

**From Dr Carole Tongue  
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**To the**

**HOUSE OF LORDS  
SELECT COMMITTEE ON COMMUNICATIONS  
CALL FOR EVIDENCE**

**The British film and television industries**

**April 2009**

“Culture must be transverse, serving as a basis for the development of a diversified humanity. Films have an essential role to play in this field. National policies must help us support independent operators who are passionately committed to try and attract publics. This must not be based exclusively on commercial forces.”<sup>1</sup>

### **Executive Summary**

1. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005 underpins nation states’ rights to take measures aimed at enhancing the diversity of cultural means of expression, including through measures to support the indigenous film industry and public service broadcasting.
2. Tax credits could be given to the high quality, tightly defined UK/EU feature/documentary film and drama produced by television with no loopholes. That would reduce costs and assist successful film investing commercial channels like ITV and Channel 4 to continue investing in British film.
3. The revised EU Audiovisual Media Services (AMS) directive 89/552/EEC, adopted in December 2007, calls on Member States to ensure that all audiovisual media services (as defined in the directive) broadcast 51% EU/national public service programming, including feature and documentary film, in their output. This should be applied to all relevant services licensed in the UK.
4. Where this level of broadcast is not practicable or applicable, particularly where new on-demand services are concerned, then discussions should take place between government, Ofcom and the relevant services, including video on demand channels, as to appropriate proportionate levels of investment to be made in public service programming, especially feature and documentary film, as defined in the directive.
5. Ofcom should commission an in-depth study, including modelling, as to how the AMS directive, through broadcast or investment, could be applied fairly and proportionately to all traditional and on-demand audiovisual media services and what outcomes in terms of investment in original public service programming, especially UK film, would result.
6. Where audiovisual players who benefit from video on demand revenues but do not wish to invest directly in UK film and become rights holders, then OFCOM should model and then make proposals for a proportionate industrial levy on their turnover or advertising revenue to be invested in a fund which then other UK film investors can draw on to make British film.

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<sup>1</sup> Actor Danny Glover at Cinema, Europe, the World: What kind of filmmaking co-operation policy should be implemented in the European Union? Colloquium of the French Presidency of the European Union. Autumn 2009.

The UK government has signed up to and ratified a number of international agreements which are extremely relevant to the matter in hand, chief amongst these are :

**UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (signed October 2005, ratified by the UK government in November 2007)**

On 20 October 2005, the 33rd UNESCO General Conference adopted by a majority of 148 votes to two the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CCD). The major objectives of the CCD are the recognition of the dual nature of cultural expressions as objects of trade and artefacts of cultural value and the recognition of the sovereign right of governments to formulate and implement cultural policies and measures for the protection and promotion of cultural diversity. Importantly the Convention underlines that cultural expressions cannot be considered as purely commercial commodities because they communicate values, meaning and identity.

The ambitious role assigned to the CCD by its proponents is to fill an existing lacuna for cultural objectives in public international law and to serve as a cultural counterbalance to the World Trade Organization (WTO) in future conflicts between trade and culture.

The Convention describes cultural diversity as concerning the human right to live ones' own cultural identity as well as the human right to have access to the wealth of cultural diversity represented by others through, inter alia, the strong provision of public service broadcasting and the existence of indigenous film industries. These are, in addition, important for democracy, tolerance, and mutual respect between peoples and cultures both within the UK and between the UK and other nations.

**EU Audiovisual Media Services Directive**

The role of investment in UK film by broadcasters is critical for the future of the industry. In this respect the overarching legislative framework is the EU Audiovisual Media services directive which the UK government signed in December 2007. The government is actually studying its implementation at the present time.

Its guiding principle is that these services are as much cultural services as they are economic ones and that they are increasingly important for society, democracy, education and culture in ensuring, inter alia, diversity of cultural expression.

All channels are expected to invest in and broadcast over 50%, wherever possible, of British/EU drama, documentary and film. This is one key component of public service television: investment in high value indigenous audiovisual material which serves to encourage and illuminate the diversity of our culture and that of our neighbours.

The European Audiovisual Observatory report<sup>2</sup> on volume and origination of fiction on all EU TV channels illustrates that UK non-terrestrial channels invest very little in home grown film productions. Channels like Disney and Jetix broadcast no UK programming at all.

In some EU countries member governments have reached agreement with those channels that do not presently achieve the 50% level of indigenous programme broadcast, to reach this target over time. Prior to the establishment of Ofcom, the ITC opened discussions with a range of non-terrestrial channels about increasing the number of British-made dramas, documentaries and films they transmitted. It was planned that such agreements would be monitored. There is no evidence for any agreements being taken forward by the ITC. Since the establishment of Ofcom, no further action in this regard appears to have been undertaken.

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<sup>2</sup>Page 162 in the "Volume and origin of fiction programmes broadcast by television channels in Europe". Report by European Audiovisual Observatory. Vol 2. Band 2. 2008

There is a role for the government and Ofcom to re-open this avenue to ensure greater investment in, and broadcasting of, local-made film across all channels.

### **New audiovisual services investment in UK Film ?**

In the course of the discussions on the revision of the "Television Without Frontiers" Directive to include in its scope the audiovisual non-linear media services, the EU Council of Ministers agreed on November 13, 2006 to a clause whereby "*Member States shall ensure that on-demand services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works within the meaning of article 6. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes proposed by the service*".

This means that governments shall ensure that new media service providers invest in the production of national and European audiovisual programmes and promote them on video on demand services. It encourages governments to ensure a level playing field in the financing of programming both on traditional TV services (articles 4 and 5 of the Directive) and on new media services and that all players, particularly news operators from the telecommunications' sector, make a fair contribution to our audiovisual culture.

The Directive is thus the legal basis for governments in the digital age to demand a fair and proportionate investment from all channels as well as from new media players such as telecoms companies providing video-on-demand.

Already France Telecom has committed itself to investing 10% of its video on demand turnover in French and European film. In Canada the government has established a video on demand fund to which VOD services contribute and whose funds go towards investment in Canadian film.

It is also a win-win situation in commercial terms as high quality drama/film/documentary can lead to major commercial and artistic successes as evidenced by Channel 4's investment in multi-Bafta and Oscar winning "Slumdog Millionaire" or ITV's investment in *The Queen* which also won an Oscar and received substantial box office returns.

### **Investigate different investment models in UK film**

So how do we achieve the necessary levels of investment by broadcasters and new audiovisual players in indigenous film production in the present climate, in which the commercial imperative conflicts with high investment in these genres ?

#### **Potential models**

1. Tax credits (with no loopholes) could be given to the high quality, tightly defined UK/EU feature/documentary film and drama. That would reduce costs and assist successful film investing commercial channels like Channel 4

2. All non public service broadcasters, including video-on-demand operators, should be asked to contribute to the production and exhibition of indigenous film in line with the Audiovisual Media Services Directive

or

They should pay an industrial levy under the AMS directive (which was not even modelled by OFCOM despite support expressed during its recent Public Service Broadcasting Review consultation), of approximately 3 - 5 % of either advertising or turnover. This would be paid to a distributing body which would distribute the money to UK film investors and rights holders such as Channel 4. to invest in indigenous films.

**Conclusion**

A strong consensus exists in government, as well as among citizens, audiovisual creators and public service broadcasters, that as a society we need more diversity/plurality of high quality drama/feature film/documentary film. This is particularly important where children's film is concerned to ensure that children can access stories on screen from their own culture.

At the same time the advertising revenue that underpins investment in such programming by ITV and Channel 4 has drained away - towards the internet in particular.

Additionally these channels have to compete with non-terrestrial channels which are not making a proportionate contribution to the UK film industry. New audiovisual players, of considerable financial means, are also now benefiting from film content, without making any corresponding investment in such film.

It is only fair that all those who benefit from showing films make a proportionate contribution to UK/EU film production and distribution as stipulated by the AMS Directive to which the UK government is a signatory and also in the spirit of the Unesco Convention on the protection and promotion of the diversity of cultural expression.

## **ANNEX ONE**

### **The French model <sup>3</sup>**

In France, the new audiovisual law adapts the legal framework to the French approach on the free attribution of channels in exchange for investment in the production of programming and equal obligations for both public and private channels.

Currently, broadcasting services have two fold investment obligations in production: direct and indirect. In addition to their direct investment described below, broadcasting services, whether public or private, invest 5,5% of their turnover in a special funds for the audiovisual production (COSIP) administered by the National Centre for Cinematography (CNC).

The direct investment in production by broadcasters concerns both cinema and TV production. For cinema, the law provides that broadcasting services invest (rights' acquisition or co-production) 3,2% of their turn over in European cinematographic works, from which 2,5% must go to French speaking works. In 2005, it represented for example €32,21m for France 2 and €47,716m for TF1. Canal+ has a special status: it has to invest 12% of its resources in rights' acquisition of European cinematographic works, 9% of them have to go to French speaking works. It represented €182,415m in 2005.

For this investment in audiovisual production (TV), broadcasting channels have the obligation to invest at least 16% of their turn over in French speaking audiovisual works. It represented €240,63m from TF1 in 2005. France 2 contributes to 18,5% of its turn over into European audiovisual works, including 16% to French speaking works (€184,67m in 2005) and M6 contributes to 18% of its turn-over in the production of European audiovisual works, including 13,5% to French speaking works (€95,505M in 2005).

This investment in audiovisual production must primarily be in original drama, creative documentaries, animation and life performance.

The new law provides that in exchange for a reduced length of their licence due to the switch to digital TV in 2011, private broadcasters (TF1, M6 and Canal+) will benefit from an additional digital channel on which they will have enhanced investment obligations in production of cinematographic and audiovisual works (a decree will detail these enhanced obligations).

In addition, new frequencies for mobile TV and HD TV services will be subject to an additional contribution of 0,1% of turnover for mobile TV and 0,2% for HD TV to the special fund for the audiovisual production (COSIP).

Moreover, the new law has decided to modernize this fund by enlarging its scope not only to editors of TV services (broadcasters) but also to distributors of TV services in order to include all platforms of distribution of TV services in a technologically neutrally way, like cable, satellite or Internet services providers who distribute broadcasting services, especially through triple play offers (Internet access, phone and TV services). The contribution of these distributors ranges from 0,5% of turnover between €10m and 75m to 4,5% of turn of over €530m.

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<sup>3</sup> Inquiry of the Culture, Media and Sport Committee of the UK House of Commons into Public Service Media Content. Written Submission from the Federation of European Film Directors, FERA. 2007