

**UK Film Council Response to
Ofcom Consultation on
Delivering Super-Fast Broadband in the UK**

December 2008

1. **Question 1: Is there further evidence available on the applications and services or consumer benefits that may be supported by next generation access?:**
 - 1.1 We agree with Ofcom that very significant benefits will be delivered to both citizens and consumers by next generation access. For this reason, the UK Film Council is extremely keen that public policy should help to facilitate the introduction of super fast broadband as soon as possible.
 - 1.2 Yet, in overall terms, Ofcom's analysis does not take full account of the benefits to content owners/rights holders and citizens, preferring to concentrate on many of the technical or infrastructural aspects of the policy debate. We would like to see a greater focus on benefits to content owners/rights holders and citizens going forward, which would deliver a greatly enriched policy debate.
 - 1.3 Ofcom states that the delivery of high-definition content may be facilitated by allowing direct competition with services previously only available on other platforms, such as viewing movies on Blu-ray disc [paragraph 3.5]. Thus the market for film may become more competitive with benefits to both rights holders and consumers.
 - 1.4 Additionally, we would note that the widespread availability of super-fast broadband in the UK should encourage much greater development of services which allow the legal streaming and downloading of new and archive films and moving images. This will help to address the problems created by unauthorised file-sharing which are the subject of a Memorandum of Understanding to which Ofcom is a signatory, along with the Government, Internet Service Providers and rights holders.
 - 1.5 The advent of such legal services will also have cultural and educational benefits for UK citizens since with the development of super-fast broadband such services should become more economic and therefore help to broaden the availability of films on offer, including the availability of archive content.
 - 1.6 As a founding member of the Media Literacy Task Force, the UK Film Council believes that such services could also enhance the development of Media Literacy by allowing citizens to develop their creative and critical skills as well as their cultural understanding, and generally help deliver on the principals set out in the Media Literacy Charter. Teaching and Learning will be greatly enhanced by the legal downloading of film and media content. This will enable engagement with the widest range of cultural media for study purposes both within formal and informal education and ensure over time a more rounded literacy in the UK, encompassing a more complete range of historical and contemporary material. Such engagement is one of the preconditions to the full development of a knowledge economy in the UK.

- 1.7 Lord Carter, Minister for Communications, Technology and Broadcasting recently said in Parliament that our ambition should be for the broadband system of the nation to be the engine of the nation's mind. This is an ambition which we entirely endorse and which we think should be reflected in Ofcom's approach to maximising the benefits of super-fast broadband.
- 2 **Question 2: Who should lead on defining and implementing a process for migrations to and from next generation access networks? What roles should industry, Ofcom and other bodies play?:**
 - 2.1 The UK Film Council does not have a view on this.
- 3 **Question 3: What role is there for Ofcom in the ongoing debate on next generation access versus industry's role in progressing this debate through multi-lateral and bi-lateral discussion?:**
 - 3.1 We believe that Ofcom, as the regulator for the communications sector, needs to play a leadership role in progressing the debate about the development of super-fast broadband.
 - 3.2 We note that Ofcom states that we do not currently see a need for mechanisms to secure widespread availability beyond that which investment from the private sector will achieve. Paragraph 4.24.
 - 3.3 Ofcom's analysis states that [given] the generally sound record of the UK telecoms market in generating investment, we conclude that the case for a major shift in policy emphasis towards public sector investment is not justified at this time; primary responsibility should continue to rest with the private sector. Paragraph 11.5.
 - 3.4 However, much of Ofcom's analysis was doubtless written before some of the most significant effects of the credit crunch became apparent. For instance, it is reported that some shareholders of BT are proposing a retreat from the company's plans to invest £1.5 billion in investing in high-speed fibre-optic networks across the UK.
 - 3.5 While the issue of what public interventions, if any, are required to incentivise the roll-out of super-fast networks is complex we believe that the current financial climate does require Ofcom to revisit its thinking on the appropriate role of public policy and to test whether its assumptions are still valid.
 - 3.6 A report by Plum consultants for the Broadband Stakeholder Group report is paraphrased as arguing that most of the value which could be identified from next generation access was properly characterised as private rather than public. Paragraph 11.6
 - 3.7 It is then stated that the BSG report conforms to our view a well-regulated market ought to be able to capture most of the economic value generate by next generation access deployment. Paragraph 11.7

3.8 The UK Film Council believes that this underestimates the wider public value (beyond the undoubtedly significant economic value) of some of the benefits that super-fast broadband could deliver. This is especially true in relation to the benefits for education, health and social inclusion which are identified at paragraphs 1.5 and 3.7, as well as the specific benefits for rights holders which we describe in answer to question 1.

4 Question 4: How far does current regulation, including market definitions, equivalence and the BT's Undertakings, need to evolve as result of next generation access deployment?:

4.1 The UK Film Council does not have a view on this.

5 Question 5: How important are passive products such as forms of sub-loop unbundling and duct access? Can the economics of these products support the promotion of effective and sustainable competition at this level? Which passive products should Ofcom pursue?:

5.1 The UK Film Council does not have a view on this.

6 Question 6: What are the characteristics of high quality, fit for purpose active wholesale products? How far can active products with these characteristics support effective and sustainable competition?:

6.1 The UK Film Council does not have a view on this.

7 Question 7: Are there other options for promoting competition through regulated access that have not been considered here?:

7.1 The UK Film Council does not have a view on this.

8 Question 8: How far may options for joint investment provide greater opportunities for competition based on passive inputs? Are there lessons that can be learned from similar ventures in other industries? What are the risks and advantages of such approaches?:

8.1 The UK Film Council does not have a view on this.

9 Question 9: What should be the respective roles of Ofcom and industry in defining and implementing product standards?:

9.1 The UK Film Council does not have a view on this.

10 Question 10: How far do stakeholders consider the pricing approach outlined here of pricing flexibility for active products and cost orientation plus considerations for risk is appropriate at this stage of market development? :

10.1 The UK Film Council does not have a view on this.

- 11 Question 11: Will indirect constraints allow for an approach based on more price flexibility for active products? How will such an approach affect the incentives of different operators to invest and deliver super-fast broadband services to end customers? :**
- 11.1 The UK Film Council does not have a view on this.
- 12 Question 12: What period of time would be appropriate for such an approach to ensure a balance between the need for longer term regulatory certainty with the inherent demand and supply side uncertainty in super-fast broadband and next generation access? :**
- 12.1 The UK Film Council does not have a view on this.
- 13 Question 13: What are the key factors that could make a review of any pricing approach necessary?:**
- 13.1 The UK Film Council does not have a view on this.
- 14 Question 14: How far can the generic model for transition outlined here deliver both incentives to invest in next generation access while ensuring existing competition is not undermined?:**
- 14.1 The UK Film Council does not have a view on this.
- 15 Question 15: What triggers would be appropriate for the commencement of any transition process?:**
- 15.1 The UK Film Council does not have a view on this.
- 16 Question 16: Once triggers or circumstances for transition are achieved, what would be an appropriate period for the various phases of transition (consultation, notice period, transition)?:**
- 16.1 The UK Film Council does not have a view on this.
- 17 Question 17: Over what geographic area should any process of transition be managed, for example region by region or nationally?:**
- 17.1 The UK Film Council does not have a view on this.
- 18 Question 18: What actions, if any, should, Ofcom undertake to support new revenue models from next generation access?:**
- 18.1 The UK Film Council notes in particular paragraphs 9.20 and 9.21 which state that:
- 18.2 Advances in Digital Rights Management may potentially enable content owners to offer consumers a much richer array of price and product offers. Use of Digital Rights Management in theory enables content owners to create new distribution models which enhance economic welfare.

- 18.3 For example, film producers engage in a form of price discrimination by releasing their product via a series of windows, which segments consumers into discrete groups according to their willingness to pay. Digital Rights Management potentially enables film producers to replace the windows-based form of discrimination with discrimination based upon technology. Where Digital Rights Management enables film producers to make content available to consumers on specific platforms earlier than is possible under traditional models economic welfare may be increased. The distribution of any increased welfare between producers and consumers is an empirical matter and is not considered here. While it is almost certainly the case that much of the revenue generated via online consumption of content will represent a cannibalisation of pre-existing revenue streams, where next generation access supports new forms of content or enables consumption of content in new ways then additional consumer value may be created.
- 18.4 We are puzzled by the reference to Digital Rights Management (DRM) issues in this context. The issue of the role of Digital Rights Management in furthering the interests of citizens and consumers is a complex one, and one that is tangential to the specific debate about the development of super-fast broadband since DRM is not, in and of itself, something that is made possible by such next generation access. Nor is it DRM as such that enables films to be made available earlier than is possible under traditional models market participants make decisions about the length of windows based on judgments about the optimisation of revenues. This was true both before and after the advent of DRM technologies (for example, the DRM technologies contained within DVDs).
- 18.5 Additionally, it is not film producers, but film distributors who release their product via a series of windows.
- 18.6 The UK Film Council believes that the development of revenue models, including the organisation of windows for film, does not require any direct intervention from Ofcom or the public sector as a whole. There may be an informational role for the public sector in helping market participants collectively to analyse and better understand the likely impact of evolving technologies and new business models. But the development of individual models should be left to the market.
- 19 Question 19: What role should public sector intervention have in delivering next generation access?:**
- 19.1 See response to Question 3.

20 Question 20: Are these the right actions for Ofcom and other stakeholders to be undertaking at this time? What other actions need to be taken or co-ordinated by Ofcom? :

20.1 The UK Film Council would like to see a broader engagement with the public benefits of super-fast broadband that we have outlined above. As stated in response to Question 3, we would also like to see a re-evaluation of the possible roles of public policy in response to highly significant and fundamental changes in the economic climate.

Comments:

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.

We believe that in a digital age the development of super-fast broadband services is one of the keys to helping to advance a number of our policy priorities including:

- Improving public access to British and specialised films,
- Developing media literacy skills
- Encouraging the take-up of legal online film services
- Promoting social inclusion and diversity especially via services to rural and remote communities and the disabled.

In this submission we have responded only to those questions appropriate to the remit of a public body.