



**BBC response to Ofcom's consultation: *Review of rules for prominence of public service broadcasters and local TV***

**5 October 2018**

## Executive Summary

1. Ofcom's review of the prominence regime comes at a critical time. The way audiences consume content is changing rapidly – and the changes aren't limited to TV content<sup>1</sup> but extend to audio and online news as well.
2. In 2003, when the current prominence regime for television was enacted, most households watched broadcast linear channels on a traditional television set and all means of accessing PSB TV content were fully in scope of the PSB prominence rules.
3. Today, there are new ways to access TV, audio, and news: connected TVs, sticks, online on-demand services, social media and more. The majority of UK households now use platforms which provide a means of accessing TV content which escape PSB prominence rules.<sup>2</sup> For all media - audio and text included - audiences are seeking out new routes to discover content such as social media and voice.
4. We therefore believe that UK policymakers should ensure that PSB benefits are protected and that a wide variety of PSB content is afforded prominence as routes of discovery change and consumption moves online. For the BBC, these concerns extend beyond TV content on iPlayer, to audio via BBC Sounds, as well as to text based news online. Making sure audiences can easily find PSB content is critical across all of these media. It is also important to ensure people are given as many opportunities as possible to watch content that delivers the purposes and characteristics of public service broadcasting – content which has been explicitly made for them, and which they have already paid for through the licence fee.
5. While we warmly welcome Ofcom's proposals to update prominence protections within the linear EPG regime, in our view, this is not the biggest problem that needs fixing to secure the future of PSB. We believe it is also critical that:
  - Ofcom recommends urgent legislative change to bridge the regulatory faultline created between linear and on-demand PSB TV content, specifically by extending the prominence regime to on-demand PSB services and significant means of accessing them.
  - As Ofcom considers recommending legislation to fix problems with PSB prominence for TV content, we hope it will also keep in mind the gatekeeper risks to UK audio products. This is particularly important because new ways of

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<sup>1</sup> In this response we use 'TV or TV like content' to refer to long form programming viewed on a TV set, tablet, laptop, or other screen. Video refers to both long and short form content.

<sup>2</sup> On-demand areas are out of scope of regulation and platforms with on-demand areas are a means to access TV for the majority UK homes. Cable is in 4.2 million homes; YouView comprises 2.2 million homes (Source: [Barb](#), Q2 2018) and in addition Sky reports that 12 million Sky homes are connected (Source: Sky, [Annual Report](#), 2017). In addition, at least 11 million households now subscribe to on demand services such as Netflix and Amazon prime (BARB, Establishment Survey, Q2 2018).

discovering content (e.g. voice) raise questions about how UK audio content is accessed and attributed.

- In addition, as more news is consumed online and through social platforms there are questions about how trusted news sources, such as those provided by PSBs, are accessed and attributed.

### *The rise of global online competitors*

6. The emergence of online viewing has offered audiences greater convenience and choice in viewing on the popular trailblazing PSB services like BBC iPlayer and 4OD and the services which followed in their wake, such as those from Apple, Amazon, and the market-leader Netflix.
7. These new competitors have also created challenges too. The vast revenues they have built on the economies of scale possible only in the world's largest TV market, the US, do not translate into investment in UK content. Netflix may have an \$8bn dollar content budget but just 35 of 753 Netflix originals were UK-made; for Amazon the figures are \$5bn and 5 of 174.<sup>3</sup> This results in programming offers which are less relevant and less reflective of the UK in all its diversity.
8. We are also seeing increasing industry consolidation and further vertical integration as even traditional giants struggle to compete with the scale and resources of our global online competitors. For example, Comcast, Disney and 21<sup>st</sup> Century Fox were all seeking to acquire Sky in order to provide them with control of this key route to audiences.

### *This makes PSBs even more valuable to the UK*

9. In an age of ever greater competition from global players, the UK's public service broadcasters are more important than ever. Among other benefits PSBs deliver value to the nation, its citizens and consumers:
  - **Economically:** acting as the cornerstone of investment in UK TV originations – PSBs spent a total of £2.6bn on first-run UK-originated content in 2017.<sup>4</sup>
  - **Democratically:** as a bulwark against fake news and filter bubbles.
  - **Culturally:** by championing the UK in all its diversity<sup>5</sup> and providing moments that bring the nation together, from the most talked-about drama like *Bodyguard*<sup>6</sup> to inspiring sports coverage that punches far above its weight<sup>7</sup>.

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<sup>3</sup> Ofcom, [Media Nation](#), 2018 (p.49)

<sup>4</sup> Ofcom. [CMR](#). 2018. (Figure 2.1)

<sup>5</sup> E.g. the BBC's *Gay Britannia* or *Black and British* seasons.

10. Beyond investment in world class programming that reflects the nation, PSB investment in the UK also delivers second order benefits such as investment and training in creative industry skills and spend outside of London.
11. Indeed, PSB investment benefits all of the UK, with half of BBC production spend – and half its staff - out of London, thanks to investments in creative hubs in Salford, Cardiff, Glasgow, Belfast and Bristol. In many ways, the BBC is the UK's Industrial Strategy for the creative industries.
12. PSB also helps to sustain companies that make specific types of programmes such as arts, religion, classical music, and original children's TV. It is unlikely that these genres would be as well provided for if left to the market alone. Public service broadcasters spent £2.6bn in 2016 on new UK original content, with the BBC accounting for just almost half of this (£1.28bn). ITV, Channel 4 and Channel 5 contributed the rest (£1.32bn).<sup>8</sup> Every £1 spent by BBC R&D in the last charter period returned between £5 and £9 to UK.<sup>9</sup>
13. All these benefits are underpinned by PSB prominence which contributes to a virtuous circle of reach<sup>10</sup>, funding and high levels of investment in UK content.<sup>11</sup> However, these benefits are at risk if consumption of quality UK originated PSB content falls because audiences don't have a real opportunity to be told about, to find, or simply to stumble across the full range of PSB programming available. A market primarily driven by global commercial principles does not have the right incentives to make PSB content easy to find and, over time, such a market will fail to deliver the diversity and range of content UK society as a whole would benefit from.

#### *Updating the existing regime to meet the future*

14. We warmly welcome Ofcom's proposed changes to the existing linear EPG code, but these do not go far enough.

#### **A. Extending the regime to all PSB TV services including players such as BBC iPlayer**

15. We believe there should be significant prominence for *all* PSB TV services – both linear channels and on-demand players (e.g. iPlayer) on all significant means of accessing TV content (e.g. major platforms, devices and services).

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<sup>6</sup> Bodyguard was the most talked about programme in the week prior to submission (w/c 24 September 2018) and the finale attracted an audience of 15.2m across all screens. (Source: GfK Pulse Survey for the BBC, September 2018; BARB Dovetail)

<sup>7</sup> In 2017, the BBC represented around 2% of the sport broadcast on TV, but delivered more than 34% of hours consumed (Source: BBC Annual Report, 2017/18). 44.5m people in the UK watched the 2018 World Cup on the BBC. (Source: Barb BARB, 4+.)

<sup>8</sup> Ofcom, [PSB Annual Research Report 2017](#), 2016. (Figure 14).

<sup>9</sup> DotEcon, [Analysis of research and development investment](#), January 2018.

<sup>10</sup> Ofcom. [EPG Prominence: A report on discoverability of PSB and local TV services](#), 27 July 2018. Pages 20-25.

<sup>11</sup> Cf Communications Chambers, [PSB prominence in a converged media world](#), 21 December 2012.

16. The critical priority on which the PSBs are all agreed on is the urgent need to update legislation to modernise the current prominence regime by extending it beyond linear television and linear EPGs. We urge Ofcom therefore to recommend that Government make available the first legislative opportunity to achieve it.

Specifically, the changes should guarantee:

- Significant prominence for all PSB linear services and associated on-demand services provided by a PSB all major platforms, devices and services used to consume TV and TV-like content.<sup>12</sup> Updates should also encompass voice-based navigation.

17. In putting in place the guidance which sits under the statute, Ofcom should be required to have regard to a number of factors (see full list in paragraph 59) including:

- The need to deliver consumer benefit, ensuring popular PSB content is not marginalised by global operators.
- The need to deliver citizen benefit by allowing the PSBs to promote a range of content – for the BBC to deliver our mission to inform, educate and entertain. This will encourage people to watch content that delivers the purposes and characteristics of PSB that they might not ordinarily have chosen.

18. Such a regime can be implemented in a way that is both proportionate and effective, potentially functioning in a broadly similar manner to the way it does today (with some enhancements). Currently, the legislation is enabling. It delegates power to the Secretary of State to set the channels within scope and enables Ofcom to determine the code. We believe the legislation should be updated to reflect developments in the market.

### ***B. Going beyond television to the problems emerging in audio***

19. For the BBC the challenge of PSB prominence doesn't stop with television. Radio also finds itself in a value chain increasingly dominated by global players. This time of market transition has offered consumers more convenient ways of accessing audio than ever before. However, the rise of in-car connectivity, as well as the growth of listening via mobile phones and other connected devices, means broadcast radio services and other UK audio products are increasingly gatekept by global players.

20. This a trend we are increasingly seeing with younger listeners<sup>13</sup> who access a wide variety of audio content through interfaces which require them to go through a third

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<sup>12</sup> The law should place a requirement on Ofcom to define 'significant prominence' within its guidance, specify which UI functions in-scope services should be prominent within, and the degree of prominence to be provided.

<sup>13</sup> Of 16-24 year olds who listen to the radio, 47% have done so through a mobile phone (Source: Ofcom. [Technology Tracker](#). 2018) . In addition, 54% of 16-24 year olds use music streaming service every week (Source: RAJAR / MIDAS. Summer wave 2018).

party – but it is a trend which is likely to increase across all demographics. Indeed, investors in global streaming services are counting on the demise of linear radio. As Spotify CFO, Barry McCarthy, said recently “The 20-year trend here is linear dies, everything on-demand wins.”<sup>14</sup>

21. As Ofcom considers recommending legislation to fix problems with PSB prominence for TV content, we hope it will also keep in mind the gatekeeper risks to public service audio products. We would therefore encourage Ofcom to:

- Consider the importance of radio on linear EPGs, which comprises 5% of radio listening hours,<sup>15</sup> and the extent to which it represents part of UK audiences' expectations of the main TV platforms;
- Work with DCMS to transpose updated 'must carry' and access related conditions into UK law and make clear these could apply to broadcast and online radio as well as TV services. This will provide a regulatory backstop if terms can't be agreed with platforms and services; and
- Investigate and report on the gatekeeper and prominence risks to UK radio/audio services. This might be via the expected review of Digital Radio Switchover or as the result of a full Ofcom radio review. It should examine a range of audio environments, from spaces which are traditionally strongholds for radio (e.g. in car) to new nascent markets, such as voice.

### **C. Ensuring trusted news can be easily found by audiences**

22. The growth of news content consumption through search and social intermediaries, while extending the convenience and reach of news, has also brought problems for public service broadcasters, as well as other trusted news providers. Key areas of concern include prominence, attribution and accuracy all of which are crucial to sustaining the production and distribution of high-quality journalism.

23. While these problems in news markets extend beyond PSBs and are undoubtedly complex, through its consultation, we believe Ofcom has a role to play in contributing to a solution by:

- Ensuring PSBs players (and the content within them) are also given prominence on platforms, devices, and services (e.g. social) if these become significant routes to accessing TV or TV like content in the future; and
- Strengthening prominence for PSB news channels and PSB main channels on the linear EPG. As we set out in our answer to question 4, the prominence afforded BBC One, as the UK's most used news source (used by 62% of UK

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<sup>14</sup> <https://musically.com/2018/09/17/spotify-cfo-apple-software-culture/>

<sup>15</sup> RAJAR, Q2, 2018.

adults)<sup>16</sup> and the main commercial PSB channels will play an important role in efforts to challenge disinformation, fake news<sup>17</sup> and filter bubbles. However, we believe Ofcom could consider going further in its support for the prominence of rolling news channels (e.g. by ensuring BBC News Channel is prominent and by ensuring platforms give greater prominence to all TV news services which are regulated for impartiality.)

24. Beyond the scope of this consultation, problems extend to text and audio based news services where trusted news providers – both PSBs and others – face difficulties with branding and attribution, access to data, platform responsibility, and prominence. There is also a risk of trusted news providers being made harder to find by the growth of voice activated search for news services. When consumers use voice to search for “news headlines” it’s completely up to whoever owns that platform which results appear first and they’re free to sell the top spot to the highest bidder.
25. These are issues we have raised in our responses to the Cairncross review examining the sustainability of high-quality journalism in the UK, and the DCMS select committee’s inquiry into disinformation and ‘fake news’. We set out more detailed comments below in response to Ofcom’s specific consultation questions.

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<sup>16</sup> Ofcom News Consumption 2018, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/116529/news-consumption-2018.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/116529/news-consumption-2018.pdf) pg 2.

<sup>17</sup> The BBC defines fake news as false information deliberately circulated by hoax news sites to misinform, usually for political or commercial purposes.

**Q1) Do you agree with our proposals that the main five PSB channels hold the top five slots on EPGs provided UK wide or in the UK outside of Wales?**

**Q2) Do you agree that on EPGs provided for viewers specifically in Wales BBC One, BBC Two and the relevant Channel 3 service should take the top three slots, with S4C in slot four, Channel 5 in slot five and Channel 4 guaranteed a position on the first page?**

26. Yes, we agree with Ofcom's proposals regarding the five main PSB channels and S4C in Wales. Traditional linear TV viewing remains high<sup>18</sup>, despite market changes, and linear EPGs are still a popular way for audiences to find their favourite channels or browse for something to watch. Audiences also *want*, and think BBC services *should* be prominent in the EPG.<sup>19</sup> In 2018, 64% of UK adults supported PSB prominence compared with 59% of adults who supported PSB prominence in 2016.<sup>20</sup> Nearly all respondents (93%) selected at least one of the main five PSB channels to appear in the top three EPG slots.<sup>21</sup>

27. Ensuring the five main PSB channels stay in the top five EPG slots (outside of Wales) is in line with current practice and will provide certainty for continued investment in UK content and programming by the nation's PSBs. PSB programming intended for UK audiences and (in the case of the BBC) paid for by them must be widely available and easy to find, with audiences presented with as many opportunities as possible to consume them. This helps to reinforce the virtuous circle of UK content investment by the PSBs, who still account for c.80% of all UK TV original content investment. The current statutory PSB prominence regime was designed to achieve these goals and should be strengthened, but as we set out in further detail below we believe this won't be sufficient to secure the future of PSB.

**Q4) Do you agree that the designated public service News channels (currently BBC News and BBC Parliament) should be guaranteed slots on the first page of the news genre section or an equivalent position within the grouping of news channels on the EPG, as applicable?**

<sup>18</sup> Viewing of traditional broadcast television on a television was at 203 minutes a day in 2017. Source: Barb / Ofcom. [Public Service Broadcasting in the Digital Age](#). 8 March 2018.

<sup>19</sup> A majority 59% of UK adults surveyed believe PSB channels and on demand services *should be* given prominence and BBC One should be in the EPG slots [55% said BBC One should be in the top three]. Source: MTM for the BBC. November 2016.

<sup>20</sup> Percentage of UK adults who think PSB channels and their catch-up/on-demand services should be given prominence in on screen TV guides and menus (8% disagree). Populus for the BBC, 2098 UK adults 18+, October 2018; MTM for the BBC, 2004 UK adults 16+, August/September 2016.

<sup>21</sup> Populus for the BBC, 2098 UK adults 18+, October 2018;



28. Yes, we agree that the prominence of designated public service news channels should be improved. In recent years, the launch of numerous new entertainment channels has seen platforms moving the news channel grouping to higher number slots making television news services less prominent in general.
29. This is unhelpful because in a world of fake news, disinformation and state propaganda, providing easy access to impartial, trusted sources of news when people are being bombarded with the opposite is increasingly critical.
30. News channels such as BBC Parliament and BBC News in particular provide important complementary services to the BBC's main channel news bulletins – especially at critical times. The BBC News channel is the most-watched 24-hour news channel in the UK, reaching 7.9m UK adults each week.<sup>22</sup> It is consistently seen as the best news channel in the UK<sup>23</sup>, and it plays an important role in helping audiences keep up to date.<sup>24</sup> Audiences also turn to BBC News Channel during breaking news events. For example, on the 4<sup>th</sup> June 2017 the BBC News Channel reached 6.8 million (versus 2.8 million per day on average for 2017) following the London Bridge terror attack.<sup>25</sup>
31. The BBC's News Channel needs to be easy to find and not buried behind less reliable alternatives that are not subject to the same requirements to cover international and local/regional news.<sup>26</sup> As the former Secretary of State put it – the BBC is the nation's 'best bulwark against fake news.'<sup>27</sup>
32. We therefore agree that PSB news channels should be at the very least guaranteed slots on the first page of the news genre section or an equivalent position within the grouping of news channels on the EPG.<sup>28</sup>

**Q5) Do you agree that CBeebies and CBBC should have guaranteed slots on the first page of the Children's genre or area of the EPG, as applicable?**

33. We agree that CBeebies and CBBC should have improved prominence. Even on linear listings, PSB children's programming is increasingly competing for prominence with well-funded multi-national content commissioners like Disney.

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<sup>22</sup> Source: BARB, all adults, 3+ min average weekly reach, 2017

<sup>23</sup> Source: BBC Accountability and Reputation Tracker, based on all adults who watch news and current affairs on TV

<sup>24</sup> GfK Pulse Survey for the BBC, 2016.

<sup>25</sup> Source: BARB

<sup>26</sup> Ofcom. Operating Licence for the UK's Public Services. 13 October 2017.

<sup>27</sup> Matt Hancock, on '[The Future of the Media' at the Oxford Media Convention](#). 12 March 2018. In addition, Secretary of State Jeremy Wright recently stated that news coverage from PSBs was a "vital asset in the era of fake news". [Jeremy Wright speech to Edinburgh TV festival](#), 22 August 2018.

<sup>28</sup> BBC researched audience views on EPG prominence for news in detail in 2012. Respondents were asked to specify which channels from a given list they believed should occupy each of the top five slots on the EPG the News channels menu. The BBC News channel was the clear leader for the 1st position on the News Channels menu at 71%, while 92% of respondents selected either BBC News or BBC Parliament for a top 3 position on the menu.

34. Guaranteed slots on the first page of the Children's genre/area of the EPG should be an absolute minimum, and we would ask Ofcom why BBC One and BBC Two, the main PSB channels for adults, should secure the first slots but UK children should not benefit from such easy access to the PSB channels designed for them. We believe that BBC children's channels should also be in slots one and two for the children's genre.
35. BBC children's channels not only provide benefits to children as the intended audience, but also to the children's production sector through:
- Investment in UK content – the BBC accounted for 90% of investment in Children's programming by terrestrial broadcasters in 2014.<sup>29</sup>
  - Provision of trusted and popular content - CBeebies continues to be the most popular channel in the children's genre with PSB children's programming performing better than commercial channels.<sup>30</sup>
  - Programmes that go beyond cartoons – schedules include pre-school learning, comedy, entertainment, drama, news, education, factual tailored for kids and programmes that introduce children to the Proms and Shakespeare.<sup>31</sup>
  - BBC channels also provide a space free from commercial influence, which parents value – Ofcom research found that 89% of parents/carers considered PSB children's programming to be important and 87% feel that the PSB channels deliver on providing high-quality programmes for children.<sup>32</sup>
36. But the BBC children's channels are relegated to 13th and 14th positions in the children's genre menu on the UK's leading pay platform where trusted, UK original content is less consumed on like-for-like basis than on platforms where they are higher in the listings.<sup>33</sup> This positioning risks declining viewing and diminished PSB benefits.
37. It is also out of line with audience needs and expectations. In 2018, 72% of parents thought CBeebies / CBBC should be at the top of the children's channel menu.<sup>34</sup>
38. We would stress that while linear changes are important, as we set out in our response to questions 14-19, by far the biggest contribution Ofcom to make to the access, prominence and widespread consumption of children's PSB would be to recommend extending the scope of the prominence regime to the on-demand

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<sup>29</sup> 90% of £105 million. Source: IHS. The Business of Children's Content. October 2015.

<sup>30</sup> Ofcom's PSB Annual Report 2017, p.18.

<sup>31</sup> Programmes such as CBeebies 'Something Special at the Proms' or 'Shakespeare special' are part of the BBC's diverse range of programmes on CBeebies.

<sup>32</sup> Ofcom's PSB Annual Report 2017, p.13.

<sup>33</sup> Source: BBC analysis of BARB data in 2017/18 comparing share of viewing on the Sky and Virgin Media platforms out of children's channels common to both in broadcast hour. Analysis among target audiences: CBeebies defined as housepersons with children 0-3 and 4-6 year-olds; CBBC = 6-12 year-olds.

<sup>34</sup> Populus for the BBC, nationally representative survey of 359 UK parents / guardians with children under 12, October 2018;

services like BBC iPlayer and BBC iPlayer Kids as this demographic moves online faster than any other.

**Q8) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of relevant Nation specific EPGs e.g. S4C in Wales, BBC Alba and BBC Scotland in Scotland?**

39. We agree that S4C, BBC Alba and BBC Scotland should be guaranteed prominence within the first three pages of relevant nation specific EPGs.
40. The indigenous language channels (i.e. BBC Alba and S4C) target the nations where these languages are primarily spoken (i.e. Scotland and Wales) and these channels play an important role in facilitating national and local identity.<sup>35</sup>
41. Given the extent of licence fee funding for S4C, the BBC's strategic partnership with it and the role that both play in Welsh language broadcasting, it is important that it receives PSB prominence.<sup>36</sup>
42. In respect of BBC Scotland, recent analysis from the BBC shows similar clear benefits for launching the channel,<sup>37</sup> this was supported by Ofcom's analysis as set out in its approval decision for the channel.<sup>38</sup> These include both social and personal welfare benefits for audiences who will be able to access broadcast content that is both relevant to and representative of audiences in a modern Scotland. News and current affairs will be at the heart of the schedule, with a one hour, integrated news programme broadcast each week-night at 9pm.<sup>39</sup>
43. Helping audiences find this new channel through guaranteed EPG prominence is critical to maximising the personal and social value that the launch of BBC Scotland is aiming to deliver.

**Q10) Do you agree with our proposals to ensure prominence for either the SD or HD version of BBC channels rather than both?**

**Q11) Do you agree with our proposals to allow broadcasters to swap HD simulcast variants of their SD designated channels, such that those HD variants could occupy the slots which the SD channels would be entitled to?**

<sup>35</sup> See for example: The Welsh Language Commissioner. [The Situation of S4C](#). 1 November 2017. This analysis suggests S4C is "essential in order to create new Welsh speakers and support the use of Welsh". It estimates S4C economic impact on the UK economy was equivalent to £170 million in 2016/17.

<sup>36</sup> <https://www.bbc.co.uk/mediacentre/latestnews/2017/s4c-bbc-partnership>

<sup>37</sup> BBC. [Proposals for launch of a new BBC Scotland TV Channel](#). November 2017.

<sup>38</sup> Ofcom Final Determination, BBC Scotland Competition Assessment, 26 June 2018, p22-24 and Annex 1.

<sup>39</sup> Cf BBC. [Proposals for launch of a new BBC Scotland TV Channel](#). November 2017.

44. We agree with Ofcom that *either* BBC HD or BBC SD channels should hold the top slots on linear EPGs (i.e. 1 and 2 or 101 and 102).
45. However, where BBC SD channels are in the top slots of the EPG overall, we believe that their HD variants should be in the top slots of any HD genre menu or grouping.
46. While HD viewing can still be relatively low today,<sup>40</sup> it is growing over time and it is standard for some audiences. For example, we are seeing HD becoming default for pay platforms and audiences do seek out PSB HD options to watch specific content (e.g. World Cup, Blue Planet). Keeping BBC channels at the top of the HD grouping would be in line with audience expectations and would help viewers choose HD.
47. We also agree with proposals to allow broadcasters to swap HD simulcast variants of SD designated channels, as long as the decision to swap is left up to broadcasters and not to platforms. We would also expect that any PSB IP-delivered and UHD simulcast channels would be afforded prominence in any genre menus for these technologies as well.

**Q12) Do you agree with our proposal to provide a 12 month transition period once the Code is finalised?**

48. As a shareholder in Digital UK, Freesat and YouView, the BBC understands that implementing Ofcom's proposed changes for linear EPGs within 12 months will not be without challenges. However, we strongly believe that platforms should be able to make these changes as soon as possible.

**Q13) Do you think that the prominence regime should be extended to ensure EPGs themselves can be easily found?**

49. For Ofcom's proposed reforms to the linear EPG code to be effective, it's important that there is prominence *of* the EPG itself as well as for PSB channels *within* the EPG. This is critical to ensure the rules put in place by Parliament can achieve their intended goal and PSBs benefits can be maximised.
50. Already connected set-top boxes can make access to PSB channels harder to find, by relegating the EPG (and with it 'live TV') within the overall user interface. Platforms do this because they have the incentive to 'nudge' viewers to areas they can better monetise. And this is one of the reasons why on-demand, graphics-based menus that

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<sup>40</sup> For example, Ofcom's 2015 [Connected Nations](#) report showed DTT households w/HD spend 80% or more watching ITV SD over the HD variant.

disaggregate VOD programmes are increasingly becoming the default home page for audiences when they turn on the TV.

51. Over time, such 'nudge' strategies are likely to drive audiences away from regulated areas of the EPG where UK-made free-to-air content is prominent and widely consumed. After launch, the original design of the Sky Q box which had BBC One eight clicks away from Home led to consumption shifting from live to on-demand viewing when compared with previous Sky boxes.<sup>41</sup>
52. It can also risk consumer confusion. Other platforms have introduced additional menus of live TV alongside the regulated TV menu. Examples include EE's set top box which allows channels to be listed in order of popularity among EE's user base at a given point in time. We also know major TV manufacturers and platforms are planning to introduce similar options. Consumers may not know which menu is the one they know and trust, and which is based on the undeclared algorithms of the platform.
53. Extending the prominence regime to ensure that the linear EPG can be easily found would:
- Be in line with the principle that PSB content and services should be easy to find to meet audience needs and expectations.<sup>42</sup>
  - Reflect that live TV is the most popular way to watch.<sup>43</sup>

**Q14) Do you agree with the broad range of factors for consideration we have identified? Are there other factors that policy makers should consider?**

**Q15) Do you agree with the principles we have set out? Are there other principles that should be considered?**

54. We agree that the increasing number of ways audiences can access content (e.g. through connected devices such as streaming sticks, voice, and smartTVs) creates challenges for extending the prominence regime.<sup>44</sup> We also agree that Ofcom has

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<sup>41</sup> Statement by Sky Director of TV and Content Products, Luke Bradley Jones (August 2016): "The shift from live to non-live has jumped by five percentage points in a few months, having taken more than a decade to get to 25%".

<sup>42</sup> In 2018 64% of UK adults supported PSB prominence (See footnote 19). Nearly all respondents (93%) selected at least one of the main five PSB channels to appear in the top three EPG slots. Populus for the BBC, 2098 UK adults 18+, October 2018.

<sup>43</sup> Paragraph 6.5 Ofcom, '[Review of the rules for prominence of public service broadcaster and local TV](#)', July 2018. "Of the 5 hours 11 minutes average video content that individuals watch, 71% originated from live TV and 58% was watched as live TV on the TV set" (Source: Ofcom/BARB/BARB TV Player (census data)/TouchPoints/comScore).

<sup>44</sup> Paragraph 6.14. In addition in its third review of PSB Ofcom states "the rules that give PSB prominence need reform. Although there are measures in place to guarantee schedule prominence for PSBs, these were designed for the analogue era."

identified the right factors to be considered when designing a new regime.<sup>45</sup> Indeed, we believe there should be significant prominence for all PSB TV services on all significant means of accessing them (e.g. all major platforms, devices and services in the UK to consume TV or TV-like content). In order to update the existing regime to be fit for the way content is being consumed today we are calling on Ofcom to make a clear recommendation to Government to update legislation.

55. Paragraphs 56 to 60 set out a joint position agreed by all PSBs which considers the outcomes we believe an updated regime should focus on.

56. *The critical priority on which the PSBs are agreed is to update legislation to modernise the current prominence regime by extending it beyond linear television and linear EPGs.*

57. *We believe the most effective legislative updates will not be based on trying to predict what future technologies for finding and accessing content will look like. Instead, key outcomes should be enshrined in legislation, and include a right to significant prominence for PSBs. Specifically, this should include:*

- **Significant prominence for all PSB linear services and associated on-demand services provided by a PSB (or several PSBs):** *The Secretary of State should maintain (and have the power to vary by Order) a list of these 'in-scope services'.*
- **Significant prominence on all major user interfaces:** *the regime should cover those who exercise editorial control of all user interfaces (UIs) on all major platforms, devices and services in the UK to consume TV or TV-like content. The Secretary of State should have the power to vary this definition by Order. In the event of dispute about whether a UI is in-scope, Ofcom should determine.*<sup>46</sup>

58. *The law should place a requirement on Ofcom to define 'significant prominence' within its guidance. It should also require Ofcom's guidance to specify:*

- **Which UI functions in-scope services should be prominent within,** including (but not limited to) all those areas of UIs:
  - **Positioned by the UI provider as central to the user experience:** *This will vary by UI as different providers emphasise different functionality, but is generally likely to include homepages, linear EPGs; VOD player landing pages; search and recommendations; or*
  - **Used by a substantial number of people to access TV or TV-like content:** *It is possible that areas of a UI are not prominently positioned but nonetheless*

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<sup>45</sup> As set out in Paragraph 6.15. Ofcom. [Review of rules for prominence of public service broadcasters and local TV](#). 27 July 2018.

<sup>46</sup> In considering what constitutes a 'major platform' Ofcom should have the discretion to take into account a range of factors as it sees appropriate, potentially including the number of users, the volume of viewing delivered, its importance to certain demographics, or its place in the wider market.

have significant appeal to consumers.<sup>47</sup> Such functions are likely to include linear EPGs and VOD player landing pages.

- **The degree of prominence to be provided**, including (but not limited to):
  - Where services are discoverable in their entirety (e.g. VOD app landing pages), in-scope services are easily discoverable and quick to access; and
  - Where individual pieces of content are discoverable as a result of editorial decisions and/or algorithmic curation, a substantial amount of such content should be immediately visible and attributable to the relevant PSB, and quick to access. The individual content displayed should be chosen by the relevant PSBs from the total catalogue of their in-scope services.

59. In putting in place its guidance, Ofcom should be required to have regard to:

- **The need to deliver consumer benefit:** High quality UK PSB content remains popular with UK audiences, and remains the bulk of content consumed despite the growth in choice. The prominence intervention should ensure that this popular content is not marginalised by global operators with an incentive to dilute consumer appetite for UK content over time and/or deliver global content deals and arrangements.
- **The need to deliver citizen benefit:** it is important that UI and content providers are able to continue to innovate to meet the demands their consumers. Taking account of consumer expectations is a part of this. But it is equally important that the citizen interest is served, for instance by ensuring a wide range of content from the PSBs is promoted, so ensuring people are encouraged to watch content that delivers the purposes and characteristics of PSB that they might not ordinarily have chosen. Where such interests appear to be in tension, the citizen benefit should take precedence.
- **The need for prominence to be free and non-contingent:** The degree of prominence offered by EPG operators should not be made contingent on other factors (e.g. prominence should not be reduced unless VOD rights are granted) or require payment by PSBs.
- **The importance of ensuring sufficient transparency:** UI operators should be open with consumers and industry about how they decide which content to include in which areas of their UI, and how they choose to promote it. This should include not only decisions about PSB prominence but also any commercial arrangements (e.g. paid-for prominence), editorial decisions, and any data / algorithmic approaches taken. Such transparency is important in relation to all scheduling and promotion, whether PSB or non-PSB content and services.

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<sup>47</sup> For example, linear EPGs remain a popular way to access programmes yet a platform might choose to make the EPG much less prominent

- **The right of consumers to personalise:** PSB prominence should not be enforced above audiences' own direct actions (e.g. viewers should be free to set their own favourites menu or rearrange the order of apps on a page). Nor should prominence override requests for specific programme assets with a single possible outcome (e.g. 'show me episode 2, series 3 of...'). But in search with any ambiguity, where more than one outcome may be presented or served to consumers, prominence rules should apply.

60. Such a regime can be implemented in a way that is both proportionate and effective, potentially functioning in a broadly similar manner to the way it does today (with some enhancements). Currently, the legislation is enabling. It delegates power to the Secretary of State to set the channels within scope and enables Ofcom to decide how to apply the code. We believe the legislation should be updated to reflect developments in the market:

- **Government:** should retain enabling legislation, setting in law the required outcomes and giving the Secretary of State powers (after consulting Ofcom) to amend which services are in scope and the criteria by which user interfaces are assessed to be in scope so that the regime can be updated more easily as and when technology and audience needs and expectations change;
- **UI providers:** should be given the space to design products that work for consumers and foster competition, but given clarity as they do so on the minimum expectations of PSB prominence that those products should deliver. The regime should amend the existing requirement from publishing an EPG policy to publishing a UI policy. Policies should be required to set out how UI providers have taken account of the views of the providers of 'in-scope services' and Ofcom; and
- **Ofcom:** should continue to hold responsibility for updating the prominence code, giving guidance as to practices to be followed, as it does today with the linear EPG code. It should determine whether user interfaces are in scope where there is disagreement. It should have a backstop role in compliance, taking firm action as necessary if either policies or outcomes do not comply with its code or guidance. Consideration should be given to the merits of requiring Ofcom to conduct reviews of the effectiveness of the intervention, perhaps every 3-5 years. It should continue its role in relation to FRND for UI relationships beyond prominence.

61. We have set out a summary below of what we believe this would mean for the factors Ofcom identifies. Further detail can be found in the answers to questions 16-19.

*What degree of prominence is desirable?*

62. Ofcom is right to suggest prescriptive changes to the linear EPG prominence code given the maturity of market and lack of prominence given to PSBs on some major



platforms over a sustained period.<sup>48</sup> However, the market for on-demand services and routes to access them is more fluid and thus would benefit from the type of regime described above underpinned by enabling legislation. In accordance with the outcomes and principles set out above we would propose extensions to the regime which are clear and binding, but that do not set out the exact way prominence requirements should be fulfilled on each UI.

*What metrics should define prominence?*

63. In keeping with the position set out above, we believe that on all significant routes<sup>49</sup> to accessing TV or TV like content UIs positioned by a platform, device or service as being central to the user experience should be within scope of prominence rules as should any UI used by a significant number of people to access TV or TV-like content. Where home screens are actively curated or selected by users (e.g. users pick their own favourites) and are not subject to updated prominence rules, it would be helpful to ensure menus containing PSB content are not hidden away. As Ofcom suggests this might involve using 'number of clicks away' from the home screen as a way of making sure PSB content and services remain easy to find.

*What types of content should benefit from prominence?*

64. All long form PSB content should benefit from prominence. The consultation notes that the VOD players from PSBs include content beyond what is available in PSB linear channels. For the BBC, this would extend the regime to content on BBC Three – the formerly linear channel which has been online only since 2016. BBC Three, like all BBC services, provides public service content and since becoming an online only channel the service and some of its programmes have been critically acclaimed. In 2017 BBC Three programmes were nominated for eight BAFTAS and three won.<sup>50</sup> The channel was also awarded RTS Channel of the Year. We would argue that this extension would be in line with the intention of PSB prominence rules.

*What platforms, services or devices should be captured?*

65. We believe that legislation underpinning an outcomes and principles-based PSB prominence regime should not limit application to particular platforms, services or devices based on whether or not these platforms have a linear EPG. Instead, the law

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<sup>48</sup> Paragraph 1.14. Ofcom. [Review of rules for prominence of public service broadcasters and local TV](#). 27 July 2018.

<sup>49</sup> This could be defined by number of users or amount of content consumed.

<sup>50</sup> BAFTA wins: Leading actor – Adeel Akhtar, *Murdered By My Father*; Scripted Comedy – *People Just Do Nothing*; Female performer in a comedy programme – Phoebe Waller-Bridge – *Fleabag*.

should be enabling and allow application to any means to finding TV content if these become significant and become routes where audiences would expect PSB content to be present.

*What elements of navigation interfaces should be captured?*

66. Since TVs dropped the channel dial, the EPG grid format has been the primary way of choosing a channel. The linear EPG is the most common way viewers chose what to watch,<sup>51</sup> and this should be in scope of updated rules along with VOD menus, but this alone is not sufficient. A key development in navigation in recent years is voice-based navigation, which is increasingly being integrated with TVs. Sixty eight percent of 16-44s claim to have used voice on a device<sup>52</sup> and 6.5m adults in the UK claim access to voice control through their TV.<sup>53</sup>
67. Voice-based navigation presents problems for PSB prominence, but arguably the problems are similar to those of search and recommendation. This is because for most queries voice is simply another means to surface results for selection on a TV screen. Therefore, for TV content the key issue with voice search is ensuring PSB content is prominent among the results returned where these are recommendations (e.g. "something funny".) Where search is specific (e.g. a specific programme is being searched for such as "Dr Who"), we believe PSB content should be treated fairly.
68. Further detail is set out at question 17 in respect of our views on search and recommendation.

*What size and scale of platforms or services should be included?*

69. We agree with Ofcom that there would need to be consideration given to a threshold criteria before a platform or device would come under the scope of regulation. The BBC believes a sensible approach might be to consider a threshold based on organisations (or undertakings) whose combined platforms are used by a certain number (e.g. 1 million or 500,000) of unique browsers per month to watch TV or TV-like content.
70. Ofcom also identifies three principles that should be upheld: (i) personalisation should not be inhibited; (ii) consumer choice and functionalities which they value should not be inhibited; and (iii) search should be transparent.

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<sup>51</sup> As set out in Paragraph 6.6 Ofcom, [Review of rules for prominence of public service broadcasters and local TV](#), 27 July 2018.

<sup>52</sup> GfK Pulse survey for the BBC, Jan 2018 & June 2018.

<sup>53</sup> BBC M&A Pulse 5Minex survey by GfK, 2018.

71. As set out above, we agree that these are key principles that should be upheld – in respect of personalisation we believe this should be limited to circumstances where the user has manually customised ordering. We also agree with the principle of transparency. Indeed, we believe that in any new regime transparency should apply to both PSB content surfaced and any paid for prominence (in a similar way to ads being tagged in internet search engines). This should apply for search and recommendation – but might also apply to paid-for prominence in VOD portals and other areas of UIs.

**Q16) Do you think that the prominence regime should be extended to ensure PSB Players can be easily found?**

72. Yes. Audiences are increasingly choosing non-linear viewing – especially younger audiences.<sup>54</sup> This shift has been prompted in part by the success of PSBs' on-demand players and prominence for PSB players (e.g. BBC iPlayer) is now something audiences expect. In 2018, 75% of viewers would expect BBC iPlayer to be in the top three positions on a catch up/on-demand menu.<sup>55</sup> Currently, due to its popularity the BBC is able to commercially negotiate prominence for its on-demand services, but this is becoming harder, due to conflicting incentives with platforms and device manufacturers.

73. Platforms have the means, motive and opportunity to prioritise their own premium pay content or content from global online competitors over PSBs. Indeed, platforms can and already do strike deals with international SVOD services for prominence within on-demand menus. These deals are often worldwide between global TV manufactures and international SVOD players. For example, Netflix runs a 'Netflix recommends' programme whereby smart TVs are 'recommended' in exchange for straightforward access to Netflix on the device.<sup>56</sup> In addition, platforms have an incentive to disaggregate PSB content<sup>57</sup>, subverting public service outcomes.

74. BBC iPlayer is curated to guide audiences to the full range of the BBC's offer – not just what's popular. When audiences use BBC iPlayer, we are able to access data in order to personalise content recommendations and guide onward journeys.<sup>58</sup> We also provide extra features, such as 'live restart' so audiences can rewind to the beginning of programmes currently on-air. These benefits, we believe, mean consumption through BBC iPlayer results in greater value than the sum of its parts. Therefore, if

<sup>54</sup> Ofcom. [Public Service Broadcasting in the Digital Age](#). 8 March 2018.

<sup>55</sup> For comparison 42% of viewers said they would expect Netflix to be in the top three. Populus for the BBC, nationally representative survey of 1591 UK adults 18+ who use TV set for catch up / on demand, October 2018.

<sup>56</sup> <https://devices.netflix.com/en/recommendedtv/2018/> [last accessed 23/09/2018]

<sup>57</sup> For example, Catch up TV (and thus BBC programmes via iPlayer) is less prominent on the Sky Q homepage than Sky's 'Top Picks', box sets, movies and store.

<sup>58</sup> Cf BBC. [Distribution Strategy](#). 12 February 2018.

PSB players are left out of the prominence regime the public service value – and PSB investment in this area - is diminished.

75. As part of the outcomes and principles based extension of prominence rules we have proposed, updates to the regime could involve the Secretary of State amending the definition of a user interfaces<sup>59</sup>, as well as adding PSB players to the list of PSB services which benefit from prominence rules.

#### **Assumptions and further considerations**

We recognise that going forward to develop a detailed regime, Ofcom would need to consider a number of issues further including:

- The definition of a PSB player; we would suggest Ofcom consider this to be a service delivering on-demand programming provided by a PSB.
- Must offer – the BBC is subject to a *de facto* must offer requirement as set out in the Charter and Framework Agreement. However, this requirement is not absolute and Ofcom are clear that the BBC only needs to meet reasonable requests to supply.<sup>60</sup>

#### **Q17) Do you think that the prominence regime should be extended to ensure PSB content can be easily found via recommendations and / or search? If so, what key parameters would you set for this aspect of the regime?**

76. In general, we think the regime should be extended in line with our high-level principle that search should be transparent and PSB content and services should be prominent on devices/user interfaces which are a significant means of accessing TV and TV like content. Recommendation and Search functions are playing an increasingly important role, so they should be in scope of an extended prominence regime.

#### *Recommendation*

77. The display of recommendations is varied and involve platforms making choices as to how content is presented and which content is selected. Recommendation UIs can range from the objective 'continue watching' to the subjective 'Editor's Choice'. We also recognise there is an area in between where content might be algorithmically driven by user behaviour and these types of recommendation UIs can and do reflect

<sup>59</sup> Both in primary legislation, but also potentially being given delegated powers to further amend the definition to ensure it remains in step with market and technology developments.

<sup>60</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0026/99413/bbc-distribtion.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0026/99413/bbc-distribtion.pdf)

the editorial and commercial imperatives of platforms. In these cases, we believe that greater transparency as to how content is surfaced in these UIs would be helpful.

78. We do not believe that prominence rules should apply to menus actively customised or selected by the user themselves or A-Z lists nor any areas within UI areas genuinely driven by popularity (within a reasonable statistical set), without bias or favour. However, we are aware that some platforms have sought to promote 'most popular' over and above the linear EPG as a way of relegating PSB prominence.
79. We already know that platforms have the incentive and ability to use recommendation areas to simply promote their own or paid-for services over free PSB content, as has been seen in case of Sky Q<sup>61</sup> and we may be seeing a move towards a 'pay-for-prominence' model where global players secure prominence for their own programmes alongside the platform's offering.<sup>62</sup>
80. This behaviour risks overriding public service objectives which seek to deliver value to the viewer through suggesting programmes the viewer may not be aware they would enjoy. This objective is sometimes not directly in conflict with a platform that wants to surface content that the audience will enjoy and value. Indeed, they may result in a very similar selection of programmes. However, they are different in one crucial way – the platform objectives can be achieved by observing previous behaviour whereas public service objectives involve a departure from this.
81. Therefore, where routes to content are programme-led rather than service-led, we believe it should be for PSBs, not EPG/UI providers, to determine which of the programmes contained within their services should be promoted in prominent positions. This outcome (which can be achieved today through commercial negotiations and is therefore technically possible) will allow PSBs to continue to deliver public service outcomes in a similar fashion to 'hammocking' on a linear schedule.

### Search

82. As a minimum, platforms need to be more transparent as problems in both search and other menus are made more complicated by a lack of transparency with regards to how content is surfaced through recommendation menus and search results. This might mean clearly marking paid-for-prominence as well as regulated PSB selections and greater transparency of search algorithms ensuring search is objective and unbiased. We believe that the audience deserves to know why content is being shown

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<sup>61</sup> Analysis of Sky Q's curated on-demand section found 77% of recommendations were for Sky's own content brands. Source: Broadcast, 'Sky favours own programmes in Top Picks' (February 2017)

<sup>62</sup> <https://media.netflix.com/en/press-releases/sky-and-netflix-agree-new-european-partnership> (last accessed 14/08/18). In addition, Comcast, Disney and 21<sup>st</sup> Century Fox are all seeking to acquire Sky in order to provide them with control of this key route to audiences.

to them. Updated rules should cover search results whether they are text or voice based.

**Q18) Do you think that the prominence regime should be extended to platforms and devices not currently captured by the EPG prominence regime? If so, how do you think the regime could be extended and who should be captured?**

83. Yes, we believe that the prominence regime should be extended to cover additional platforms, devices and services. Internet-connected TV devices (e.g. streaming devices and sticks) are becoming increasingly popular. Ofcom's data shows 11% of households used them to access VOD services in H1 2018 (up from 5% in 2016).<sup>63</sup>

84. While PSBs are typically able to negotiate a place on such devices in national markets on the basis of their popularity and strength of content, there is a risk that this won't continue. This is, once again, because the market for connected devices is dominated by global companies and in the future prominence deals are likely to favour international deals with global content providers who can pay for prominence.

85. We therefore believe that the prominence regime should be extended to the user interfaces of platforms, devices and services not currently captured by the EPG prominence regime, provided that the interfaces:

- Are providing TV or TV-like content from one or more providers; and
- Meeting a significance threshold (e.g. are major platforms, devices or services)<sup>64</sup>.

86. But in order for the legislative regime to keep up with future changes in how users are accessing and finding TV content, we believe the legislation underpinning an updated prominence regime needs to be broad.

87. Updated prominence rules should function similarly to the way the regime does today. Currently, the legislation is enabling. It delegates power to the Secretary of State to set the channels within scope and enables Ofcom to determine the code. We believe the legislation should be updated to reflect developments in the market, with the Secretary of State gaining powers to define which types of interface are in scope so rules can be updated more easily when technology and audience needs and expectations change. Ofcom would continue to hold responsibility for updating the prominence code giving guidance as to practices to be followed as it does today with the linear EPG code.

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<sup>63</sup> Ofcom. Technology Tracker. H1 2018. H12016. (paragraph 6.32).

<sup>64</sup> In considering what constitutes a 'major platform' Ofcom should have the discretion to take into account a range of factors as it sees appropriate, potentially including the number of users, the volume of viewing delivered, its importance to certain demographics, or its place in the wider market.

88. This would ensure that PSB content and services remain easy to find as the routes to viewing TV content, as the device that the content is viewed on changes. It would also have the added benefit of creating a 'level playing field' between platforms with EPGs and connected devices without them.

**Q19) Do you think that the prominence regime should be extended to online services? If so, who should be captured?**

*The way audiences are consuming content is changing rapidly.*

89. We agree with Ofcom that audiences are increasingly seeking out new online routes, including social media and voice, to discover content. If these services become a significant route to accessing TV or TV like content in the future, then we believe these services should be captured by the PSB prominence regime.

90. The introduction of voice in particular has the potential to be a significant threat to the findability of content from public service broadcasters. The platforms that own voice interfaces, and the underlying technology, operate globally and will control the intermediation of content. The management and presentation of responses to queries for content requests is entirely in the hands of global operators whose incentives - absent regulation – are unlikely to favour significant amounts of locally relevant content.

91. Turning to social media, many of these services have been building more video into their product and have been experimenting with longer TV and TV-like formats.<sup>65</sup> The scale and ability of global online competitors to move quickly suggests it would be wise to ensure that these routes were capable of being captured by updated legislation in order for PSB benefits to be preserved and for the regime to keep up with future developments. The position we have proposed in answer to questions 14 and 15 would accomplish this.

*Changes and challenges go beyond TV*

However, the changes and the challenges Ofcom raises extend beyond TV content to audio and news products online.

*News*

92. We are already seeing the significant impact of online platforms on news markets. A greater proportion of adults claim to use social media for news than other internet sources.<sup>66</sup> A recent Reuters Institute study also found that the majority of access to

<sup>65</sup> A <https://www.ft.com/content/2047563c-4bd6-11e7-a3f4-c742b9791d43> [last referenced 23/09/2018]

<sup>66</sup> Ofcom, News Consumption in the UK: 2018.

websites and apps is now via side-door routes (65%) rather than direct (32%).<sup>67</sup> This is contributing to problems with fake news, echo chambers and filter bubbles, all of which pose a threat to democracy.

93. Arguably, public service broadcasters with a remit to focus on the public good, are uniquely positioned to face these challenges – to provide trusted news, to break down filter bubbles and make sure that we as members of UK society don't lose sight of what we have in common. Prominence and television with its enduring popularity could be a powerful corrective force to puncture filter bubbles, as it's not based on algorithms and what people already see. However, it is likely to only provide part of the solution.
94. Outside of the scope of this consultation, we believe that UK policymakers need to consider issues beyond TV and TV like content. This is especially important given the growth of voice activated search for news services as when consumers use voice to search for "news headlines" it's completely up to whoever owns that platform which results are played.
95. As more news is consumed through voice activated devices, online and on social platforms there are increasing challenges around the findability and attribution of news content for not only the BBC but also for the UK's commercial news providers. Attribution and branding on third party platforms represents a key area of both public value for the BBC and commercial value for the wider market.
96. As set out in the BBC's Distribution Strategy<sup>68</sup>, the BBC seeks to ensure that its content and services are clearly branded and can be reliably and accurately attributed. This delivers benefits for audiences as the BBC's brands signpost the quality or tone that a user might expect from its content, thereby helping the user to make better informed content consumption choices. It also contributes to the effective functioning of competition in the content and platform markets respectively by ensuring that the user can better identify the value they receive from the licence fee whichever route they choose to access BBC content. Attribution is likely to also be an important driver of reader loyalty and willingness to pay for commercial providers of news too.
97. However, securing attribution on online platforms can, however, be highly challenging with many global companies launching their own formats to host branded news (e.g. Facebook (Instant Articles), Apple (News app), Google (Accelerated Mobile Pages), and Snapchat (Discover)).<sup>69</sup> This is likely to increase

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<sup>67</sup> Reuters Institute Digital News Report, 2018

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[http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/bbc\\_distribution\\_policy.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/bbc_distribution_policy.pdf)

<sup>69</sup> Reuters, <http://www.digitalnewsreport.org/publications/2017/i-saw-news-facebook-brand-attribution-distributed-environments/>



attribution of value to the platform at the expense of that attributed to the content provider<sup>70</sup> while also minimising exposure to the news providers' brand and full editorial offer.

98. These are issues we have raised in our responses to the Cairncross review examining the sustainability of high-quality journalism in the UK, and the DCMS select committee's inquiry into disinformation and 'fake news'.

#### *Audio*

99. We would hope that as Ofcom looks to consider legislation to fix problems with PSB prominence for TV content, policymakers will also consider how to fix other related problems such as access and prominence challenges for UK radio/audio services.

100. In the audio market similar problems are emerging to those Ofcom has identified for TV. Radio also finds itself in a value chain increasingly dominated by global players. This time of market transition has offered consumers more convenient ways of accessing audio than ever before, but changes like the growth of listening via mobile phones and other connected devices, means broadcast radio services and other UK radio/audio products are increasingly gatekept by global players.<sup>71</sup> Dashboards in cars for example are becoming a battleground for Apple (with Apple Car) and Android (Android Auto), with Spotify and other platforms fighting to be front and centre of the connected car. Indeed, investors in global streaming services are counting on the demise of linear radio. As Spotify CFO, Barry McCarthy, said recently "The 20-year trend here is linear dies, everything on-demand wins."<sup>72</sup>

101. As Ofcom considers recommending legislation to fix problems with PSB prominence for TV content, we hope it will also keep in mind the gatekeeper risks to UK audio products. This is particularly important because younger listeners<sup>73</sup> now access a wide variety of audio content through interfaces which require them to go through a third party and this is a trend which is likely to increase across all demographics. We would therefore encourage Ofcom to:

- Consider the importance of radio on linear EPGs, which comprises 5% of radio listening hours,<sup>74</sup> and the extent to which it represents part of UK audiences' expectations of the main TV platforms;
- Work with DCMS to transpose updated 'must carry' and access related conditions into UK law and make clear these could apply to broadcast &

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<sup>70</sup> [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/596835/IPOL\\_BRI%282017%29596835\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/596835/IPOL_BRI%282017%29596835_EN.pdf)

<sup>71</sup> In just over 2 years since their launch 14% now own smart speakers. Source: BBC M&A Pulse 5Minex survey by GfK, 2018.

<sup>72</sup> <https://musically.com/2018/09/17/spotify-cfo-apple-software-culture/>

<sup>73</sup> Of 16-24 year olds who listen to the radio, 47% have done so through a mobile phone (Source: Ofcom. [Technology Tracker](#). 2018). In addition, 54% of 16-24 year olds use music streaming service every week (Source: RAJAR / MIDAS. Summer wave 2018).

<sup>74</sup> RAJAR, Q2, 2018.

online radio as well as TV services. This will provide a regulatory backstop if terms can't be agreed with platforms and services; and

- Investigate and report on the gatekeeper and prominence risks to UK radio/audio services. This might be via the expected review of Digital Radio Switchover or as the result of a full Ofcom radio review. It should examine a range of audio environments, from spaces which are traditionally strongholds for radio (e.g. in car) to new nascent markets, such as voice.

102. The BBC believes that the issue of prominence is critical across all these mediums to ensure people are encouraged to consume content that delivers the purposes and characteristics of public service broadcasting that they might not ordinarily have chosen, which they have paid for and which is made for them.

ENDS.