

[Redacted]

To: [Redacted]  
Cc: [Redacted]  
Subject: FW: Note of Broadcasting Decisions

*and attachments*

please print for Rebecca's files

Department for Culture Media and Sport  
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Original Message

From: [Redacted]  
Sent: 14 December 2001 14:54  
To: [Redacted]  
Cc: PS Patricia Hewitt (E-mail); RAMSAY ANDREW [Redacted]  
Subject: BUSH BILL; MACKENZIE, RUTH [Redacted]  
Note of Broadcasting Decisions  
Importance: High

attached are final formal notes of decisions on broadcasting by the SoS at meetings 21 Nov, 11 & 4 December



BroadcastingMeetin g.4Dec.wpd    BroadcastingMeetin g.4Dec.doc    BroadcastingMeetin g.21Nov.wpd    BroadcastingMeetin g.21Nov.doc    BroadcastingMeetin g.11Dec.wpd    BroadcastingMeetin g.11Dec.doc

thanks

Private Secretary to the  
Hon Tessa Jowell MP,  
Secretary of State  
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*Here are some submissions from SoS office which are the nearest to what you are looking for (The Hewitt approval and Chris' submissions are in file beneath)*  
[Redacted]

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14 December 2001

## COMMUNICATIONS BILL

As you will know, we are currently drafting a Communications Bill to give effect to the policies set out in the Communications White Paper of December 2000. There are some issues concerning the licensing regime which I should like to discuss with you as soon as possible to inform this work.

A key aim has been to seek to define those services to be licensed by OFCOM in a way which matches public expectations, (which have been built up over the years), of where the limits of external regulation fall.

Defining the boundary becomes most difficult in relation to services carried over wired systems, some of which are licensed as broadcasting systems and some of which are not.

I should therefore like to meet to discuss the ways in which you see the industry developing in the short and medium term and how our approach to content regulation and licensing could facilitate that development. In particular we would like to cover:

- the extent to which wired systems might combine broadcast and on-demand services;



INVESTOR IN PEOPLE

## RESTRICTED - POLICY

To Diana Kahn cc PS/Patricia Hewitt (DTI)

From [REDACTED] [REDACTED]  
Andrew Ramsay

File Ref [REDACTED]

Date 13 December 2001 Michael Seeney

[REDACTED]

Bill Bush  
Ruth Mackenzie

[REDACTED]

COMMUNICATIONS BILL - MEETING TO DISCUSS OUTSTANDING ISSUES, 4  
DECEMBER 2001

1. You were present when the Secretary of State met relevant officials to discuss the following broadcasting policy issues: British Board of Film Classification (BBFC) Instructions to Counsel ([REDACTED] submission of 25 June); Satisfaction TV - Foreign Satellite Porn Channels (FSPCs) and Bill Instructions (submission from [REDACTED] of 3 December).

2. After discussion, the Secretary of State agreed the following:

## BBFC Instructions to Counsel

3. The Secretary of State agreed that the function of OFCOM in tv content regulation and monitoring was different from the role of the BBFC in respect of video and film. The one monitored tv content *after* transmission, the other was more of a censor intervening *before* public consumption of material that was not subject to the licensing obligations put on broadcasters. Given the difference of function, she was not persuaded that the role of the BBFC should be subsumed within OFCOM. She agreed that the current institutional arrangements, with the BBFC acting as a regulator outside OFCOM, should remain.

## Satisfaction TV - FSPCs

4. The Secretary of State asked for further advice on this, as it needed very careful handling. She would like to be able to proscribe Satisfaction TV, but was wary of the precedent of the R18 High Court judgement (16 May 2000). Relevant details were in the annexes to the submission. The findings in that

case suggested that a Proscription Order against Satisfaction TV would not be upheld by the European Commission, or - failing them - in a UK court. She requested further advice, refining the arguments on why any attempt to proscribe would fail. The propriety of attempting to go for proscription in the knowledge of probable failure in court also would need to be examined by Law Officers.

5. The ITC notification of Satisfaction TV had been before the High Court judgement. In effect, there were now two different sets of standards in operation, which meant the ITC were asking the Secretary of State to proscribe satellite material which - by all accounts - it was no longer in her power legally to do. The Secretary of State said that she would like to put this back to the ITC, and ask whether they still wished to notify. She would like advice on whether it was procedurally possible to do this.

[ACTION: BPD & Legal Advisers]

  
Private Secretary

## RESTRICTED - POLICY

To Diana Kahn cc PS/Patricia Hewitt (DTI)  
 From [REDACTED]  
 File Ref [REDACTED]  
 Date 11 December 2001

[REDACTED]  
 Andrew Ramsay  
 [REDACTED]

Bill Bush  
 Ruth Mackenzie  
 [REDACTED]

**COMMUNICATIONS BILL - MEETING TO DISCUSS OUTSTANDING ISSUES, 21  
 NOVEMBER 2001**

1. You were present when the Secretary of State met relevant officials to discuss the following outstanding broadcasting policy issues: High Level Remits ([REDACTED] submission of 17 October), Channel 4 Powers & S4C Powers (submissions from [REDACTED] of 30 October). I apologise for the delay with this formal note of the meeting.
2. After discussion, the Secretary of State agreed the following:
 

**High Level Remits**

  3. The Secretary of State agreed that the 3<sup>rd</sup> tier remits for Channels 3, 4 & 5 should be founded on a broad description of public service obligations as described in the BBC's 'remit'. This should be differentiated and tailored, however, to reflect the hierarchy of obligations of these broadcasters (the 'sliding scale' of public service obligations, from BBC at the top of the scale - strict obligations in return for the licence fee - through Channels 3 and 4 to 5 at the bottom).
  4. The Secretary of State asked for the remits to be more fully fleshed out and re-submitted to her, and highlighted the importance of very clear definitions of requirements at each tier. She also agreed with the need for a system of review of the remits and their relation to the individual broadcasters to be built into the legislation.
  5. The Secretary of State asked that the ITC be canvassed informally on these proposals, before the broadcasters themselves are approached for sounding-out.

[these proposals have now been firmed up, further to discussion with the ITC, and passed back to the Secretary of State under cover of Vanessa Brand's further submission of 4 December, which is currently with the Secretary of State for clearance].

#### Channel 4 Powers

6. The Secretary of State agreed that - in general terms - Government should aim to create a framework which would allow Channel 4 to develop commercial enterprises, but that there needed to be careful thought given to the limits on C4's funding of such activities. She recognised the need for C4 to adopt a commercial approach, including channels and activities that are primarily commercially-driven, but that this also needed to co-exist in a transparent relationship with activities more related to its public service remit.
7. The Secretary of State asked officials to discuss a structure with C4 that could meet the following Ministerial aims:
  - C4 should have a clear remit, as well as the freedom to act commercially in support of the core purpose;
  - there should be a system of transparent 'fair trading' in recognition of the advantages C4 derives from its public corporation status, and following on from this;
  - there should be some form of external regulation put in place to ensure C4 does not abuse the benefits bestowed by its public corporation status (the extent of the powers of the regulator to intervene where necessary would also need to be teased out);

[a further submission on this of 30 November from [REDACTED] has now gone to Ministers, and is awaiting the Secretary of State's clearance].

#### S4C Powers

8. The Secretary of State suggested that, notwithstanding some of the arguments put forward in the submission, there needed to be fair treatment of S4C in its ambitions for more commercial freedom, in comparison to - for example - C4. There ought to be more consideration given to where Government might be able to relax requirements, but bearing in mind that S4C is positioned between C4 and the BBC in terms of its public service structure/make-up, and this means that necessarily commercial freedom could not go quite as far as in the case of C4.

[REDACTED]  
Private Secretary

## RESTRICTED - POLICY

To Diana Kahn cc PS/Patricia Hewitt (DTI)  
 From [REDACTED] [REDACTED]  
 Andrew Ramsay  
 File Ref [REDACTED]  
 Date 13 December 2001

Bill Bush  
 Ruth Mackenzie  
 [REDACTED]

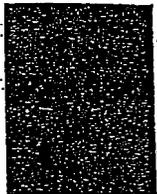
COMMUNICATIONS BILL - MEETING TO DISCUSS OUTSTANDING ISSUES, 11  
DECEMBER 2001

1. You were present when the Secretary of State met relevant officials to discuss the following outstanding broadcasting policy issues: Light Touch Regulation ([REDACTED] submission of 9 October, and follow-up note of 10 December); and Must Carry/Must Offer (joint submission of 26 June from you and [REDACTED]).
2. After discussion, the Secretary of State agreed the following:

Light Touch Regulation

3. [REDACTED] presented the issues here as being, in the main, setting the initial balance between regulation and deregulation, and then creating a mechanism to allow OFCOM to deregulate (or indeed regulate further, if necessary) further down the line where appropriate, as the broadcasting and media landscape changes and develops.
4. Bill Bush emphasised that the key would be to avoid creating uncertainty for the industry. The industry needed to be clear on the structure and timetables for any reviews of the regulatory landscape. There should be as clear an indication as possible *in advance* of how often reviews will be (every 3 years?), what would be their scope and focus, and what the processes for any review would be (consultation etc). We needed to avoid any sense that OFCOM might be subject to change the ground rules at any time in response to lobbying by industry heavyweights, or Ministerial intervention. There needed to be a sense of stability to nurture commercial confidence.
5. The Secretary of State agreed with these points, and that there should be a defined and transparent mechanism for OFCOM to review regulation at

specified junctures. The Secretary of State agreed the mechanisms recommended in para. 7 of Stephen Pride's 9 October submission, and also agreed with the list of mechanisms which should not be introduced (para. 8 of that submission).



6. On [redacted] further note of 10 December, which put forward areas of possible further deregulation, the Secretary of State agreed the following:

Equal opportunities and training - a firm no to any further deregulation;

No licence required for cable & satellite radio - on the basis that any deregulation here could be achieved by an Affirmative Order reducing the scope of the proposed Radio Licensable Content Services (RLCS) licence, we should leave this for the time being;

Independent Production Quotas - the 'range and diversity' specification should be kept in place, to avoid further encouraging the use of a very narrow field of independent production companies by broadcasters;

Common provisions for standards on TV & radio - this could be examined further, on the basis that there must not be a levelling-down of standards, and where different standards exist these can be easily explained.

Must Carry/Must Offer

7. The Secretary of State requested some urgent further work on this, as follows:

what is the scope for including 'must carry' obligations on satellite broadcasters as a condition of 'packager' licenses?

what is the scope for including a sunrise provision which could be invoked if satellite broadcasters attempted to drop PSBs?

can more urgent investigation be undertaken on how this sits with OFTEL?

[ACTION: BPD & [redacted]]

can more thought be given to how Sky might be handled on this issue?

[ACTION: Bill Bush [redacted]]

[redacted]  
Private Secretary