

THE GOVERNMENT'S WHITE PAPER 'ANEW FUTURE FOR COMMUNICATIONS'

THE BBFC'S RESPONSE

EXECUTIVE SUMMARY

The BBFC's response to the White Paper, 'A New Future for Communications', makes the following points:

- (i) It would be difficult to split video regulation from cinema regulation without creating the 'double-jeopardy' to which the White Paper refers (paragraph 4).
- (ii) A small, dedicated, sector-specific regulator like the BBFC is able to respond more quickly and efficiently to the needs of the industry and the public (paragraphs 5-7).
- (iii) Video classification is different from broadcast regulation in terms of the standards that should be applied (paragraphs 8, 10) and the involvement of the BBFC before the material is seen by the public (paragraphs 11-14, 23).
- (iv) The White Paper's arguments for keeping the Advertising Standards Authority as a separate body also apply to the BBFC (paragraphs 15-16).
- (v) Conflicts would arise if the same body was responsible for regulation before the event and after (paragraphs 17-20).
- (vi) The BBFC would welcome an appeals body which would arbitrate on public complaints (paragraphs 21-22).
- (vii) The continued role of the BBFC provides the necessary plurality in cultural regulation (paragraphs 24-25).
- (viii) The convergence of film/video with the Internet remains a distant prospect (paragraphs 26-27).
- (ix) The BBFC's future role should include advising new broadcasters on classification and consumer advice, which would not be possible as part of OFCOM (paragraphs 28-29).

- (x) The classification of video, video games and film should remain together within the remit of the BBFC, either by continuing present arrangements or by forging closer links with OFCOM (paragraph 32).

THE GOVERNMENT'S WHITE PAPER 'A NEW FUTURE FOR COMMUNICATIONS' THE BBFC'S RESPONSE

1. This response to the White Paper, 'A New Future For Communications', seeks to answer the questions asked about the BBFC. Should the BBFC remain as a separate body responsible, as now, for classifying films and videos, albeit within the framework of the statutory principles embodied by OFCOM? Or should it be absorbed, so far as its video classification responsibilities are concerned, into OFCOM? The White Paper accepts that the BBFC will continue to be responsible for cinema classification.

RELEVANT CRITERIA

2. Some of the relevant criteria are described in the White Paper. Regulation should be 'intelligent, adaptive and farsighted' (1.3.4). Reliance can continue to be placed upon what already works well (5.3.1), of which an example is the Advertising Standards Authority system for self-regulation of advertising content in non-broadcast media (6.8.3). The new framework must be flexible so that it can respond to change (1.3.1). Regulation should be kept to the minimum necessary for ensuring that the interests of citizens and consumers are fully safeguarded (1.3.9).

WORKING WITHIN THE FRAMEWORK OF STATUTORY PRINCIPLES EMBODIED BY OFCOM

3. The BBFC already works to a published set of Guidelines which enshrine similar principles and which may need little or no amendment to fit in with what is being suggested for OFCOM. The BBFC Guidelines are the result of extensive research (using the same range of methods which the White Paper specifies for OFCOM) which therefore reflect current public expectations. No other guidelines used by an existing regulator have been exposed to the same level of public debate.

IT WOULD BE DIFFICULT TO SPLIT VIDEO REGULATION FROM CINEMA REGULATION

4. The film industry will continue to want theatrical release first, followed a few months later by video or DVD and only after a further period of time will the work be offered to broadcasters. The intervention by OFCOM at the video/DVD stage, after the original classification of the same work for cinema had been determined by the BBFC, would create confusion. Indeed requiring two regulators to arbitrate on the same work at different stages in its marketing roll-out would be to introduce the very 'double-jeopardy' to which the White Paper refers.

5. The video/DVD classification should be made in full understanding of the processes and evidence which produced the cinema decision. The most efficient way of achieving this, avoiding needless repetition, is to use a single body for both cinema and for video/DVD classification. The BBFC is a 'one-stop shop' where distributors can go through the necessary classification procedures for both the cinema and video or DVD versions of their films. In this way the burden of regulation on the industry is reduced to the minimum necessary.
6. A small, dedicated, sector-specific regulator like the BBFC can respond quickly and efficiently to the needs of the industry and of the public. It is not constrained by wider concerns that are irrelevant to the industry it regulates and it can therefore be more flexible and sensitive in its responses. This would not be the case if video classification became part of OFCOM.
7. It should be remembered, too, that the medium of film (and by extension video) is allowed a degree of freedom of expression which is not available to television. The BBFC's Guidelines are designed to underpin that freedom, whilst at the same time protecting children and the more vulnerable members of society.
8. In any case, people regard film and video content differently from the great majority of television material. The most recent British Social Attitudes Survey shows that consumers are more tolerant of sexual portrayals on video than they are of similar material on free-to-air TV. Video is closer to film in that respect. For example, 14 per cent of those interviewed felt that explicit heterosexual acts should not be seen at all at the cinema and 13 per cent felt the same about explicit sex on video. This compares with 23 per cent who thought it should not be available on regular TV channels.
9. Having more than one regulator need not lead to inconsistencies in approach or confusion of the public and programme and film makers. The classification ratings applied by the BBFC to films and videos are respected by the broadcasters and their regulators. For example, the ITC Programme Code has, from the beginning, required that no film classified '12' be transmitted before 8pm; no film classified '15' be transmitted before 9pm; and no film classified '18' be transmitted before 10pm.

BBFC'S WORK IS VERY DIFFERENT FROM BROADCAST REGULATION

10. There are clear differences between what the BBFC does and what the broadcast regulators do. The BBFC is not concerned, unlike the ITC or BSC, with the schedule as a whole and whether for example there is too much violence in peak time or over a period of weeks or months. Each film or video stands alone. The BBFC, unlike the BBC, does not commission or make films or videos. Nor does it, unlike the ITC or Radio Authority, determine which companies should be licensed to do business.
11. Moreover the BBFC is the only regulator which views material before it is seen by the public. This places more responsibility on the Board than is placed on a regulator which operates after the fact. For instance, the Video Recordings Act is unique to the BBFC. It requires the BBFC to consider harm both to the viewer and to society as a whole through the encouragement of anti-social behaviour. Furthermore, the regulation of video can lead directly to the creation of a criminal offence should the regulator's classifications be abused by the distributor or retailer. The criminal implications of the Video Recordings Act, in relation to video works, have no direct parallel with the functions proposed for OFCOM.
12. The BBFC recognises that prior regulation tends to make film and video makers unduly cautious. They will, in any case, have sought to avoid regulatory conflict at the earlier production stages by making compromises. When faced with an unwelcome classification decision film makers may forgo mounting a challenge on the grounds that, for example, the schedule for release may be pressing and leave little room for argument. Or the costs of cutting or changing the work may be prohibitive, compelling the company to accept a higher classification than hoped for.
13. This problem would be exacerbated if the prior regulator was a large, bureaucratic organisation with political muscle and other priorities. Such a regulator would be able to take as tough a position as it wished. Since the work would not yet have been shown (at least in this country), no evidence of public opinion could be brought to challenge the regulator's conclusions.
14. Thus a prior regulator must use its strength wisely and this requires alertness, skill, knowledge, flexibility and sensitivity. These are, we believe, the stock in trade of the BBFC today. We suggest that these key qualities would not survive a transition which replaced the present small and responsive Board with a monolithic quango, within which video classification becomes at best one divisional function among many.

THE BBFC IS COMPARABLE TO THE ASA

15. The White Paper specifically singles out the Advertising Standards Authority as a body which regulates media which 'overlap with the ambit of the new communications regulator' and goes on to say that because there is a greater degree of user-selection and less immediacy the existing self-regulatory systems work well. It also suggests that a more co-regulatory approach could be effective. The BBFC, which also classifies advertisements for cinema and video, believes that the same arguments are relevant to the classification of video.
16. The Board similarly is small (with 50 staff). It has been able to adapt rapidly to changing techniques, moving from simply classifying films to the classification of video, DVD and video games at the cutting edge of technical development. Its website, as well as offering a very popular public facility, provides a secure extranet link with up to the minute information about classification decisions. It allows distributors access to a paperless submission system for their works. It will eventually enable companies to submit the works themselves electronically.

TAKING RESPONSIBILITY FOR VIDEO REGULATION WOULD POSE DIFFICULT PROBLEMS FOR OFCOM

17. Conflicts would arise if the same body was responsible for regulation both before the event and after. A content regulator may not be able to take an independent and detached view of the performance of those it regulates if it has already involved itself in the decision-making which has contributed to that performance, that is by classifying films in video format later transmitted on TV.
18. Indeed it was precisely in order to avoid similarly becoming judge and jury in its own case that the ITC dropped its role of prior regulator or censor in 1993. Before then, its predecessor, the IBA, had the power to intervene before a programme was transmitted and to demand cuts or even to forbid broadcasting. However, the IBA had no power to fine or otherwise sanction a television company (short of the nuclear device of sacking it completely). By contrast the ITC was given powers of sanction and has occasionally used them. It could not have done so in the case of a programme which it had, as prior regulator, approved. That is why the ITC ceased to be a prior regulator.

19. There are also differences between a complaint about a television programme and one about a classified video. A television programme is shown once and, unless repeated, is not seen again. But by the time OFCOM came to consider a complaint against a particular video work, it would have been distributed and sold nationally through thousands of shops. It would in practice be impossible to call back.
20. The BBFC already has in place a complaints procedure for video distributors. The Board is actively looking at establishing an appeals procedure for cinema distributors. Complaints about classification issues raised by the public are dealt with quickly in writing, and where a cinema classification raises significant concerns with the public this will be taken into account when the video classification is subsequently considered by the BBFC. This facility would be difficult to sustain if video classification was carried out separately by OFCOM.
21. The Board is concerned about the prospect that an OFCOM appeals body would be broadcast led. Video and television are different media whose audiences bring different expectations to the viewing experience, and it would be essential to have people with experience of the film and video industry if fair and reasonable decisions were to be reached.
22. The BBFC would welcome an appeals body which would arbitrate on complaints from any member of the public that a BBFC rating was too liberal or too severe. This would provide the public with an appeals mechanism alongside the Video Appeals Committee (which is available only to the video industry).
23. A further problem for an OFCOM which incorporated video regulation is that the public would begin to wonder why video is pre-classified but television not if both were the responsibility of the same regulator. Government effectively dismissed the idea of centrally regulated pre-classification for television when it rejected the introduction of V-chip technology.

AN ARGUMENT FOR PLURALITY

24. A single regulator would have sole authority over a very wide range of cultural output and will become monolithic and - in fact - over powerful. There is no other body to compare itself against or to challenge or compete with it. The most efficient way of achieving a healthy dialectic is to ensure that different media sectors have different regulators who are also committed to monitoring the similarities between their sectors as well as the extent to which necessary contrasts should be preserved. An independent BBFC would represent a degree of plurality in content regulation.

25. It has been suggested that a single authority would introduce greater 'consistency' into media regulation. This argument needs to be treated with caution. Cultural regulation is a subjective discipline: every programme or video sets a fresh challenge, and context ultimately determines the final decision. What may be unacceptable in one work may very well be acceptable in another. It is inevitable that those who are bruised by regulatory criticism will make whatever use they can of this truism by raising the argument of 'inconsistency'. However, any system which is not open to such a charge fails in its duty both to the public and to the medium it regulates.

HOW QUICKLY WILL CONVERGENCE TAKE PLACE?

26. From the point of view of the public and the film/video industry, the notion of electronic convergence is still a distant prospect. Cinema audiences are increasing - rising from 135.5 million in 1998 to 143 million last year. This represents a nearly threefold increase since 1984 when cinema admissions were 54 million. With the advent of the DVD the video industry is thriving. Video features submitted to the BBFC for classification rose steadily from just over 3000 titles in 1997 to 6300 last year with an industry projection for 2001 of 7500. A total of 16.6 million DVD videos were sold in 2000 compared with 4.05 million in 1999. The growth of DVD has not yet hit VHS cassettes, sales of which rose seven per cent in 2000. The video rental market is also strong with over 106 million videos rented in 2000 with a projected audience of almost 204 million. The industry is forecasting a strong year in 2001. In short, the video sector is robust rather than wilting in expectation of losing its business to a new medium.
27. This may be contrasted with the very slow growth of the public take-up of film/video through new media. Some 20 years since the beginning of the cable and satellite 'revolution', the share of viewing in multichannel homes of dedicated film channels has never reached more than one per cent for Sky Premier and Sky Moviemax - the most popular channels. All other channels attract less than a 0.4 per cent share each; Film Four's share is 0.1 per cent (in spite of spending some £10m in marketing since its launch in 1998). In the meantime, the mixed schedules of the traditional terrestrial channels still account for 83 per cent of television watched. It is not surprising that the government remains unsure about the appropriate date for analogue switch off, given the general public reluctance to take up new broadcast entertainment technology.

BBFC CAN ADVISE BROADCASTERS ON THE DEVELOPMENT OF CLASSIFICATION SYSTEMS AND IT CAN PROVIDE THEM WITH CONSUMER ADVICE FOR INDIVIDUAL FILMS

28. The Board could use its experience and expertise to advise on the development of classification systems and could provide consumer advice about films to broadcasters. This could be done at marginal cost. The Board could take on further classification duties for new media entering the market and wanting the benefit of an already recognised and understood classification system.
29. However, in providing consumer or ratings advice to broadcaster websites, cable channels and other developing companies, the BBFC would not be performing a regulatory function. It would be operating as a (non-profit) business enterprise, charging out the marginal costs of its work. This is not a new idea. In the late 1980's, the BBFC performed a similar ratings service on contract to the developing satellite company BSkyB. However, a commercial transaction of this kind could not be entered into if the BBFC video function became part of OFCOM. The regulator could not do business with the companies it regulates.

THE BBFC: CONCLUSION

30. The British Board of Film Classification has been classifying films on behalf of local authorities since it was established by the film industry in 1912, and videos since the Video Recordings Act 1984. In addition the Board classifies those video games whose content brings them within the scope of the Video Recordings Act. The Board is independent of Government and is funded entirely by the fees charged to the industry for its services.
31. Throughout the White Paper OFCOM is referred to as regulating telecommunications, television and radio. The treatment of the issue of video classification gives the impression of having been an after-thought and the BBFC notes that it was not consulted by either the DTI or the DCMS during the Green Paper stages, nor in the run up to the publication of the White Paper.

32. The BBFC would expect to work alongside OFCOM, as it currently does with the present broadcast industry regulators. The Board's Guidelines could easily be allied to those of OFCOM so that the differences between film, video and television could be taken into account. The BBFC strongly recommends that the Government does not dismiss the Board's many years of unique experience and expertise by separating two inextricably linked media. The classification of video and video games and film should remain together within the remit of the British Board of Film Classification, either by continuing the present arrangements or by forging closer links with OFCOM in terms of common principles of regulation, and a formal process of mutual consultation on issues of common interest.

Annex: Statement of the Role of the BBFC

Copies of the BBFC's Classification Guidelines and a summary of the research which underpins the Guidelines, entitled **Sense and Sensibilities**, are available on the BBFC website at www.bbfc.co.uk or direct from the BBFC, 3 Soho Square, London W1D 3HD tel: 020 7440 1570

Annex - Taken from the BBFC Annual Report 2000

The Role of the BBFC

The BBFC classifies films, videos and digital media. It does this on behalf of the Local Authorities, who are responsible for cinema licensing and classification, and as the designated authority under the Video Recordings Act.

The BBFC is funded solely from the fees charged for its services.

Statement of Purpose

1. To provide the public with the means to make informed decisions about the films, videos or digital media which they, or those in their care, may wish to view or play.
2. To classify works into appropriate categories with regard to relevant legislation and in accordance with the Board's published Classification Guidelines. In doing so, to preserve a proper balance between social responsibility and freedom of expression.
3. To provide a reliable and efficient service to the Board's client industries.
4. To operate at all times in an independent, fair, consistent and transparent manner.
5. To be accessible and responsive to the public and its representatives.
6. To ensure a sound financial base for the Board's work and to preserve its independence and integrity.

Aims

The BBFC, additionally, has the following aims:

- (i) To ensure that the Classification Guidelines are in line with current legal requirements and contemporary public opinion. To that end, to engage in regular and wide ranging consultation with the public and its representatives, with expert and specialist advisers and with the relevant entertainment industries.

- (ii) To seek at all times, in the implementation of the Guidelines, to ensure that the younger and more vulnerable members of society are protected from harm.
- (iii) To monitor closely research into the effects of the media and changes in public opinion; and to participate in relevant research projects.
- (iv) To promote clear, effective and efficient working practices, lines of communication and accountability, in all aspects of the Board's work.
- (v) To treat all submitting clients fairly and impartially and to promote openness by providing information and advice about Board policy and procedures.
- (vi) To continue to improve the quality and efficiency of the Board's performance at all levels through ongoing internal review and early response to developments in the industry and in technology.
- (vii) To ensure that the Board is responsive to new requirements for classification services.
- (viii) To achieve a high level of courtesy in all forms of communication.
- (ix) To keep under review appropriate means of informing audiences about film, video or digital media content and to promote their use.
- (x) To explain the Board's function and activities to the public clearly and fully.
- (xi) Through the application of equal opportunities and fair employment policies and practices, to develop the Board's staff to their full potential to enable them to secure the aims set out here.