

CHANNEL 4 RESPONSE TO OFCOM'S CONSULTATION ON PROPOSED CHANGES TO THE LINEAR EPG CODE AND FUTURE OF THE REGIME



1. **EXECUTIVE SUMMARY**

- 1.1. The UK's public service broadcasting (PSB) ecology is the envy of the world, it plays a vital role in British public life, supporting British democratic values and culture. Prominence is one of the key regulatory interventions which supports PSBs' ability to sustain their investment in UK made public service content. It ensures viewers can easily find the content Parliament has asked PSBs to produce provide, it both increases the impact and effectiveness of socially important content while also maximising its commercial viability for commercially funded PSBs – thereby incentivising continued investment.
- 1.2. However the application of the current regime is limited only to linear Electronic Programming Guides – and viewing habits are changing to include consumption away from linear TV to a wider range of platforms and devices. We therefore agree with Ofcom that it is vital that the legislative and regulatory regime that underpins prominence is updated to reflect these changes.
- 1.3. Channel 4 broadly supports Ofcom's proposals to strengthen the prominence of PSBs on linear. Given the significant and increasing shift in viewing habits and the number of new ways of accessing content beyond the linear EPG, Channel 4 also welcomes Ofcom's support for updating the regime to ensure it is fit for purpose . It is essential that PSB content continues to be easily discoverable as viewers increasingly access TV through online services.

Ofcom's proposed updates to the linear regime

- 1.4. EPG positioning remains vitally important both to enhance discoverability and for commercial PSBs to secure the revenues needed to aid in the delivery of their remits.
- 1.5. C4 supports Ofcom's proposals to guarantee C4 a slot at the top of linear EPGs and on the first page of EPGs in Wales – this will result in a significant uplift in terms of the discoverability of C4 in Wales with an **[REDACTED]** increase in share and a projected increase in revenue **[REDACTED]**. As a result of Channel 4's model all of this revenue will be reinvested back into the delivery of our public service remit.
- 1.6. C4 believes there are a number of areas where Ofcom should go further to strengthen its proposals to ensure they are effective in practice and platforms truly deliver the level of prominence Ofcom expect.
 - Ofcom should clarify that they expect platforms to have moved PSB channels to their new positions at the end of the transition period. It should not be sufficient to have simply changed an EPG policy to state the intention of promoting these channels as and when the opportunity arises.
 - Ofcom should put in place a clear policy which ensures the prominence of new PSB channels and sets a clear timeline for these channels to be moved in to prominent positions.
 - PSBs should be given first refusal on empty slots (as suggested by Ofcom in their current EPG code of practice).

Channel 4 proposals for a new prominence regime

- 1.7 Channel 4 believes there is a pressing need to update the prominence regime and welcomes Ofcom's support. The current regime only applies to linear EPGs, and while this remains an important means of access, there has been a significant and increasing shift in viewing habits and growth in new ways of accessing content.

- 1.8 Channel 4 believes there is a pressing need to update the prominence regime and welcomes Ofcom's support. The current regime only applies to linear EPGs, and while this remains an important means of access, there has been a significant and increasing shift in viewing habits and growth in new ways of accessing content.
- 1.9 There has been huge growth in new devices and interfaces for accessing content - the percentage of households with a connected TV, including streaming sticks and consoles, has risen **[REDACTED]**.
- 1.10 Platforms now push users towards their own algorithmically generated recommendations and top picks and increasingly viewers are using their voices to interact with their TV rather than their remote control. These changes have fundamentally changed how content is discovered but prominence rules don't apply to any of these new ways of finding content.
- 1.11 In recent years, there have been significant changes to the UK's media landscape with a massive increase in competition through digital switchover and the rise of online platforms. These platforms have significantly more bargaining power than PSBs and strike global deals to ensure their content is the first thing audiences see. If Government and Ofcom want to ensure PSB content remains discoverable as viewing habits change and as PSBs face unprecedented levels of competition it is vital that the rules are updated.
- 1.12 The lack of a clear definition of what Ofcom considers to be "appropriate prominence" has led to some ambiguity and the need for Ofcom to set out more detailed guidelines for linear. Given this, and the importance of ensuring the discoverability of PSB content, Channel 4 believes it makes sense for Ofcom to reposition the regime.
- 1.13 Channel 4 believes Ofcom's objective for a new regime should be to ensure PSB content is significantly prominent on all platforms that provide a significant means of access to TV like content.
- 1.14 The main Public Service Broadcasters, BBC, ITV, Channel 4 and Channel 5 have agreed a joint approach which we believe will deliver an effective updated prominence regime. This approach is outlined in more detail below but can be summarised as:
- Government should introduce legislation that extends the current regime to all licensed PSB linear services and associated on-demand services provided by one or more PSB licence holders on all major user interfaces. This includes ensuring the EPG itself receives prominence within user interfaces, extending prominence to the PSB VoD services on smart TVs and streaming sticks, and ensuring PSB content is prominent regardless of how viewers access content, including through algorithmically generated recommendations and voice search.
 - Ofcom would be empowered to apply the principles set out in legislation in a more detailed way through implementation of guidelines and enforcement.
 - Legislation should require Ofcom to define within published guidance the scope of the regime and the degree of prominence to be provided – the PSBs believe the appropriate level of prominence for PSBs is significant prominence and that this should be equivalent to the degree of prominence Ofcom have mandated for PSBs on linear.

- 1.15 Ofcom would set out in guidance the criteria by which services/platforms would fall within scope, a definition of significant prominence and would monitor, review and update these regulations over time.
- 1.16 Channel 4 believes the regime should ensure PSB services and links to those services are prominent on home pages, app menus, recommendations and search and we have laid out how we believe this should be implemented in practice as part of this response (p18, section 7).
- 1.17 There are a range of options for how Ofcom could seek to enforce the new regime, including building out the existing licensing regime with platform operators required to publish clear policies or operating a system whereby platforms are required to notify Ofcom when they fall in scope.

2. INTRODUCTION

- 2.1 Channel 4 welcomes the opportunity to respond to Ofcom's consultation on the proposed changes to the linear EPG code and the future of the regime as public service broadcasting is delivered in an increasingly non-linear context.
- 2.2 The UK's broadcasting ecology is the envy of the world and consists of a variety of different organisations with different remits, models and purposes. At the centre of this sit the UK's Public Service Broadcasters (PSBs) - the publicly owned and public funded BBC, the publicly owned and commercially funded Channel 4 and the purely commercial ITV and Channel 5. Together these broadcasters play a vital role in British public life, supporting British democratic values- helping to inform UK citizen's understanding of the world and each other, through investment in a wide range of genres from news and current affairs to film and drama. As Ofcom's own research highlights, the role of the PSB's continues to be highly valued by audiences - indeed, despite an increasingly competitive market, satisfaction with the public service broadcasters has actually increased in recent years. This may be due to the recognition that the PSBs have a particularly important role to play as a counterpoint to wider media trends - for example in a time of 'fake news' and disinformation, the PSBs are hugely valued sources of trusted, impartial information. The crucial role of public service broadcasters within the context of wider public policy debates around the impact of the digital giants has been recognised recently by both Government and Ofcom - for example we welcome Secretary of State for Digital, Culture, Media and Sport Jeremy Wright's recent statement that *"high quality and properly researched journalism is the best possible weapon in our battle against fake news"* and his commitment that the Government *"will support PSBs to ensure they continue to thrive, and stay prominent, as part of a healthy, sustainable and dynamic media landscape"*.

Channel 4's unique public service remit and model

- 2.3 Channel 4 is a public service broadcaster with a unique public service remit and mission to innovate, be diverse, present alternative views and stimulate debate. Over time Channel 4's remit has evolved; the 2010 Digital Economy Act called for Channel 4 to deliver a broader remit across all of its channels and services, recognising Channel 4's role as a PSB institution rather than a single PSB channel and enabling it to deliver its public service remit across its portfolio, including through All 4.
- 2.4 Channel 4 has a detailed statutory public service remit comprised of 15 components, including requirements: to produce high quality news and current affairs; to support and stimulate well-informed debate on a wide range of issues; to support emerging talent; and to challenge established views and promote alternative views and new perspectives. Channel 4 delivers to this remit across a wide range of genres, from the ground-breaking investigations of *Channel 4 News* and *Dispatches* through to the social issues examined in youth drama such as *Hollyoaks* and *Ackley Bridge*, from Film4's vital investment in British independent feature film such as the Oscar-winning *3 Billboards...* through to our pioneering sports coverage of the *Paralympics*, which had a tangible impact on how the British public perceive people with disabilities. Channel 4's distinctive place within the PSB system is as important as ever, given its remit for bringing challenging ideas to mainstream audiences and in particular its strong connection with young audiences, who are generally the hardest to reach with PSB content and who are at the forefront of changes in media consumption.

- 2.5 Channel 4 is a publicly-owned, but entirely commercially-funded public service broadcaster. Combined with our not for profit status this model ensures Channel 4 puts its profits back into programmes, with the ultimate objective of maximising the delivery of its statutory public service remit whilst remaining commercially self-sufficient. To do this Channel 4 uses commercially successful programming (e.g. The Great British Bake Off) to cross fund programming which is less likely to achieve a large enough audience (e.g. Channel 4 News) to be sustainable in isolation. This cross funding model is core to Channel 4's ability to maximise investment in high quality public service content across a range of genres at no cost to the British public and act as an agile and innovative "challenger brand" in the creative industries.
- 2.6 The PSBs also deliver significant economic benefits for the UK's creative economy, in particular through their support of the UK's independent production sector. Channel 4's status as a "publisher broadcaster", which commissions all of its programmes from external production companies is central to this. In 2017 PSBs accounted for the vast majority of investment in UK originated content at c. £2.6bn. In contrast while the budgets of global competitors like Amazon and Netflix vastly exceed that of the PSBs, only a small proportion of the programmes produced are UK made or reflect the lives and experiences of UK citizens. In their 2018 Media Nations report Ofcom found that;
- 2.7 *"Only a small proportion of SVoD spend is on programmes made in the UK. In March 2018, Netflix had 753 originals, of which 35 were UK-made [...] whereas Amazon only had five UK-made originals out of 174 original titles. Consequently, about 9% of Netflix's total catalogue hours were UK-produced original content, compared to 8% for Amazon Prime Video."*¹
- 2.8 This is in sharp contrast to PSBs like Channel 4 whose remit and model ensure that we prioritise investment in UK originated productions. In 2017 more than 75% of Channel 4's total content investment went on UK originated productions, and as a publisher broadcaster, all of this was invested in external production companies, helping to support c. 17,000 jobs across the UK.
- 2.9 This successful PSB ecology is the result of a number of carefully considered market interventions by policy makers, chief amongst which is the PSB compact – an agreement between PSBs, Parliament and Ofcom, as the designated regulator, through which PSBs are provided with benefits such as EPG prominence and access to spectrum, in return for the delivery of their public service obligations (in Channel 4's case in the form of its statutory remit and specific requirements such as the provision of high-quality news and current affairs).

¹ [Ofcom, Media Nations: UK 2018](#)

The current prominence regime

- 2.10 PSB prominence is one of the key interventions which supports PSBs' ability to sustain investment in content and the delivery of their public service missions. Prominence serves a dual purpose: first, by ensuring viewers can easily find the content Parliament has asked PSBs to provide, it both increases the impact and effectiveness of socially important content; second it maximises the commercial viability for commercially funded PSBs – thereby incentivising continued investment.
- 2.11 The current prominence regime was introduced as part of the Communications Act 2003 and calls for PSBs to be given *“such degree of prominence as Ofcom consider appropriate”* and gives Ofcom a duty *“to draw up, and from time to time to review and revise, a code giving guidance as to the practices to be followed in the provision of electronic programme guides.”*²
- 2.12 Ofcom's code of practice then calls for EPG providers *“to give appropriate prominence for public service channels”*³ but does not define further what this is other than to say that it *“permits a measure of discrimination in favour of PSB channels”* and to list three general principles EPG providers should comply with;
- To ensure their approach is objectively justifiable.
 - That Ofcom will consider the interests of citizens and the expectations of consumers in deeming whether appropriate prominence has been delivered.
 - To enable viewers in a region to select the appropriate regional versions of those channels
- 2.13 Whilst the current regime has led to some positive outcomes by ensuring PSB content on linear TV is largely easy for audiences to discover, it has been 15 years since it was introduced and it is now badly out of date.
- Digital switchover has led to a massive increase in the number of available channels and PSB channels do not always receive appropriate levels of prominence in channel listings.
 - There have been substantial and rapid changes in viewing habits and the ways we now access content have evolved far beyond the linear EPG that the current rules are tied to.

Market changes

- 2.14 Alongside this increase in competition, viewing habits have changed rapidly. Whilst the EPG remains an important means of access, content discovery has evolved rapidly. Video on Demand and algorithmically generated recommendations have changed the way people access content. The use of voice is also growing rapidly and has the potential to fundamentally change how content is discovered in the future but prominence rules don't apply to any of these new ways of finding content.

² [Communication Act, 2003](#) (section 310)

³ [Ofcom, EPG code of practice](#)

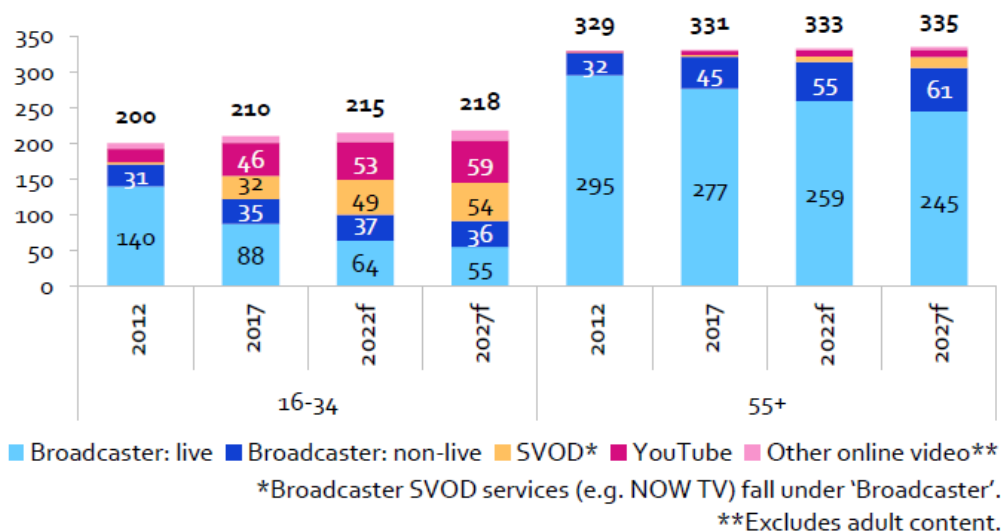
- 2.15 Since 2011 viewing has fallen amongst all age groups but this change has been particularly pronounced amongst younger viewers (4-15s and 16-24s) where viewing to live broadcast TV is down by roughly a third.
- 2.16 Despite the increase in competition, from commercial channels and global online players, PSB programming remains popular with audiences. Young people (16-24s) are still watching nearly 2 hours of Broadcast TV a day. The five main PSBs still account for over half (51%)⁴ of all TV viewing with 85%⁵ watching PSB channels every week. PSB is also still highly valued by British audiences with 78% rating the PSBs highly for showing well-made, high-quality programming.
- 2.17 TV has remained remarkably strong in large part because of the ability and willingness of PSBs to innovate. Channel 4 has a particularly proud history of innovation in this space as the first broadcaster in the world to launch a VoD service – 4oD in 2006 – which 12 years later evolved into All 4.
- 2.18 As well as being the first to launch an on demand service Channel 4 was also the first to register viewers online. Registration was launched alongside our award winning Viewer Promise and enables us to tailor programme recommendations (alongside human curation) and deliver relevant advertising to viewers. All 4 now has over 17 million registered users including two thirds of all 16-34 year olds in the UK, demonstrating Channel 4’s ability to reach audiences across different platforms and compete with other online services despite our relatively small scale. All 4 continues to grow and digital is now a £100m a year business for Channel 4 with 24% growth in our digital revenues last year.
- 2.19 As viewing habits have continued to change, Video on Demand has become a vital part of how PSBs reach audiences. Indeed, since the Digital Economy Act 2010, which recognised the value of Channel 4 delivering its remit across all of its services, All 4 has become a key part of Channel 4’s strategy to deliver its remit, particularly with younger audiences.
- 2.20 However the provision of our content beyond live linear broadcast TV is not underpinned by any form of regulatory backing to ensure it is discoverable. The combination of the entry into the market of massive global players and vertically integrated gatekeepers who do not have the same incentives and missions as the PSBs alongside rapidly changing viewing habits and interfaces which enable these players to pay for the top slots means that PSBs are increasingly at risk of being marginalised.
- 2.21 By 2022 it is estimated that just a third of all viewing by people under 35 will be from live television.⁶ There is huge growth in new devices and interfaces for accessing content - the percentage of households with a connected TV, including streaming sticks and consoles, has risen **[REDACTED]**. Despite the growth in these areas prominence rules do not apply.

⁴ [Ofcom, PSB Annual Report 2017](#)

⁵ *ibid*

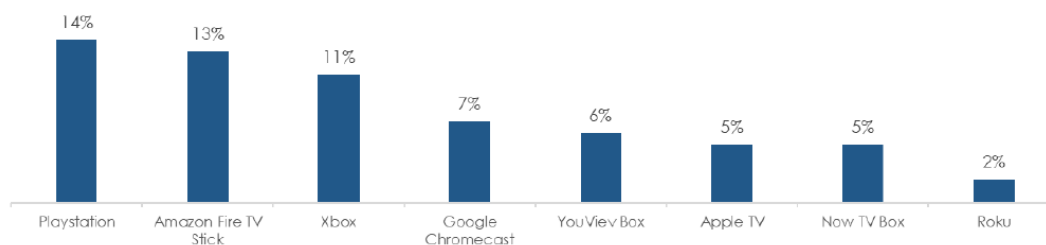
⁶ Enders Analysis, Video viewing forecasts to 2027: continued divergence by age group

Average video viewing, all UK by age group (mins/day)⁷



[Source: Enders Analysis, BARB/AdvantEdge, ONS, comScore, and industry research]

Household penetration of connected devices, 2017⁸



- 2.22 As viewing habits continue to change and the means through which people access content moves beyond the narrow prism of linear Electronic Programme Guides to algorithmically generated recommendations and voice search, it is essential that the rules which ensure PSB content is easy for audiences to find are updated to ensure they remain fit for purpose. Failure to update these rules will inevitably mean audiences find it harder to find PSB content and our ability to continue to effectively deliver our remits will be constrained.
- 2.23 We therefore welcome Ofcom's proposals to update and strengthen the existing rules on linear but believe there are a number of areas where they could go further to ensure platforms actively seek to promote PSBs.
- 2.24 We also welcome Ofcom's support for updating the regime to secure the health of the UK's PSB system as television is increasingly accessed through means other than the linear EPG and have laid out a number of areas we believe Ofcom should consider when designing a new regime.

⁷ Enders Analysis, Video viewing forecasts to 2027: continued divergence by age group

⁸ MTM survey of 1,178 respondents in late 2017. Note that Playstation and Xbox penetration may be overstated given that some owners will not utilise their TV services

3. OFCOM'S PROPOSED UPDATES TO THE LINEAR REGIME

- 3.1. Channel 4 broadly supports Ofcom's proposals to strengthen the prominence of PSBs on linear. Ofcom's more specific guidance as to what they consider '*appropriate prominence*' to mean on linear is helpful, as is the clear differentiation and levels of expected prominence between the different types of PSB (National, Local, and genre specific PSBs such as CBBC) as this provides greater clarity on what was otherwise ambiguous and has led to negative outcomes on some platforms (as evidenced below).
- 3.2. Channel 4 believes it is important that Ofcom act now to strengthen the regime because there have been a number of recent troubling examples of platforms implementing policies which could undermine the discoverability of PSB programming. For example Virgin Media's (VM) review of its EPG policy in May 2017 proposed further discretion over the prominence they had to give to PSBs – including tying the provision of certain rights, content and features to prominence. VM's new policy now enables them to consider "*the content on the channel*" and the "*The breadth and attractiveness of distribution rights and features across devices and access points granted by the channel to VM and to be made available to VM customers*" (amongst other things) when applying the requirement for appropriate prominence.
- 3.3. Channel 4 fundamentally disagrees with this policy. It is not for Virgin Media or any other third party to decide what is and is not a PSB. Nor is it for Virgin Media to judge "*the extent of the public service remit and content on the Channel*". Channel 4 and other Public Service Broadcasters are given their status as PSBs by Government through powers provided by Parliament. This status is enshrined in statute and sets out the distinct public service roles and missions for each of the PSBs. It is for Parliament to decide the extent of a PSBs remit and it is for Ofcom and Parliament to judge the how well those remits have been delivered.
- 3.4. As Ofcom outline, the positioning of channels on the linear EPG has a direct and substantial impact on their viewing figures and their ability to generate revenues. Channel 4 has experienced this first hand in recent months.
- 3.5. E4's recent move up the Virgin Media EPG (from 138 to 106) following a competitive bidding process resulted in a **[REDACTED]** increase in share which corresponds to an increase **[REDACTED]** in ad revenue and similarly the move of 4Seven from 195 – 143 on Virgin Media resulted in an **[REDACTED]** uplift. Conversely Sky's recent decision to relegate +1 channels down their EPG has resulted in a **[REDACTED]** loss of viewing to Channel 4's +1 services – we calculate that these changes could cost Channel 4 **[REDACTED]**.

Channel 4 in Wales

- 3.6. The importance and value of an improved EPG position should not be underestimated, and Ofcom's proposals for the listing of PSB channels in Wales to guarantee Channel 4's main PSB channel a slot on the first page of all EPGs in Wales are significant. Channel 4 therefore welcomes this proposal.
- 3.7. Channel 4 accepts that there are citizen benefits to be gained from ensuring S4C remains in its current prominent position. However, ensuring Channel 4 is also guaranteed a slot on the first page of EPGs in Wales will have a positive impact, both in terms of enabling Channel 4 to reach as wide an audience as possible to effectively deliver its remit (particularly at a time

of greater emphasis on reflecting the whole of the UK on screen) and also ensuring it can maximise its viewing share, and therefore the revenues it can generate from advertising.

- 3.8. Our internal modelling suggests that moving Channel 4 up to the first page of EPGs in Wales will result in a significant uptick in our reach and discoverability in Wales with a **[REDACTED]** increase in share for Channel 4 (total) in Wales. This equates to an increase in overall national share **[REDACTED]** which we calculate could result in an uplift in revenues **[REDACTED]**

Strengthening Ofcom's linear proposals

- 3.9. There are a number of areas in which Channel 4 believes Ofcom should seek to strengthen its proposals to ensure they are effective in practice and platforms truly deliver the level of prominence Ofcom expect.
- 3.10. In particular, Channel 4 believes Ofcom's proposals to require platforms to move PSB channels up the EPG should go further. Currently Ofcom's proposals call for
- The main 5 PSB channels to be guaranteed the top five slots UK wide (excluding Wales)
 - Channel 4 should be guaranteed a position on the first page of EPGs in Wales
 - BBC4 should be guaranteed a slot in the top 3 pages of any EPG
 - Genre specific channels (BBC News, CBBC etc) should have guaranteed slots on the first page of the relevant genre section.
 - BBC Alba and BBC Scotland should have guaranteed slots in the top 3 pages of any EPG in Scotland
 - S4C, BBC Alba and BBC Scotland should have guaranteed slots within the top 3 pages of UK-wide EPGs
 - Local TV services should be located within the top 3 pages of any EPG.
- 3.11. Ofcom also propose that platforms implement these changes within 12 months of the EPG code of practice being changed.
- 3.12. Channel 4 believes it is right that Ofcom have laid out a clear set of expectations and a realistic timescale in which they would expect these to be delivered. The linear EPG is a settled interface and a lack of clear guidance up until this point has led to a wide variety of outcomes, many of which do not deliver prominence for PSBs.
- 3.13. However, Channel 4 believes it is important that Ofcom clearly outline an expectation that these channels will be moved within the 12 month period outlined and that this objective cannot be met through a simple revision to an EPG policy which states the aim to achieve these changes over time.
- 3.14. There is limited frequency to slots higher up the EPG becoming available because Channels rarely shut down. Therefore, Channel 4 does not believe that a policy change which relies on making substantive changes only when the opportunity arises would be an acceptable response. We recommend that Ofcom clearly outline an expectation that these channels will be moved within the 12 month period outlined and that this objective cannot be met through a simple revision to an EPG policy which states the aim to achieve these changes over time.

- 3.15. Ofcom's clarification around the expected positioning of PSB channels and the differentiation in the level of prominence expected for the main PSBs, genre specific PSBs and Local TV channels is helpful. However, for maximum clarity, Ofcom should make it clear what their expectations would be for newly launched PSBs were they to arise. Channel 4 believes it is important that Ofcom clearly outline that, as with their current proposals, there would be an expectation that any newly launched PSB channel was given a prominent position (e.g. on the first three pages) on all EPGs within a set time period (e.g. 12 months from launch).
- 3.16. Channel 4 also notes that in Ofcom's current EPG code of practice, Ofcom lay out a number of principles EPG providers should comply with and give two clear examples of policies which platforms and EPG providers could adopt under the existing prominence rules. One of these examples states that the principles would *"justify giving public service channels first refusal on vacant listings higher in the category that they were placed."*⁹
- 3.17. Channel 4 notes that while Digital UK have implemented this suggestion as part of its policy on Freeview it has not been adopted by Pay TV platforms.
- 3.18. Channel 4 believes that as a general principle Platforms should seek to promote PSB content wherever possible and opportunities which arise to increase the prominence of PSB channels should be taken. Channel 4 therefore believes that Ofcom should clarify that as part of the requirement to deliver prominence for PSBs, the EPG policies of platforms should clearly state that PSBs will receive first refusal – and for the avoidance of doubt, at no charge - on any vacated or newly available slots.

4. CHANNEL 4 PROPOSALS FOR A NEW PROMINENCE REGIME

- 4.1. Given the significant and increasing shift in viewing habits and the number of new ways of accessing content beyond the linear EPG, Channel 4 believes there is a pressing need to update the regime. We therefore welcome Ofcom's support for updating the regime to ensure it is fit for purpose and PSB content can continue to be easily discoverable. Indeed Ofcom put it best when they first indicated their support for updating the rules in their 2015 PSB report;
- 4.2. *"The current rules on schedule prominence for the PSBs were designed for an analogue broadcasting era. They need to be reformed to match changes in technology and ensure that public service content remains available and easy to find, in whatever way it is viewed."*¹⁰
- 4.3. Our approach in developing proposals for reform has been aimed at ensuring the legislation contains principles that are flexible enough to account for technological change, but provides strong and broad powers for Ofcom so that the regime has sufficient 'teeth' to ensure compliance.

⁹ Ofcom, Code of practice on electronic programme guides

¹⁰ [Ofcom, Public Service Broadcasting in the Internet Age, 2015](#)

- 4.4. Channel 4 believes that in order to be effective it is essential that the new regime should learn the lessons of the current regime. It should adopt the same principles based approach as the existing regime but – unlike today - should provide clear guidance as to what level of prominence is expected and should not be tied to a particular technology, device, interface or means of accessing content as is the case with the current regime.

Objectives for a new regime:

- 4.5. Channel 4 believes a new prominence regime must start with a clear objective in mind, Channel 4 believes this objective should be;

To ensure PSB services are significantly prominent on all platforms that provide a significant means of access to TV like content.

- 4.6. Ofcom should then list a series of practical outcomes they want to achieve with a clear indication that they expect PSBs to receive significant prominence, and clear guidance on where it should be applied.
- 4.7. Ofcom should then list a series of practical outcomes they want to achieve with a clear indication that they expect PSBs to receive significant prominence, and clear guidance on where it should be applied.
- 4.8. The regime should ensure that PSB services and the content from these services is easy for viewers to find regardless of how they are accessed (via search, recommendations, VoD menus etc.) It should ensure the prominence of PSB linear channels and associated VoD services provided by PSB licence holders, including links in to those services, and collections of content under the branding of these services.
- 4.9. The regime should cover the user interfaces (UIs) of all platforms, devices and services that are used by a significant number of people in the UK to consume TV or TV-like content, or designed to access to TV or TV like content (further detail on p17, section 6).
- 4.10. UIs now go well beyond linear EPGs. While there may legitimately be areas of UIs where PSB prominence cannot (or should not) be granted, it is important that the new rules ensure prominence of PSB services in whichever areas of the UI are widely used by audiences or segments of audiences, or are viewed by platforms or PSBs as increasingly important in surfacing content to consumers. This is likely to include but not necessarily be limited to homepages, linear EPGs, VoD player landing pages, search and recommendations. This means it should also include areas where individual programme assets are used to promote discovery rather than service brands.
- 4.11. As well as prominence within individual routes to content discovery, it is important to ensure that PSB is prominent within UIs as a whole. This means ensuring that those functions most commonly or increasingly used to access content, such as linear channel lists and VoD landing pages, are themselves prominent within the UI.

Principles:

- 4.12. In order for the new regime to be effective, future proof and give platforms room to innovate Channel 4 believes it should be principles based. In designing the new regime Channel 4 believes Ofcom should consider the following principles.

Significant prominence: As Ofcom construct a new regime we believe it is important to set out clearly what level of prominence is expected, as the lack of a clear definition of what Ofcom considers to be “appropriate prominence” has led to some ambiguity and the need for Ofcom to set out more detailed guidelines for linear. Ofcom acknowledge this in their decision on the dispute between Virgin Media and London Live.

“Ofcom wishes to see public service channels given easily discoverable positions on EPGs, and it is our view that the discretion afforded to EPG providers under the existing Code may not achieve the policy aims of the legislation. Consequently, it may be appropriate for Ofcom to be more specific as to the outcomes which are to be secured in granting prominence to public service channels.”

Given this, and the importance of ensuring the discoverability of PSB content, it makes sense for Ofcom to reposition the regime as one that secures “significant prominence” for PSBs. In practice, Channel 4 believes that this should be a broadly equivalent level of prominence Ofcom have prescribed for the main PSB channels on linear EPGs whilst still giving platforms room to innovate. Channel 4 has outlined what we believe significant prominence should look like in practice below (p18 section 7).

Technology Neutrality: One of the primary flaws of the existing regime is that it ties the discoverability of PSB programming to one very specific form of accessing that content, the linear EPG. Channel 4 believes it is vital that in the creation of any new regime, the rules are designed to be flexible enough to adapt as viewing habits change. That means that rules must be technology neutral, and be flexible enough to be able to apply to any platform or device which provides access to TV and TV like content. The rules should also have a neutral application across all different forms of user interface and means of content discovery. They should not be tied to just the linear EPG or any other form of access and should be flexible enough to deliver prominence regardless of how viewers choose to access content, now or in the future.

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. PSBs effectively pay for this privilege through the delivery of their Licence obligations and public service remits.

Attribution: There should be clear attribution back to the originating PSB where content is listed, promoted or accessed within a disaggregated UI or listed separately from the player. The impact and reach of our content has always relied on our ability to convince viewers to come back for more and clear attribution will be vital to achieving this in a crowded online market.

Content-provider led: where routes to content are programme-led rather than service-led, it should be for PSBs, not platforms, to curate which of the programmes contained within their services should be promoted in prominent positions.

A framework for a new regime

4.13. The main Public Service Broadcasters, BBC, ITV, Channel 4 and Channel 5 have agreed a joint approach which we believe will deliver an effective updated prominence regime. This approach is outlined in more detailed below but can be summarised as:

- Government should introduce legislation that extends the current regime so that all licensed PSB linear services and associated on-demand services provided by one or more PSB licence holders are 'significantly prominent' on all 'major user interfaces' (e.g. smart TV's, set top boxes, streaming sticks etc.) that are used by a significant number of people.
- Ofcom would then be empowered to apply the principles set out in legislation in a more detailed way through implementation of guidelines and enforcement.
- Legislation should require Ofcom to define within published guidance:
 - The scope of the regime
 - The degree of prominence to be provided

5. A JOINT PSB APPROACH

5.1. 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.

5.2. Desired outcomes for a new prominence framework

Specifically, these outcomes 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 (further detail laid out on p17 section 6). 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 should determine.¹¹

5.3. Setting out parameters of a new prominence framework

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

¹¹ 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.

- **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 have significant appeal to consumers¹². 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.

5.4. Considerations for the new framework

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.
- **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

¹² For example, linear EPGs remain a popular way to access programmes yet a platform might chose to make the EPG much less prominent

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.

5.5. Implementation of new framework

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.

6. SCOPE

- 6.1. Channel 4 does not believe it would be proportionate to design a regime which automatically applies to all platforms and means of accessing content so appropriate thresholds should be put in place to ensure only major user interfaces or platforms which are a "used by a significant number of people" are caught.
- 6.2. The use of "*significant*" as a threshold is already established in the Communications Act 2003 in measuring the usage of a platform. This is not given a specific numerical definition in the Act but for these purposes there are a number of criteria that could be taken into account when Ofcom determines which platforms are in scope:
 - **Purpose:** Whether the primary purpose of the device or platform is to access TV-like content (e.g. Smart TVs, Set top boxes, streaming sticks)
 - **Usage:** The degree to which a device or platform is used to access TV like content, regardless of whether that is the primary purpose of the platform.
 - **Penetration:** The proportion of the UK population or population segment with access to the device or platform.

- **Audience Volume:** The proportion of audiences (or audience segment) in the UK who use the platform to access TV-like content.
- **Viewing:** The proportion of viewing to the PSB service accounted for by the device or platform.

- 6.3. Channel 4 would therefore expect the regime to cover all means of accessing content – and thus have the potential to include web search engines and social media platforms - but that any rules would only apply if and when such services meet the thresholds as defined by Ofcom.
- 6.4. These thresholds should be applied on a case by case basis rather than to broad categories of service and take into account the different stages of a platform’s development and its trajectory in terms of the provision of TV like content.

7. SIGNIFICANT PROMINENCE IN PRACTICE

- 7.1. Channel 4 believes that, as part of any new regime it will be important for Ofcom to set out a number of clear examples, based on settled user interfaces, which detail the level of prominence they expect platforms to deliver. These could include;
- 7.2. **Home pages:** each home page of a UI will be designed differently and it would be wrong for Ofcom to prescribe exactly what a home page should look like. However, we believe that at minimum, the home page of a UI should ensure the linear EPG is given a significantly prominent position, ideally not more than one click away. Additionally, if the home page displays on demand TV services e.g. Netflix, or links to content from those services, the PSB services and content from these services should be significantly prominent within that line-up. We note that Ofcom echo this sentiment in their existing EPG code of practice, noting the principles they outline would *“justify a decision by an EPG operator using a menu-based approach to position public service channels no more than ‘one click’ from the home page.”*¹³
- 7.3. **App menus:** where a platform is providing access to an app menu through which other TV apps are accessed (often in the form of a tile based interface), be it on the home page or as part of a separate interface beyond the home page, Channel 4 would expect the PSBs to be significantly prominent. In practice this means that the first 4 tiles of the menu should be reserved for the main PSB players and therefore equivalent to the level of prominence PSBs receive on the linear EPG.
- 7.4. **Recommendations:** where the platform has had a role in curating recommendations, each PSB should be allocated a top slot, a significant proportion of the overall recommendations should be allocated to content from PSB services and PSBs should be in control of which pieces of content are shown. Where recommendations are purely based on user preferences PSB content should be inserted at regular intervals as an opportunity to disrupt and challenge these preferences.

¹³ [Ofcom, EPG code of practice](#)

- 7.5. **Search:** In the context of this paper Channel 4 considers that “search” covers both text search and voice search. However, Channel 4 acknowledges that the use of voice as a means of content discovery is growing and Channel 4 believes it will become an increasingly important paradigm in the future. It is therefore vitally important that Ofcom closely monitor the impact of voice and how best to ensure PSB can continue to be discoverable as the use of voice grows.
- 7.6. While there are important differences between text and voice input, namely that voice is more suited to delivering one answer rather than a list of potential options, we expect that delivering prominence in either situation will be similar in many instances.
- 7.7. Channel 4 sees significant benefits in the use of artificial intelligence, machine learning and the use of algorithms to improve the user experience for both search and recommendations but we believe there should be scope within the use of these technologies to promote PSB content as is currently the case with Google search results surfacing paid for search results. This should not result in users receiving irrelevant recommendations or search results that are against user interests but algorithms should be tweaked to ensure the benefits of PSB content can be surfaced easily.
- 7.8. In practice, for specific searches for programmes (e.g. play Game of Thrones), or non-specific searches which have a clear answer (play the programme with dragons and kings) there should be no place for PSB prominence to interrupt the user journey. However where viewers are making a general search (e.g. show me comedies) and the platform essentially defaults to recommendations, the same prominence principles should apply as above.
- 7.9. Where there is an unspecific search requesting a specific action (e.g. show me a good comedy) prominence should apply and platforms should seek to ensure the majority of times a PSB programme is shown and that other organisations cannot pay to be a more likely result than a PSB.
- 7.10. **Remote controls:** remote controls are a special case given that they require changes to hardware and developing a unique remote control for the UK market. Channel 4 has sympathy with the view that this may not always be proportionate and overall our proposed updates to the regime are focused on software not hardware. However, Channel 4 notes that the remote control is an extremely important form of access, as evidenced by the increasing number of global commercial deals being struck by Netflix, Amazon and YouTube in particular for the presence of specific prominent buttons which directly link viewers to their services. Channel 4 believes that where manufacturers are offering dedicated buttons to access other VoD services the same should be extended to PSBs. However given the limited real estate of a remote control Channel 4 does not believe it would be proportionate to expect device manufacturers to provide buttons for each of the main PSBs. However, where device manufacturers are offering dedicated buttons to access other services Channel 4 believes they should also maintain a direct link to PSB content, for example by maintaining the ‘TV Guide’ button.

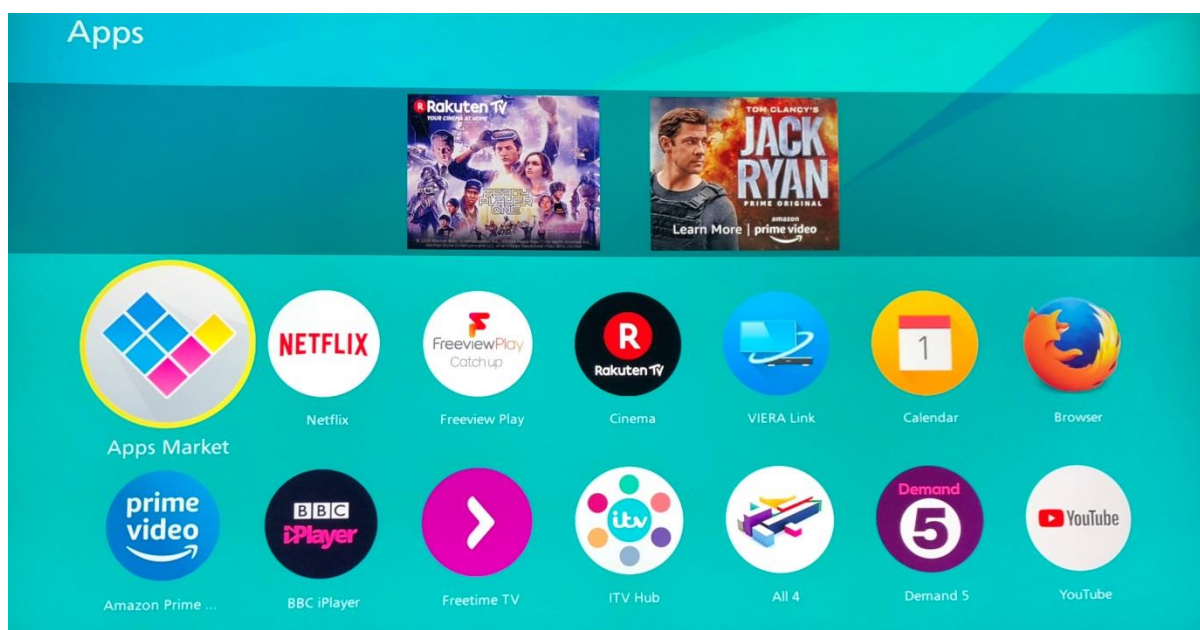
Freeview Play

7.11. The regime outlined above will enable platforms and TV manufacturers to continue to innovate and design different UIs whilst being guided by a clear set of principles to deliver prominence for public service content. Channel 4 notes that much of the above is already implemented via Freeview Play without inhibiting either platform innovation or active viewer choice. As a result platform interfaces which use Freeview Play vary widely, for example:

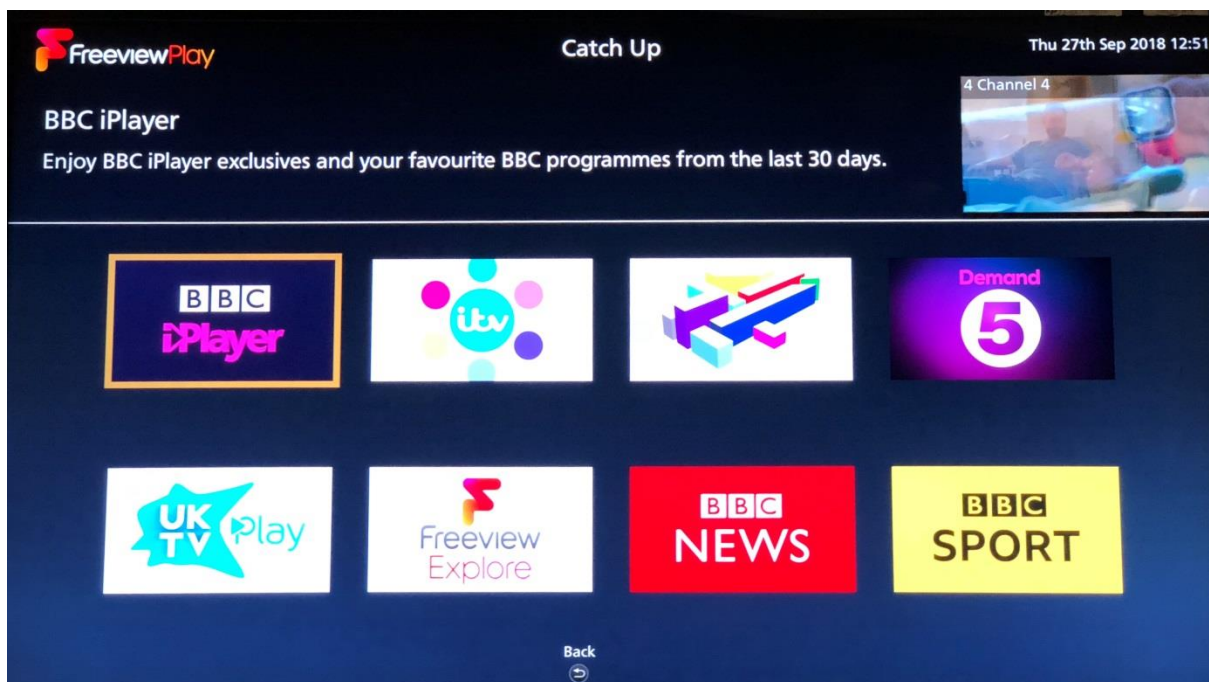
- Panasonic's 'quick look' guide, bringing together live discovery and OD recommendations in a single, image driven UI;
- Sony's backwards EPG, integrating access to recommended OD content, discoverable by recency, genre and brand;
- LG's universal search, bringing together prominent results from Freeview Play Content Providers with those from third parties making their content available through LG's Smart TV UIs (e.g. YouTube and Netflix).

7.12. However, the principles Digital UK try to deliver through Freeview Play are subject to commercial negotiations so do not always deliver optimal outcomes as even those platforms who take Freeview Play are still able to do commercial deals to sell off the top slots on their version of the user interface.

7.13. **Panasonic App menu UI:** Netflix and Amazon receive the most prominent slots with Freeview play (next image) and iPlayer in the next most prominent slots.



7.14. **Panasonic Freeview Play Catch Up menu:** Once users click in to the Freeview Play Catch Up app it lists PSB players in order



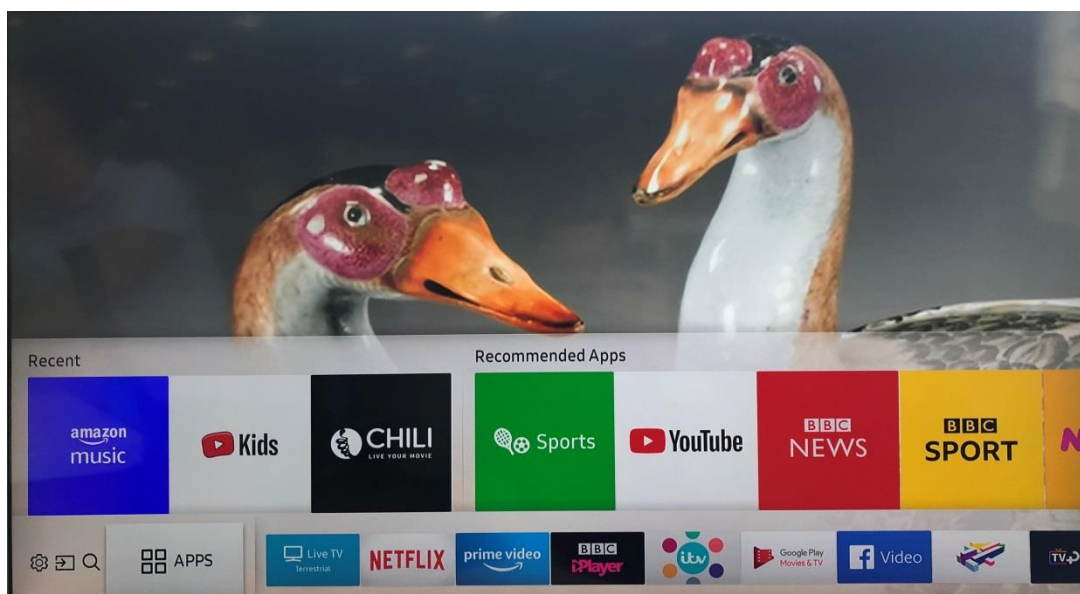
7.15. [REDACTED]

7.16. **LG Web OS 2017:** An example of how PSB apps have had to settle for a reduced level of prominence because of the commercial agreements already made by TV manufacturers.



7.17. There is an important role for Ofcom and Government to ensure PSB content is discoverable in these content discovery paradigms. The consequence of a lack of rules beyond the linear EPG is that the natural market outcome is a negotiated compromise that fails to ensure PSB content achieves prominence and as more services launch it is likely that prominence will become harder to achieve.

- 7.18. Were Ofcom to provide strong guidance around what they consider to be significant prominence in more settled parts of the non-linear UI, - for example, setting out the expectation that PSB VoD player apps were given equivalent prominence to the PSB linear channels in a linear EPG - this could enable Digital UK to implement this with their manufacturer partners, armed with the strength and backing of the regulator.
- 7.19. Additionally, not all TV manufacturers offer Freeview Play as part of their interface, including the largest TV manufacturer in the world Samsung. Digital UK project that Samsung will sell 30% of all Smart TV sets in 2018.
- 7.20. Samsung have implemented their own user interface and PSBs have to negotiate with Samsung to achieve prominence. This results in a variety of different outcomes for PSBs depending on their size and influence.
- 7.21. **Samsung 2017 user interface:** All 4 is the last available app behind Facebook, Google, Amazon and Netflix – while BBC and ITV have achieved better positions, My 5 is not visible.



- 7.22. While All 4 is on the home page on Samsung's 2017 TV's, on 2018 models the home page has changed and as a result All 4 is occasionally hidden from view. On 2018 models Samsung have promoted their TV plus tile [REDACTED] and also occasionally include a sponsored tile which advertises different content. When this sponsored tile appears, All 4 is pushed further to the right and is barely visible on the front page.

8. OFCOM'S PRINCIPLES

- 8.1. In addition to the outcomes and principles outlined above, Channel 4 broadly agrees with the set of three principles or ground rules set out by Ofcom, covering personalisation, consumer choice and search transparency. However in some cases, Channel 4 believes exceptions should be considered to ensure these principles lead to positive outcomes.
- **Personalisation:** We agree that the user should be free to personalise interfaces as they see fit. However, where there is active involvement from the platform (e.g. providing users suggesting users with a suggested list of favourite channels for their adoption) PSBs should be given prominence.
 - **Consumer choice:** Channel 4 agrees functions like “resume” or “recently watched” should be out of scope. However Channel 4 does not agree that it is reasonable to say that, as recommendations are based on viewer preferences they should be exempt from PSB prominence rules. Social media algorithms designed to do the same have led to a number of negative outcomes including the creation of filter bubbles and echo chambers. Whilst we are not seeking to remove the ability of platforms to provide ‘Because you watched xxx,’ recommendations, we believe these need to be balanced with the prominence provision of PSB recommendations which will help to challenge established views and set preferences. This is vital to maximising the societal value of PSB as viewing increasingly moves online.
 - **Search transparency:** C4 agrees search should be transparent, and that this should apply across the board, not just for PSB. So where a search result is paid for or otherwise influenced by a commercial relationship - including ownership of a content provider by a platform – this should be clearly marked as an advert.
- 8.2. In order to ensure maximum flexibility we believe the best approach to deliver prominence for PSB content in an online world should be based on principles that are technology and device neutral, with guidance setting out how prominence should be applied across different and emerging platforms. We have therefore set out our proposals above with this more holistic approach, rather than breaking down how a regime would apply platform by platform. However for the purposes of providing maximum clarity, we summarise our approach within the themes set out by Ofcom in their consultation document.

9. LEGISLATIVE AND REGULATORY IMPLEMENTATION

- 9.1. We believe that as far as possible implementation of these reforms should mirror the current linear regime. It should therefore have three parts:
- Legislative underpinning setting out the required outcomes
 - Regulatory enforcement through Ofcom (Ofcom responsible for setting out and updating guidance on how the regime should operate in practice and monitoring compliance)
 - Platforms responsible for setting out how they will comply with guidance
- 9.2. We agree with Ofcom that legislative reform is necessary in order to modernise the current framework. These changes could be achieved through a simple strengthening of the concept of “appropriate prominence” to “significant prominence”, and to expand the scope of who that legislation applies to by extending the definition of an electronic programme guide.
- 9.3. We believe that the reforms we are proposing in this consultation response could be captured in a similarly straight-forward amendment in primary legislation – for example

through a vehicle such as the Government's forthcoming Internet Bill, or other forthcoming legislation relevant to communications and technology. We note that Ofcom have already identified that if Parliament wishes for PSB to remain easy to find, then new legislation is needed. We therefore urge Ofcom to reiterate the importance of this and urge Government and Parliament to identify the right vehicle for this reform arising out of this consultation.

- 9.4. Following the successful passage of legislation, Ofcom would then be empowered to implement and oversee new regulations that will enforce the regime. Ofcom should also be able to review and update these regulations over time. C4 believes that an appropriate regulatory framework, drawing on the extension of the definition of an EPG in legislation, would, in practice, mean that Ofcom would set out in guidance the criteria by which services/platforms would fall within scope, and a definition of significant prominence.
- 9.5. Ofcom could also provide a series of clear examples of the level of prominence expected, based on settled user interfaces, (e.g. Tiled app menus). These examples should not prejudice the ability of platforms to design their interfaces as they see fit and should merely act as guidance of what level of prominence Ofcom expect (detail below). This will help to avoid the vastly different interpretations of what constitutes prominence that have led to some negative outcomes on linear, which Ofcom have sought to correct through this consultation.
- 9.6. This would ensure that those services and PSBs would have maximum clarity about what is required of them. Ofcom would set out a code of practice and in turn each provider would develop and publish its own UI policy outlining how they will deliver prominence, consistent with the regulations.
- 9.7. The onus would be for services that fall in scope to notify Ofcom; or for PSBs providing content to those services to do so. Ofcom could have a role in monitoring the market and identifying services that may not have applied but meet the threshold requirements as outlined above. This determination would be based on market available data such as Ofcom's own annual communications market report and the PSBs could also play a role in highlighting trends in viewing and emergent market activity. Similar to the regulation of on demand programme services, this would be based on a notification system, with powers for Ofcom to intervene in the case of dispute; with ultimately recourse to the courts if disputes cannot be resolved. This has the benefit of enabling the market to operate at speed as new services come on stream.
- 9.8. An alternative model would be to introduce a licensing system - whereby providers would have to apply for a licence. We note the recent example of Amazon requesting and being granted a licence from Ofcom in order to broadcast live coverage in the UK of the US Open tennis championship, after initially believing it did not require one. This approach would have the benefit of providing greater certainty and a greater level of enforcement.

Summary of legislative and regulatory reform

- Legislative update to Comms Act to strengthen prominence definition and scope
- Ofcom set out Code of Practice outlining expectations for prominence in practice
- Platforms to set out UI policies
- Services notify Ofcom that they are in scope of legislation
- Services set out their Prominence Policy in line with Codes of Practice
- Ofcom responsible for overseeing compliance and potential breaches of Code of Practice

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?

Yes. While this reflects common practice across UK linear platforms it is important to give PSBs certainty of their positioning for the future.

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?

Yes. Channel 4 accepts that there are citizen benefits to be gained from ensuring S4C remains in its current prominent position. However, ensuring Channel 4 is also guaranteed a slot on the first page of EPGs in Wales will have a positive impact, both in terms of enabling Channel 4 to reach as wide an audience as possible to effectively deliver its remit (particularly at a time of greater emphasis on reflecting the whole of the UK on screen) and also ensuring it can maximise its viewing share, and therefore the revenues it can generate from advertising.

Our internal modelling suggests that moving Channel 4 up to the first page of EPGs in Wales will result in a significant uptick in our reach and discoverability in Wales with a projected **[REDACTED]** increase in share for Channel 4 (total) in Wales. This equates to an increase in overall national share **[REDACTED]** which we calculate could result in an uplift in revenues **[REDACTED]**.

Q3) Do you agree that BBC Four should be guaranteed a slot within the top three pages of all EPGs?

Yes. Channel 4 believes that all Ofcom's approach to designate different levels of prominence to different PSBs is the right one and that non genre specific PSBs like BBC Four should be within the first three pages of the EPG.

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?

Yes. Channel 4 believes it is important that these Channels are easily discoverable and agrees with Ofcom's approach to ensure these channels are given first page prominence in their respective genres.

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?

Yes. See response to Q4.

Q6) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs?

Yes. See response to Q3.

Q7) Do you agree that local TV should be guaranteed prominence within the first three pages of UK wide EPGs?

Yes. See response to Q3.

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?

Yes. See response to Q3.

Q9) Do you agree that local TV should be guaranteed prominence within the first three pages of relevant regionalised EPGs?

Yes. See response to Q3.

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

No. If users seek out HD content by navigating to the HD section of the EPG they should find the channels in the order they would expect – mirroring how the channels are placed at the top of the EPG.

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?

Yes but broadcasters should not be compelled to swap SD and HD variants, either by Ofcom or by platforms. Given the regionalised nature of some channels it will be difficult to

simply swap SD and HD variants but Channels should be free to do so and prominence should be attached to whichever variant of the service they choose.

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

Yes, Channel 4 believes it is important that Ofcom set a clear deadline for their proposals and believes that a 12 month transitional period is a reasonable length of time to enact the changes Ofcom have outlined. However Channel 4 also believes it is important that Ofcom introduce a minimum period by which platform should deliver prominence for any newly launched/designated PSB channels.

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

Yes. Channel 4 agrees with Ofcom's proposal that the rules should be expanded to cover the prominence of the EPG itself. There is clear evidence that Pay TV platforms and Smart TV manufacturers have increasingly sought to work around the prominence rules by burying the linear EPG deep within their user interfaces. Instead, they are promoting their own content or the content of those who have paid for the privilege by pushing users to unregulated areas.

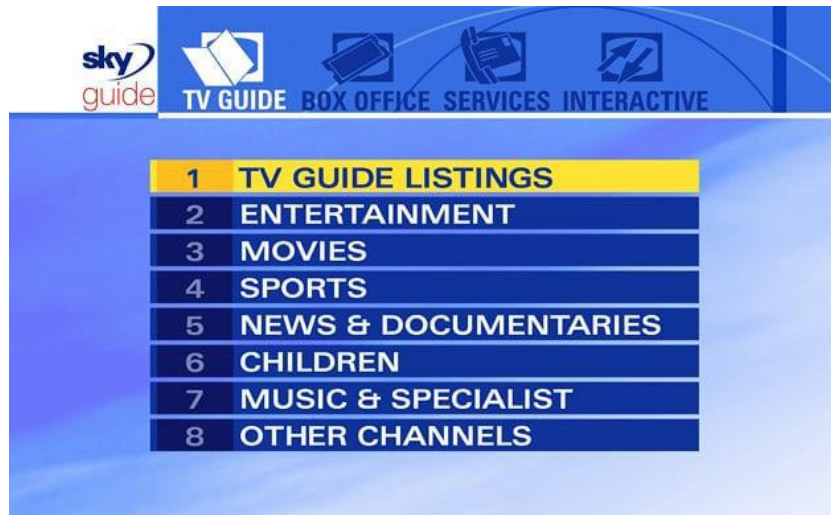
The linear EPG still plays a vital role in enhancing the discoverability of PSB content, despite changing viewing habits. Indeed, as Ofcom note, BARB's lifestyle insights questionnaire highlighted that it is still the most used means of finding out what's on TV for almost all age groups.

When Sky launched their newest platform, Sky Q, in 2016 it effectively bypassed the prominence rules by burying the linear EPG itself deep within the interface whilst keeping PSBs prominent within that EPG. Instead of landing on the guide as was the case on their previous platforms, viewers landed on a top picks section, and Channel 4 was placed a total of eleven clicks from the home page. Although Sky have since changed the interface to bring the EPG further up the main menu Channel 4 remains 6 clicks from the homepage.

Research conducted by Decipher at the end of 2016 found that 77% of the programmes featured in this top picks section were Sky branded, with no other provider receiving more than 6% and no PSB receiving more than 4%.¹⁴

¹⁴ Decipher observational research, December 2016

Sky Digital EPG (1998): EPG easily accessible with a single click from the homepage



Sky + homepage (2016): EPG remains one click from the homepage but is now accompanied by curated on demand recommendations with graphical icons



Sky Q home page (2016): EPG now 6 swipes and 1 click from the home page with curated on demand, box sets and Sky Store all more easily accessible.



As such, given the incentives for platforms to deprioritise the linear EPG in favour of pushing users to areas of the interface which are unregulated and for which they can charge providers for the most prominent positions, Channel 4 believes it is essential that the prominence regime is expanded to ensure the EPG itself remains discoverable, ideally not more than one click away. However, depending on the effective implementation of other reforms, this regulatory protection could be reviewed over time.

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

Yes. Channel 4 believes the factors outlined by Ofcom are broadly the right ones.

What degree of prominence is desirable?

As Ofcom construct a new regime it will be important to clearly set out what level of prominence is expected whilst also ensuring guidance is not prescriptive and gives platforms room to innovate.

Channel 4 believes Ofcom should be clear that in practice platforms should look to deliver a significant level of prominence for PSBs and that this should be a broadly equivalent level of prominence given to the main PSB channels on linear EPGs.

What metrics should define prominence?

Channel 4 believes that the best approach for designing a future regime is a principles based regime sitting alongside clear guidance, based on settled interfaces. A regime based on hard and fast rules for number of clicks or swipes risks being out of date before it is passed into law. However Ofcom should provide clear examples of the level of prominence they expect platforms to act as guidance for platforms when designing user interfaces.

What types of content should benefit from prominence?

Channel 4 believes it is important that Prominence is given to PSB services and associated VoD services provided by PSB licence holders including links in to those players, and collections of content (services) under the branding of these players should receive prominence.

All 4 plays a vital role in the delivery of our public service remit by expanding and maximising the reach of our content especially amongst younger audiences. This was formally recognised when, as part of the Digital Economy Act 2010, Parliament recognised that Channel 4 should seek to deliver its remit across all of its services, not just the main channel.

Channel 4 has always operated a model whereby it effectively cross funds the programming it commissions by using commercially successful programming, like the Great British Bake Off to pay for programming which is less commercially sustainable but high is PSB value, like Channel 4 News. This model will remain just as important and relevant in the online world.

All 4 is increasingly the primary form of accessing our content for many of our viewers, last year All 4 views increased to 719m (up 16% year on year). This is especially true for our younger viewers, indeed nearly half of the viewing from the 16-34 audience to programmes including *Derry Girls*, *Who is America?* And *The End of the F***ing World* happened on All 4.'

All 4 hosts all of the content that has been broadcast on our main linear public service channel and includes programming from our other, non PSB licenced channels including E4, More 4 and Film 4 as well as All 4 dedicated content like that in our Walter presents strand and our latest partnership with Vice.

As outlined above Channel 4 delivers its remit across all of its channels and services which gives Channel 4 the flexibility to better target programmes like *Skins*, *Misfits*, *Youngers* and *My Mad Fat Diary* by placing them on E4 (despite it not being a licenced PSB) because it attracts a younger audience than our main Channel.

Channel 4 does not believe that the inclusion of content which was not broadcast on the main linear channel compromises All 4's public service value. On the contrary we believe it strengthens it.

What platforms, services or devices should be captured?

One of the primary flaws of the existing regime is that it ties the discoverability of PSB programming to one very specific form of accessing that content, the linear EPG. Channel 4 believes it is vital that in the creation of any new regime, the rules are designed to be flexible enough to adapt as viewing habits change. That means that rules must be technology neutral, and be flexible enough to be able to apply to any platform or device which provides access to TV and content. The rules should be flexible enough to deliver prominence regardless of how viewers choose to access content, now or in the future.

What elements of navigation interfaces should be captured?

Technology neutrality should also apply to the way in which users are accessing content, not just the platforms they are using. The rules should have a neutral application across all

different forms of user interface and means of content discovery. UIs now go well beyond linear EPGs so the rules should not be tied to just the linear EPG or any other form of access.

While there may be legitimate areas of UIs where PSB prominence cannot (or should not) be granted, it is important that the new rules ensure prominence of PSB services in whichever areas of the UI are widely used by audiences or segments of audiences, or are viewed by platforms or PSBs as increasingly important in surfacing content to consumers. This is likely to include but not necessarily be limited to homepages, linear EPGs, VoD player landing pages, search and recommendations. It should also include areas where individual programme assets are used to promote discovery rather than service brands.

As well as prominence within individual routes to content discovery, it is important to ensure that PSB is prominent within UIs as a whole. This means ensuring that those functions most commonly or increasingly used to access content, such as linear channel lists and VoD landing pages, are themselves prominent within the UI.

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

Channel 4 believes the regime should cover the user interfaces (UIs) of all platforms, devices and services that are used by a significant number of people in the UK to consume TV or TV-like content, or designed to access to TV or TV like content.

Channel 4 does not believe it would not be proportionate to design a regime which automatically applies to all platforms and means of accessing content so appropriate thresholds should be put in place to ensure only those platforms which are a "significant means of access" are caught.

The use of "*significant*" as a threshold is already established in the Communications Act 2003 in measuring the usage of a platform. This is not given a specific numerical definition in the Act but for these purposes there are a number of criteria that could be taken into account when setting appropriate thresholds including:

- **Purpose:** Whether the primary purpose of the device or platform is to access TV-like content (e.g. Smart TVs, Set top boxes, streaming sticks)
- **Usage:** The degree to which a device or platform is used to access TV like content, regardless of whether that is the primary purpose of the platform.
- **Penetration:** The proportion of the UK population or population segment with access to the device or platform.
- **Audience Volume:** The proportion of audiences (or audience segment) in the UK who use the platform to access TV-like content.
- **Viewing:** The proportion of viewing to the PSB service accounted for by the device or platform.

Channel 4 would expect the rules to cover all means of accessing content, including web search engines and social media platforms but the rules would only apply if and when they meet the thresholds laid out above.

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

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.

Desired outcomes for a new prominence framework

Specifically, these outcomes 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.¹⁵

Setting out parameters of a new prominence framework

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 have significant appeal to consumers. 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.

¹⁵ 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.

Considerations for the new framework

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.
- **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.

Implementation of new framework

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.

OFCOM'S PRINCIPLES

In addition to the outcomes and principles outlined above, Channel 4 broadly agrees with the set of three principles or ground rules set out by Ofcom, covering personalisation, consumer choice and search transparency. However in some cases, Channel 4 believes exceptions should be considered to ensure these principles lead to positive outcomes.

- **Personalisation:** We agree that the user should be free to personalise interfaces as they see fit. However, where there is active involvement from the platform (e.g. suggesting users default to suggested list of favourite channels) PSBs should be given prominence.
- **Consumer choice:** Channel 4 agrees functions like "resume" or "recently watched" should be out of scope. However Channel 4 does not agree that recommendations should be exempt from PSB prominence rules, on the basis that the recommendations are based purely on viewer preferences. Social media algorithms designed to do the same have led to a number of negative outcomes including the creation of filter bubbles and echo chambers. Whilst we are not seeking to remove the ability of platforms to provide 'Because you watched xxx,' recommendations, we believe these need to be balanced with the prominence provision of PSB recommendations which will help to challenge established views and set preferences. This is vital to maximising the societal value of PSB as viewing increasingly moves online.
- **Search transparency:** C4 agrees search should be transparent, and that this should apply across the board, not just for PSB. So where a search result is paid for or otherwise influenced by a commercial relationship - including ownership of a content provider by a platform - this should be clearly marked as an advert.

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

Yes.

Given the increase in viewing to VoD services and the high likelihood that PSBs will become less and less discoverable over time as the market evolves, it is clear that if PSBs are to continue to be able to maximise the delivery of their public service purposes the prominence rules which act as the cornerstone which enables them to do so must be updated to include the VoD services of the PSBs as a matter of urgency.

Channel 4 was the first broadcaster in the world to launch a video on demand service, 4oD in 2006 to ensure our content remained available and easily discoverable to the increasing numbers of younger viewers who were accessing content online. Since then All 4 has become a significant and growing part of our business, delivering £100m of revenue and

growth of 24% yoy. It has 17 million registered users including 3/4 of all 16-34 year olds in the UK and plays a vital role in the delivery of our public service remit by expanding and maximising the reach of our content especially amongst younger audiences. This was formally recognised when, as part of the Digital Economy Act 2010, Parliament recognised that Channel 4 should seek to deliver its remit across all of its services, not just the main channel.

Channel 4 has always operated a model whereby it effectively cross funds the programming it commissions by using commercially successful programming, like The Great British Bake Off to pay for programming which is less commercially sustainable but high is PSB value, like Channel 4 News. This model will remain just as important and relevant in the online world.

All 4 is increasingly the primary form of accessing our content for many of our viewers, last year All 4 views increased to 719m (up 16% year on year). This is especially true for our younger viewers, indeed nearly half of the viewing from the 16-34 audience to programmes including Derry Girls, Who is America? and The End of the F***ing World happened on All 4.'

All 4 hosts all of the content that has been broadcast on our main linear public service channel and includes programming from our other, non PSB licenced channels including E4, More 4 and Film 4 as well as All 4 dedicated content like that in our Walter presents strand and our latest partnership with Vice.

As outlined above, Parliament has already recognised the value of the provision of content beyond the main PSB channel to the fulfilment of the Channel's remit, giving Channel 4 a mandate to deliver its remit across all of its channels and services. This gives Channel 4 the flexibility to better target programmes like Skins, Misfits, Youngers and My Mad Fat Diary by placing them on E4 (despite it not being a licenced PSB) because it attracts a younger audience than our main Channel. Increasingly, this reflects the increasing importance in providing content on All 4, where it is able to increase its overall reach and engagement.

Channel 4 does not believe that the inclusion of content which was not broadcast on the main linear channel compromises All 4's public service contribution. On the contrary we believe it strengthens it.

As part of the 2015 PSB review Ofcom clearly laid out their position that prominence should be extended to PSB VoD players;

*"At a minimum, if PSB is to be 'maintained and strengthened' as set out in the statutory duty, catch-up players or all PSB channels should benefit from appropriate prominence".*¹⁶

Channel 4 supports this conclusion. Whilst the main PSB players are available on most major platforms and devices, any prominence we may receive on these platforms is the result of hard fought commercial negotiations – and thus potentially traded against other areas of commercial value, to secure a reasonably discoverable position. Prominence is provided to PSBs in return for the delivery of their public service remits and obligations;

¹⁶ [Ofcom, Public Service Broadcasting in the Internet Age, 2015](#)

Channel 4 does not believe PSBs should effectively have to pay twice for this privilege through further sacrifices made in a market negotiation.

Given the scale and spending power of many of these players, PSBs, especially smaller PSBs, are at a distinct disadvantage and negotiations rarely deliver optimal outcomes in terms of delivering prominence for our content. As a result of our varying levels of influence and scale PSBs achieve very different outcomes from their commercial negotiations with platforms.

Amazon Fire Stick home page 2018: Amazon's own content and services alongside sponsored content receive prominence on start up with a link to download BBC iPlayer and Netflix also prominent. No other PSB is visible.



As a PSB with a responsibility to deliver its remit to as wide an audience as possible Channel 4 often has to trade off ensuring our availability on as wide a range of platforms as possible with sub optimal prominence outcomes on these platforms. **[REDACTED]**

Netflix uses its power by requiring Smart TV manufacturers to meet a set of conditions before being designated as "Netflix recommended"¹⁷. Amongst other things these include provision of a dedicate Netflix button on the remote control, a prominent Netflix icon on the TV menu and the ability for your TV to turn on to Netflix if that was the last app you viewed when you turned it off.

As platforms which provide access to VoD players continue to gain popularity, the real estate of their most prominent slots becomes increasingly valuable and platforms are looking to monetise this asset.

Ofcom is also right to note that there is a finite amount of space on the front page of interfaces and large scale international players are incentivised to strike global deals to

¹⁷ <https://devices.netflix.com/en/recommendedtv/2018/>

ensure their apps are preloaded and given the best slots. As Apple, Google, Facebook, Instagram and others join Netflix, Amazon and YouTube in providing AV focussed Apps, Channel 4 believes it is highly likely, without regulatory intervention to ensure PSBs are prominent within these interfaces, that PSBs will be relegated to lower, less discoverable positions.

Given the increase in viewing to VoD services and the high likelihood that PSBs will become less and less discoverable over time as the market evolves, it is clear that if PSBs are to continue to be able to maximise the delivery their public service purposes the prominence rules which act as the cornerstone which enables us to do so must be updated to include the VoD services of the PSBs as a matter of urgency.

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?

Yes the rules should be technology neutral and prominence should not be restricted to a particular type or style of interface.

We believe that it is important that prominence is applied beyond merely the EPG and PSB Players. While we agree with Ofcom that these areas are more complex, we believe that as alternative routes such as search and recommendations are likely to become increasingly important means for users to discover content, it is important that they are captured within this extension of the regime. If they are not, there is a risk that any reforms to the current regime quickly become outdated and the prominence of public service broadcasters falls away as consumer habits continue to change.

We have outlined above (p18, section 7) how we believe these areas should be treated – with Ofcom guidance making clear what it is expected of providers in these areas. Channel 4 believes the rules should be technology and device neutral but there should be a clear threshold in place which ensures that only platforms which provide access to TV like content and are a significant means of access are caught.

Recommendations: where the platform has had a role in curating recommendations, each PSB should be allocated a top slot, a proportion of the overall recommendations should be allocated to content from PSB services and PSBs should be in control of which pieces of content are shown. Where recommendations are purely based on user preferences PSB content should be inserted at regular intervals as an opportunity to disrupt and challenge these preferences.

Search: In the context of this paper Channel 4 considers that “search” covers both text search and voice search. However, Channel 4 acknowledges that the use of voice as a means of content discovery is growing and Channel 4 believes it will become an increasingly important paradigm in the future. It is therefore vitally important that Ofcom closely monitor the impact of voice and how best to ensure PSB can continue to be discoverable as the use of voice grows.

While there are important differences between text and voice input, namely that voice is more suited to delivering one answer rather than a list of potential options, we expect that delivering prominence in either situation will be similar in many instances.

Channel 4 sees significant benefits in the use of artificial intelligence, machine learning and the use of algorithms to improve the user experience for both search and recommendations but we believe there should be scope within the use of these technologies to promote PSB content as is currently the case with Google search results surfacing paid for search results. This should not result in users receiving irrelevant recommendations or search results that are against user interests but algorithms should be tweaked to ensure the benefits of PSB content can be surfaced easily.

In practice, for specific searches for programmes (e.g. play Game of Thrones), or non-specific searches which have a clear answer (play the programme with dragons and kings) there should be no place for PSB prominence to interrupt the user journey. However where viewers are making a general search (e.g. show me comedies) and the platform essentially defaults to recommendations, the same prominence principles should apply as above.

Where there is an unspecific search requesting a specific action (e.g. show me a good comedy) prominence should apply and platforms should seek to ensure the majority of times a PSB programme is shown and that other organisations cannot pay to be a more likely result than a PSB.

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?

Yes the rules should be technology and device neutral but there should be a clear threshold in place which ensures that only platforms which provide access to TV like content and are a significant means of access are caught.

As noted above, we believe that it is essential that prominence is applied to services beyond licensed EPGs, as this is an increasingly narrow subset of ways to consume TV content. To ensure that the regime can be meaningfully applied in a world in which consumers are increasingly accessing PSB content from different platforms and devices, we strongly believe it is important to update the regime to include devices such as streaming sticks and smart TVs. As Ofcom themselves note, smart TV's have grown faster than any other device as a way of accessing VoD content.

We note Ofcom's assessment that extending the scope of the regime beyond licensed EPG's requires careful consideration about defining an extended scope. We believe the definition outlined above is an appropriate way of ensuring the regime can be extended in a way that is flexible and technology neutral, with a threshold in place which ensures that only platforms which provide access to TV like content and are a significant means of access are caught.

We believe that as far as possible implementation of these reforms should mirror the current linear regime. It should therefore have three parts:

- Legislative underpinning setting out the required outcomes
- Regulatory enforcement through Ofcom (Ofcom responsible for setting out and updating guidance on how the regime should operate in practice and monitoring compliance)
- Platforms responsible for setting out how they will comply with guidance

We agree with Ofcom that legislative reform is necessary in order to modernise the current framework. These changes could be achieved through a simple strengthening of the concept of “appropriate prominence” to “significant prominence”, and to expand the scope of who that legislation applies to by extending the definition of an electronic programme guide.

We believe that the reforms we are proposing in this consultation response could be captured in a similarly straight-forward amendment in primary legislation – for example through a vehicle such as the Government’s forthcoming Internet Bill, or other forthcoming legislation relevant to communications and technology. We note that Ofcom have already identified that if Parliament wishes for PSB to remain easy to find, then new legislation is needed. We therefore urge Ofcom to reiterate the importance of this and urge Government and Parliament to identify the right vehicle for this reform arising out of this consultation.

Following the successful passage of legislation, Ofcom would then be empowered to implement and oversee new regulations that will enforce the regime. Ofcom should also be able to review and update these regulations over time. C4 believes that an appropriate regulatory framework, drawing on the extension of the definition of an EPG in legislation, would, in practice, mean that Ofcom would set out in guidance the criteria by which services/platforms would fall within scope, and a definition of significant prominence.

Ofcom could also provide a series of clear examples of the level of prominence expected, based on settled user interfaces, (e.g. Tiled app menus). These examples should not prejudice the ability of platforms to design their interfaces as they see fit and should merely act as guidance of what level of prominence Ofcom expect (detail below). This will help to avoid the vastly different interpretations of what constitutes prominence that have led to some negative outcomes on linear, which Ofcom have sought to correct through this consultation.

This would ensure that those services and PSBs would have maximum clarity about what is required of them. Ofcom would set out a code of practice and in turn each provider would develop and publish its own UI policy outlining how they will deliver prominence, consistent with the regulations.

The onus would be for services that fall in scope to notify Ofcom; or for PSBs providing content to those services to do so. Ofcom could have a role in monitoring the market and identifying services that may not have applied but meet the threshold requirements as outlined above. This determination would be based on market available data such as Ofcom’s own annual communications market report and the PSBs could also play a role in highlighting trends in viewing and emergent market activity. Similar to the regulation of on demand programme services, this would be based on a notification system, with powers for Ofcom to intervene in the case of dispute; with ultimately recourse to the courts if disputes

cannot be resolved. This has the benefit of enabling the market to operate at speed as new services come on stream.

An alternative model would be to introduce a licensing system - whereby providers would have to apply for a licence. We note the recent example of Amazon requesting and being granted a licence from Ofcom in order to broadcast live coverage in the UK of the US Open tennis championship, after initially believing it did not require one. This approach would have the benefit of providing greater certainty and a greater level of enforcement.

Summary of legislative and regulatory reform

- Legislative update to Comms Act to strengthen prominence definition and scope
- Ofcom set out Code of Practice outlining expectations for prominence in practice
- Services notify Ofcom that they are in scope of legislation
- Services set out their Prominence Policy in line with Codes of Practice
- Ofcom responsible for overseeing compliance and potential breaches of Code of Practice

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

Ofcom is right to acknowledge that it is possible for prominence to be provided in an online environment, for example on Facebook or Google search where algorithms are used to prioritise specific pieces of content.

While we recognise that these platforms may not yet be a significant means of TV consumption, it is possible that they could become so. It is therefore vital that updates to the regime are flexible enough to ensure they can be updated to reflect these or other market changes. As noted above, we believe the definition we have proposed is an appropriate way of ensuring the regime can be extended in a way that is flexible and technology neutral, with a threshold in place which ensures that only platforms which provide access to TV-like content and are a significant means of access are caught.

The use of "*significant*" as a threshold is already established in the Communications Act 2003 in measuring the usage of a platform. This is not given a specific numerical definition in the Act but for these purposes there are a number of criteria that could be taken into account when setting appropriate thresholds including:

- **Purpose:** Whether the primary purpose of the device or platform is to access TV-like content (e.g. Smart TVs, Set top boxes, streaming sticks)
- **Usage:** The degree to which a device or platform is used to access TV like content, regardless of whether that is the primary purpose of the platform.
- **Penetration:** The proportion of the UK population or population segment with access to the device or platform.
- **Audience Volume:** The proportion of audiences (or audience segment) in the UK who use the platform to access TV-like content.
- **Viewing:** The proportion of viewing to the PSB service accounted for by the device or platform.

Channel 4 would expect the rules to cover all means of accessing content, including web search engines and social media platforms but the rules would only apply if and when they meet the thresholds laid out above.