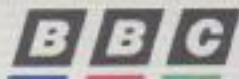


c.e. Prof. ~~G. G. G.~~



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WITH COMPLIMENTS

## BROADCASTING BILL

### BBC Briefing

There are a number of issues, highlighted by the Committee stage, where the BBC would like to see amendments as the Bill continues its progress through Parliament.

#### The Background

Following publication last December, the Director-General, Michael Checkland, welcomed the Bill and had this to say :

"The BBC is asked to be the cornerstone of British broadcasting. I want the BBC to be the cornerstone of a very strong British broadcasting industry and I think it's important for the BBC that we're challenged across all our programming, so I want to see the quality of programmes maintained, not only in the BBC (I'm determined that we shall do that) but throughout the rest of the industry."

The strengthening of the quality threshold for ITC licensees, foreshadowed in debates at the Committee stage, will help the BBC fulfil its own rôle as a quality broadcaster under the overall framework to be established by the Bill.

The BBC was pleased that the Minister also seemed willing to accept amendments to some of the legal and regulatory provisions of the Bill. The BBC accepted the application of obscenity and public order legislation to broadcasting, but sought changes to make the proposed legislation more appropriate to the medium. The Minister accepted arguments that broadcasting, with its topical as well as creative and artistic aspects, merited a broader "public good" defence than that applied to films, and that it should be recordings of programmes which constituted evidence of transmission, not scripts as would be the case for theatrical performance. He said he would also bring forward at Report amendments making police powers in regard to obscenity and public order legislation subject to judicial authority.

However, there remain a number of issues of particular concern to the BBC for which we feel it important to seek further Parliamentary consideration.

#### 1. Independents (Clauses 171 and 172)

The BBC will achieve the target of 25% of production of designated programmes by independent producers from 1993 onwards, as required by the Bill. The quota is the same as that required of the commercial companies licensed by the ITC, but in the case of the BBC alone, the achievement of the quota is to be monitored by the Office of Fair Trading.

At present, the BBC makes regular reports to the Home Secretary on the targets for independent production which have already been agreed. (This year, for example, we will be reporting that our independent transmissions from April 1989 to March 1990 have met the agreed target of 360 hours. Targets for the next 2 years are 482 hours and 600 hours respectively.) This system of monitoring and reporting is in line with the BBC's traditional responsibilities to Parliament, and the details of progress with independent production are currently included in the Report which we lay before Parliament annually. The Board of Governors has a regulatory as well as a broadcasting rôle, and is responsible for ensuring that the BBC meets its statutory duties. The detailed powers given to the OFT to make reports to the Home Secretary on the BBC's implementation of the target and to require the production of related documents will constitute an unnecessary, time-consuming and expensive duplication of the powers and responsibilities of the Board.

If it is useful to have a system of additional oversight to represent the interests of independent producers and fulfil a more general monitoring role it should be applied across the television industry as a whole.

## 2. Programme listings (Clause 164, Schedule 14)

The Bill introduces a statutory licensing system to permit publishers to reproduce programme information, in which the broadcasters retain the copyright, on payment of a mutually-agreed fee. In the event of disagreement between rights owner - i.e. Radio Times and TV Times - and publisher, the latter would be able to pay what he considered a reasonable amount to the rights owner pending adjudication by the Copyright Tribunal.

The BBC welcomed the overall proposal to open up a market in programme information, but remains concerned that the market should be orderly and that the right balance should be struck between the interests of copyright holder and publisher. For example, rights owners should be offered protection against unreasonable self-assessment. Under the Bill's present proposals, publishers will be under no incentive to reach any agreement. Indeed, a group of prospective publishers have already committed themselves to the proposition that payments to rights holders should be no more than minimal.

An arrangement by which customers (i.e. the publishers) set their own price does not constitute a fair market. The BBC welcomed the reassurances on the way the system will operate which the Minister gave in Committee, but remain concerned about the confidentiality of information, the timing of its

release and the proposal for self-assessment without safeguards. At the very least, publishers who self-assess should lodge a 'bond' pending adjudication by the Copyright Tribunal and there should be a "cooling-off" period before self-assessment can be implemented as an incentive to agree reasonable terms.

### 3. "Must Carry" (Clauses 65-75)

The Bill repeals the provisions of the 1984 Cable and Broadcasting Act which obliged broadband cable operators to carry BBC channels on their cable or ensure they are available to customers as part of the package. There was a potential problem for MVDS providers offering a limited number of channels and for some cable systems, since the 1984 Act required them to carry nine channels designated as public service channels (including ITV and DBS) in addition to their own services.

We believe BBC-1 and BBC-2, and Channel 4, which remain designated as public service broadcasting channels under the Bill, should continue to be available to all the audience, however they receive their television signal. At present these channels are available to 99% of the population through terrestrial transmitters. But transmission systems are changing. Experience in other countries, such as the United States, has shown that aeriels are no longer properly maintained once areas are cabled. Indeed, legislation currently being considered by Congress would ensure "must carry" protection for public service channels, taking account of the capacity of cable services. If such safeguards are not incorporated in our own legislation, cable operators will be able to take advantage of the removal of the "must carry" requirement by dropping one or more of the terrestrial services, and licence-payers will find that they no longer have access to public service channels.

Cable operators would no doubt wish to offer BBC-1 as part of any package designed to attract customers. But BBC-2 and Channel 4 could be less attractive commercially than, for example, a revenue-earning subscription service offering a share to the cable operator. The "must carry" requirement has until now been part of the regulatory framework for broadcasting in this country, and the requirement should continue for the public service channels for at least the duration of the current Charter.

### 4. Listed Events (Clause 168)

The Home Secretary designates a list of sporting events of national importance. These are : the Olympic Games, Wimbledon, the Grand National, the Derby, Test Matches when

played in this country, the FA Cup Final, the Commonwealth Games when held in this country, the football World Cup finals, the Oxford-Cambridge Boat Race, and in Scotland, the Scottish FA Cup Final. Under the terms of the 1984 Cable and Broadcasting Act, cable and satellite operators can show these events only if the terrestrial broadcasters - BBC and ITV - have first had the opportunity to acquire the rights on equal terms. Under the terms of the Bill, the only safeguard for listed events is the prevention of their transmission on a pay-per-view basis. There is no safeguard against transmission on other forms of service which are not universally available. Hence, the risk that an event which is now recognised as being of national importance by the Home Secretary will in future only be available to an extremely restricted audience.

The only certain way of ensuring that the "national" nature of these "listed" events is reflected by truly nationwide availability is by incorporating appropriate safeguards into the Bill. It is not sufficient to assume that the sporting bodies themselves would not wish to see their television audience restricted; this might well place these bodies in the invidious position of having to weigh an excessively high cash bid (in market terms), with its offer of immediate benefits to the sport concerned, against the less quantifiable benefit of universal availability on the small screen.

The BBC has already completed a number of arrangements involving terrestrial and satellite coverage, including the current West Indies Test series. In its payment to the rights-owner for highlights and news access, the BBC had contributed one third of the cost of the operation which has resulted in Sky's live coverage. Such arrangements can result in the extension of the services available to viewers. But we remain concerned at any moves which would, on the contrary, restrict what is presently available to all viewers. The undesirability for viewers of any such restriction is recognised and reinforced by Article 9 of the European Convention on Transfrontier Television, to which the United Kingdom is a signatory. Article 9 states :

"Each Party shall examine the legal measures to avoid the right of the public to information being undermined due to the exercise by a broadcaster of exclusive rights for the transmission or retransmission, within the meaning of Article 3, of an event of high public interest and which has the effect of depriving a large part of the public in one or more other Parties of the opportunity to follow that event on television."

On all the above questions, the BBC would welcome further Parliamentary consideration of the issues raised.

10 April 1990