

# UK Broadcasting in the '90s

**Always seeking to improve competition, choice and quality in broadcasting, the British Government last month released a White Paper setting out its legislative agenda for broadcasting in the 1990s. This is an edited version.**

## The key proposals

- Most viewers will have a major increase in choice with the authorisation of a new fifth channel, to be operated as a national channel, with different companies providing the services at different times of the day. A sixth channel will also be authorised should technical studies show this to be feasible.
- The present ITV system will be replaced by a regionally based Channel 3 with positive programming obligations but also greater freedom to match its programming to market conditions.
- Provision will be made for at least one body which is effectively equipped to provide high quality news programmes on Channel 3.
- Options are canvassed for the future constitution of Channel 4 on the basis that its distinctive remit is preserved and its advertising is sold separately from that on Channel 3. The Welsh Fourth Channel Authority will continue to provide the Fourth Channel in Wales.

There will be a new flexible regime for the development of multi-channel local services through both cable and microwave transmission (MVDS). This will provide a further major extension of viewer choice.
- The UK's two remaining Direct Broadcasting by Satellite (DBS) frequencies will be advertised by the Independent Broadcasting Authority (IBA) early next year. This will provide scope for two further UK DBS channels in addition to the three being provided by British Satellite Broadcasting (BSB).
- Viewers will continue to be able to receive other satellite services directly, including those from the proposed medium-powered Astra and Eutelsat II satellites. Steps will be taken to ensure that the programme content of all such services is supervised.
- All television services (including those of the British Broadcasting Corporation (BBC)) will be given freedom to raise finance through subscription and sponsorship (subject to proper safeguards). All services (except the BBC) will also be free to carry advertising.
- A new agency, the Independent Television Commission (ITC), will be established in place of the Independent Broadcasting Authority (IBA) and the Cable Authority to license and supervise all parts of a liberalised commercial television sector. It will operate with a lighter touch than the IBA but will have tough sanction. Its functions are set out in the Annex to this White Paper.
- The BBC will continue as the cornerstone of public service broadcasting. The Government looks forward to the eventual replacement of the licence fee which will, however, continue for some time to come.
- The night hours from one of the BBC's channels will be assigned to the ITC. The BBC will be allowed to retain the other set on the basis that it uses it as fully as possible for developing subscription services.
- The part played by independent producers in programme making in the UK will continue to grow.
- The Government will proceed with its proposals for the deregulation and expansion of independent radio, under the light touch regulation of a new Radio Authority.
- All UK television and radio services will be subject to consumer protection obligations on such matters as taste, decency and balance.
- The Broadcasting Standards Council (BSC), established to reinforce standards on taste and decency and the portrayal of sex and violence, will be placed on a statutory footing.
- The exemption of broadcasting from the obscenity legislation will be removed.
- There will be a major reform of the transmission arrangements, giving scope for greater private sector involvement. The principles underlying the Government's approach are these.
- Broadcasting services must remain independent of Government editorially and, to the greatest extent possible, in economic and regulatory terms.
- Because of broadcasting's power, immediacy and influence, there should be continued provisions, through both the law and regulatory oversight, governing programme standards, including the portrayal of violence and sex.
- There are significant differences between radio and television as broadcasting media which need to be reflected in their respective regulatory arrangements.
- There should be no unnecessary constraints on increasing the range, variety and quality of programmes from which viewers and listeners can choose.
- There should be increasing opportunities for direct payment for television programme services through subscription, whether on a pay per channel or pay per programme basis.
- There should be vigilance against uncompetitive practices and market distortions. Partly for this reason, and to limit barriers to the entry of new operators in the market, there should be a greater separation between the various functions which make up broadcasting and have in the past been carried out by one organisation. These include programme production, channel packaging and retailing, and transmission or delivery.
- The emergence of a production sector which is independent in that it neither controls nor has guaranteed access to a delivery system fits this objective and should be further encouraged.
- Broadcasting companies and organisations of all kinds should be briskly and efficiently run. They should give value for money to the viewer and listener and compete effectively with each other and abroad. The present duopoly can no longer be insulated from the disciplines necessary to bring this about.
- Through greater competition, downward pressure should be exerted on the costs to UK industry of television airtime.
- Wherever possible the Government's approach to broadcasting should be consistent with its overall deregulation policy. This is that the Government should help enterprises to set up, develop and meet the needs of consumers by removing unnecessary regulatory barriers. This implies both less regulation (removing restrictions which are outmoded or unnecessary) and better regulation (lighter, more flexible, more efficiently administered).

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## The role of the BBC

The BBC has a special role. It will continue to be expected to provide high quality programming across the full range of public tastes and interests, including both programmes of popular appeal and programmes of minority interest, and to offer education, information and cultural material as well as entertainment. It also makes a major contribution to the operation of the Open University. The Government agrees with the Home Affairs Committee that the BBC "is still, and will remain for the foreseeable future, the cornerstone of British broadcasting". This does not mean that the BBC has to involve itself in every aspect of broadcasting, or that it should be insulated from change.

The Peacock Committee believed that both the BBC and the ITV system had suffered from cost and efficiency problems arising from what it called "the comfortable duopoly". The Government's proposals for the independent television sector will mean that the BBC will face much greater competition. Over the past months the BBC itself has striven for increased efficiency and has also sought to be more open and responsive and accountable to viewers about the way in which it works. The Corporation has started on a process of tightening its management structure and shifting resources into programme improvements through savings elsewhere. There is scope for further progress.

Consistent with its Charter the BBC is also taking a more enterprising approach to commercial opportunities in order to finance programme developments. BBC Enterprises Ltd - the world's largest exporter of television programmes and also responsible for co-productions, magazines and consumer products - is being developed as a competitive commercial company.

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## Subscription, licence fee and night hours

The BBC has a role in the Government's desire to enable subscription to develop. Subscription for BBC programmes cannot be considered in isolation from the future of the licence fee and the use made of the night hours.

The Government's consultants advised against the wholesale immediate switch of existing services to subscription, mainly because this would result in a loss of consumer welfare since some viewers would not subscribe to services now available to them. But they went on to note that subscription already plays an important role on new services provided by cable and satellite, and also recommended the gradual, incremental in-

roduction of subscription on existing terrestrial services. They suggested that the down-loading of services in encrypted form during unused night hours would be a natural starting point.

As new television services proliferate, the system of financing the BBC television and radio services by a compulsory licence fee alone will become harder to sustain. Though the Government accepts the advice of its consultants that a sudden, wholesale switch to subscription would be undesirable and damaging, there should be a greater role for subscription. The Government looks forward to the eventual replacement of the licence fee. The timing will depend on experience gained of the impetus and effects of BBC and other new subscription services. The Government intends to encourage the progressive introduction of subscription on the BBC's television services. Account will need to be taken in due course of the implications for financing BBC radio services.

The Government accordingly proposes to authorise the BBC to encrypt its services so that it can raise money through subscription. The extent and pace of the move towards subscription will be for the BBC to judge in the first instance. But the BBC will have in mind the objective of replacing the licence fee. To provide a financial incentive, the Government intends after

April 1991 to agree licence fee increases of less than the RPI increase in a way which takes account of the BBC's capacity to generate income from subscription. If subscription goes well it may be possible to freeze or even reduce the licence fee. The Government has informed the BBC of these decisions and will be discussing the details further before firm targets are set.

The Home Affairs Committee supported the responsible introduction of sponsorship of BBC programmes in the field of the arts and sport. The Government shares the BBC's view that any relaxation of current sponsorship restrictions should not be at the expense of editorial independence or transparency for the viewer.

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## Independent television

The Government thinks it right that all independent sector television services should be brought within the ambit of a single agency which can look across the board, rather than being limited, as the IBA and Cable Authority now necessarily are, to particular delivery technologies. The Government therefore proposes that there should be an Independent Television Commission (ITC). The ITC would apply lighter, more objective programme requirements. The way in which the Commission enforced them could be tested

in the courts. The ITC would therefore adopt a less heavy handed and discretionary approach than the IBA necessarily does at present. The main functions which the Government envisages for the ITC are summarised in the Annex.

It would not be sensible for the ITC to take on the Cable Authority's duty to promote cable. The Government envisages that this will be displaced by a general duty to ensure fair competition across the independent television sector.

The Government proposes that the ITC should be licensing body rather than a broadcasting authority. This means that it will supervise, but not itself provide, programme services, applying broadly the same light touch regulation across the board.

There will need to be carefully worked out transitional arrangements for the hand-over from the IBA and the Cable Authority to the ITC, and the Government will pursue this in consultation with interested parties. The ITC will need to assume at least some of its functions as soon as enabling legislation has been enacted. The Government is considering whether it should be set up on a shadow basis after the Second Reading of the proposed Broadcasting Bill.

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## Multi-channel regime

As the UK moves towards a more competitive multi-channel broadcasting market, the existing regime for ITV would become increasingly hard to sustain. It would be even less sustainable to try to make all new services conform to the present requirements of the ITV system. Many of these were laid down by Parliament because of the absence of competing alternative services. As viewers exercise greater choice there is no longer the same need for quality of service to be prescribed by legislation or regulatory fiat. The point is crucial and can be simply put. When there was only one television channel it was natural and right for the BBC to take great care about the balance between different types of programmes on that channel. When there are 10 or more channels within the reach of the average viewer he and she can increasingly sort this out for themselves provided that the choice before them is sufficiently varied. The development of payment by subscription, drawing on a new source of funding, will help to ensure that it is. That freedom of choice from a varied output of programmes is the Government's aim. The Government believes that the time is now right to make major changes to the regime for what might henceforth be called Channel 3. If Parliament agrees, these changes will take effect from 1 January 1993 when the present ITV contracts, as extended, come to an end.

There should be no relaxation of the requirements not to show material which is inherently unacceptable. The following "consumer protection" requirements will therefore apply to Channel 3, and to all independent sector television services including the BBC:

- news should be impartial and accurate;
- nothing should be included in the programmes which offends against taste and decency or anchors crime or disorder or is offensive to public feeling;
- programmes should omit all expressions of the views and opinions of the persons providing the service on religious matters or on matters which are of political or industrial controversy or relate to current public policy;
- due impartiality should be preserved in dealing with such matters; and
- the content of advertisements should be subject to the same requirements, where they are relevant.

In addition to these consumer protection requirements the Government proposes that Channel 3 should be subject to the following positive programme requirements.

- to show regional programming, including programmes produced in the region. The Government envisages that this should become, for the first time, an express statutory requirement;
- to show high quality news and current affairs dealing with national and international matters, and to include news coverage (and possibly also current affairs) in main viewing periods;
- to provide a diverse programme service calculated to appeal to a variety of tastes and interests;
- to ensure that a minimum of 25 per cent of original programming comes from independent producers; and
- to ensure that a proper proportion of programme material is of EC origin.

As a necessary safe-guard, the ITC would have power to withdraw, after adequate notice, its approval of a news organisation established under the arrangements discussed in the previous paragraph which failed to deliver an acceptable service.

## Night hours licence

In order to create more opportunities for entry to the broadcasting market and competition within it the Government proposes that there should be a separate night hours licence, or licences, for Channel 3. It will be for the ITC to determine the exact boundaries, and to decide on possible additional licences covering other times of day - eg for a breakfast time service. The ITC will also be responsible for the geographical division of Chan-

nel 3 into regions, whose particular interests licensees will need to cater for. The Government envisages that the extent to which the regional and any schools programming obligations apply to any night time or breakfast time licensees would be determined by the ITC taking account of the basis on which the Channel 3 licences were being divided up.

The ITC will not have or need the IBA's present powers to block takeovers, which reflect the discretionary nature of the present contract allocation process. But those buying into companies will have to satisfy the proposed programming tests and the ownership rules. Subject to these tests and rules, takeovers can be a useful way of bringing new ideas and talent into television and reinforcing pressures for efficiency.

## Licence terms

The Government proposes that the licence for UHF independent television services should be for a fixed term of 10 years (as recommended in paragraph 658 of the Peacock Report), but that it should be open to licensees, during the final years (perhaps the last four) of their licences, to apply for licence renewal for further 10 year terms. The licensee would have to satisfy the ITC that he was continuing to meet his programming obligations and otherwise sustaining a satisfactory performance, and the ITC would retain the ability to make structural changes in the system. The licensee would also have to pay a licence renewal fee to the ITC, which would be calculated on a formula based on the licensee's advertising, subscription and sponsorship revenue. Where the ITC was not satisfied that the licence should be renewed it would be open to it to proceed to competitive tender or else to invite the licensee to re-apply for renewal after a further existing licence.

## Channel 5

The Government proposes that Channel 5 should come on stream from the beginning of 1993, when the new Channel 3 licences will start. It will enlarge the choice of a majority of viewers in the UK, and should bring significant relief to the advertising market, though Channel 5 operators will be free to determine their own mix between advertising and subscription. Channel 5 will not be able to achieve universal coverage, but it will be expected to achieve sufficient coverage of those areas where it can be received to justify the allocation of scarce frequencies. Although it sees no need to impose the additional burdens inherent in a regional structure on Channel 5, the Government envisages that the Channel could be split up by time into two or more different licences covering different parts of the day and night. The Government sees a

good case for such segmentation, which will promote competition and enhance diversity. It will be for the ITC to decide how large these segments should be. Channel 5 licensees will, like those on Channel 3, be required to include accurate, impartial and high quality news and current affairs at suitable times in their schedules.

## Channel 4

The Government does not accept that in future only the BBC need concern itself with the range and quality of programmes traditionally associated with public service broadcasting. The Government accordingly proposes that Channel 4 should be required to cater for tastes and interests not served, or underrepresented, by other parts of the independent television sector; to encourage innovation and experiment in the form and content of programmes; to devote a suitable proportion of its airtime to educational programming; to devote a suitable proportion of its airtime to high quality news and current affairs programmes including during main viewing periods; and to maintain a distinctive character of its own. Channel 4 would also be expected to maintain universal coverage, to show a proper proportion of programme material of EC origin, and to observe the consumer protection requirements. The Government also envisages that Channel 4 would still be expected to operate on a publishing house model, commissioning much of its programming from the independent production sector.

The Government believes that Channel 4's special role is best fulfilled by an independent organisation subject to ITC oversight, but without direct financial or structural links to the Channel 3 or other channels; while this is probably best made the responsibility of Channel 4 it might in practice choose to contract this out,

## Direct broadcasting by satellite

British Satellite Broadcasting (BSB) plans to provide three channels nationwide. One Channel will introduce subscription, but the service as a whole will provide important relief to the television advertising market. BSB has gone ahead (without funding from the Government) to an extent not paralleled in other countries.

The Government gave BSB an undertaking last year that the UK's fourth and fifth DBS channels would not be allocated until BSB's service had been in operation for at least 3 years. BSB has, however, recently indicated that it would be willing to see this moratorium lifted. The Government has

therefore decided to make these channels available for allocation as soon as possible.

## Financing independent sector

The Government proposes to allow all independent sector TV operators the freedom to finance themselves by advertising or subscription or a mixture of the two.

The Government envisages that the ITC will have a duty to draw up and enforce a code or codes on advertising and sponsorship. This should allow more flexible regulation of advertising and sponsorship than is now possible under the Broadcasting Act 1981. The Government in particular favours liberalising the restrictions deriving from the 1981 Act on sponsorship, provided adequate safeguards are built in for editorial independence and transparency for the viewer. The Government proposes that any maximum limits on advertising minutage should be subject to Government approval, and that the Government itself should take power to adjust this limit, after consultation with the ITC, in case this should prove necessary in order to allow relief to be brought to the advertising market, or for other reasons.

## Ownership

With the greater choice and variety that lies ahead, the Government is determined that ownership in the independent sector should be, and remain, widely spread. The existing controls to takeovers will be removed. The underlying thrust will be that the ITC's regulation should bite on performance rather than through an extensive and rigid set of disqualifications, although some disqualifications will be necessary. But clear rules will also be needed which impose limits on concentration of ownership and on excessive cross-media ownership, in order to keep the market open for newcomers and to prevent any tendency towards editorial uniformity or domination by a few groups. The Government proposes to make the greatest possible use of subordinate legislation for such rules in order to ensure maximum flexibility in catering quickly for changing circumstances. The Government would welcome comments on the scope and formulation of such rules.

In the case of licences to provide Channel 3, 4 (if provided by a separate licensee) 5 or any further UHF services the following further restrictions will apply:

- no group may control or have an interest in more than two such licences
- no group may control or have an interest in more than one such licence if they cover the same area
- no group holding a licence with cross regional coverage may hold or have an

interest in any other licence covered in this paragraph.

## Programme standards

The Government sees no case for continuing the exemption of broadcasting from the Obscene Publications Act 1959, and proposes that it should be removed at the earliest opportunity. This does not imply any relaxation of the stricter consumer protection standards which broadcasters have long been required to observe throughout the hours of broadcasting. But there is no justification for not applying the obscenity law to broadcast programmes, particularly since it already applies to cable programmes.

As a further measure, the Government has sought to strengthen standards and reinforce the work of the individual regulatory bodies by establishing a Broadcasting Standards Council (BSC), initially on a non-statutory basis.

During the pre-statutory phase the Council's role is to:

- draw up, in consultation with broadcasting authorities and the other responsible bodies in the broadcasting, cable and video fields, a code on the portrayal of sex and violence and standards of taste and decency;
- monitor and report on the portrayal of violence and sex, and standards of taste and decency, in television and radio programmes received in the UK and in video works;
- receive, consider and make findings on complaints and comments from individuals and organisation on matters within its competence and ensure that such findings are effectively publicised;
- undertake research on matters such as the nature and effects on attitudes and behaviour of the portrayal of violence and sex in television and radio programmes and in video works;
- prepare an annual report, which the Home Secretary will lay before Parliament and publish.

## Radio proposals

In outline the Government's proposals are as follows. There will be scope for at least three new national commercial services operating alongside the BBC. A new VHF frequency will be available for one of these services. The BBC's existing Radio 1 and Radio 3 MF frequencies will be reassigned for the other two. The BBC will retain sufficient frequencies to broadcast its national services, whose editorial content it is seeking to strengthen. The new national services and

independent local services will be subject to a lighter regulatory regime. They will not be required to comprise education, information and entertainment, although they may follow a public service pattern if they wish. Programme operators will be responsible for their own services, subject to requirements of taste and decency and of avoiding editorialising and giving undue prominence to views on religious matters or matters of political or industrial controversy. At the local level licensing criteria will include financial viability, local audience demands and the extent to which the proposed services would enhance the range of programming and the diversity of listener choice. National services will be expected to provide a diverse programme service calculated to appeal to a variety of tastes and interests and not limited to a single narrow format. The proposed competitive tender procedure for national services will be subject to this test. National and local services will have to keep their promises of performance in order to retain their licences. In the interests of preserving a competitive radio broadcasting market, no group will be able to control more than one national service and more than six local services. There will be a 20 per cent limit on radio interests in newspapers, and vice versa. The Government will seek flexibility by setting these limits in subordinate legislation. There will be transitional arrangements striking a balance between the legitimate interest of existing stations and the importance of not delaying bringing new stations onto the air.

## Slim Radio Authority

A new slim Radio Authority will be responsible for assigning frequencies and issuing licences to, and supervising the performance of, all independent stations. Advertising and sponsorship will be more flexibly supervised: stations will not generally be able to receive public authority funding, but there will be certain clearly defined exceptions. Stations will be responsible for their own transmission arrangements, and will be expected to broadcast on single frequencies unless there are good reasons to the contrary. The number and scale of local services will depend on local demand and wishes. The Government's proposals will create an environment in which community radio, based on a combination of local identity and cultural diversity, will be able to fulfil its potential.

There is scope for a considerable expansion of radio services and a much wider range of listener choice. The Government proposes to help these developments by deregulation and the provision of a new enabling frame-

work. At the same time, the consumer protection requirements which safeguard minimum standards will be retained. Public service radio broadcasting will continue under the aegis of the BBC. BBC radio services will continue to be funded from the licence fee for some years to come. But BBC radio services will be subject to a much stronger stimulus of competition. The Government's proposals will create the conditions for an expansion of radio which should benefit broadcasters, advertisers and listeners alike. In the meantime the Government, as a step towards the new radio arrangements, has endorsed proposals by the IBA for a limited number of additional stations operating under present legislation.

## The UHF network

The UHF transmission networks run by the BBC and the IBA give a highly effective service to the public. They reach 99.4 per cent of the households in the UK, providing them with a reliable, high quality signal. This is a considerable engineering achievement, and it is highly regarded internationally. As broadcasting enters a more competitive phase, the Government intends to see that high technical standards are maintained, while moving the UHF transmission system progressively into the private sector, and separating transmission (ie service delivery) from service provision.

The Government considers that the best arrangement in due course would be a regionally based, privatised transmission system designed to promote competition, while containing certain common carrier obligations. The route towards this objective is complicated at present by the way in which the IBA's system is entwined with that of the BBC, and by the fact that the BBC's transmission responsibilities are rooted in its Charter which lasts until the end of 1996. The Government proposes to discuss with the BBC, the IBA and others how the objective of moving towards a privatised transmission system might best be taken forward. It will also be considering how, given its inherent monopolistic characteristics arising in part from topography, any necessary regulatory oversight should be arranged.

Until such a system is in place the BBC will continue to have responsibility for transmitting its television and radio services. The Government hopes that the BBC will, during this transitional period, test the market for the operation of its own transmission system by commercial contractors on a regional basis. This would be consistent with the steps which the BBC has already taken to test the market for a range of support services, as part of its general policy of devoting as great proportion as possible of its resources to programmes. This would be a useful step in

itself, and would also prepare the way for privatisation in due course. The advent of new services - such as the new national commercial radio services - will open up new commercial transmission opportunities. The Government also envisages that the BBC might, in the transitional period while it retains a transmission role, be able to arrange for its contractors to offer a transmission service to new entrants.

Under the existing arrangements the IBA owns and operates the uplink for its DBS contractors. The Government believes that DBS licensees should in future be responsible for the uplink themselves along with the rest of their transmission system (ie the satellite). The IBA is presently constructing the uplink for British Satellite Broadcasting and will operate it while the law remains as it is. The Government will discuss the transitional arrangements with the parties concerned.

## Independent productions

Traditionally, broadcasters in the UK have themselves made the television programmes they have not acquired from abroad. Channel 4 broke this mould. The results have exceeded all expectations. Independent producers constitute an important source of originality and talent which must be exploited, and have brought new pressures for efficiency and flexibility in production procedures.

The Government has already set the BBC and the ITV companies the target of commissioning 25 per cent of original material from independent producers as quickly as possible. Both the BBC and the ITV companies are committed to achieving this target by the end of 1992, subject to satisfaction on cost and quality. Good progress has already been made. A framework for the business arrangements for commissioning programmes has been agreed.

The Government has welcomed these developments, and the willingness of the BBC, IBA and ITV companies to embrace change. Under the arrangements proposed in Chapter VI, the Government envisages that independent producers will continue to play a greater part in programme making in the UK. So far as the position after 1992 is concerned, the Government's proposals for the independent television sector in any event envisage that no licensee should be required by the ITC to maintain any in-house production capacity as a condition of obtaining a licence.

Anyone interested in acquiring an unabridged copy of UK Broadcasting in the '90s should contact the BBC, 80 William St, Sydney. Tel: (02) 358 6411.

## FM Licence Grants

from p9

Again, this position can be contrasted to the situation in Newcastle, Gosford and Geelong where all winners had a major media interest as a shareholder and the ABT found it to be an advantage to have input and support of this type.

Another interesting aspect of the Sheparton decision is that the ABT assessed the personal qualities of the directors and their ability to implement the proposals proposed after determining the most suitable applicant on the basis of the best programming. This is quite a different approach to all other decisions.

In conclusion it is obvious that the Tribunal makes its decisions on a case by case basis. If prospective licence applicants are looking for precedents on which to base their applications then they can take little comfort from past decisions of The Australian Broadcasting Tribunal.

## The ABC Bill

Several items in the Broadcasting Legislation Amendment Bill, which whizzed through Parliament in December should have had much more public discussion.

Foremost of concern is the new Limited Licence which is not, as many people think, connected with aborigines in remote areas but concerned with the broadcasting of events like an Olympic Games or a Bicentennial.

The ABC will have no control over the awarding of licences and permits as this will be done by the ABT with fees paid to the government. Vet Clauses 7, 34 and 43 of the Bill provide that the Corporation may make broadcasting facilities and staff available to a limited licence holder for them to transmit programmes to the general public pursuant

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## Contributions

Send feature articles,  
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