S4C's response to Ofcom's Review of the prominence regime: Consultation on proposed changes to the linear EPG Code and future of the regime

5th October 2018

Introduction

S4C is a public service broadcaster (PSB) with a unique public purpose which is to provide a television service in the Welsh language. By doing so, S4C plays a crucial role in maintaining and promoting the Welsh language, reflecting the various cultures that use the Welsh language by providing high quality content that is accessible to all. S4C has now evolved from being the broadcaster of a television channel to being a provider of digital services across an array of platforms throughout the UK.

During the past year, an independent review of S4C was commissioned by DCMS. It includes a number of recommendations[1], together with DCMS' response to these recommendations[2]. Recently, S4C has announced an action plan in response to the recommendations[3]. Several of the actions to be taken are relevant to our response to Ofcom's review and, where appropriate, they are referred to below.

Television EPGs

Ofcom's review recommends the following for S4C's position on EPGs:

- Continue in slot four in Wales on EPGs provided specifically for viewers in Wales.
- If there is no specific EPG for Wales, S4C should be guaranteed a slot within the top three pages of UK-wide EPGs.

Slot Four in Wales

We support the recommendation that S4C continues in slot four in Wales. This has been S4C's slot since its creation in 1982 and it is where the audience expects to find the channel. As a channel which serves viewers in Wales, it is wholly appropriate that S4C is grouped with BBC1 Wales, BBC2 Wales and ITV Wales, and that viewers in Wales can discover all of the public service television content that is relevant to them in one place.

S4C plays a crucial role in providing a full-service channel in the Welsh language across a wide range of genres. It makes an important contribution to the future of the Welsh language as a modern language and an everyday language for people of all ages. In particular, S4C's children's services, including *Cyw* and *Stwnsh*, are recognised as making an important contribution to normalising the use of Welsh amongst younger and older children. In an age where there is an increasing number of English services to attract children and young people from the UK and beyond, it is important that they see Welsh-medium television in the mainstream by appearing side by side with the other main PSB providers.

As well as enabling people to enjoy Welsh-medium programmes and helping children and adults learn the language, S4C provides Welsh interest programmes for the wider audience in Wales, widely reflecting Wales' culture and events.

S4C offers a wide range of content to appeal to viewers of all ages and to a broad cross-section of the audience. This includes programmes such as children's programmes, sports, drama, soaps, light entertainment, magazine shows, news, current affairs,

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695964/Building_an_S4C_for_the_Future_English_Accessible.pdf
2
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695760/Government_response_to_the_S4C_indep_English_Accessible.pdf
3 http://www.s4c.cymru/media/media_assets/S4C-DCMS-IR-Implementation-Plan.pdf

factual and religious, as well as extensive provision from Wales' main cultural and national events. With subtitles provided on almost 80% of our programmes, they attract an audience of Welsh speakers and non-Welsh speakers alike – around 55% of our viewers are non-Welsh speakers.

An independent image tracking survey by Beaufort Research has shown that over the years S4C has been considered as "the Channel of Wales" – more so than any other PSB channel. This applies amongst Welsh speakers and non-Welsh speakers alike. It is considered an integral part of reflecting the culture, language, locality and identity of Wales and its people.

As regards the strength of programmes, S4C is seen as being strong in terms of "relevant documentaries for the people of Wales", Sports, Music Programmes, Events and Children's Programmes. For many non-Welsh speaking parents and mixed language families, *Cyw*'s programme service is a vital resource. The children learn Welsh in school and the whole family can enjoy the television service together.

These are some of the key findings from the latest questionnaire (2017/18) which shows that S4C is considered one of the main sustainers of Welsh language and culture:

	Welsh speakers (% agree)	Non-welsh speakers (% agree)
S4C is an important channel for the Welsh language	97	96
S4C is relevant to the identity of Wales and its people	95	96
The channel with the best coverage of events in Wales	97	89
A channel that contributes to Welsh culture	95	82

In its response to the Independent Review, DCMS said: "*We agree that S4C plays a vital role in reflecting Welsh culture and society and promoting the Welsh language.*" DCMS welcomed the recommendation that S4C should establish a language partnership to help deliver the Welsh Government's commitment to reach 1 million Welsh language speakers by 2050.

Considering this central role in Welsh life, viewers in Wales would naturally expect to see S4C in a high EPG position. Ofcom noted in its consultation document that 22% of adults in Wales said that they place at least some importance on S4C being easy to find in their TV guide on their TV set.

Having this prominence is particularly valuable to S4C. The challenge of attracting viewers to Welsh language content is greater than ever, with so much choice among other channels with strong brands and far greater promotion budgets.

As there are clear reasons for the recommendation to maintain S4C's prominence in the fourth slot in Wales, we would ask Ofcom to consider whether there is by now any technical reason why every EPG provider could not be asked to provide an area-specific EPG for Wales. This would enable viewers in Wales to find S4C in a consistent position across all television platforms.

Question 2: 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. The reasons for positioning S4C in slot four in Wales are noted above.
Question 8: 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?	This question refers to guaranteed prominence for S4C within the first three pages of the EPG in Wales. Ofcom's consultation however recommends guaranteeing the fourth slot for S4C in Wales. We believe S4C should have the fourth slot in Wales for the reasons noted above.

Slot within the top three pages of UK-wide EPGs

In general, we welcome the recommendation that S4C should appear within the top three pages of UK-wide EPGs, whilst noting the question raised above on increasing the number of platforms which offer an area-specific EPG for Wales. However, we believe this recommendation should extend to all platforms, irrespective of whether they have an area-specific EPG for Wales. We feel that S4C should have a degree of prominence outside Wales – in England, Scotland and Northern Ireland – and believe that securing a slot on the first three pages of the EPG in those countries is the most appropriate way forward.

The reasoning behind that is the audience for S4C content extends beyond Wales, with around 50% of S4C's audience now viewing from outside Wales. The most popular programmes outside Wales are sports, children's programmes, national events and documentaries.

Ofcom's consultation (paragraph 5.50) includes S4C as one of the nation-specific channels but S4C is by now recognised as a channel which serves the whole of the UK, whilst also having particular responsibility towards the population of Wales. The Welsh language is part of the heritage of the United Kingdom as a whole and the service which S4C provides should have the prominence which reflects this.

In the Independent Review of S4C referred to above, it was concluded that there is a need to update the statutory remit for S4C to remove the geographical restrictions upon it. With such a high percentage watching S4C outside Wales, *"S4C should be able to provide content without the current geographical restrictions to provide programmes 'wholly or mainly' to people in Wales"*.

DCMS has accepted the recommendation to remove the current geographical broadcasting restrictions*: "Updating the remit will allow S4C to make its content available on a wider range of platforms – in Wales, across the UK and abroad."*

To make the most of the public investment in S4C, which is funded mainly by licence fee payers across the UK, we believe that the content should be easy to find whatever the viewer's location in the UK, and that S4C should have a slot on the first three pages of EPGs outside Wales. This would be consistent with Ofcom's recommendation to include

more PSB channels on the first three pages and would correspond to the expectations of viewers under the new regime.

Question 6: Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs?	Yes, but also: - We ask Ofcom to consider whether every television EPG provider should offer a Wales-specific EPG. - We believe S4C should be guaranteed prominence within the first the pages of EPGs which are available outside Wales, as well as any UK-wide EPGs. The reasons for this are set out above.

HD

S4C currently offers a simulcast version of its television channel in HD on Sky and Freesat, with the hope of extending the HD platforms in future. We agree with Ofcom's recommendation that it should be possible to substitute the SD version with the simulcast HD version in the more prominent slot on the EPG.

Question 11: 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.

Transitional arrangements

Ofcom has suggested a transitional period of 12 months after updating Ofcom's Prominence Code for EPG providers to implement the new arrangements. We agree with 12 months as a maximum.

Question 12: Do you agree with our proposal to provide a 12 month transition period once the Code is finalised?	We agree with a transition period of 12 months as a maximum.

Protecting prominence in the digital world

S4C has its own player, *S4C Clic*, where all of S4C's television content, as well as additional content, is available to stream live and on-demand on computers and on apps on mobile devices and some smart TVs. S4C also provides short-form content on Facebook and YouTube and has created *Hansh* as a separate brand, an online short-form service targeting 16 - 34 year olds. We also offer content to young children via our online service *CywTiwb*. All content provided on our online services is in Welsh.

Since 2014, the majority of S4C's television content has been available on the iPlayer to stream live and on-demand. This has enabled S4C to be enjoyed on a wide range of devices, which has led to a substantial increase in viewers. This development was made possible by the unique partnership created between the BBC and S4C due to the fact that the majority of S4C's funding comes from the licence fee.

We strongly believe that there is a need to modernise the framework for prominence on EPGs for PSBs, and extend the same principles to digital platforms. We agree fully with the content of the joint response that has been produced with the other PSBs, and we attach a copy as part of S4C's reply to Ofcom.

We would like to add the following comments from S4C's perspective:

As noted above, S4C has played an important role in normalising the use of Welsh. In order to preserve the Welsh language as a part of everyday life for the young people of today and for future generations, it is essential that S4C provides content in the digital space and that the content is easy to find. This space offers more choice than ever and English language content dominates the most popular platforms. In light of all of this, the challenge of raising awareness of Welsh language content, and getting young people to engage with it through the medium of Welsh, is huge.

S4C wishes to meet this challenge by significantly increasing its investment in digital content and ensuring that the content is available on a wide range of platforms. This was among the main recommendations of the Independent Review and DCMS has agreed with the recommendation for S4C to do more in the digital arena. DCMS has also accepted the recommendation to update S4C's public service remit to include online and digital services.

To ensure that our investment in digital content from public funding sources achieves the objectives of our remit, it is crucial that there is a framework to ensure the audience can easily discover and enjoy the content. We therefore encourage Ofcom to recommend the creation of a statutory system to ensure sufficient prominence for PSB content on digital platforms.

We have also considered whether it would be possible to offer different levels of geographical prominence in the digital arena. Currently, it is generally difficult to identify a user's location reliably. It can be difficult to correctly identify someone's location using their IP address. With mobile devices, the location changes as the user moves. There are some exceptions, such as YouView, where there is a specific set top box where the location must be recorded. In those instances, the order of services on the user interface could be varied, and we would recommend giving a higher level of prominence to S4C in Wales.

We agree that there is a particular public service value to our content for users in Wales, and as is true as regards to television content, content that is delivered to our audiences on digital platforms reflect, where appropriate, circumstances relevant to the people of Wales. That includes accepting the devolved context of a number of high-profile areas (health, education, agriculture etc) as a natural part of discussion in a range of genres.

In general therefore, we are aware of the need for audiences in Wales to receive relevant content and to be aware of where to find the relevant content on digital platforms. Despite the current challenges, we ask Ofcom to be innovative in terms of this agenda, in co-operation with providers such as S4C, and ensure that the regulatory framework corresponds to what the latest technology can facilitate in this regard.

Question 13: Do you think that the prominence regime should be extended to ensure EPGs themselves can be easily found?	Yes, for the reasons noted above and in the Appendix.
Question 14: Do you agree with the broad range of factors for consideration we have identified? Are there other factors that policy makers should consider?	Yes. Consideration should also be given to the extent to which the level of prominence could and should be adjusted in a specific geographical area.
Question 15: Do you agree with the principles we have set out? Are there other principles that should be considered?	See our comments above and in the Appendix on the principles which we believe should be considered.
Question 16: Do you think that the prominence regime should be extended to ensure PSB Players can be easily found?	Yes, for the reasons noted above and in the Appendix.
Question 17: 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. See our reasons and comments above and in the Appendix.
Question 18: 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. See our reasons and comments above and in the Appendix.
Question 19: Do you think that the prominence regime should be extended to online services? If so, who should be captured?	Yes. See our reasons and comments above and in the Appendix.

Appendix

Joint PSB response on prominence in a digital world

Establishing a new framework for prominence
The PSBs continue to strongly support the principle of prominence for linear PSB television channels and welcome Ofcom's review of the extent to which this is delivered. But globalisation is fundamentally changing the media landscape. Technological change is facilitating intense global competition. Global online platforms and global TV distributors are playing an ever-increasing role in content distribution and discovery, attempting to disintermediate UK players. To address this growing threat, the critical priority on which the PSBs are agreed is to update legislation to modernise the current prominence regime by extending it beyond linear television and linear EPGs.

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

- *Significant prominence for all PSB linear services and associated on-demand services provided by a PSB (or several PSBs)*: The Secretary of State should maintain (and have the power to vary by Order) a list of these 'in-scope services'.

- *Significant prominence on all major user interfaces*: the regime should cover those who exercise editorial control of all user interfaces (UIs) on all major platforms, devices and services in the UK to consume TV or TV-like content. The Secretary of State should have the power to vary this definition by Order. In the event of dispute about whether a UI is in-scope, Ofcom should determine.[4]

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[5]. 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,

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[4] 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.

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

and quick to access. The individual content displayed should be chosen by the relevant PSBs from the total catalogue of their in-scope services.

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

- <u>The need to deliver consumer benefit:</u> 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.

- <u>The need to deliver citizen benefit</u>: 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.

- <u>The need for prominence to be free and non-contingent</u>: 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.

- <u>The importance of ensuring sufficient transparency</u>: 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.

- <u>The right of consumers to personalise:</u> 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.

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:

- <u>Government</u>: 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;

- <u>UI providers</u>: 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.