

## Written evidence submitted by the British Film Institute

### About the BFI

The British Film Institute (BFI) is a cultural charity, a National Lottery distributor, and the UK's lead organisation for film and the moving image. The BFI is also administrator of the cultural test and co-production assessments for film, television and games tax reliefs.

Our mission is:

- To support creativity and actively seek out the next generation of UK storytellers
- To grow and care for the BFI National Archive, one of the world's largest film and television archives
- To offer the widest range of UK and international moving image culture through our programmes and festivals - delivered online and in venue
- To use our knowledge to educate and deepen public appreciation and understanding of film and the moving image
- To work with Government and industry to ensure the continued growth of the UK's screen industries

Founded in 1933, the BFI is a registered charity governed by Royal Charter. The BFI Board of Governors is chaired by Tim Richards.

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### Summary

The BFI welcomes the opportunity to submit evidence to the DCMS Committee's pre-legislative scrutiny of the Government's draft Media Bill.

The BFI's latest Screen Engagement Audience Tracker found that streaming services are now the most popular way of watching films in terms of overall reach and number of films watched, having overtaken watching films at cinemas as well as on broadcast TV channels.<sup>1</sup> It is important that media and broadcast regulation in the UK remains fit for purpose and reflects technological advances and changing audience habits. This is essential if the BFI National Archive is to continue to deliver the greatest possible benefit to the public and if audiences are to benefit from high-quality UK productions.

Our response focuses on two specific areas: the archiving of online programming; and prominence in online services. In particular, we encourage the Committee to consider the need for:

- Legislation granting explicit powers for the BFI to capture programming from online platforms provided by the PSBs for the purpose of archiving;
- Archive contributions from non-PSB television and streaming platforms; and
- Prominence of UK films on online platforms.

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<sup>1</sup> BFI, February 2023. *Screen Engagement Audience Tracker*. Available at: <https://core-cms.bfi.org.uk/media/28280/download>

## National Archive for Film and Television

### 1. Overview

We welcome the Media Bill's efforts to update the regulation of public service broadcasting to address on-demand programme services and recognise changing audience habits and developing technology. However, we consider it an omission that the Bill contains no reference to archive provision in this new landscape, particularly given the Government's previous statements on the importance of future-proofing the Archive.

The BFI's 10-year strategy Screen Culture 2033 lays out our ambitions at a time of tremendous change for moving image culture. Within our screen heritage strategy we plan to establish the BFI National Archive as the most open moving image collection in the world. We seek to enhance public engagement with our screen heritage and safeguard future collections. This is in line with our Royal Charter mandate 'to care for and develop collections reflecting the moving image history and heritage of Our United Kingdom'.

As technology and audience viewing habits change, it is essential the BFI National Archive is able to continue to deliver the greatest possible benefit to the public, and capture programming that reflects "the moving image history and heritage" of the UK regardless of the platform on which it is shown.

### 2. Background and Legislation

The BFI National Archive is one of the largest and most important collections of film and television in the world. The Archive's work as custodian of the UK's national collection of film and television is underpinned by range of legislation, including the Broadcasting Act and Copyright Act. Currently, under the Broadcasting Act 1990, Public Service Broadcasters are required to support the upkeep of this heritage and make a 'reasonable contribution' towards it. What constitutes a 'reasonable contribution' is determined with Ofcom's involvement and this currently amounts to c£1.2m across the PSBs. The BFI works closely with the BBC and its archival activity to avoid duplication.

Under Section 75 (Recording of broadcast for archival purposes) of the Copyright, Designs and Patents Act (CDPA)<sup>2</sup> the BFI National Archive is able to record broadcast and cable programmes and keep copies:

*"A recording of a broadcast programme or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it."*

For the purposes of Section 75, the BFI is the "designated body" which is specified in Section 185 of the Broadcasting Act:<sup>3</sup>

*"In this section "the nominated body" means such body as may for the time being be nominated by the Commission for the purposes of this section, being a body which—*

*(a) is for the time being a designated body for the purposes of section 75 of the Copyright, Designs and Patents Act 1988 (recordings for archival purposes), and*

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<sup>2</sup> Available at: <https://www.legislation.gov.uk/ukpga/1988/48/section/75>

<sup>3</sup> Available at: <https://www.legislation.gov.uk/ukpga/1990/42/section/185/1997-12-18>

*(b) appears to the Commission to be in a position to maintain a national television archive."*

Before this legislation, BFI National Archive was voluntarily funded by ITV and Channel 4, and direct recording of TV transmissions could only be done with their express permission.

Article 3 of the Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies) Order 1993<sup>4</sup> states that *"All broadcasts other than encrypted transmissions and all cable programmes are designated as a class for the purposes of section 75 of the Act."* Therefore, the designated class of programme which can be legally recorded only includes free-to-air transmissions. Subscription services on cable and satellite platforms cannot be recorded.

### 3. Recommendations

This legislative context has helped the BFI National Archive preserve the history of UK screen culture to date, and become the world-leading collection of film and television it is today. However, as technology evolves and the Media Bill changes the definition of PSB, Government must ensure that the appropriate framework is in place to guarantee the preservation of UK screen culture, regardless of where it is shown.

Increasingly, programming that reflects "the moving image history and heritage" of the UK is being made outside of linear public service broadcasting, with some programming from public service broadcasters now only available on streaming services. For example, ITV recently announced the planned closure of its dedicated children's channel CITV launched in 2006.<sup>5</sup> The CITV channel will close in early autumn 2023 after the launch of a new "dedicated destination for kids" on its streaming service ITVX. It is important that as public service programming such as this moves online it is still preserved.

The shift from broadcast to streaming delivery demands a change in archival practice. While 'recording' was a viable practice for archiving broadcast media, the preservation of streaming programmes will require additional practical support from the PSBs towards making their output available at scale to the archive. It is imperative that the BFI is able to continue to collect and preserve this content as a record of life in the UK for future generations. As noted above, Article 3 of the Copyright (Recording for Archives of Designated Class of Broadcasts and Cable Programmes) (Designated Bodies) Order 1993 *"All broadcasts other than encrypted transmissions and all cable programmes are designated as a class for the purposes of section 75 of the Act."*

The BFI's interpretation of this Order is that it therefore permits the BFI National Archive to record programming from any streaming service provided by the PSBs that is not encrypted. However, some designated PSBs are currently encrypted or require the viewer to have an account. We are in positive conversations with the PSBs on how we collect programming as it moves from broadcast to streaming. However, we would like to flag to the CMS Committee that it is vitally important that the Media Bill supports the BFI's capacity to continue to collect PSB programming for the purpose of archiving.

Furthermore, there is still no archiving regulation for non-PSB freeview channels, cable television providers and streaming platforms – all of which make key contributions to UK screen culture. The House of Lords Communications Committee's 2019 inquiry into Public Service Broadcasting

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<sup>4</sup> Available at: <https://www.legislation.gov.uk/ukxi/1993/74/made>

<sup>5</sup> ITV, March 2023. *ITV announces closure of CITV in favour of streaming-only children's content*. Available at: <https://www.itv.com/news/2023-03-10/itv-announces-closure-of-citv-in-favour-of-streaming-only-childrens-content>

concluded that, given changing viewing habits, “The Government should broaden the requirement to provide programmes to and fund the BFI National Archive to non-public service broadcasters and SVODs which produce content in the UK”.<sup>6</sup> Following this inquiry the Government’s Broadcasting White Paper,<sup>7</sup> stated:

*“Over time, relevant screen content which shapes UK culture is increasingly being made outside the PSB ecosystem. It is therefore important that the Archive continues to stay aligned to the changing cultural output of the UK, and we would welcome more proactive engagement from non-PSB content makers with the Archive about how they will contribute to and support the UK’s store of culturally significant content moving forwards. Looking ahead, and working with relevant partners, we will consider and act on how best to secure the nation’s cultural screen heritage so that it can be understood by generations to come.”*

Since publication of the White Paper, the BFI National Archive has entered into a voluntary partnership with Netflix to provide programming to the Archive, and we are in positive conversation with other subscription video-on demand platform (SVoDs). This is very welcome, particularly as SVoD platforms, such as Apple TV+ and Amazon Prime Video, make up an increasing large proportion of UK production activity.

Our long-term ambition is for all major SVoD (and cable) providers to support the archiving of the UK’s indigenous production as standard practice. This outcome would ensure better public value from the Archive, and ensure that titles that are key to the story of the moving image in the UK are preserved for future public access, including BAFTA-winning programmes such as *The Crown*, *Black Mirror*, and *The Essex Serpent*. As we move forward with our Screen Culture 2033 ambitions, we will continue to work with SVoD providers to achieve this aim and monitor progress.

Finally, the Broadcasting Act (1990) refers to “the nominated body”, which has been the BFI since its introduction. For transparency and certainty, we would welcome amendment to have the BFI written into legislation as custodian for the National Archive for film and television.

### **Online prominence**

We welcome the proposal to give designated PSB services prominence on major TV services. PSBs play a vital function in creating and promoting UK screen culture. Society needs stories and film, television and the moving image bring them to life, helping us to connect and understand each other better. It is important that audiences are able to find and watch a wide range of diverse UK stories that inform and define UK history and culture. It is important that, as far as possible, PSB online platforms have equivalent prominence to linear electronic programming guidance so that online audiences can continue to find and benefit from PSB programming.

As identified in Ofcom’s Media Nations Report 2022,<sup>8</sup> audiences are spending an increasing proportion of their viewing time watching on-demand content, including on services provided on a subscription basis (e.g. Netflix), free-to-view from broadcasters (e.g. BBC iPlayer) and social video platforms (e.g. YouTube).

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<sup>6</sup> Select Committee on Communications and Digital, November 2019. *Public service broadcasting: as vital as ever*. Paragraph 109. Available at:

<https://publications.parliament.uk/pa/ld201919/ldselect/ldcomuni/16/16.pdf>

<sup>7</sup> Available at: <https://www.gov.uk/government/publications/up-next-the-governments-vision-for-the-broadcasting-sector/up-next-the-governments-vision-for-the-broadcasting-sector>

<sup>8</sup> Ofcom, August 2022. *Media Nations: UK 2022*. Available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/242701/media-nations-report-2022.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/242701/media-nations-report-2022.pdf)

BFI Screen Engagement Audience Tracker research similarly found that watching films on streaming services has overtaken watching films at cinemas and on broadcast TV channels as the most popular way of watching films.<sup>9</sup> Three-fifths (59%) of adults surveyed in July 2022 said they had watched at least one film over the previous 12 months on a streaming service, compared to 53% in 2019; while those watching films on broadcast TV channels fell from 61% in 2019 to 51% in 2022, and the proportion of adults watching films at cinemas fell from 56% to 41%.

Over this same period, the audience reach of UK film featuring UK writers, cast and crew or locations has also fallen from 53% to 45%, while mainstream Hollywood films continued to be the film type with the highest reach. The BFI commissioned Economic Review of Independent Film highlighted the significant challenges facing UK independent film, including the *“significant and increasing competition for “screen time” with releases from large and well-financed Hollywood studios and online streaming platforms, which collectively make it challenging for UK independent film productions to reach their audience”*.<sup>10</sup>

UK independent films are a rich and vibrant part of the UK cultural identity: they help create a new and vibrant range of stories that reflect the diverse lives of audiences in the UK. The declining reach of UK independent film, within an increasingly international production and audio-visual landscape, risks reducing the impact UK independent films can have on audience and the diversity of screen culture in the UK. The UK independent film sector is an integral part of the wider screen ecosystem and has an essential role in positioning the UK as a world leader in a fast-growing global industry. Independent film production is a proven incubator for new and exciting talent, both on and behind the camera, who have gone on to be world-renown figures in the sector. Craft and technical skills developed through working on independent film feed the success of the UK screen sectors in creating a skilled workforce able to support bigger budget films and high-end television productions. It is therefore vital for the UK screen sector and screen culture that the appropriate conditions are in place to allow UK independent film to continue to flourish.

Alongside their other PSB purposes, BBC Film and Film4 are two of the main investors in independent film in the UK beside the BFI, and promote and champion new UK feature film talent. As discussed, for the UK screen industry to thrive, audiences need to be able to discover and watch UK independent film in an increasingly crowded market dominated by largely US owned streaming platforms, and the BBC and Channel 4 are a vital in achieving this aim.

The BFI also has an important role to play in this regard. As the lead body for film and the moving image, supporting UK independent film is a key part of our mission and we recently announced £54m of National Lottery funding for UK film and talent over the next three years. Alongside a wide and diverse range of culturally significant titles, we highlight the films we support on BFI Player, the BFI’s streaming service – helping to maximise the audience impact of National Lottery investment. This includes the likes of BAFTA-winning *After Love*, BAFTA 2023 nominee *Blue Jean*, and acclaimed Siegfried Sassoon biographic drama *Benediction* – all of which were supported though the BFI National Lottery Film Fund and are now available to watch on BFI Player. Currently, BFI Player offers 2500 feature films as well as 11,000 free-to-access short films in the UK. Any profit generated from rental and subscription titles is invested straight back into supporting the BFI’s mission as a cultural

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<sup>9</sup> BFI, February 2023. Screen Engagement Audience Tracker. Available at: <https://core-cms.bfi.org.uk/media/28280/download>

<sup>10</sup> BFI, July 2022. *An Economic Review of UK Independent Film*. Available at: <https://www.bfi.org.uk/industry-data-insights/reports/economic-review-uk-independent-film>

charity and the UK's lead organisation for film and the moving image – ultimately benefitting the UK independent sector.

One of our key stated ambitions under our new strategy, *Screen Culture 2033*, is *Growing our digital platforms*.<sup>11</sup> We want to expand our digital reach and improve access so that everyone can benefit from everything the BFI does – no matter where they live. As part of this, we will launch and develop our next-generation streaming service, BFI+. Growing the availability, awareness, and prominence of BFI+, alongside designated PSB platforms, will help ensure that a strong and diverse choice of UK film and moving image is foregrounded in an internationally dominated market.

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We welcome the opportunity to discuss these proposal and evidence further with the Committee. For further information, please contact Matthew Hall, Senior Policy Analyst.

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<sup>11</sup> BFI, 2022. *Screen Culture*. Available at: <https://blog.bfi.org.uk/>