrs</td> </tr> <tr> <td>£ Not quantifiable</td> <td></td> </tr> <tr> <td colspan="2">Average Annual Cost (excluding one-off)</td> </tr> <tr> <td>£ Not quantifiable</td> <td></td> </tr> </table>		One-off (Transition)	Yrs	£ Not quantifiable		Average Annual Cost (excluding one-off)		£ Not quantifiable
	One-off (Transition)	Yrs							
	£ Not quantifiable								
Average Annual Cost (excluding one-off)									
£ Not quantifiable									
Total Cost (PV)		£ Not quantifiable							
<p>Other key non-monetised costs 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 Bill's Ofcom reporting duty provisions.</p>									
BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'							
	<table border="1" style="width: 100%;"> <tr> <td style="width: 60%;">One-off</td> <td style="width: 40%; text-align: center;">Yrs</td> </tr> <tr> <td>£ Not quantifiable</td> <td></td> </tr> <tr> <td colspan="2">Average Annual Benefit (excluding one-off)</td> </tr> <tr> <td>£ Not quantifiable</td> <td></td> </tr> </table>		One-off	Yrs	£ Not quantifiable		Average Annual Benefit (excluding one-off)		£ Not quantifiable
	One-off	Yrs							
	£ Not quantifiable								
Average Annual Benefit (excluding one-off)									
£ Not quantifiable									
Total Benefit (PV)		£ Not quantifiable							

Other **key non-monetised benefits** by 'main affected groups' Consumers are better protected in terms of 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) Greater growth in e-commerce as a result of a better functioning Internet economy.

Key Assumptions/Sensitivities/Risks

Price Base Year N/A	Time Period Years N/A	Net Benefit Range (NPV) £ Not quantifiable	NET BENEFIT (NPV Best estimate) £ Not quantifiable
------------------------	--------------------------	---	---

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

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

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

Evidence Base (for summary sheets)

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.

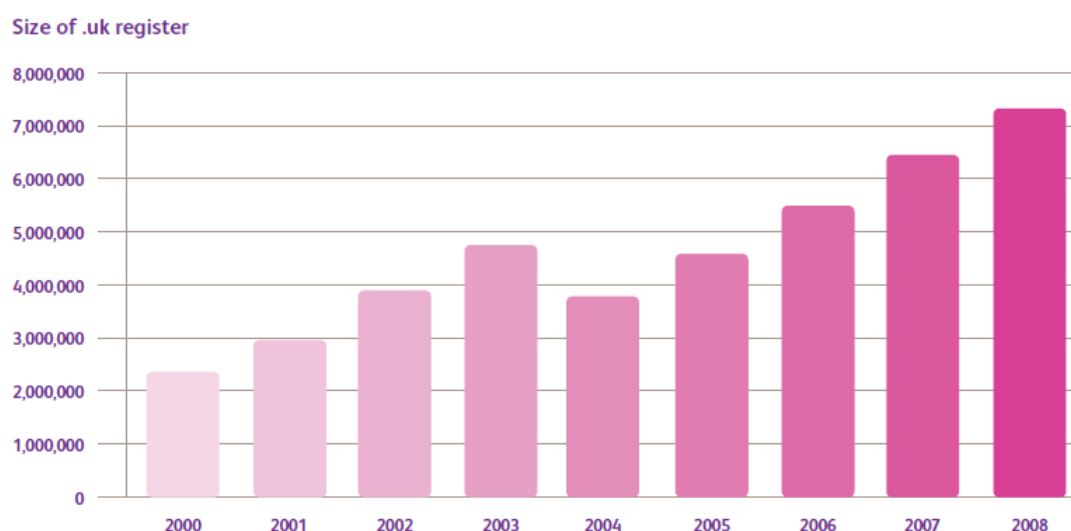
Each TLD is operated by a TLD registry. It is their task to link new domain names to the unique numerical IP address of their computer, which is then used to route the traffic via servers. In the UK, a company called Nominet, a not-for-profit organisation, operates the registry that oversees the distribution 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. There is currently only one other TLD registry in the UK. This is the .tel gTLD registry operated by a company called Telnic Ltd. 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 report⁷⁶. 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

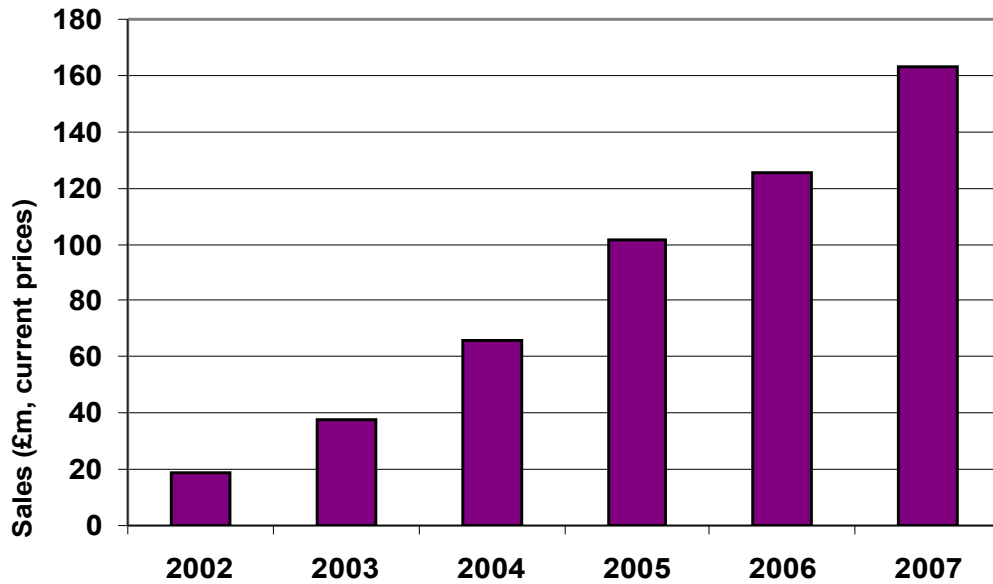


Source: Nominet (2009)

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 risen from around £20bn in 2002 to over £160bn by 2007.

Figure 2: Sales over the internet by UK businesses

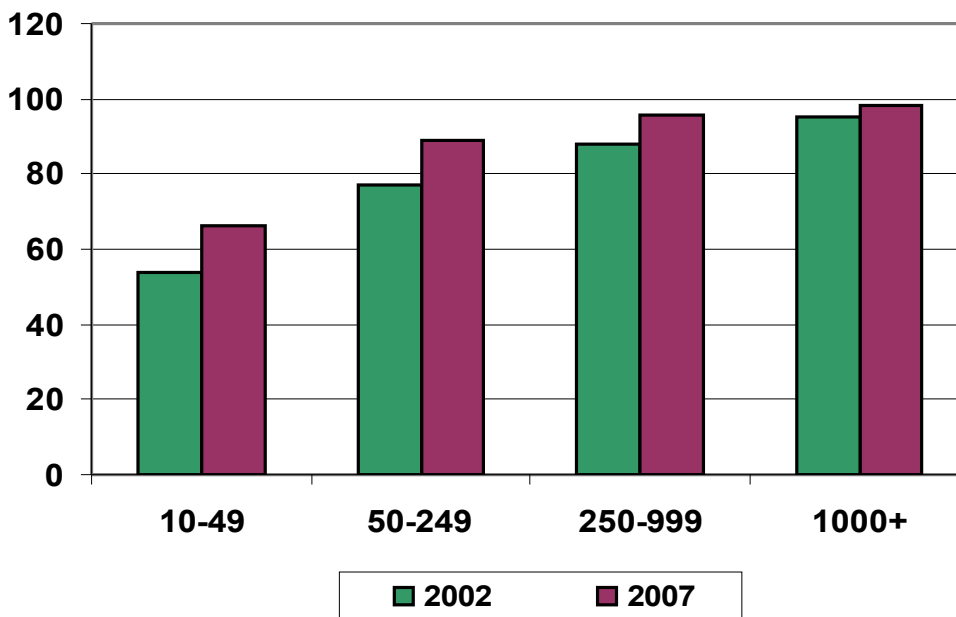
⁷⁶ Nominet (2008) *Domain name industry report* Available at: http://www.nominet.org.uk/digitalAssets/32856_Domain_name_industry_report2008.pdf



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 475 between January and September 2009. Nominet currently estimate that 1 in 3000 .uk domain name registrations are subject to a complaint. Particular abuses include:

- *Cyber-squatting* – members apply to register domain names which are of economic value to other people and then charge them high prices to buy them.
- *Drop-catching* – members wait until the expiry date for an existing registered domain name has just passed and then exploit the few seconds between the expiry of the registration and the effecting of the original owner's automatic registration in order to snatch the name and then charge for them to buy it back
- *Phishing* – a member uses the 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.

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.

While domain name registries do have mechanisms which help deter abuses of the Domain Name System, these may not 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.

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 Telnic Ltd. This will include top level domain name registries but also registries that may be established at any other level.

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 dropcatching) 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. In each case these will be prescribed in regulations made by the Secretary of State.

The powers will only be used where there is a risk of the failure adversely affecting the reputation of the UK's Internet economy or where such adverse effects are already occurring.

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.

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

By giving the reserve powers to the Government, consumers would benefit from 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. 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. Intellectual property and brand ownership will be better retained by businesses.

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. Further information can be found in the Digital Economy Bill Equality Impact Assessment.

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 will ask Ofcom to report to him using powers proposed. That report will 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. This action could take the form of the Secretary of State appointing a manager of a registry and/or applying to court to interfere in 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 3-5 years after the implementation of the secondary legislation.

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	Results in Evidence Base?	Results annexed?
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

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 Bill. 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
- 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/
- 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
- 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
- Ofcom Public Service Broadcasting Annual Report 2009 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 review⁷⁷ 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

PSB characteristics*

⁷⁷ http://www.ofcom.org.uk/tv/psb_review/

- **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 channels⁷⁸ 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

⁷⁸ The BBC PSB channels are BBC One, BBC Two, BBC Three, BBC Four, CBBC, CBeebies, BBC News and BBC Parliament.

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 PSB⁷⁹, 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.

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

⁷⁹ http://www.ofcom.org.uk/consult/condocs/psb/psb/sup_vol_1/concept/historic/

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 principles⁸⁰ 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;
- 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

⁸⁰ http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf (paragraph 6.34)

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 survey⁸¹ 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 PSB⁸² 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;

⁸¹ http://www.ofcom.org.uk/consult/condocs/psb2_1/annex5.pdf (chapter 5)

⁸² Ofcom's Second PSB Review, Phase 2, p18, paragraph 2.49

- It acts as a competitive spur, helping to ensure that public service content remains relevant and focused on meeting audience needs

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 supply⁸³. It concluded that having PSB largely or exclusively limited to one institution would have a number of undesirable effects:

⁸³ <http://www.ofcom.org.uk/consult/condocs/psb2/psb2/psbwp/wp2schles.pdf>

- 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 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 figures⁸⁴ 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-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 package⁸⁵.

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

⁸⁴ Ofcom Communications Market Report 2009: <http://www.ofcom.org.uk/research/cm/cmr09/cmr09.pdf>

⁸⁵ 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>

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 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.

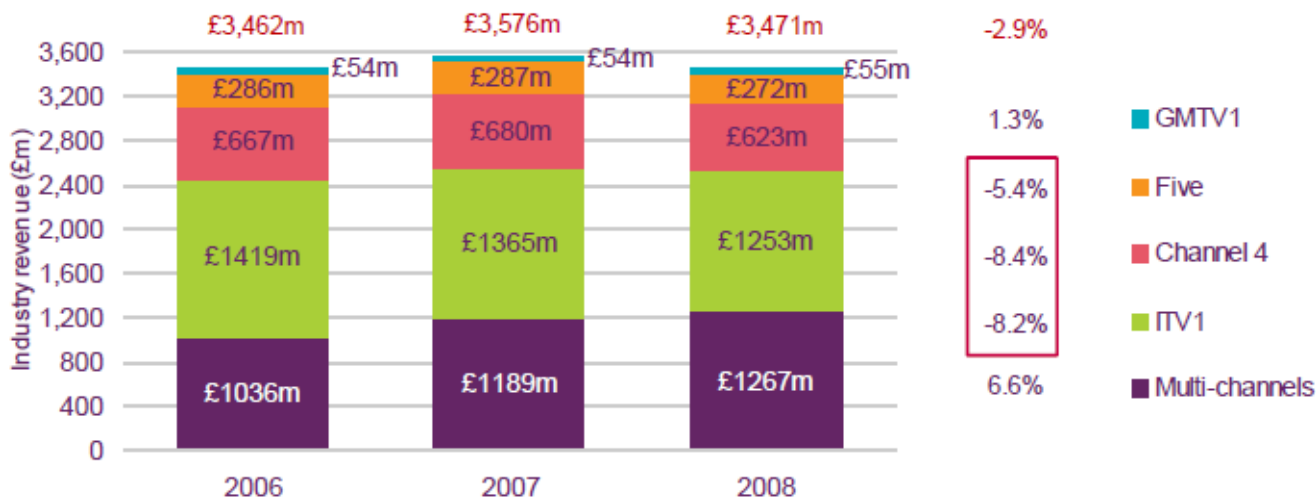
Further research by Oliver & Ohlbaum suggests that television advertising revenue may continue to decline sharply, by close to 20% in total in real terms, from 2006 to 2012. The decline, in the short-term, is likely to be greatest for the commercial public service channels, although this will be partly 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 broadcasters⁸⁶



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 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

⁸⁶ <http://www.ofcom.org.uk/research/cm/cmr09/cmr09.pdf>

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 intervention⁸⁷. 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.⁸⁸

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

Threats to plurality

Without intervention, there is also a threat to the plurality of public service 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

⁸⁷ from Ofcom's Public Service Broadcasting: Annual Report 2009

⁸⁸ from Ofcom's Research Report: The Future of Children's Programming

Policy objective

The Digital Britain White Paper set out a renewed commitment to public service content in the Digital World⁸⁹ 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.

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.

⁸⁹ http://www.culture.gov.uk/images/publications/chpt5_digitalbritain-finalreport-jun09.pdf

There are five elements of the preferred package – each is considered in detail individually in separate mini impact assessments

1. Establishing **Independently Funded News Consortia** for news in the Nations, locally and in the regions

2. Updating Channel 4’s remit

3. Updating commercial PSB Licensing Procedures

4. Gaelic Programming on Channel 3 in Scotland

5. 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.

CHANNEL 4 CORPORATION FUNCTIONS

Department /Agency:

DCMS

Title:

Impact Assessment – Update of the Channel 4 Television Corporation’s Functions

Stage: Final

Version: Final

Date: 25th September 2009

Related Publications: Digital Britain White Paper, Chapter 5

Available to view or download at:

Contact for enquiries: Aude Accary-Bonnery/Robert Wallich

Telephone: 020 7211 6916/6449

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 TV⁹⁰ 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.

⁹⁰ Linear TV channels consist of fixed schedules, where the broadcaster rather than the individual viewer determines what is broadcast, and when.

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:

Lord Davies.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option:

Description:

COSTS	ANNUAL COSTS		Description and scale of key monetised costs 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	
	£ Marginal	1	
	Average Annual Cost (excluding one-off)		
	£ Marginal		
	Total Cost (PV)		c£ Marginal
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits 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
	One-off	Yrs	
	£	N/A	

Average Annual Benefit (excluding one-off)	costs, which are not significant) was: Original content on digital channels - £32m; Other digital media content (e.g. online) - £7m; Digital media
£56m	Total Benefit (PV) £ 56.6m
Other key non-monetised benefits 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	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate)
-------------------------	----------------------	-------------------------------------	--

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?	C4 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

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

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

Evidence Base (for summary sheets)

C4C are already well on the way to delivering various aspects of the new remit 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 remit formalises C4C practice, enables C4C to move some of their now marginal activities into the mainstream; helps it 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

⁹¹ Source: C4C Report and Financial Statements, 2008 - Public Impact Report

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, emphasises 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 assessments - licensing and IFNCs). 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 it proposes to fulfil its 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 its 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 its 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

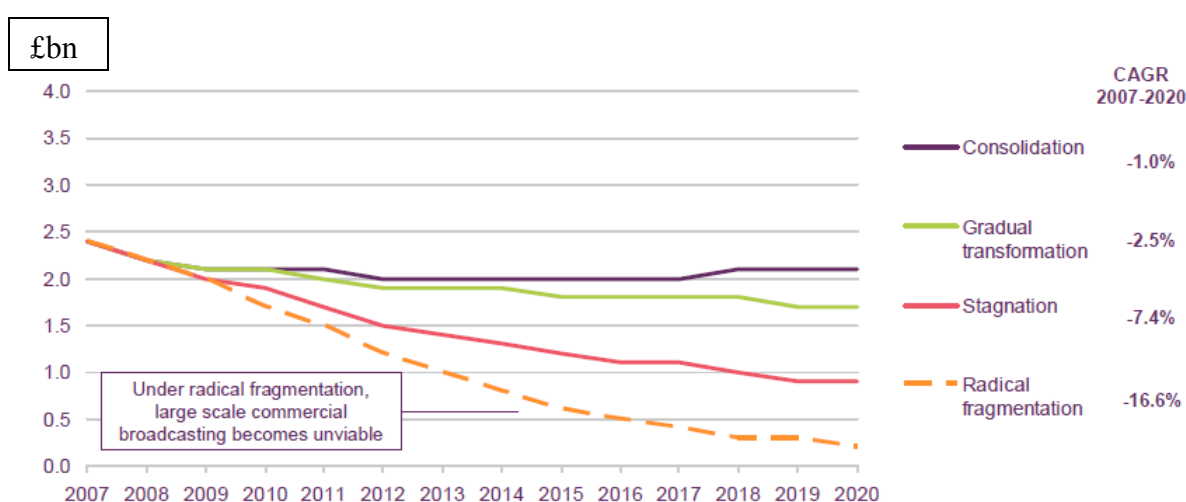
Costs of preferred options

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:

	2009	2010	2011
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
Output	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.
Cost (£)	Not quantifiable	Not quantifiable
Other Costs	Reduce Channel 4's impact and public value, reduce competition to the BBC	
Benefits		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
Legislation	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 follow 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 PSB 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 its 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.

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 BROADCASTING LICENSING PROCEDURES

Department /Agency: DCMS	Title: Commercially Funded Public Service Broadcasters – Licensing Procedures	
Stage: Final	Version: Final	Date: 25th September 2009
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: Aude Accary-Bonnery / David Goss

Telephone: 0207 211 6916 / 6541

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, Five and Teletext) 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 IA that model has become unsustainable. 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 and 5 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 and Ch5 licence and (iv) adjusting the duty on Ofcom, set out in the 2003 Act, to do all it can to secure the provision of the 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:

Lord Davies..... Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option:	Description:																
COSTS	<table border="1"> <tr> <th colspan="2">ANNUAL COSTS</th> <th rowspan="2">Description and scale of key monetised costs by 'main affected groups'</th> </tr> <tr> <td>One-off (Transition)</td> <td>Yrs</td> </tr> <tr> <td>£ Negligible</td> <td></td> <td rowspan="3"> 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 consultation and report on the future of Teletext. </td> </tr> <tr> <th colspan="2">Average Annual Cost (excluding one-off)</th> </tr> <tr> <td>£ Negligible</td> <td></td> </tr> <tr> <td colspan="2"></td> <td style="text-align: right;">Total Cost (PV)</td> <td style="background-color: #e0ffe0;">Negligible</td> </tr> </table>	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'	One-off (Transition)	Yrs	£ Negligible		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 consultation and report on the future of Teletext.	Average Annual Cost (excluding one-off)		£ Negligible				Total Cost (PV)	Negligible
	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'														
	One-off (Transition)	Yrs															
	£ Negligible		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 consultation and report on the future of Teletext.														
Average Annual Cost (excluding one-off)																	
£ Negligible																	
		Total Cost (PV)	Negligible														
Other key non-monetised costs 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 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 Teletext service would lead to a loss of value to viewers of those services.																	
BENEFITS	<table border="1"> <tr> <th colspan="2">ANNUAL BENEFITS</th> <th rowspan="2">Description and scale of key monetised benefits by 'main affected groups'</th> </tr> <tr> <td>One-off</td> <td>Yrs</td> </tr> <tr> <td>£ Not Quantifiable</td> <td></td> <td rowspan="3"> 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. </td> </tr> <tr> <th colspan="2">Average Annual Benefit (excluding one-off)</th> </tr> <tr> <td>£ Not Quantifiable</td> <td></td> </tr> <tr> <td colspan="2"></td> <td style="text-align: right;">Total Benefit (PV)</td> <td style="background-color: #e0ffe0;">£ Not Quantifiable</td> </tr> </table>	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'	One-off	Yrs	£ Not Quantifiable		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.	Average Annual Benefit (excluding one-off)		£ Not Quantifiable				Total Benefit (PV)	£ Not Quantifiable
	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'														
	One-off	Yrs															
	£ Not Quantifiable		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.														
Average Annual Benefit (excluding one-off)																	
£ Not Quantifiable																	
		Total Benefit (PV)	£ Not Quantifiable														

Other key non-monetised benefits by 'main affected groups'

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.

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £	
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
Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)		
Increase of £ negligible	Decrease of £ negligible	Net Impact	£ negligible	

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

Evidence Base (for summary sheets)

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, Five and Teletext).

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

The Communications Act 2003⁹² 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.

⁹² http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_1

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 profitability. The Government accepts Ofcom's analysis in the second PSB review⁹³, 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 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).
- 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).

⁹³ Putting Viewers First: Final statement and recommendations

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 1990⁹⁴ 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

⁹⁴ https://www.hmso.gov.uk/acts/acts1990/Ukpga_19900042_en_1

The Communications Act 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 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 2010⁹⁵) 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-licence them.

The extension of the licence duration provision is simply designed to make the licence map more attractive to potential bidders, if and when Ofcom come to re-licence. The licence map issue is designed to allow Ofcom, if it believes it would be beneficial to do so, to create a single English licence and a single Scottish licence. At present, statute requires Ofcom to award at least two licences in England and two in Scotland (though potentially to the same provider, as today) and we believe that altering the legislation in the way described will bring stability and scale at a time when there are difficulties and challenges in operating the Channel 3 network, as set out above.

Teletext Licence

With regard to Teletext, the current licence holder has announced its intention to stop provision of the PSB service in 2010. Government accepts Ofcom's view that the current service 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.

⁹⁵ 'Sustainable independent and impartial news; in the Nations, locally and in the regions' - Ofcom's public response to the DCMS Consultation

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 Teletext service there might be little (if any) interest in the market securing it when the licence is re-tendered. The service is currently commercially funded and is 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, especially when it is still serving sections of the population, including some of the more vulnerable members of society, especially if robust evidence has not been specifically gathered and publically discussed that shows that 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 2003⁹⁶ – “to do all it can” to secure provision of a public Teletext service), so that in the event of the licence coming to an end by whatever means, it must consult and produce a report to the Secretary of State on the public value and viability of the 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:

⁹⁶ http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030021_en_21#pt3-ch2-pb3-l1g218

- 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 and 5 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 and Ch5 licence and (iv) adjusting the duty on Ofcom, set out in the 2003 Act, to do all it can to secure the provision of the 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 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 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 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 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, as 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 and Channel 5 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 Teletext service. **Intended Impact** – To allow Ofcom to conduct a public review of the commercial sustainability and public value of the 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

Channel 3, Channel 5 and Teletext current 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 Teletext licence would result in the additional of cost of undertaking a consultation and producing 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 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 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 the 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

	Do Nothing	Provision to permit the extension of the initial expiry date of the PSB licences
Output	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.
Cost (£)	Negligible	Negligible
Other Costs	Reduce value and competition for licences.	
Benefits	n/a	Longer duration would increase value and attractiveness of licence to the market. Increase competition for obtaining licence

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

	Do Nothing	Allow greater flexibility for the SoS to remove or impose short term variations to public service obligations on the Channel 3

		and Channel 5 licence holders
Output	As of today	Increase flexibility and allow Secretary to remove or re-impose public service obligations.
Cost (£)	Negligible	Negligible
Other Costs	Total loss of certain genres, if market left to decide. Reduce outlets for the ideas of Independent Producers.	Reduction in public service content, but at minimal and managed level to ensure continued delivery and plurality of providers and programming
Benefits	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.

	Do Nothing	Adjust the duty on Ofcom, set out in the 2003 Act, to do all it can to secure the provision of the Teletext service
Output	As of today	Allow Ofcom to decide, following a public review of the commercial sustainability and public value of the 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 nor able to deliver public value.
Cost (£)	Approximate cost for Ofcom of £300,000 to conduct re-licensing process (which could prove	Negligible

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

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 Teletext 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 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. Further analyses' relating to these tests is contained in the Equalities Impact Assessment accompanying the Digital Economy Bill. With regards to the future of the public service Teletext 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

INDEPENDENTLY FUNDED NEWS CONSORTIA

Department /Agency: DCMS	Title: Impact Assessment on Independently Funded News Consortia	
Stage: Final	Version: Final	Date: 8th October 2009
Related Publications: Digital Britain Final report, June 2009; Digital Britain Interim report, January 2009; Ofcom's second public service broadcasting review: Putting Viewers First: Final statement and recommendations, 21 January 2009; Consultation on sustainable, independent and impartial news in the Nations, locally and in the regions, June 2009		

Available to view or download at:

Contact for enquiries: Dominic Lake (dominic.lake@culture.gsi.gov.uk)

Telephone: 020 7211 6957

What is the problem under consideration? Why is government intervention necessary? Without effective intervention there is a risk that current plurality of high quality and impartial broadcast nations news (the nations being Scotland, Wales and Northern Ireland), as well as local and regional news could be lost. The over-arching Public Service Content Impact Assessment explains that the Government and citizens place a high value on this type of news because it is good for democracy; it informs citizens about their local and regional area; and provides a voice for communities. In order to prevent the diminution of this plurality the Government wants to establish a new structure that extends the principal of funding essential public service content to meet consumers' needs. Independently funded news consortia (IFNCs), procured through a transparent and competitive process by Ofcom under new powers to be awarded through the Digital Economy Bill will achieve this.

What are the policy objectives and the intended effects? The creation of independent news consortia, funded by competitive tender, will deliver a choice of regional news across the UK. The IFNC news service will be carried in the Channel 3 schedule as television continues to offer greater audience reach. This ensures plurality in editorial voice with the BBC's regional news service. IFNCs could also offer greater localness and cross-media news provision. The objective is to secure the delivery of an alternative high quality and impartial news provision that maintains a presence for regional news on Channel 3 (which has high reach and impact but where the risk of the current service being dropped is also high) and at the same time providing multimedia access. The provisions insert new powers into the Communications Act 2003 by creating a new function for Ofcom to enable it to procure and fund local and regional news content. The Government will be procuring pilots separately that will inform the longer-term IFNC process. These provisions allow Ofcom to set criteria and conditions for a news service in return for a set proportion of public funding. Bidders may join together to create a consortium to provide this news service in order to meet the conditions required. These organisations will compete through the bidding process to provide a local and regional news service.

What policy options have been considered? Please justify any preferred option. During the preparation of the Digital Britain White Paper, the Government looked at a range of options including non-intervention and maintaining the status quo; placing new regional news obligations on Channel 4 (as a publicly owned institution); funding ITV and the other Channel 3 licence holders directly to support the provision of a regional news service; and developing independently funded news consortia, which is the Government's preferred approach. These were discussed in a separate impact assessment⁹⁷. The current proposal is based on recent analysis carried out by Ofcom as part of its statutory public service broadcasting review⁹⁸; stakeholder responses to the interim Digital Britain report (the Green Paper)⁹⁹; the Government's recent consultation on funding¹⁰⁰; independent consumer research¹⁰¹; and policy assumptions and judgements on the issues. Two options are considered below:

- Option one: no intervention - the status quo.
- Option two: preferred policy option outlined in the Digital Britain White Paper which is the introduction of independently funded news consortia (with an initial pilot basis run separately to start with).

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

The costs and benefits of IFNCs will be considered through a separate pilot stage to help inform a nationwide roll out. The pilots will be subject to formal evaluation of their costs and benefits and this will be incorporated within the tendering process

⁹⁷ http://www.culture.gov.uk/images/publications/digitalbritain_impactassessment.pdf

⁹⁸ http://www.ofcom.org.uk/consult/condocs/psb2_phase2/

⁹⁹ http://www.culture.gov.uk/what_we_do/broadcasting/5952.aspx

¹⁰⁰ http://www.culture.gov.uk/reference_library/publications/6361.aspx

¹⁰¹ http://www.culture.gov.uk/reference_library/research_and_statistics/6344.aspx

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:

Lord Davies.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option:	Description:
-----------------------	---------------------

COSTS	ANNUAL COSTS		
	One-off (Transition)	Yrs	
	Average Annual Cost (excluding one-off)		
	Up to £4-7m per region (of public funding)		
		Total Cost (PV)	IFNCs are expected to cost between £30-50m per year (depending on the scale of ambition)
Other key non-monetised costs by 'main affected groups' Costs to incumbent licence holders and news providers			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Relief from the cost of regional news could benefit commercial Channel 3 public service broadcasters.
	One-off	Yrs	
	Average Annual Benefit (excluding one-off)		
	£		
		Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups'			
<ul style="list-style-type: none"> • Benefits will be to the citizen who will continue to have choice in broadcast regional news and information and its contribution to democracy. • BBC will continue to experience competition which incentivises the quality and output by the Corporation and the product carried on Channel 3 – benefit to audiences. • Consortia members will benefit through increased access to assets, pictures and raw news. 			

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 4	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-------------------------	------------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	United Kingdom
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?	£ Unknown
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?	Yes/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
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£ 0	

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

Evidence Base (for summary sheets)

Please also refer to the separate overarching impact assessment on public service content.

Importance of news

Public service content is provided for public consumption to offer public benefits beyond purely commercial purposes. The Government recognises that some programming has positive externalities even though commercially they may be unsustainable: they are good for democracy or society; they inform citizens about their local and regional area; and provide a voice for communities (e.g. news, children's programming and current affairs). One in five people want more nations and regions news for example¹⁰². News is the key element of regional programming and plural supply is seen to be important for the majority of people. News and journalism is effective in informing and educating people and holding public and democratic institutions and individuals to account.

Importance of choice

Ofcom's research shows that audiences value choice of public service content beyond the BBC. In particular, Ofcom research has demonstrated that there are high levels of support for nations and regions news to be shown on more than one of the main channels across the UK.

Therefore, sustaining choice in news for the nations and regions is of particular value for audiences. Broadcast regional news is currently available on BBC1 and on ITV/stv/UTV and Channel TV. Regional and local news is also available through the radio, online and in newspapers. Channel 3 currently offers the significant reach and impact viewed by millions each week. Television is the main source for UK and world news for nearly 70% of consumers. Although, a younger demographic increasingly relies on the internet for their information.

Accessing news on Channel 3 remains extremely important to viewers in the nations (Scotland, Wales and Northern Ireland) in particular and Ofcom's research supports this view. For example, in Scotland, stv's news has up to 30% audience share and UTV's early evening news

¹⁰² Paragraph 3.22, page 27, *Ofcom's Second Public Service Broadcasting Review: Putting Viewers First*, London 2009

bulletin can attract up to 40% share. Three in four (74%) people think that news about their nation/region needs to remain on the main television channels in the future.

Problem in the market

Ofcom, ITV and most public service broadcasters agree that the structural and commercial pressures placed on these broadcasters are having a severe impact. Ofcom's second PSB review set out the evidence of cyclical and structural problems of falling advertising revenues where broadcasters are competing with a multitude of digital channels and a migration away from broadcasting to other digital media¹⁰³.

Ofcom has also considered ITV's position which is that the cost of the PSB obligations (with the provision of regional news making up the majority of these costs) will outweigh the benefit of holding a PSB licence (examples of the benefits include access to spectrum and prominence in the Electronic Programme Guide (EPG)) but the value of these benefits are declining.¹⁰⁴

Alongside the changes happening in the commercial broadcasting market, other news sectors are experiencing significant pressures as well. For example, circulation of paid-for daily local and regional newspapers has fallen by over 20% over the past four years and newspaper revenues are estimated to decline by 52% (£1.3bn) between 2007-13 (Enders). There is a risk, therefore, that without intervention the BBC will in time become the sole provider of public service content in key genres including local and regional news. Ofcom's research indicated, however, that there remains a strong public demand for plurality of public service provision, especially in UK news, current affairs, specialist factual, and nations/regions news¹⁰⁵ (2007).

Rationale for Government Intervention

The principal reason the Government intends to intervene is to address market failure and risk of market failure in the near future which means that commercial, independent and high quality news could decline along with the positive externalities this provides for audiences and society as a whole. The Government intends to address this failure by securing the provision of this kind of news through direct intervention. This will ensure those externalities such as empowering citizens through knowledge and information, contributing to the process of democracy in the nations, locally and in the regions and helping to maintain a professional journalistic base is delivered. As set out in the overarching Impact Assessment on Public Service Content, plurality means competition for the BBC and can incentivise the news providers to deliver a high quality product that meets audiences' needs.

¹⁰³ Ibid.

¹⁰⁴ OFCOM response to DCMS consultation on "Sustainable, independent and impartial news" (September 2009) and discussion document "Local and Regional Media in the UK" also published September 2009.

¹⁰⁵ Ofcom PSB Review Phase 2 annex: The Future of public service broadcasting. A deliberative research report; also PSB Review phase 2 annex 8: Audience research pack.

Ofcom's second PSB review supported Government intervention in regional and local news and news in the nations. The review recognised the risks and uncertainties affecting commercial public service broadcasters and recommended the Government put in place an alternative model to secure plurality in local and regional news. The argument for supporting news is stronger compared to non-news content on the basis that regional news is necessary for a healthy and functioning democracy especially one with devolved governance. Plurality of nations and regions news is more important to people in the devolved nations than in England according to Ofcom research. 82% of people in England agree that "it is important for ITV 1 as well as the BBC to show news programmes about my nation/region", which rises to over 90% in each of the devolved nations.¹⁰⁶ In the devolved nations, in deliberative research on Phase 1 of the PSB Review, this genre was associated with cultural identity and thought to strengthen the democratic process.

The Government recently commissioned independent consumer research¹⁰⁷. This research showed that television was the most popular source for regional and local news (72%) and three quarters of the public (73%) felt it important to have a choice of TV channels providing news programming about their nation or local area. When offered a direct choice between BBC-only coverage of regional news and coverage on different channels as well as the BBC, over seven in ten (71%) opted for choice.

Intervention will not only preserve high quality and impartial regional news, but will help preserve the other public service obligations within the Channel 3 licences such as quotas for originations, national and international news and out of London production. To impose similar obligations on any successor licensee is likely to be very difficult because of the costs attached.

BBC Partnerships

In developing this proposal, the Government has considered the extent of the relief that is already being provided through the existing regulatory framework and scope of partnerships between the BBC and ITV plc. Following a recent reduction in regulatory quotas by the regulator, combined with the value derived from ITV partnerships with the BBC, Ofcom believed that this could make regional news sustainable for the 2009-10 period. However, it has become apparent that the BBC/ITV partnerships announced earlier this year in respect of regional news will generate relatively small savings (£7m by 2016), and this alone will not deliver the full solution required. There may be greater value to the IFNCs, but Government intervention through public funding delivered under an alternative structure for the provision of nations, local

¹⁰⁶ PSB Review Phase 1 annex 5.

¹⁰⁷ http://www.culture.gov.uk/reference_library/research_and_statistics/6344.aspx

and regional news will have the effect of addressing the market failure by securing the plural provision of local and regional news and the benefits that this brings.

Policy options

Option 1: no intervention - the status quo

One option is for the Government to take no specific action and leave the provision of local and regional news to the market.

Costs

Ofcom have said publicly that the costs of the Channel 3 licences to provide ITV television programmes across the UK will outweigh the benefits by 2012. Their response to the department's consultation on "Sustainable, independent and impartial news; in the Nations, locally and in the regions" says that the Channel 3 regional network licences could be in deficit to the tune of £38-£64 million by 2012. The PSB obligations, including the requirement to provide regional news services on Channel 3, are the biggest cost. This potentially means that the Channel 3 licence holders (especially stv and ITV plc) may continue to seek to dismantle their current regional news offering even further to the detriment of plurality and audience need. In addition, any serious licence breach by ITV risks Ofcom having to consider licence revocation and could mean the loss of the current sustaining network for the non-ITV plc owned licences.

If news in the nations and English regions was discontinued, this would diminish competition, damage journalism and reporting and deprive many viewers of their principal source of local and regional news, , and the contribution plural broadcast news makes to the democratic process across the UK.

Benefits

No obvious economic benefits without intervention.

Option 2: IFNCs

The Government's preferred option is to establish a contestable (competitive) funding model for news in the nations, locally and in the regions.

The preferred option will have the effect of securing plurality in nations, local and regional news. A replacement of the regional news service carried by channel 3 public service broadcasters will help balance PSB licence deficit given the high costs associated with the provision of broadcast

regional news. Through potential synergies between news providers, this will allow the sharing of raw news to enhance plurality of content made available across multi-platforms.

Through the Bill, the Government is creating new powers for Ofcom to procure local and regional news suppliers. IFNCs will be selected on a competitive basis with pilot IFNCs being commenced first through a separate process run by the Government. The pilots will follow a proper procurement process that will enable lessons to be learned through the process; extent of cost provision and investment; and extent of commercial revenues and public funding required.

The White Paper sets out the Government's vision that IFNCs would be chosen against published criteria which are likely to include: the ability to achieve reach and impact; high production and editorial standards to sustain accuracy and impartiality; and the financial stamina to sustain the service throughout the period of the award.

The Government considers criteria for desirable outcomes could include the ability to raise the proportion of total activity devoted to journalism, commitments to distinctiveness and original/investigative journalism, commitments to multi-media training and willingness to/arrangements for syndication of news stories to other news organisations, whether nationally, regionally or locally.

Ofcom have the necessary in-house skills and expertise to undertake such a role. Ofcom would carry out a full competitive process using transparent criteria to ensure value for money and award contracts for a specified duration (likely to be a minimum of 3 years). As Ofcom do not currently have the necessary statutory powers to undertake the procurement or funding for IFNCs, through the Digital Economy Bill the Government is proposing to create these powers that are flexible but robust to ensure accountability and value for money.

The Government expects IFNCs to be run commercially, but accepts the market reality that commercial funding might not be enough to support all the costs of sustainable independent news in the Nations, locally and in the regions. The specification will clearly determine what service will need to be provided in return for funding. Whilst multiplatform news will be a crucial feature, in the medium term at least it would make sense to take advantage of the window provided in the Channel 3 licence schedule for news across each nation, locally and regionally to build on the existing reach and scale of access to audiences.

The White paper states the Government's determination that the necessary governance arrangements ensure that IFNCs deliver value for money, with sufficient reach and impact to justify the public investment, are editorially independent, simple and transparent in their set-up and on-going administration, properly accountable for their use of public funds and capable of

providing news in the nations, locally and in the regions on the basis of clear service level agreements.

Costs

Cost of news in the nations range from £4-7 million per annum. The cost of IFNCs will be determined through the selection process and depend on the scale of ambition and scope of commercial revenues. Ofcom estimate the 2009 pattern for regional news services in England and Wales costs over £50 million per annum. The process and funding for the pilots is separate from the main IFNC proposal presented in the Bill and will be managed by the Government. Again, the costs for the pilots depend on the winning bids in the three areas covered.

Administrative costs will arise from the development, procurement and award process. There will be ongoing contract management costs which will be borne by Ofcom. These costs are unknown at this stage but will be significantly reduced by using an existing institution such as Ofcom compared to setting up a wholly new body to carry out this process. There is also a small cost to the respective Channel 3 broadcasters of the value of the slot in the schedule devoted to regional news. As the licence holders will no longer have to fund the cost of this news (figures set out above), this brings considerable benefit in rebalancing the PSB licences.

Benefits

The governance arrangements the Bill is awarding to Ofcom creates a statutory-based independent accountability model over the procurement process and funding arrangements.

Competition for resources offers maximum potential for efficiency. The winning bidder is the one who can either deliver a specified level of service with minimum subsidy or achieve a better quality service for higher level of subsidy. The procurement process will follow OGC guidelines and would need to ensure that certain criteria can be met including financial standing, previous track record and technical capacity.

The benefits of IFNCs could achieve a significant enhancement and broadening of the quality of news in the nations, regionally and locally and its wider distribution and syndication across a larger number of platforms. This model could raise commitments to distinctiveness and original journalism, greater willingness of syndication of news stories and therefore delivering to audiences' local and regional news that might not otherwise continue to exist.

Equality Impact Assessment

After initial screening of the potential impact of this policy and regulation on race, disability and gender equality, the provision of sustainable plural sources of news in the nations, locally and in the regions has a positive benefit for all groups. The objective of a news service that is provided on a multiplatform basis with a potentially greater local offering would benefit all communities and individuals in the way that this type of news is accessed and the type of content that might be provided.

Competition Assessment

The process for procuring and awarding IFNCs will be an open and transparent competition following competition and procurement guidelines.

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	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

Department /Agency: DCMS	Title: Impact Assessment on Gaelic Programming on Ch3 in Scotland	
Stage: Final	Version: Final	Date: 25th September 2009
Related Publications: 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:

Lord Davies.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option:

Description:

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	n/a		Small loss of income to production community
	Average Annual Cost <i>(excluding one-off)</i>		
	negligible		Total Cost (PV) £ negligible
<p>Other key non-monetised costs 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.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ n/a		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').
	Average Annual Benefit <i>(excluding one-off)</i>		
	£ 87,000		Total Benefit (PV) £ 331,000 over 4 yrs
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>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.</p>			

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 4	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £331,000 over 4 yrs
-------------------------	------------------------	-------------------------------------	--

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 <i>(excluding one-off)</i>	Micro	Small	Medium Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A N/A

Evidence Base (for summary sheets)

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 in Digital Economy Bill
--	--

Stage: Final	Version: Final	Date: 25 th September 2009
---------------------	-----------------------	--

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:

<http://www>.

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.

COSTS	ANNUAL COSTS		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.
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		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.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	----------------------	-------------------------------------	---

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
Ministerial Sign-off For final proposal/implementation stage	Impact Assessments:			
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

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:

Lord Davies.....Date: 16th November 2009

Annex D: Analysis & Evidence	
Policy Option:	Description:

Key:

Annual costs and benefits: Constant

(Net) Present

Evidence Base (for summary sheets)

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 will be implemented by a new Community Radio Order 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. The Upgrade will occur on a single date, announced at least two-years in advance, at which time 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 and the opportunities for greater revenue streams through new functionality and content 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.

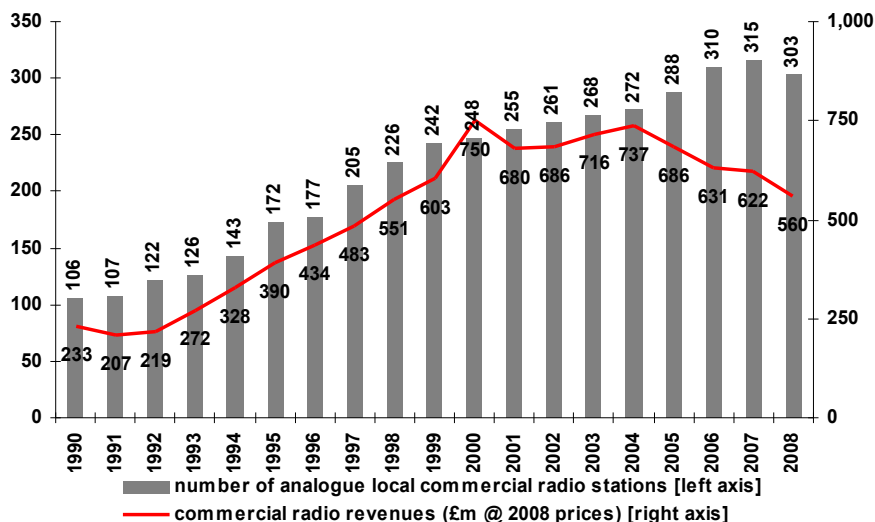
Falling revenues in the commercial radio sector

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, to a low of £560 million in 2008; revenues are predicted to fall by a further 10% to 20% 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 2009¹⁰⁸. 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 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 revenues¹⁰⁹



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

¹⁰⁸ Source – Radio Joint Audience Research (Rajar) – quarterly listening figure

¹⁰⁹ Source – An Independent Review of the Rules Governing Local Content on Commercial Radio, John Myers (2009).

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 £100,000¹¹⁰.

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 station¹¹¹

VARIABLE COSTS	30%	
sales commissions		13%
royalties		15%
other direct costs		2%
FIXED COSTS	70%	
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 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 50¹¹² stations closing in the next two years.

¹¹⁰ 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

¹¹¹ Source – An Independent Review of the Rules Governing Local Content on Commercial Radio, p26, figure 8.

¹¹² Source – An Independent Review of the Rules Governing Local Content on Commercial Radio, p11

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 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)¹¹³

CURRENT COVERAGE (% of population) – BBC Radio 2					
	<i>UK</i>	<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

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

¹¹³ Source Digital Radio Working Group - Spectrum sub-group

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 bear additional transmission costs, dual analogue and digital broadcasting costs, estimated to be an additional £38.9 million¹¹⁴.

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 insert a two-year termination clause into all new licences; 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.

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 research¹¹⁵ estimates that large stations (covering in excess of 750,000 adults) could see profits before interest and tax (PBIT) rise from 6% to 24%

¹¹⁴ Transmission costs are approximate based upon information submitted by Arqiva, Ofcom and the BBC.

¹¹⁵ 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.

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 projections¹¹⁶ 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 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. Such a process could collectively cost the existing national broadcasters in excess of £10 million which in the current market conditions such costs would likely be raised through cost cutting in programming or staffing. In addition, these changes will reduce the regulatory requirement placed on renewals to allow regional stations to launch national DAB services, which will raise the value of these stations to advertisers and allow them to attract high-profile talent.

The new two-year termination clause proposed will be an essential part of delivering the Digital Radio Upgrade programme. These new powers 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.

¹¹⁶ Source – 'Radio: the implications of Digital Britain for localness regulation' - page 49

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 which 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 this 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'. 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 in the region of £10 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 sustainable 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 the small businesses.

We recognise that the proposal to insert a two-year termination clause in all new licences may have a negative impact on those small radio businesses which are not broadcasting on digital. It could be argued 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 Bill 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 in 2011.

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 th October 2009
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, <i>forthcoming</i>); 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: Tim Hogan

Telephone: 0207 215 1628

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:

Lord Young.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Amend Wireless Telegraphy Act 2006

ANNUAL COSTS		Description and scale of key monetised costs 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.
One-off (Transition)	Yrs	
£ Unknown		
Average Annual Cost		
£ Unknown		Total Cost (PV) £ Unknown
<p>Other key non-monetised costs 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>		

ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Potential benefits will be considered as part of a more detailed analysis of the costs and benefits of the Wireless Radio Spectrum Modernisation Programme 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.
One-off	Yrs	
£ Unknown		
Average Annual Benefit (excluding one-off)		
£ Unknown		Total Benefit (PV) £ Unknown
<p>Other key non-monetised benefits 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 16th October 2009.

Price Base	Time Period	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
Year	Years	£ Unknown	£ Unknown

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 <small>(excluding one-off)</small>	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A/Yes/N	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase	£ Unknown	Decrease of	£ Unknown	Net Impact £ 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 consultation document on proposals to implement the Wireless Radio Spectrum Modernisation Programme which was published on 16th October 2009.

The potential costs and benefits associated with the proposed amendments to the Wireless Telegraphy Act are not quantified here. They will be included as part of further analysis of the potential impact of the Wireless Radio Spectrum Modernisation Programme which it is hoped will be published in the first half of 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, reliable coverage throughout the rail network and mobile coverage on the London Underground
- Maintaining a highly competitive mobile market

Key to achieving these goals is the re-allocation and liberalisation 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 Programme¹¹⁷, 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 13th 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 is due to issue a consultation on these latest proposals shortly.

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 functioning as well as it could do. This could have the effect of reducing the impact of the ISB's proposed solution should it be implemented and 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 holder in particular of two frequencies (at 900MHz and 1800MHz)

¹¹⁷ 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

- 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. 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, there is a risk that some of the directions by the Secretary of State cannot be implemented appropriately by Ofcom. In this event, it is possible that some mobile network operators have to delay the roll-out of next generation mobile services or even decide not to deploy such services at all. As a result, the ISB's final proposed solution may not be as effective as it would otherwise have been. This may serve to reduce the potential benefits achievable from the successful delivery of the Wireless Radio Spectrum Modernisation Programme.

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. For example, operators may be required to provide services that cover a particular percentage of the UK population.

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 Bill 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 RECORDING – VIDEO GAMES CLASSIFICATION

Department /Agency: Department for Culture, Media and Sport (DCMS)	Title: Impact Assessment of re-classification of Video Games	
Stage: Final	Version: Final	Date: June 2009
Related Publications: 'Safer Children in a Digital World': Review by Dr. Tanya Byron, published 27th March 2008; 'Digital Britain Report': Joint DCMS/ BIS publication, published 16 th 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:

Lord Davies.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 3	Description: Enhanced PEGI Option
-------------------------	--

COSTS	ANNUAL COSTS	Description and scale of key monetised costs 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.		
	One-off (Transition) Yrs			
	£ 0.25m			
	Average Annual Cost (excluding one-off)			
	£ 5.44m	10	Total Cost (PV)	£ 45.5 m
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits 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.		
	One-off Yrs			
	£ 0			
	Average Annual Benefit (excluding one-off)			
	£ 0		Total Benefit (PV)	£ 0
Other key non-monetised benefits 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	Net Benefit Range (NPV) £ -45.5m	NET BENEFIT (NPV Best estimate) £ -45.5m
-------------------------	-------------------------	---	---

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

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ 1.76m	Decrease of	£ 0	Net Impact	£ 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
Actual - 2007	£1,972,013	£1,531,200	£3,503,213
Hybrid	£3,738,579	£1,912,900	£5,651,479
Enhanced BBFC	£4,450,519	£2,769,800	£7,220,319
Enhanced PEGI	£3,917,433	£1,526,800	£5,444,233
Code of Practice	£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	

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
U	£26,880	£0	£24,080		£543,520				£26,880	£0
PG	£44,400	£0	£40,700		£233,200				£44,400	£0
12	£51,600	£0	£345,100		£345,100				£51,600	£0
15	£159,600	£0	£303,360		£303,360				£159,600	£0
18	£111,600	£0	£105,400		£105,400				£111,600	£0
3+	£843,426	£0	£1,560,746			£1,560,746	£1,633,099	£0	£843,426	£0
7+	£244,370	£0	£452,203			£452,203	£547,812	£0	£244,370	£0
12+	£349,100	£0		£646,004		£646,004	£749,365	£0	£349,100	£0
15+	£135,451	£0		£250,650		£250,650	£496,131	£0	£135,451	£0
18+	£5,586	£0		£10,336		£10,336	£416,027	£0	£5,586	£0
Total	£1,972,013	£0	£2,831,589	£906,990	£1,530,580	£2,919,939	£3,842,433	£0	£1,972,013	£0
Additional costs							BBFC charge for linear material	£75,000		
Combined total	£1,972,013		£3,738,579		£4,450,519		£3,917,433		£1,972,013	

Table 9

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.

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

	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	£696,000
Packaging costs (at £600 per game title), including design, proofing and admin.	£835,200	£1,043,400	£1,510,800	£832,800	£835,200

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.

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 don't 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

COPYRIGHT: AN INTRODUCTION

Introduction and Rationale for Government Intervention

Under national and international copyright¹¹⁸ legislation, the creators of copyright works are given the exclusive right to perform certain acts in relation to their works, for example the right to copy the work and the right to communicate the work to the public (the full list of exclusive acts is detailed in Section 16 of the Copyright Designs and Patents Act 1988 – CDPA). Performers have rights over the recording of their performance and a mixture of exclusive rights and rights to equitable remuneration in their recorded performances. Most of these rights may be sold, transferred or inherited. Some creative works contain more than one right; for example a CD may contain copyright music, lyrics and sound recording and performers' rights. Each individual copyright may be owned by more than one person; for example, if the lyrics have been composed by two songwriters working together they will jointly own the copyright.

Anyone apart from the owner of the right who wishes to perform one of the exclusive acts (copying etc), will need authorisation from the right owner which may take the form of a permission or a licence. The performance of an exclusive act without the permission of the rights holder will amount to an infringement of copyright or performers' rights, unless it falls within the statutory exceptions.

It can be time consuming and expensive for rights holders to control and administer the use of their works. Likewise, it can be difficult for those wishing to use works to know who to approach for permission, and to negotiate terms with them. This difficulty is being compounded in the digital age where works can be used in large volumes and in a multitude of ways. The internet in particular has led to the fractionalisation of rights, meaning that a user will often need multiple authorisations for the use of a work, making it expensive and time consuming. As it can be difficult, practically, for right holders to police the use of their works, they licence or assign rights to a collecting society¹¹⁹ which is a private entity and which carries out this function in return for taking a percentage of the royalties collected.

¹¹⁸ **Copyright:** is a form of intellectual property. It gives the creator of an original work certain exclusive rights over the work for a certain period of time. These include the right to make copies of the work, to broadcast the work, and to publicly perform the work.

¹¹⁹ **Collecting Society:** in the UK, it is usually an organisation created by private agreements with the owners of copyright. On joining a collecting society, the holder of a copyright becomes a member of a collecting society and mandates it to manage his or her rights. This management usually includes licensing the use of members' works, collecting licence fees, and distributing royalties to rights holders.

The complexity of rights clearance¹²⁰ was highlighted in **The Digital Britain Report**¹²¹. **The Report announced the intention to make the United Kingdom one of the world's creative capitals. Part of achieving this ambition includes modernising licensing. Thus, the Government intends to introduce three** linked measures:

(1) Some collecting societies operate a near monopoly¹²² over some uses of specified rights but do not represent every rights holder. While it is important that the owners of rights can choose whether they license their rights through a collecting society, it is easier for users to deal with a small number of bodies, and to be confident that licences from those bodies will cover all the works they wish to use.

A collecting society cannot license the use of a work if it does not have a mandate from the rights holder as, in doing so, it would be infringing copyright. However, in some Scandinavian countries, a collecting society that represents a substantial proportion of rights holders is allowed to license specific uses of a work for all rights holders in a particular category. It does not need specific consent from each right holder in the category of right it manages, although rights holders retain the ability to opt out of the system. This type of rights management is referred to as **extended collective licensing** (ECL). ECL can be used to license either a single right or a multiplicity of rights associated with any given work. In order to simplify rights clearance for users and rights holders alike, ***The Government wants collecting societies to be authorised to license the use of rights on this basis, if certain conditions regarding transparency and fairness are met***

(2) There is a large body of works whose authors cannot be identified or traced (**orphan works**¹²³) and any exemptions which allow use of these works are very limited in their scope. As a result, anyone who does

¹²⁰ **Rights Clearance** is the process of getting permission from the owner(s) of the right(s) to make use of the right(s) in some defined way.

¹²¹ Chapter 4, Digital Britain Report <http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf>

¹²² http://www.competition-commission.org.uk/rep_pub/reports/1996/fulltext/378c3.pdf

¹²³ **Orphan Work** is a work still in copyright where it is difficult or impossible to locate the owner of the copyright after a diligent search. A work can become orphaned for a number of reasons, for example, the author may have published the work anonymously or information relating to the identity of the author may have been lost over time.

anything which falls within the exclusive rights of the copyright owner risks civil and (if the work has been exploited commercially) criminal penalties because the use is unauthorised. The impact of this is felt most keenly by those wishing to undertake mass digitisation projects. The British Library for example, estimates that up to 40% of its archives are effectively orphaned works, with the problem being even greater in its collection of old newspapers. This is just one example of a valuable resource that is prevented from being made available digitally, because of legal restrictions on the use of orphan works. The BBC suffers similarly with its archive of sound recordings, and again this prevents or greatly complicates the use of that material for the cultural benefit of the nation. ***The Government wants to ensure that orphan works which are currently locked up can be accessed.***

(3) Any collecting society wishing to make use of either of these new powers will need to be subject to suitable scrutiny and regulation, to ensure that the absence of direct involvement from some rights holders does not lead to unfairness or a lack of transparency.

There is a broader issue here too. New technologies and changing business methods have given collecting societies opportunities to widen their reach in terms of fee-paying licensees. This has meant not only increasing the efficiency of collection in some existing areas for revenue gathering, but also moving into areas such as small business and charities. Such new licensees can lack the bargaining power of traditional larger business clients, but do not generally enjoy the protections that are available to consumers dealing with broadly comparable organisations, such as utility companies. The Government therefore wants to ensure that an appropriate balance of power is maintained between the collecting societies and their licensees as a whole, including the less empowered groups of licensees.

In recent months one collecting society has taken steps towards addressing some of these concerns by consulting on and publishing a code of practice and appointing an independent ombudsman to adjudicate on complaints. Another collecting society has begun work on a Code of Practice. The Government hopes that all collecting societies will be able to address these concerns through systems of self-regulation. However, it is possible that this work may not be sustained or effective and so ***the government intends to take a reserve power***

to regulate collecting societies, to be used in the event of self-regulation failing.

The first two measures (extended collective licensing and orphan works) are considered in more detail in mini impact-assessments in the attached annexes. The third part (regulation of collecting societies) is a reserve power only, and so will be subject to consultation and impact assessment at such point in the future as it should become necessary to activate the power by secondary legislation.

It is not possible to publish quantitative information on expected costs and benefits at this stage. This is because the proposals are for enabling legislation which will allow the Secretary of State to make regulations spelling out the detail of the package. This detail is intended to be derived in part from consultations with stakeholders. It is at this stage that the proposals can be costed out. These will be published in a further and final impact assessment when the regulations are being made.

High Level Benefits of Interventions

At this stage it is not possible to outline the precise nature and scale of each benefit that could accrue from these interventions in the United Kingdom. The reason for this is that these are enabling powers which will remove the statutory obstacles to introducing these interventions. The detail of the policy interventions will be contained in secondary legislation. This detail will be informed by formal consultations with stakeholders, following which a further impact assessment will be produced in which benefits can be more accurately set out and quantified. As such, the benefits set out below are those that have been observed from the introduction of similar policy interventions in other jurisdictions.

(1) Extended Collective Licensing (ECL)

The following high level benefits have been seen to flow from the introduction of extended collective licensing schemes in the Nordic countries:¹²⁴

- Users negotiate a significantly simpler system as they can be more certain that a blanket licence from a single body will cover the use they wish to carry out. This is good for

¹²⁴ This list of benefits has been compiled based on discussions with government officials and collecting societies in Norway, Sweden, Denmark and Finland during the course of August 2009.

creators and simpler for consumers and businesses **and** extends the ability of consumers to enjoy cultural works.

- Guaranteed remuneration for rights holders especially in circumstances where they are unaware of their rights or their rights have been inadvertently used without permission.
- The possibility of a reduction in administration for collecting societies, which could lead for the reduction of administration charges that are deducted before royalties are distributed to rights holders.
- With simplification, the prospect of more efficient collection and distribution.

Economic value could develop further from the introduction of ECL in the following ways:

- Improved information (what rights are available on what terms). This is likely to facilitate economically rational decision making which should in turn lead to efficiencies
- Cost and value improvements in the production of creative works which rely on elements of other creative works for which licences are required
- Incentive improvements through the improvement of returns to marginal creators who may not be presently signed up to collecting societies (under an ECL system, collecting societies would have to advertise periodically to reach those rights holders due payment who are not currently members). This in turn should tend to increase the supply of creative works, enhancing competition which would improve quality and/or drive down prices
- Lower barriers to market entry as it would be easier for small and/or part-time creators to gain some reward for their creative efforts (as the mechanism would be in place for them to claim payments from the ECL scheme, without having to sue for any unauthorised use of their works as at present). This should have the effect of increasing the pool of potential creators.

(2)Orphan Works

The following are high level benefits that should flow from the ability to use orphan works

- Increased access to creative works for users. While difficult to quantify exactly, it is likely that in the public sector alone the number of orphan works that could be freed up for use would be in the tens of millions. For example the British Library estimates that up to 40% of material in their archives may contain one or more orphaned rights. Likewise, the BBC estimate that they have over 1 million hours of archive material where the rights clearance issues, including orphaned rights, mean that it is too complex to properly utilise the material. The commercial value of these works may vary, but the combined cultural value is likely to be substantial.

- The ability to use orphaned rights should allow works which contain multiple rights (where only one or two for example may be orphaned) to be legally exploited. This should create an income stream for the other rights holders with an interest in such works, who are currently blocked from exploiting the work they have contributed to by one or two missing pieces of the puzzle.
- Remuneration for rights holders who come forward. They should be able to secure an income stream that they would not otherwise have been able to do so without expensive and possibly unsuccessful court action for compensation
- Licensing orphan works should benefit rights holders who are unaware of their rights or have not kept track of their rights for whatever reason. The ability to legitimately use orphaned works is likely to create an increased market for collections of works for which it was previously thought to be too difficult to clear the rights. This, coupled with the diligent searching (likely to follow European guidelines, but details to be part of the secondary legislation) required before an orphan works authorisation may be granted, should identify a substantial number of rights holders in this category. Thus, the work would no longer be orphaned and could be put back into the population of managed rights.

Stakeholders, including a large collecting society, have commented that the ability to use orphaned works on an authorised basis is also likely to increase overall confidence in copyright licensing per se. The situation where culturally valuable material has to remain locked up, to the benefit of neither the public nor the rights holder, tends to decrease respect for the copyright system as a whole, and may reduce compliance in other areas.

COPYRIGHT – EXTENSIVE COLLECTIVE LICENSING (ECL)

Department /Agency: Intellectual Property Office (IPO)	Title: Making Provision to enable the use of extended collective licensing by collecting societies (ECL)	
Stage: Final	Version: Final	Date: 28 th September 2009
Related Publications: Digital Britain Report		

Available to view or download at:

<http://www.culture.gov.uk/images/publications/digitalbritain-finalreport-jun09.pdf>

Contact for enquiries: Nadia Vally

Telephone: 020 7034 2890

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

The current rights clearance system involves multiple users and rights holders giving rise to co-ordination problems thus preventing rights holders and users from making optimal use of copyright works. Government intervention is required to help simplify this complex system and strengthen it to cope with volumes of rights used in digital platforms.

Collecting societies are unregulated entities with significant market power, the abuse of which can give rise to a reduction in consumer welfare. Government intervention is necessary to preserve the best interests of the consumer and to ensure that costs to businesses and consumers remain fair and competitive.

What are the policy objectives and the intended effects?

The **policy objective** is to make the problem of rights clearance in the digital age easier by streamlining licensing procedures.

The **intended effects** are to:

- Reduce the cost of rights clearance for businesses, thereby reducing a barrier to innovation
- Extend the ability of consumers to enjoy works by improving access and giving legal certainty
- Ensure maximum royalties are collected for creators by reducing the cost and inconvenience of multiple transactions

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

1. Do nothing.
 2. Amend existing copyright legislation. This could be a long process with no guarantee of success.
 3. Improve the efficiency of rights clearance by allowing established collecting societies to license works on an "opt out" rather than "opt in" basis, thereby extending their repertoire of rights managed.
- Option 3 is preferred as it achieves policy objectives and the intended effects in a relatively short time frame.

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

5 years from introduction of the first regulations under the power(s)

Ministerial Sign-off For [consultation or final impact/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

Lord Young.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Enabling Collecting Societies to Set Up Extended Collective Licensing Schemes

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' One off costs to government of granting authorisation. This plus ongoing costs of renewing authorisation will be recouped through cost of authorisation. Not mandatory to have ECL, so assume collecting society will only do so if it is a commercially viable decision.	
	One-off (Transition)	Yrs		
	£			
	Average Annual Cost (excluding one-off)			
	£		Total Cost (PV)	£
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Anecdotal evidence to suggest an estimated reduction in administration costs of 2-5%. Some of this could be passed onto rights holders, so possible increases in royalties available for distribution.	
	One-off	Yrs		
	£			
	Average Annual Benefit (excluding one-off)			
	£		Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups' Users and rights holders benefit from simplification of the system. Users gain greater access through a simplified system. Rights holders and users have legal certainty.				

Key Assumptions/Sensitivities/Risks These proposals are for enabling legislation only. The detail of the scheme will be contained in the secondary legislation that will follow. These details will be worked out in consultation with stakeholders. Therefore, more accurate costs will only be available when the impact assessments for those consultations are prepared.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-----------------	-------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?				UK
On what date will the policy be implemented?				Circa 2011
Which organisation(s) will enforce the policy?				IPO
What is the total annual cost of enforcement for these organisations?				£ Not applicable
Does enforcement comply with Hampton principles?				Not applicable
Will implementation go beyond minimum EU requirements?				Not applicable
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?				Unknown
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

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£ N/A	Decrease of	£ N/A	Net Impact £ N/A

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

Background

Under national and international copyright legislation, the owners of copyright works are given certain rights in relation to their works. For example, they have the right to perform or play the work in public and the right to communicate the work to the public. These rights are exclusive to the owner of the work, meaning that the owner is the only person who can exercise the right. Anyone apart from the owner of the work who wishes to exercise these rights will, in most cases, need authorisation which may take the form of permission or a licence. Performers have rights over the recording of their performance and both exclusive rights and rights to equitable remuneration in the use of their recorded performances.

Most of these rights can be sold, transferred, or inherited. Some creative works contain more than one right; for example a CD may contain copyright music, lyrics and sound recording and performers' rights. Each individual copyright may be owned by more than one person; for example, if the lyrics have been composed by two songwriters working together they will jointly own the copyright.

It can be time consuming and expensive for rights holders to control and administer the use of their works. This difficulty is being compounded in the digital age where works can be used in large volumes and in a multitude of ways. The internet in particular has led to the fractionalisation of rights, meaning that a user will often need multiple authorisations for the use of a work, making it expensive and time consuming from the user perspective too.

Many rights holders (for example, record companies, publishers, and songwriters) opt to use collecting societies to administer their rights. On joining a collecting society, they authorise it to issue licences to those who wish to exploit their exclusive rights. The charges for these licences are distributed in the form of royalties to members after the collecting society has deducted its administrative costs.

Currently, collecting societies operate on the principle of 'opt in' i.e. the owner of a copyright work opts into membership of a collecting society which then adds his or her work(s) to its repertoire. In most cases, collecting societies manage particular types of right. For example, the Design and Artists Collecting Society (DACS) manages the right of reproduction in relation to artistic works.

The Problem under Consideration and the Rationale for Government Intervention

Although it can sometimes be feasible to get fairly comprehensive rights coverage through concluding one contract (for example, with some music collecting societies which represent artists throughout the world), the current system of licensing is increasingly proving to be time consuming and expensive for those who wish to exploit works. There are areas of mass exploitation, especially on digital platforms, where it can be financially burdensome and time consuming for commercial users to locate the rights owners who are not covered by a blanket licence from the relevant collecting society and conclude contracts with them.

An example of this complexity is the BBC's popular on demand catch up service, iPlayer which has a current daily average of 1.5 million streams and downloads requested by users. The BBC¹²⁵ told us that it took five years to create a framework in which the rights for 1000 hours of content are now potentially cleared to be made available weekly on the iPlayer across multiple platforms. Despite this effort, a small team of rights professionals is required to check and cross check rights availability of content on an ongoing basis, and material will sometimes be withheld from the service because the rights have not been secured in time. Such complexity can inhibit the creation and development of new works and investment which can diminish the potential common cultural output of the UK.

In 2005, the European Commission, quoting the European Digital Media Association (EDIMA) which represents online music providers, said that, "The direct cost of negotiating one single licence amounts to €9.500 (which comprises 20 internal man hours, external legal advice and travel expenses). As mechanical rights and public performance rights in most Member States require separate clearance, the overall cost of the two requisite licences per Member State would amount to almost €19,000."¹²⁶

Rights management can be equally complex from the perspective of the rights holder whether the right is self managed or managed through a collecting society. To fully derive the rewards due to them for exploitation of their rights, rights holders would need to: identify all potential users; negotiate licence fees and content; collect the licence fee; and monitor the use of the licence. So it is not difficult to see that creators who manage their rights themselves can find it difficult to control and manage every single use of their rights. This is especially the case when those rights are exploited on digital platforms and/or in high volumes.

Even collecting societies, which have the experience and infrastructure to control and manage usage, report that they are not 100% accurate in being able to quickly match usage to the

¹²⁵ Conversations between BBC and IPO Officials, August 2009

¹²⁶ <http://www.edri.org/edriagram/number3.14/music>

correct rights holder. For example, one collecting society has told us that although ultimately it is almost always able to match usage, on average 5% of usage is unmatched on a rolling basis.

The complexity of the system can lead to rights holders being missed, either inadvertently (the user is unaware that the right needs to be cleared/ the rights holder is unaware of/unable to control his rights) or deliberately (the user decides to risk being unlicensed) This has two consequences: first, the rights holder loses remuneration; secondly, the user runs the risks infringement.

Moreover, the mere existence of collecting societies does not automatically enable all rights holders to have their rights managed. It is possible that an owner may be unaware of their rights or simply unable to control and administer their rights in a mass use environment.

Mass uses of rights in the digital environment continue to grow, so the magnitude of this problem continues to be compounded. Therefore, we have ruled out doing nothing as an option.

Aside from doing nothing, another option would be to wait for an opportunity to make detailed changes to existing copyright legislation. This would mean waiting for the opportunity to secure a legislative slot at some point in the future. Given that the magnitude of the problem is growing constantly, the Government concluded that it would be sensible to take the opportunity to create enabling powers now and work out the detail of the solution in secondary legislation.

The current rights clearance system involves multiple user and rights holders giving rise to coordination problems thus preventing rights holders and users from making optimal use of copyright works. Government intervention is required to help simplify this complex system and strengthen it to cope with volumes of rights used in digital platforms.

Collecting societies are unregulated entities with significant market power, the abuse of which can give rise to a reduction in consumer welfare. Government intervention is necessary where self-regulation fails to preserve the best interests of the consumer and to ensure that costs to businesses and consumers remain fair and competitive.

Extended Collective Licensing (ECL): Policy Objectives and Intended Effects

The introduction of ECL (the Government's preferred option) will enable a collecting society to apply for a permission from the Government to license specified rights in all works in a particular

category. The general principle in countries where ECL is used is that where a collecting society represents a critical mass of rights holders (its members), it is assumed to act for all rights holders in that class or category of right. So the works of all rights holders in the particular area that the collecting society represents are assumed to be in the collecting society's repertoire unless the rights holder specifically opts out of it.

Precedent for extended collective licensing exists in, among others, the Nordic countries where it has been in existence since the 1960s. The key driver behind the introduction of ECL was not dissimilar from ours: the complexity brought on by mass use and exploitation of numerous rights.

Intended Effects/ Benefits of ECL

A number of headline benefits have been reported to flow from the introduction of ECL in other jurisdictions. These benefits as described below will not be realised without the change in legislation discussed in this Impact Assessment. These are:

- a. Simplification for users and rights holders
- b. Improved access for users
- c. Reduced administration leading to more efficient collection and possibly improved remuneration
- d. Guaranteed remuneration for the rights holder
- e. Legal certainty for users and rights administrators

These are explained in further detail below.

Simplification and Improved Access

The introduction of ECL in other jurisdictions has been shown to improve access to creative works for users. The simpler system means that aside from negotiating with rights holders who opt out of the extended repertoire, users would only need to negotiate with one body per category of right. Discussions with Danish, Finnish, and Swedish counterparts have revealed that once an extended collective licence is in place for a right, the instances of opting out are so rare as to be negligible.

An illustration of simplification, in stark contrast to the BBC's experience of rights clearance, is that narrated to us by KOPINOR, a large umbrella for Norwegian collecting societies. KOPINOR recently concluded a complex agreement with the Norwegian National Library for

making approximately 50,000 works by Norwegian authors available on the internet. This took two months to conclude.¹²⁷

Reduced Administration and More Efficient Collection

Collecting societies charge rights holders administrative fees, subtracting these from the royalties that are distributed to members. Among the major collecting societies in the UK, these fees range from over 10% to approximately 25%, meaning that there is a reduced amount available for distribution to the rights holder.

Reductions in administration costs could mean that a greater proportion of the royalties collected would become available for distribution to the rights holder. Although collecting societies in the UK that this has been discussed with are understandably not yet able to accurately quantify this, they foresee some reduction in administration costs, meaning that there could potentially be more available for distribution to rights holders. The regulatory aspects of the proposals would ensure that any benefit in terms of reduced administration cost is passed on to the rights holders and/or licensees.

One collecting society has estimated a £20k reduction in administration costs in a certain part of its operations. Another UK collecting society helped to analyse costs as a percentage of revenue for different collecting society models around the world. For its sector, it has estimated that the existing model generates costs typically in the region of 15-20% whereas extended collective licensing schemes could typically result in costs of 10-15%. With the book/magazine/newspaper collecting societies of the UK having an income of some £100m per year, a reduction in the cost base of 5%, arising from economies derived from a move to extended collecting licensing, is worth £5m.

Under the existing collective licensing arrangements, collecting societies can still find it difficult to account for and administer the various uses of works. To the extent that ECL enables easier licensing of works, it will allow collecting societies more time to dedicate to more accurate recording and monitoring of usage, thereby enabling more precise collection of royalties.

Guaranteed Remuneration

Collecting societies do not provide the only method of obtaining rights clearance. In some sectors, a significant proportion of rights are self-managed. For example, one major collecting society estimates that it has 90% coverage, with the remaining 10% presumably self-managed or unmanaged. Self-management can be a conscious decision and one which the Government would want to ensure remains possible. However, in many other cases a lack of active management or even lack of awareness that they *are* the rights holder means that they

¹²⁷ Example related to us by KOPINOR, a large Norwegian collecting society

do not enjoy any financial benefits but their lack of consent prevents others from making use of the work legally.

A key benefit of ECL has been shown to be for rights holders who are unaware of their rights or just unable to control or administer their rights in a complex rights environment. These rights holders will automatically have their rights safeguarded and be compensated for their uses and exploitation should they subsequently come forwards (for example in response to advertising by the collecting society). Accordingly, the benefit of ECL to owners of works moves beyond potentially diminished administrative fees and moves towards the increased control over works and income for owners who may not have previously have been able to manage their works. For example, in Finland it has been estimated that the extension effect (i.e. the licensing of rights on behalf of rights holders who are not members of a collecting society) when measured by the number of individual rights holders whose rights were used in 2004, amounted to 13% ¹²⁸.

Legal Certainty

The Government calculates that the current business models and operations of certain collecting societies could, in theory, give rise to the risk of civil or criminal sanctions. This is because, against the digital backdrop of mass usage in numerous permutations, it can be difficult-if not ultimately impossible- for a collecting society to obtain a mandate to represent all rights holders, whether domestic or foreign (foreign rights are usually dealt with by means of reciprocal agreements with overseas collecting societies, but the same problems of coverage apply as with domestic rights). Given the demand for different types of usage of different rights, it is possible that a collecting society could get to a point where it may be licensing outside its repertoire. This is supported by Professor Daniel Gervais's study¹²⁹ prepared for the Department of Canadian Heritage in which he looked at the issues related the implementation of ECL in Canada. Professor Gervais, a leading international authority on ECL, concluded that in Canada at least, very few collecting societies could boast a complete repertoire.

Equally, it may not be practically possible for users to clear every single right that they wish to exploit and they may decide to risk going ahead without full clearance. In some cases, users may simply not be aware of the need to clear certain rights or are unable to negotiate the sheer complexity of the system.

ECL would enable the licensing system to be structured to significantly reduce the risk of infringement. Collecting societies would be able to licence confidently with a reduced risk of there being a right or a work not being in their repertoire. Users would be able to obtain

¹²⁸ Tarja Koskinen-Ollsen in Daniel Gervais, *Collective Management of Copyright and Related Rights* (May 2006)

¹²⁹ Professor Daniel Gervais, 'Application of an Extended Collective Licensing Regime in Canada: Principles and Issues Related to Implementation.' (June 2003)

licences for the use of an increased number of works from one body. Thus, once they have bought their licence, users can be more confident that their exploitation will not be interrupted by unexpected claims from one or more rights holders.

Economic value could develop further from the implementation of ECL in the following ways:

- Improved information: To the extent that it becomes easier to obtain information about what rights are available on what terms, economically rational decision-making is made easier, which should lead to efficiencies. There are also cost savings for the licence-seeker from better information.
- Cost and value improvements in the production of other creative works. Many commercial creative works employ elements of others for which licences are required. Making licensing of other work easier will increase the range of works than can be used and potentially also reduce their price. This may lead to further value creation and cumulative innovation.
- Incentive improvements: Several of these factors will tend to improve the returns to “marginal” creators, i.e. those who are not signed up with collecting societies from ignorance or omission rather than by conscious decision. Increased returns to these creators would tend to increase the supply of creative works, creating competition that will drive up quality and/or drive down prices in general.
- Lower barriers to market entry: the increased ease of return, however small, may attract part time and/or inexperienced creators, thus increasing the pool of creators and creative works.

Costs Associated with ECL

The legislation will create an enabling power, to allow actions to take place that previously could not. Therefore, at this stage there are no costs to business. A full IA with quantified costs will be produced when developing the detailed licence requirements.

There are three groups that could potentially incur costs. These are:

- The body granting authorisation
- The collecting society
- The user

The Body Granting Authorisation

At this stage, the Government's thinking is that the applications for the authorisation would be assessed and processed by staff at the Intellectual Property Office. The cost of doing so would be worked out and recouped through the cost of the authorisation.

The Collecting Society

The collecting society is likely to incur set up costs which would include putting in place the infrastructure for locating and paying rights holders whose works sit in the extended portion of the repertoire i.e. the rights holders who have not explicitly given the collecting society to manage their rights on behalf of them.

However, extended collective licensing is not mandatory. Therefore, it would be fair to say that those collecting societies which decide to apply to set up such schemes would only do so if they felt that it was a commercially viable decision for them to do so i.e. where they assess that the cost of setting up the scheme would be offset by the financial benefits that flow from the extended repertoire.

Cost to the User

This analysis lends support to ECL as a benefit to rights holders and users who actively want to exploit works. Yet the cost for users who have to obtain licences to perform a work in public, (for example, a PRS (Performing Rights Society) licence to perform music in the workplace) will not go up. The marginal price of music tends towards zero once listeners have more than they can readily listen to. If the user already has access to the collecting society's entire repertoire, including current chart music, then it is unlikely that he or she would need a million new songs. Thus, the PRS licence, for example, would not be worth very much more, if anything.

Competition Assessment

We have fully considered the questions posed in The Office of Fair Trading competition assessment test¹³⁰ and conclude that the introduction of extended collective licensing is unlikely to hinder the number or range of suppliers. The proposals are generally pro-competitive as they encourage market entry.

Collecting societies generally tend to be monopolistic¹³¹. Although there are strong arguments that this makes for the most efficient way of managing rights, concerns have been expressed about the market power of some collecting societies as their operations increasingly reach small businesses including sole traders who would otherwise enjoy consumer protection when dealing

¹³⁰ http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft876.pdf

¹³¹ http://www.competition-commission.org.uk/rep_pub/reports/1996/fulltext/378c3.pdf

with equivalent organisations such as utility companies. Any collecting society setting up an extended collective licensing scheme will automatically be subject to regulation to ensure that the balance of power with its customers is maintained. These regulations could include adherence to Codes of Conduct, increased transparency, and regulation of pricing if necessary. Thus, there will be a bolstering of users' rights. Moreover, they will be able to make informed choices through increased transparency.

In order for a collecting society to practise ECL it must be representative of the rights holders whose rights are licensed through the ECL agreement. As representative status being granted would still enable a multiplicity of collecting societies to administer the different parallel rights, this would not be in breach of competition principles. As long as ECL continues to enable new entrants to the market, it would not be in breach of competition rules.

Small Firms Impact Test

ECL would have a positive impact for small firms as it would make it easier for them to enter the creative markets and make a return (though lower costs of licence administration, and greater legal certainty as to the coverage of those licences). It would provide them with greater access to works at a lower cost.

Equality Assessment

Racial equality – No known differential impacts by race. If a disproportionate number of non-managed works were from people from particular racial backgrounds, this proposal would tend to improve conditions for their creators and thus decrease any detriment, and also to improve the availability of those works to the community.

Disability equality – as long as collecting societies are fulfilling their own legal requirements under disability legislation, this would potentially have a markedly positive impact on people with disabilities that affect their ability to communicate with a majority of others (such as impaired hearing or deafness) or to act in their own best interests (e.g. some mental conditions) through the collecting society taking action on their behalf and returning money to them. It needs to be easy for such people to contact and be contacted by the collecting society for the full benefit to be enjoyed.

Gender equality – No known differential impacts by gender. If a disproportionate number of non-managed works were from people of a particular gender, this proposal would tend to improve

conditions for their creators and thus decrease any detriment, and also improve the availability of those works to the community.

Further information can be found in the Digital Economy Bill 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

COPYRIGHT – ORPHANED RIGHTS

Department /Agency: Intellectual Property Office (IPO)	Title: Impact Assessment of proposals to create a regulated process for licensing of orphaned rights	
Stage: Final	Version: Final	Date: 28 th September 2009
Related Publications: Digital Britain Final Report (June 2009)		

Available to view or download at: <http://www.culture.gov.uk/images/publications/digital/digitalbritain-final-report-jun09.pdf>

Contact for enquiries: Matt Cope

Telephone: 01633 814274

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

The number of copyright works and performers' rights used in audio visual recordings and the widespread lack of definitive information regarding ownership of some rights in all types of media, has led to a large amount of historically and culturally valuable copyright material being orphaned and 'locked up' in archives, unable to be used. As copyright is an exclusive right, if the owner of a right cannot be identified or found to grant permission for use of their work, then that work cannot legally be used until the term of protection expires, except where the use is covered by one of the existing narrow exceptions (e.g. for certain educational purposes). This problem is especially prevalent in projects to digitise historical material, such as the Europeana Digital Library project and other smaller domestic initiatives.

As a result there is a missing market and a demand for orphan works which can only be satisfied through government intervention in the form of legislative changes.

What are the policy objectives and the intended effects?

- create a system to allow regulated use of orphaned rights on a legal basis, with fair recompense for the owners of those rights should they be identified subsequently (full details to be determined in secondary legislation).
- this will 'unlock' much of the vast quantity of culturally and commercially valuable material, currently unable to be legally exploited, improving access for consumers and realising dormant value.

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

1. Do nothing.
2. Annul protection for orphaned rights. This would contravene international treaty obligations.
3. Create a regulated process for licensing of orphaned rights
 - Option 3 is preferred as it achieves policy objectives and the intended effects in a relatively short time frame, while protecting the interests of absent rights holders.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 5 years from 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:

Lord Young.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 3

Description: Create a regulated process for licensing of orphaned rights (preferred option)

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Left blank because the provisions in the Bill do not create any costs. The authorisation arrangements will be subject to full impact assessment during their development.
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
Other key non-monetised costs by 'main affected groups' There would be a cost involved in granting permissions to run orphaned works licensing schemes. This will be borne by those wishing to run schemes.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits Left blank because the provisions in the Bill do not create any costs. The authorisation arrangements will be subject to full impact assessment during their development.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Consumers should benefit from greater access to cultural works. Organisations that currently make use of orphaned rights usually rely on an indemnity or hold funds in reserve to compensate any rights holder who subsequently comes forwards. This entails a small, but real cost in terms of interest/insurance premiums and a lost opportunity cost for the capital involved. The average number of orphaned works in public sector collections in the UK is estimated at 5-10% (JISC report – 'In from the Cold'). However, as the value of these works and the uses that they could be put to may vary considerably, it is impossible to estimate with any accuracy the value that might be unlocked, other than to say it will be a positive value. UK government will benefit from increased reputation within Europe if it is shown to have developed a workable solution to a problem that affects many other member states.			

Key Assumptions/Sensitivities/Risks These proposals are for enabling legislation only. The real detail of the scheme will be contained in the secondary regulations that will follow. These details will be worked out in consultation with stakeholders. Therefore, more accurate costs will only be available when the impact assessments for those consultations are prepared.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-------------------------	-------------------------	-------------------------------------	---

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?	IPO
What is the total annual cost of enforcement for these organisations?	£ Not applicable
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?	Not applicable
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

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

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

Background

Under national and international copyright legislation, the creators of copyright works are given the exclusive right to perform certain acts in relation to their works, for example the right to copy the work and the right to communicate the work to the public (the full list of exclusive acts is detailed in Section 16 of the Copyright Designs and Patents Act 1988 – CDPA). Performers have rights over the recording of their performance and a mixture of exclusive rights and rights to equitable remuneration in their recorded performances. Most of these rights may be sold, transferred or inherited. Some creative works contain more than one right; for example a CD may contain copyright music, lyrics and sound recording and performers' rights. Each individual copyright may be owned by more than one person; for example, if the lyrics have been composed by two songwriters working together they will jointly own the copyright.

Anyone apart from the owner of the right who wishes to perform one of the exclusive acts (copying etc), will need authorisation from the right owner which may take the form of a permission or a licence. The performance of an exclusive act without the permission of the rights holder will amount to an infringement of copyright or performers' rights, unless it falls within the statutory exceptions.

An orphan work is a work that remains protected by copyright but where one or more of the persons with an exclusive right in the work either cannot be identified, or cannot be found following a diligent search. Anyone performing any of those exclusive acts (copying, performing etc) with an orphan work will therefore be infringing copyright (except where the use falls within the limited exceptions available to cover, for example, some educational activities), and anyone commercially exploiting those works may be committing a criminal offence.

A lot of historical and archived material contains one or more orphaned rights (due in part to age, incomplete record keeping, and the nature of the material itself). This means that a vast wealth of material (roughly 40% of the British Library's collection and around 1 million hours of BBC programming, for example) cannot be fully utilised. It is likely that commercial opportunities are also being missed. Currently there are many projects which aim to digitise copyright works to make them available to a broader range of people, a prominent international example being the Europeana Digital Library initiative funded by the European Union. It is these cultural projects in particular that often run up against the problem of orphan rights. For example, many of these projects concern unpublished material such as private

letters and diaries held by libraries and archives, or professionally taken photographs owned by individuals (where the copyright still lies with the now unidentifiable photographer or their heirs). Tracing the rightful owner of the various copyrights in order to obtain permission to copy the work (for example) for this type of material can often prove impossible.

The problem is also prevalent in archived audiovisual works such as films. As the nature of films is such that there are many rights holders, it is frequently the case that the records for older films records are incomplete, or some parties prove impossible to trace. This can mean that the film as a whole cannot subsequently be used without a risk of infringing copyright.

Both the Gowers review of Intellectual Property, and work by the European Commission's High Level Expert Group on Digital Libraries (and indeed the subsequent EU Green Paper on Copyright in the Knowledge Economy) have identified this as an area that needs to be addressed. The Government has acknowledged that a legal solution to allow the use of orphan works on a regulated basis would be beneficial both in terms of unlocking cultural material and realising the commercial value that cannot currently be legally exploited.

Rationale for Government Intervention

Although there are some ostensibly orphaned rights where ownership details and permissions can be reconciled through detailed detective work, there are many more works which are genuinely orphaned. Without government intervention these culturally and commercially valuable works cannot be fully exploited without infringing copyright (with attendant risk of financial penalty and in some cases criminal sanctions).

The extent of this problem is hard to gauge accurately, as it is not until diligent attempts are made to clear rights in a collection of works that individual works can be classified as orphaned or otherwise. Estimates from the Joint Information Systems Committee (JISC)¹³² however estimate that over 25 million items may be locked up in public sector organisations alone. Clearly the importance of individual works will vary considerably, both in cultural and commercial value, but the overall scale of the problem is certainly large.

An example of an organisation affected by this issue is The British Film Institute (BFI) which holds the largest collection in the world of moving image material in the National Film and Television Archive. The types of material held range from feature films to early newsreels and from animated films to documentaries. The problems created by orphaned rights often mean that the BFI is unable to use material in its own archives. This has sometimes prevented the

¹³² <http://www.jisc.ac.uk/publications/documents/infromthecold.aspx#>

BFI from taking measures to preserve the material or to make it available in a useful format (usually digital) for researchers and historians.

In addition, the BFI is often used as a resource by commercial producers. Where works contain one or more orphaned rights, it is unable to release clips from this cultural treasure chest for use by others who are developing new products in the audiovisual sector. The inability to clear orphan rights therefore denies the public access to this material, and can prevent commercial value being created or realised.

Commercial solutions to this problem have been proposed, based for the most part on using insurance to indemnify users of orphan works against subsequent legal challenges (i.e. if the owner of the right later comes forwards). While Government does, as a rule, prefer industry led solutions to problems in this sort of area, the provisions of the CDPA are such that these commercial proposals do not solve the problem, and still leave any user of orphan works open to legal challenge and potentially criminal sanctions.

The Google Books settlement¹³³ in the US is an example of an industry led agreement that does address some of the issues around orphaned rights in printed works, but as the settlement relies on the doctrine of fair use (a concept which is not present in the same way in UK and European law) it is not a solution that could be transplanted directly into the UK. There have also been concerns raised about other aspects of the Google Books settlement, especially around the dominant position that Google itself may achieve through its actions.

The Gowers Review of Intellectual Property suggested that the most appropriate way to address the legal obstacles blocking the use of orphaned works would be to re-open negotiation within Europe of the Information Society Directive, specifically in an attempt to introduce a new explicit exception to copyright to allow the use of orphaned rights. The European Commission has however indicated that it is reluctant to consider this route. The Directive is a large and complex piece of legislation and there is a risk that renegotiation could undo previously won concessions and harm UK interests in other areas. For this reason we do not think that the European approach is the right one at this time, although we acknowledge that it is important that any UK solution should be compatible with any subsequent changes at European level.

¹³³ http://www.googlebooksettlement.com/r/view_settlement_agreement

The orphan works problem has resulted in a missing market. The demand for authorised orphan works can only be satisfied by government intervention in the form of legislative changes.

Given the above considerations, the only way to sensibly address this issue and to allow the fair and regulated use of the large amount of cultural material containing orphaned rights within the UK is to amend UK legislation to allow approved licensing schemes to be run on a regulated basis.

Orphan rights solutions in other countries

Canada has for some time had a provision within its law allowing the Canadian Copyright Board to grant licences over orphan copyright works, when asked to do so by a person who wishes to use that work and has made reasonable, but unsuccessful, efforts to locate the copyright owner. The licence granted is a non-exclusive license covering a fixed term, and requires the payment of an agreed licence fee which is held for five years by an appropriate collecting society, in order to reimburse the owner of the right should they subsequently come forwards. The effect of the law in Canada is essentially that of a compulsory licence. Notably, the number of licences granted (25 in 2005, 18 in 2004) is rather small. This is apparently due to various factors, with a major consideration being the fact that the licences may not be granted over unpublished works (removing a large amount of the valuable cultural material from the equation) but also suggests that the system as administered by the Copyright Board may not entirely meet the requirements we have identified for a system in the UK.

The US has received considerable publicity over the last couple of years covering the introduction of a Bill to amend copyright law and limit the remedies available for infringement where the infringer had conducted a reasonably diligent search for the rights holder before commencing use of the work. While this approach may allow some measure of certainty as to the financial liability facing those in the US who wish to use works containing orphaned rights, it does not change the fact that the use of the work without permission amounts to an infringement. The Government wishes to go further than this in providing certainty for users.

In 2008 Hungary amended its domestic copyright law to allow for the regulated use of orphan works. In the Hungarian system, the national Patent Office has the power to grant a non exclusive licence for the use of orphan works, which is valid for five years. When the licence is granted, the Patent Office also sets the rate of remuneration. The fee for any commercial use is deposited at the Patent Office before use can start (for non-commercial use it seems that the fee can be deferred until any rights holder comes forwards to claim their right). The

Hungarian system has only been in place for a few months, and so it is too early to gauge what effect it is having on the use of copyright works in the country. It should also be noted that some uses of orphan works are already possible in Hungary within the scope of existing extended collective licensing (ECL) arrangements.

Norway is another country that makes use of ECL to allow some legitimised use of orphaned works. ECL enables a collecting society to licence all works in a particular category. The general principle in countries where ECL is used is that where a collecting society represents a critical mass of rights holders, it is assumed to act for all rights holders in that class or category of right. So the works of all rights holders in the particular area that the collecting society represents are assumed to be in the collecting society's repertoire unless the rights holder specifically opts out of the scheme. This approach is most prevalent when licensing on a blanket basis, for example in the case of licences for reprographic copying (e.g. use of photocopiers in libraries). As no record is kept of exactly which works are copied, it is probable that some orphaned rights may fall within the activities purportedly authorised by such a licence. ECL allows the use of these rights to be made on a legitimate basis, contrasting with the current situation in the UK where such licences only legally cover the works of actual members of the collecting society or organisation that granted the licence.

For context it is also intended that the current round of legislative changes should introduce ECL to the UK (details in Annex A) and this will allow more effective and legally correct functioning of collective licensing, especially in situations of high volume usage in numerous permutations on digital platforms. The use of ECL to deal with orphan works will, however, be limited to situations where a collective licence is appropriate, and would not cover situations where a user wishes to exploit a single distinct work. This is why the Government believes that it is necessary to introduce the provisions in tandem.

Orphan rights in the UK

The Government proposal is to give the Secretary of State the power to make regulations which will in turn allow authorisation of suitable schemes for the licensed exploitation of orphaned works. At this stage the Government intends only to take an enabling power. Once the power is in place then a rigorous consultation process will commence to determine the details of suitable orphan works schemes, how they should be administered and how they should be regulated.

Until those details are worked out in advance of secondary legislation, it is not feasible to discuss the precise mechanics of the licensing schemes, but certain key points have been agreed with stakeholders. Any licensing scheme is expected to be administered for the most

part through existing collecting societies, but it is also envisaged that new collecting societies or other suitable bodies may also be licensed to administer schemes. All authorisations will require the authorised person to carry out a suitably diligent search (likely to be assessed on the basis of the European Digital Libraries High Level Expert Group recommendations¹³⁴), and will involve payment of a fee where appropriate. This fee is likely to be held in some form of escrow or deposit for a set period of time with the intention of it being reimbursed to the rightful owner should he or she come forward. Regulation of the system will ensure that any authorised person who is not ensuring diligent searches etc are carried out may lose their authorisation to run a scheme.

In order to cut a master key that unlocks all cultural works, including the many orphaned private letters and diaries, the solution in the UK is expected to extend to license unpublished works. This should lead to a greater take-up of the solution than has been the case in Canada to date.

The Government's expectation is that licences granted in the UK are likely to be non-exclusive. This is in line with solutions in other countries, and ensures that the original rights holders maintain the ability to exploit their own work, even if it has been licensed through an orphan scheme in their absence.

Benefits

These benefits as described below will not be realised without the change in legislation discussed in this Impact Assessment.

The introduction of licensing schemes for orphaned works would increase access to creative works for users. As discussed above, the number of works which may be freed up is hard to quantify with any accuracy, but in the public sector alone it is likely to number in the tens of millions. While the commercial value of these works may vary, the combined cultural value is likely to be substantial.

As well as increased access for users, including other creators, the ability to license orphaned rights will allow works which contain multiple rights (where only one or two for example may be orphaned) to be legally exploited. This will create an income stream for the other rights

¹³⁴ http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/guidelines.pdf

holders with an interest in such works, who are currently blocked from exploiting the work they have contributed to by one or two missing pieces of the puzzle.

While there is little data available on the functioning of existing orphan works schemes elsewhere in the world, discussions with Danish, Finnish, and Swedish counterparts have shown that the instances of opting out of ECL schemes are so rare as to be negligible. It is reasonable to assume that, if 100% of rights holders in orphaned works subject to licences subsequently were identified or came forwards, the number who would object to the use made of their works would be similarly negligible. It should be remembered of course that in such a case, as with ECL, the rights holder, once identified, would be paid a fair remuneration for the use made of their work. It is more likely however that the number of rights holders in works that are licensed under orphaned works schemes who subsequently come forwards will be small, but those who do will receive an income stream that they would previously not have received without expensive, and possibly unsuccessful, court action for compensation.

A further benefit of licensing schemes for orphaned rights would be for rights holders who may be unaware of their rights, or who have perhaps not kept track of what rights they control. The increased ability to legitimately use orphaned works will create an increased market for collections of works for which it was previously thought to be too difficult to clear the rights. This, coupled with the diligent searching required before an orphan works licence may be granted, should identify a substantial number of rights holders in this category, taking the work out of the definition of orphaned works per se, and back into the population of managed rights.

The Government has also received comments that the ability to utilise orphaned works on a licensed basis is also likely to increase overall confidence in copyright licensing per se. The situation where culturally valuable material has to remain locked up, to the benefit of neither the public nor the rights holder, tends to decrease respect for the copyright system as a whole, and may reduce compliance in other areas.

Costs

The legislation will create an enabling power, to allow actions to take place that previously could not. Therefore, at this stage there are no costs to business. A full IA with quantified costs will be produced when developing the detailed licence requirements.

Competition Assessment

We have fully considered the questions posed in The Office of Fair Trading competition assessment test¹³⁵ and conclude that the introduction of licensing schemes for orphaned rights is unlikely to hinder the number or range of suppliers.

Any organisation licensed to deal in orphan works will be subject to regulation to ensure minimum standards of fairness and transparency in the absence of the rights holder. These regulations could include adherence to Codes of Conduct, increased transparency, and regulation of pricing if necessary. Thus, there will be a bolstering of users' rights. Moreover, they will be able to make informed choices through increased transparency

Small Firms Impact Test

Licensing schemes for orphan works would have a positive impact for small firms by increasing the pool of works available to them, thereby enhancing access to works. This could, potentially, make it easier for small firms to enter the creative markets and make a return. They would also have legal certainty when dealing with orphan works.

Equality Assessment

Race equality – No known differential impacts by race. If a disproportionate number of orphaned works were from people from particular racial backgrounds, this proposal would tend to improve conditions for their creators and thus decrease any detriment, and also to improve the availability of those works to the community.

Disability equality – No known differential impact on people with disabilities. The increased availability of work will provide benefits for all, and may allow the creation of derivative works more suitable for use by persons with visual or auditory impairments on occasions where this is not already permitted under copyright exceptions for disability access.

Gender equality – No known differential impacts by gender. If a disproportionate number of orphaned works were from people of a particular gender, this proposal would tend to improve conditions for their creators and thus decrease any detriment, and also improve the availability of those works to the community.

¹³⁵ http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft876.pdf

Further information can be found in the Digital Economy Bill 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	Results in Evidence Base?	Results annexed?
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

MATCHED PENALTIES

Department /Agency: Intellectual Property Office	Title: Equalisation of penalties for online and offline intellectual property (IP) offences	
Stage: Final	Version: Final	Date: 24 th September 2009
Related Publications: http://www.ipo.gov.uk/pro-policy/policy-information/policy-notices.htm http://www.ipo.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.ipo.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:

Lord Young.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option:	Description: Equalisation of penalties for online and offline intellectual property offences
-----------------------	---

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition) Yrs	
	£	
	Average Annual Cost (excluding one-off)	
	£	Total Cost (PV) £ Unknown
<p>Other key non-monetised costs 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>		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'	
	One-off Yrs		
	£		
	Average Annual Benefit (excluding one-off)		
£		Total Benefit (PV)	£ Unknown
Other key non-monetised benefits by 'main affected groups' 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.			

Key Assumptions/Sensitivities/Risks
 It is not possible at this stage to estimate the benefits.

Price Base Year: 2009	Time Period Years : 10	Net Benefit Range (NPV) £ Unknown	NET BENEFIT (NPV Best estimate) £ Unknown
---------------------------------	----------------------------------	--	--

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?			

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

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, s107 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 illegal. 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 Bill Equality Impact Assessment.

126 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

Department /Agency: Department for Culture, Media and Sport (DCMS)	Title: Impact Assessment of Public Lending Right amendments	
Stage: Final	Version: Final	Date: October 2009
Related Publications:		

Available to view or download at: 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:

Lord Davies.....Date: 16th November 2009

Summary: Analysis & Evidence

Policy Option: 3

Description: Extension of PLR to all rights-holders

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Exchequer funding of approximately £750,000 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
	One-off (Transition)	Yrs	
	£ 60,000		
	Average Annual Cost (excluding one-off)		
	£ 750,000		Total Cost (PV) £ 810,000
Other key non-monetised costs 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.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Rights holders of non-print books could benefit from up to £750,000 in additional payments.
	One-off	Yrs	
	£ -		
	Average Annual Benefit (excluding one-off)		
	£ 750,000		Total Benefit (PV) £ 750,000
Other key non-monetised benefits 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. 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.

Price Base Year: 2009	Time Period Years : 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
---------------------------------	----------------------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	UK/EEA ¹³⁶			
On what date will the policy be implemented?	2011 ¹³⁷			
Which organisation(s) will enforce the policy?	PLR Office ¹³⁸			
What is the total annual cost of enforcement for these organisations?	c£800,000 ¹³⁹			
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	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

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

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

¹³⁶ 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).

¹³⁷ Following enactment of legislation, PLR will need to consult on any proposed scheme prior to its introduction.

¹³⁸ 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.

¹³⁹ 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 but £750,000 would be needed to cover additional payments.

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:

- 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.

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 is currently 5.98 pence. A minimum payment threshold of £1 applies and payments of less than £50 were made to 66% of authors in 2007-08. This accounts for 17% 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, the estimated cost of extending the scheme could be in the region of £750,000. This is a conservative estimate within the maximum range of costs referred to in the table below.

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 six pence rate per loan, the maximum cost of extending the Scheme (based on 11 million loans and assuming that all audio-books are eligible, that each rights holder is registered and no loans fall below or above the thresholds for payment) would be £660,000.

If the market is currently rewarding each of the three rights holders at the rate of six pence per loan the rate per loan for audiobooks would be 18 pence. On this basis, presuming payment is subject to the assumptions outlined above and that the rate per loan for printed books is unchanged, the maximum cost of extending PLR would be £1,980,000.

	5.98p per loan	17.94p per loan
No. Rights holders	3	3
Rate/rights holder	2p	6p
No. Eligible loans (max.)	11 million	11 million
Cost	£660,000	£1,980,000

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 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.

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 fall closer to the lower estimate identified in the table above and propose that additional grant in aid of around £750,000 would make expansion of the Scheme 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. 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:

Payment Distribution

23,940 authors and assignees (23,866 in 2006-07) qualified for payments.
The numbers of authors in the various payment categories were as follows:

Authors Earning:	2007-08 25th Year	2006-07 24th Year
£6,000.00 - £6,600.00	277	291
£5,000.00 - £5,999.99	82	72
£2,500.00 - £4,999.99	375	397
£1,000.00 - £2,499.99	797	788
£500.00 - £999.99	897	922
£100.00 - £499.99	3,591	3,661
£50.00 - £99.99	2,190	2,319
£1.00 - £49.99	15,731	15,416
No of Authors	23,940	23,866
<hr/>		
Expenditure	6,657,280	6,809,018

An analysis of the distribution of money for the twenty fifth year to authors by payment category shows:

	£	%
£6,000.00 - £6,600.00	1,819,197	27
£5,000.00 - £5,999.99	446,558	7
£2,500.00 - £4,999.99	1,312,131	20
£1,000.00 - £2,499.99	1,266,299	19
£500.00 - £999.99	636,373	10
£100.00 - £499.99	820,563	12
£50.00 - £99.99	156,217	2
£1.00 - £49.99	199,942	3
		100

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 Bill.

Race, disability and gender equality will all be considered as part of the overall Equality Impact Assessment for the Digital Economy Bill.

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, or 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	www.getsafeonline.org
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
IFNCs	Independently Funded News Consortia
IGF	Internet Governance Forum
IP	Intellectual Property or 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 or 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
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
Wimax

Waste Electrical and Electronic Equipment Directive
A wireless data transfer technology

First published November 2009. Crown Copyright. URN 09/1501