



ÚDARÁS
CRAOLACHÁIN
NA hÉIREANN

BROADCASTING
AUTHORITY
OF IRELAND

Public Consultation

Development of a BAI Strategy
Statement 2011-2013

1. Introduction & Contents

The Broadcasting Authority of Ireland (BAI) is currently developing its strategic statement for the period 2011 to 2013. The statement is being developed in line with legislative requirements set out in the 2009 Broadcasting Act. The BAI is now inviting submissions to the Public Consultation process from any individual, group or associations who wish to actively contribute. The purpose of this consultation is to provide interested parties in the general public with an opportunity to comment on the future strategy of the BAI and to provide their views on the role and priorities for the broadcasting regulator.

Submissions can be sent to the Authority by post or by email, to reach the Authority no later than **Monday 19th July 2010**. The fastest and most efficient method of making submissions is by way of email to the BAI at consultations@bai.ie

Alternatively responses can be posted to the following address:

Consultation on BAI Strategy Statement

Broadcasting Authority of Ireland

2-5 Warrington Place,

Dublin 2

Please include your name and contact details along with your submission. If you are putting forward a submission on behalf of an organisation please include contact details for that organisation.

This consultation document has a number of sections. These are as follows:

- Section 2: The BAI objectives & functions – A brief background
- Section 3: Questions that those responding to the consultation may wish to consider
- Section 4: A summary of the next steps that will be taken after the consultation period has come to an end
- Appendix 1: Sections 25 – 28 Broadcasting Act 2009

2. The BAI Objectives & Functions – A Brief Background

The Broadcasting Authority of Ireland (BAI or the Authority) was established on October 1st 2009, as an independent regulator for radio and television broadcasters in Ireland. The roles and responsibilities of the Broadcasting Authority of Ireland are set out in the Broadcasting Act 2009.¹

The BAI has three key objectives which underpin its work as a regulator. In carrying out its functions, the Authority must try to ensure:

- That the number and categories of broadcasting services made available in the State best serve the needs of the people of the island of Ireland.
- That democratic values, especially those relating to rightful liberty of expression, are upheld and
- That broadcasting services in Ireland are open and pluralistic.

The Broadcasting Act 2009 also sets out a range of objectives for the Authority with regard to:

- Stimulating high quality, diverse, innovative programming
- Facilitating public service broadcasters in fulfilling their public service objectives
- Promoting diversity of station control in the commercial and community sectors
- Ensuring that broadcasting regulation:
 - Sustains independent and impartial journalism
 - Sustains compliance with employment law
 - Protects the interests of children
 - Facilitates a broadcasting sector which is responsive to audience needs and accessible to people with disabilities
 - Promotes and stimulates the development of Irish language programming and broadcasting services

The Authority must make sure that its approach to regulation is proportionate (i.e. balanced and fair), stable (i.e. not subject to sudden or extreme change) and takes into account the range and type of broadcasting services in Ireland. The Authority also has a role to play in encouraging technological development in the broadcasting sector.

¹ A copy of the Broadcasting Act can be found here:
<http://www.bai.ie/pdfs/BroadcastingAct2009.pdf>

The BAI is to be funded through a levy on all broadcasters licensed in the State. The general and specific objectives and functions set out for the Authority are set out in the main in Section 25 of the 2009 Act. This Section of the 2009 Act can be found in Appendix 1.

There are a range of functions which the Authority currently performs and will perform in the future, in order to meet the objectives outlined above. Below is a list of the key areas which these functions cover. (This is not an exhaustive list and a full list of the functions can be found in Appendix One of this consultation document).

- **Strategy and Policy:** The Authority must consider and prepare a strategy for the provision of broadcasting services in the State, outside of those provided by RTÉ and TG4. The Authority is also responsible for the development of policy in a range of areas. Policy development is important in helping to shape and support the broadcasting sector, from the perspectives of content and technology.

- **Contracts:** The Authority is responsible for licensing and entering into contracts with commercial and community radio and television broadcasters wishing to operate in Ireland. The BAI is also responsible for broadcast content on digital, cable, MMD and satellite systems. The Authority also has responsibility for licensing commercial Digital Terrestrial Television (DTT) in the State.

- **Compliance:** The compliance function of the Authority incorporates a number of important activities. The BAI has a role in monitoring and enforcing compliance by broadcasters with the terms of their contract, with broadcasting Codes and Rules and with any obligations under law. The Authority is also responsible for the investigation of, and adjudication upon, viewer and listener complaints. Any viewer or listener can refer a complaint to the Authority if they are not happy about broadcasting content on an Irish broadcasting service under a range of categories.

- **Codes and Rules:** The Authority is responsible for the development and review of a range of Codes and Rules, which govern programming and advertising and which apply to all radio and television broadcasting services licensed in Ireland.

- **Public Service Broadcasting:** The Authority performs a range of regulatory functions in relation to public service broadcasters (PSB's) (currently RTE and TG4). The Authority makes recommendations to the Minister for Communications, Energy and Natural Resources in relation to funding for the PSB's; advises the Minister on a range of issues relating to the PSB's and detailed in the legislation, in addition to providing guidance to the PSB's on some matters.

- **Development and Funding:** the Authority develops and supports the broadcasting sector through the provision of funding, training, seminars and conferences. Specifically, BAI has a role in collecting information on skills requirements for the sector and in co-operating with industry and other bodies to address skills shortages. Funding support is provided in this regard. The BAI is also responsible for the administration of 'Sound & Vision' (the Broadcasting Funding Scheme). The Scheme was established to provide funding in support of high quality programmes on Irish culture, heritage and experience, and programmes to improve adult literacy. This scheme has recently been extended to offer funding towards programmes dealing with the themes of media literacy and global affairs.

- Information, Liaison, and Media Literacy: In order to operate effectively as a regulator, it is important for the BAI to be fully aware of developments in broadcasting nationally and internationally. As a result, the Authority functions also extend to information collection and dissemination, and co-operation/collaboration with other national and international bodies involved in broadcasting regulation. Finally, the Authority is charged with undertaking activities to promote media literacy and to co-operate with other agencies, including broadcasters, in this regard.

For further information on the work of the Broadcasting Authority of Ireland and other policy documents please visit www.bai.ie or contact the BAI directly on 01 6441200.

3. Questions that those responding to the consultation may wish to consider.

This public consultation process will provide important information that will feed into the development of the BAI Strategic Plan. While we would welcome submissions on any areas relevant to the various roles and priorities of the broadcasting regulator we would, in order to make the process of analysing submissions as efficient as possible, particularly welcome submissions that are structured in response to some or all of the following 10 sets of questions. These questions have been set to help focus the consultation process.

Your thoughts as a viewer and listener	
1.	<p>What are your key concerns as a viewer/listener about television and radio programming produced by the Irish based broadcasters?</p> <p>Do you think the BAI has a role to play in addressing these concerns? If so how would you like to see the BAI address these concerns?</p>
2.	<p>How would you like to see the BAI protect the interests of the viewer and listener? Are there particular viewer and listener groups that are not sufficiently protected or served at present?</p>
3.	<p>Do you think it is important that the BAI, through its monitoring and enforcement activities, ensure that broadcasters comply with the terms and conditions of their contracts and with broadcasting codes and rules? Is it important that viewers and listeners can refer a complaint to an independent body such as the BAI if they are not happy about broadcasting content?</p> <p>Are there particular areas that you would like to see the BAI focus on in the areas of monitoring broadcaster compliance and handling viewer and listener complaints?</p>

What you'd like to hear and see	
4.	<p>Do you think there is enough choice and variety in terms of the number and type of television and radio services (i.e. stations) that are available to the Irish based viewer and listener? Why? Why not?</p> <p>As the independent regulator for television and radio broadcasters in Ireland what would you like to see the BAI do to address the issues you have identified?</p>
5.	<p>Do you think there is enough diversity in television and radio programming to meet the needs of viewers and listeners? Are certain types of programming missing from existing programme schedules? Are there gaps that you would like to see addressed?</p> <p>Do you think the BAI has a role to play in encouraging the development of programming that is high quality, diverse and innovative? If so, what would you like to see the BAI focus on in this area?</p>
The type of regulation you want	
6.	<p>Why do you think regulation of the broadcasting sector is necessary? What would you expect from a regulator acting in this area? What issues should a regulator acting in this area focus on?</p>
7.	<p>In your opinion how would you describe the influence of regulation on the broadcasting sector to date? Has the approach of the regulator been positive and appropriate? Why? Why not?</p> <p>Is change in the regulators 'style' of, or approach to regulation required? What 'style' of, or approach to regulation will be appropriate in this area over the next three years?</p>
8.	<p>In your view is there enough diversity in terms of those who own, control and influence the broadcasting sector? Why? Why not?</p> <p>What would you like to see the BAI focus on in this area?</p>
9.	<p>Why do you think the regulation of public service broadcasting is important?</p> <p>What would you expect from a regulator responsible for Public Service Broadcasters (RTÉ and TG4)?</p> <p>Are there particular issues that a regulator acting in this area should</p>

	focus on?
10.	<p>Do you think the broadcasting regulator has a role to play in supporting and developing the broadcasting sector through the provision of funding and other initiatives?</p> <p>If so what would you like to see the BAI focus on in this area?</p>

4. Next steps that will be taken after the consultation period has come to an end

Evaluation of Submissions / Consideration by the Authority

Once the period for receipt of submissions has elapsed, the Authority will review and analyse responses received. This analysis will be included in a presentation to Authority members as they engage in the strategic planning process. It may be necessary during the evaluation process to invite parties making submissions to clarify matters.

Draft Strategy Statement

Following completion of the various strands of consultation and planning work, a draft version of the BAI strategy statement will be placed on the BAI website (circa mid October 2010). Interested parties will then be able to submit views regarding the content of this draft strategy statement. Following a review and analysis of submissions that may be received at this point the strategy statement will be presented to the Minister.

Freedom of Information

Responses to this call for submissions are invited on the basis that anyone submitting a response recognises that the Authority is subject to the Freedom of Information Acts 1997 and 2003. This is a public consultation process and following consideration of submissions by the Board of the BAI, all information submitted will be publicly available on request. However, there may be aspects of your submission which you may wish to make in confidence. If this is the case, when making the submission please identify any information which you do not wish to be publicly disclosed and specify the reasons for its sensitivity.

Agreements between the BAI and respondents to the consultation, regarding confidential information, are without prejudice to the BAI's obligations under the Freedom of Information Act, 1997 and the Freedom of Information (Amendment) Act, 2003. If the BAI receives a request for information submitted in confidence, you will be consulted before any decision is made.

Appendix One; Sections 25 – 28 Broadcasting Act 2009

25.—(1) The Authority and the statutory committees, in performing their functions, shall endeavour to ensure;

(a) that the number and categories of broadcasting services made available in the State by virtue of this Act best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity,

(b) that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and

(c) the provision of open and pluralistic broadcasting services.

(2) Without prejudice to the generality of subsection (1), the Authority, and the statutory committees, shall —

(a) stimulate the provision of high quality, diverse and innovative programming by commercial, community and public service broadcasters and independent producers,

(b) facilitate public service broadcasters in the fulfilment of their public service objects as set out in this Act,

(c) promote diversity in control of the more influential commercial and community broadcasting services,

(d) provide a regulatory environment that will sustain independent and impartial journalism,

(e) provide a regulatory environment that will sustain compliance with applicable employment law,

(f) protect the interests of children taking into account the vulnerability of children and childhood to undue commercial exploitation,

(g) provide a regulatory environment that will facilitate the development of a broadcasting sector in Ireland that is responsive to audience needs and in particular is accessible to people with disabilities, and

(h) promote and stimulate the development of Irish language programming and broadcasting services.

(3) The Authority and the statutory committees, in performing their functions, shall seek to ensure that measures taken—

(a) are proportionate having regard to the objectives set out in this section,

(b) are applied across the range of broadcasting services taking account of the degree of influence that the different types of broadcasting services are able to exert in shaping audience views in the State,

(c) are mindful of the objects, functions and duties set for public service broadcasters in Parts 7 and 8,

(d) will produce regulatory arrangements that are stable and predictable, and

(e) will readily accommodate and encourage technological development, and its application, by the broadcasting sector.

26.—(1) The principal functions of the Authority are to—

(a) prepare a strategy for the provision of broadcasting services in the State additional to those provided by RTE, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel,

(b) prepare a statement under section 29(1),

(c) liaise and consult with the Communications Regulator in the preparation of the allocation plan for the frequency range dedicated to sound and television broadcasting,

(d) make a levy order under section 33(1),

(e) prepare or make broadcasting codes and rules,

(f) prepare a scheme for the exercise of the right of reply,

(g) direct the Contract Awards Committee to make arrangements, in accordance with Parts 6 and 8, to invite, consider and recommend to the Authority, and the Authority shall follow such recommendation, proposals for the provision of—

(i) broadcasting services additional to any broadcasting services provided by RTE´ , TG4, the Houses of the Oireachtas Channel and the Irish Film Channel under Part 7, and (ii) multiplex services additional to any multiplex services provided by RTE´ under Parts 7 and 8, (h) prepare rules and enter into contracts in respect of electronic programme guides,

(i) determine disputes arising under section 76(2) and section 77(5),

- (j) make a report to the Minister under section 77(15),
- (k) consult with the Minister under sections 101(3), 102(3), 103(4), 104(1), (2) and (3), 106(3), 107(3), 111(4), 112(2), (7) and (11), 116(5), 127(6), 130(1) and 130(12),
- (l) prepare and issue guidance to RTE and TG4 as to the fulfilment of their obligations under sections 109(11) and 112(2),
- (m) undertake a review under section 124(2) and (8) and section 128(3),
- (n) make a recommendation under section 124(5) and (12), (o) make a request under section 115, section 130(10), section 132(3) or section 133(3) or (4),
- (p) make a report to the Minister under section 139(1) in respect of preparedness for analogue switch-off, (q) provide information to the public on the availability of services by means of television multiplexes, and (r) prepare and implement schemes for the granting of funds under Part 10.

(2) The Authority has the following ancillary functions —

- (a) to collect and disseminate information on the broadcasting sector in the State,
- (b) to monitor developments in broadcasting internationally,
- (c) to initiate, organise, facilitate and promote research relating to broadcasting matters,
- (d) to collect and disseminate information in relation to the skills requirements of the broadcasting sector,
- (e) to co-operate with other bodies, including representative bodies within the broadcasting sector, to promote training activities in areas of skill shortages in the broadcasting sector,
- (f) to co-operate with other bodies outside the State which perform similar functions to the Authority, and
- (g) to undertake, encourage and foster research, measures and activities which are directed towards the promotion of media literacy, including co-operation with broadcasters, educationalists and other relevant persons.

(3) In fulfilling its function under subsection (1)(a) the Authority shall consider the needs of community broadcasters in respect of digital broadcasting.

(4) For the purposes of the independent discharge of their functions and duties as set out in this Part, the Authority or a statutory committee may enter into agreements with one another.

(5) The Minister may confer on the Authority by order such other additional functions in relation to broadcasting services as he or she may from time to time consider necessary.

(6) (a) An order made under subsection (5) shall be laid before each House of the Oireachtas as soon as practicable after it is made.

(b) Either House of the Oireachtas may, within 21 sitting days after the day on which an order was laid before it in accordance with paragraph (a), pass a resolution annulling the order.

(c) The annulment under paragraph (b) of an order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of the resolution.

27.—The principal functions of the Contract Awards Committee, at the direction of the Authority, are to make arrangements in accordance with Parts 6 and 8, to invite, consider and recommend to the Authority, and the Authority shall follow such recommendation, proposals for the provision of—

(a) broadcasting services additional to any broadcasting services provided by RTE´, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel under Part 7, and

(b) multiplex services additional to any multiplex services provided by RTE´ under Parts 7 and 8.

28.—(1) The principal functions of the Compliance Committee are to—

(a) monitor compliance by contractors with the terms and conditions of any contract entered into by the Authority on the recommendation of the Contract Awards Committee under this Act,

(b) enforce the terms and conditions of any contract entered into by the Authority on the recommendation of the Contract Awards Committee under this Act,

(c) monitor compliance by— (i) broadcasters with sections 39, 40 and 41, (ii) RTE´ and TG4 with section 106(3), and (iii) the Irish Film Channel with section 127(6), (d) enforce compliance by—

(i) broadcasters with sections 39, 40 and 41, (ii) RTE´ and TG4 with section 106(3), and (iii) the Irish Film Channel with section 127(6),

(e) monitor compliance by broadcasters with any broadcasting code or rule,

(f) enforce compliance by broadcasters with any broadcasting code or rule,

(g) investigate and decide upon a complaint made under section 48, and

(h) investigate and decide upon a request made under section 49.

(2) The Compliance Committee has the following additional functions—

(a) at the request of the Minister, to report on compliance by a corporation under sections 108(3), 109(13), 111(11), and 112(10),

(b) at the request of the Minister, to report on the proportion of the television programme service of a broadcaster which is — (i) produced in the State or in another Member State, and

(ii) devoted to original programme material produced therein by persons other than the broadcaster, his or her subsidiary, his or her parent or existing broadcasting organisations.

(3) The Compliance Committee may delegate some of its functions to a member of staff of the Authority, who is not a member of the Compliance Committee, subject to such conditions as the Compliance Committee considers appropriate and the member of staff concerned shall be accountable to the Compliance Committee for the performance of the functions so delegated to him or her.

(4) The Compliance Committee may delegate some of its functions to a subcommittee of the Compliance Committee, subject to such conditions as the Compliance Committee considers appropriate.

(5) The Compliance Committee shall review on an ongoing basis the extent to which the television broadcasts of broadcasters under the jurisdiction of another Member State which are wholly or mainly

directed towards audiences in the State comply with broadcasting codes, in particular the codes referred to in section 42(2)(g) and (h).

(6) The Compliance Committee shall each year make a report to the Minister in respect of the matters in subsection (5).

(7) The Minister shall cause a copy of the report referred to in subsection (6) to be laid before each House of the Oireachtas.

