

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: **Programme-making and special events: future spectrum access**

To (Ofcom contact): Steve Roper

Name of respondent: Carol Comley

Head of Strategic Development

Representing (self or organisation/s): UK Film Council

Address (if not received by email):

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Yes No

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Name Carol Comley
Head of Strategic Development

Signed (if hard copy)

**Ofcom consultation: Programme-making and Special
events: future spectrum access**

August 2007

UK Film Council

General Remarks

- 1.1. The UK Film Council is the Government-backed lead agency for film in the UK ensuring that the economic, cultural and educational aspects of film are effectively represented at home and abroad. Our goal is to help make the UK a global hub for film in the digital age, with the world's most imaginative, diverse and vibrant film culture, underpinned by a flourishing, competitive film industry. The UK Film Council welcomes the opportunity to comment on Ofcom's consultation on Programme-making and Special Events: Future spectrum access.
- 1.2. In March this year, the UK Film Council responded to Ofcom's consultation on the Digital Dividend Review. In that response we observed that "any proposals to auction Channel 69 or interleaved spectrum which might otherwise be made directly available on a gifted basis to the Programme Making and Special Events (PMSE) sector are fundamentally flawed. These options would have very serious consequences for Government policy for UK film and the film industry." We were specifically concerned with the consequences in relation to the use of wireless microphones for the film sector. We were also concerned that Ofcom should reflect its statutory duties to further the interests of citizens, as set out in the Communications Act, and not simply those of consumers. Our views on these topics have not changed.
- 1.3. We note that Ofcom states that the present consultation "does not contain new proposals on other aspects of the DDR, like whether to reduce regulation in Channel 69. (para. 1.10), and that it is also stated that Ofcom will return to this issue later in the year in a further consultation. Nonetheless, we note that the document contains a number of references to Channel 69 (e.g. paras 3.23, 3.32 4.41/2 and 6.90) and indeed that question 4 of the consultation specifically refers to the scope for applying the options discussed to "to bands other than the digital interleaved spectrum." We still believe that the issue of the use of spectrum by the PMSE sector needs to be dealt with comprehensively and taking account of the concerns that ourselves and others have raised, and we look forward to a full consultation on these matters as proposed by Ofcom. We are puzzled by the decision to issue a consultation on digital interleaved spectrum alone (although the consultation does touch on Channel 69 as noted above), and we are unclear what the rationale is for this.
- 1.4. We also note Ofcom's references to the work being carried out by CEPT Task Group 4 on behalf of the European Union (paras 6.87 ff.). We would urge Ofcom to keep this work under review given that it could, as the consultation notes, "raise significant issues for the UK"

(para 6.90), especially in relation to the use of Channel 69. We very much welcome Ofcom's statement that it is "committed to ensuring that spectrum is available for PMSE, and that this includes, as with Channel 69, a UHF Channel or equivalent available nationwide" (para 6.91).

To conclude, if the PMSE sector were to lose this spectrum this would, quite simply, be disastrous for the UK film sector because of its impact on film production in the UK. It would mean that film production in the UK would come to a halt. It would deprive the sector of what is, in effect a "utility" that is as basic to its operation as electricity. The loss of spectrum would render Government policy to support indigenous film production and inward investment production through tax reliefs redundant, and would have the same impact on National Lottery funding for indigenous production.

Consultation questions

Question One: Do you agree with our identification and analysis of the options for how the PMSE could make use of the digital interleaved spectrum? Which options if any do you favour?

- 1.5. We think Ofcom has usefully identified a number of different options for ways in which the digital interleaved spectrum could be allocated. We would reiterate our belief that an auction process is not the way to take forward the allocation of this spectrum. In this respect, we note that Ofcom's analysis is based on the premise that "the central question is how best to overcome the barriers to well-functioning markets"(p.39) which is followed by the statement that "our central task as a spectrum regulator is to secure the optimal use of the finite spectrum resource in the interests of citizens and consumers. (para. 6.11). It seems to us that "well-functioning markets" (however defined) do not necessarily advance the interests of citizens, since the citizen interest cannot and should not be reduced to an economic one.
- 1.6. Nor do we accept the premise, at para 5.13, which again seems to inform the options, that "a more effective way to take account of the existence of a broader social value is for delivery bodies to operate in a financial and institutional framework that ensures they can acquire spectrum, at auction or in the market if this is the best use of their resources. This is generally better than intervening through spectrum policy (e.g. to provide scarce spectrum to particular users at prices below opportunity cost)..." First, it should be recognised any auction or market-based approach constitutes a "spectrum policy", just as much as other forms of intervention. Secondly, the apparent a priori assumption that social value is best delivered through market-based

mechanisms (whether in the form of an auction or by other means) is highly contestable in relation to spectrum policy.

- 1.7. Similarly, the equivalence that is made between the way that spectrum is allocated and the way "that all other economic inputs, such as land and equipment are obtained." (para 5.27) is fundamentally flawed. It is clear that there are very particular forms of market failure which operate in relation to the audiovisual sector, that do not pertain in relation to land and equipment. It is for this reason that the Government has long intervened in the film and television sectors. Spectrum policy, however delivered, is one means by these market failures can be corrected and will remain an instrument for doing so even in a digital age since forms of market failure will continue to prevail.
- 1.8. We believe therefore that the analysis of the options needs to take much greater account of a non-economic citizen interest. Earlier in the consultation Ofcom offers a useful overview of the functions of PMSE (para. 3.23), which underlines that the programming made by the sector produces cultural, social and educational outcomes (although which we would wish to see film production specifically referenced, especially as Government has a clear set of public policies for film). This overview needs to inform the analysis of options, to ensure that the citizen interest is represented appropriately. We do not believe that taking account of the citizen interest is any in way in conflicts with Ofcom's wish to "encourage innovation" (para. 3.11) a principle which we support.
- 1.9. We do not yet favour a particular option as we wish to see Ofcom's further thinking on Channel 69, since we believe, as noted above, that the issue of PMSE use is best dealt with in the round.

Question Two: Do you agree that we should offer one package of digital interleaved spectrum?

- 1.10. We are not qualified to respond to this question.

Question Three: Do you agree that greater licence-exempt use could be made of Channel 70 by PMSE? Are there any obstacles that would need to be overcome first?

- 1.11. We are not qualified to respond to this question.

Question Four: Do you have any comments on the scope for applying the options discussed above to bands other than the digital interleaved spectrum?

- 1.12. Not at this stage; as noted above, we would wish to see Ofcom's further thinking on plans for Channel 69 before commenting in detail on the options set out here whether in relation to digital interleaved spectrum or other bands.