



**BBC response to Ofcom's consultation on  
guidance for VSP providers on measures to  
protect users from harmful material**

**28 May 2021**

## Executive Summary

1. The BBC welcomes increased protections for audiences. This response sets out considerations about the treatment of BBC content by VSPs.
2. Audiences value the role that the PSBs play in connecting communities, providing trusted, independent news, and entertaining. The BBC is the most trusted news provider<sup>1</sup> and during the pandemic we have continued to deliver news through our main social media accounts as a way of engaging audiences with trusted information – receiving record usage of social media accounts.<sup>2</sup> The BBC plays a significant role in countering misinformation and disinformation, improving media literacy, and through participation in projects like the Trusted News Initiative.<sup>3</sup>
3. It is very important that audiences can trust content that bears PSB and trusted news branding and logos. Therefore it is crucial that the process to report brands being misused is effective. However, previously PSBs have wished to report misinformation and disinformation that misused PSB branding or logos but have had no special status in reporting such cases and have been forced to use copyright procedures.
4. We are pleased that Ofcom’s Guidance recognises that PSB Content should be subject to protections by platforms. We believe this approach is right because it reflects the fact that such content already meets the highest standards by virtue of it being subject to BBC and Ofcom regulation. However we believe that some clarificatory drafting changes would mean that the Guidance was clearer about such protections applying in a broad range of circumstances rather than in narrowly in appeals processes. The principle that PSB Content is given this careful consideration should also be acknowledged upfront in section 4.
5. Given the public interest value of PSB Content, where appropriate, VSPs should provide notifications to PSBs in advance of removal of PSB Content together with a reasoned explanation which relates to the individual content in question. PSBs are well placed to understand whether takedown is appropriate and to make representations to platforms if it is not.
6. In addition, we agree that it is right, as Ofcom suggests, that some platforms – particularly those with scale who reach large UK audiences – should have an

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<sup>1</sup> Ipsos MORI, 1,013 UK adults 18+ who follow the news, Mar 2020

<sup>2</sup> The BBC News YouTube account saw 38 million video views in the last week of March 2020. The BBC News UK Twitter account saw record numbers of engagements, with 5.6 million in the first week of April 2020.

<sup>3</sup> TNI overview: <https://www.bbc.co.uk/mediacentre/latestnews/2019/disinformation/> / TNI coronavirus: <https://www.bbc.co.uk/mediacentre/latestnews/2020/coronavirus-trusted-newsT/> / TNI US election: <https://www.bbc.co.uk/mediacentre/latestnews/2020/trusted-news-initiative>

expedited process for the handling of disputes from broadcasters and other media outlets.

## **Introduction**

The BBC welcomes Ofcom's guidance for video sharing platforms (VSPs) on measures to protect users from harmful material (the 'Guidance'), and with it, increased protections for audiences. We support the aims of the new statutory framework including in relation to VSPs. The public - in particular children - should not be expected to navigate harms on their own. Nor is it realistic to expect social media platforms to make all the judgement calls in the absence of clear guidance.

By way of background, the BBC has its own platforms - these are not video sharing platforms that would meet the AVMSD definition of a VSP. This response therefore sets out considerations about the treatment of BBC content by VSPs. Audiences value the role that the PSBs play in connecting communities, providing trusted, independent news, and entertaining. As Ofcom reflected, seven in ten regular viewers of BBC TV news agreed it was accurate and trustworthy.<sup>4</sup> The pandemic demonstrated the importance of institutions like the BBC in a time of crisis. The BBC is the most trusted news provider<sup>5</sup> and during the pandemic we have continued to deliver news through our main social media accounts as a way of engaging audiences with trusted information - receiving record usage of social media accounts.<sup>6</sup>

The BBC is also a UK-leader in providing advice and guidance to children and their parents on how to navigate online. The BBC is redoubling efforts to tackle misinformation and disinformation,<sup>7</sup> ensuring the UK plays an even stronger role in fighting falsehoods that could undermine security, economic wellbeing and health. Beyond Fake News, launched by the World Service, aims to fight back with a focus on global media literacy.

We tackle problems with online information not just through our global news output, but also through leadership of projects including the Trusted News Initiative,<sup>8</sup> whereby the BBC and partners, including the major social media companies, have agreed to work together to protect their audiences and users from disinformation, particularly around

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<sup>4</sup> 2020 Ofcom News Consumption Survey

<sup>5</sup> Ipsos MORI, 1,013 UK adults 18+ who follow the news, Mar 2020

<sup>6</sup> The BBC News YouTube account saw 38 million video views in the last week of March 2020. The BBC News UK Twitter account saw record numbers of engagements, with 5.6 million in the first week of April 2020.

<sup>7</sup> We have invested in a 'disinformation hub' and have recruited a specialist disinformation reporter.

<sup>8</sup> TNI overview: <https://www.bbc.co.uk/mediacentre/latestnews/2019/disinformation/> / TNI coronavirus: <https://www.bbc.co.uk/mediacentre/latestnews/2020/coronavirus-trusted-newsT/> / TNI US election: <https://www.bbc.co.uk/mediacentre/latestnews/2020/trusted-news-initiative>

moments of highest jeopardy, including the immediate threat to life and to the integrity of the democratic electoral process. The TNI is the only global collaboration of major news and tech organisations working together in real time to stop the spread of disinformation posing a serious risk of real-world harm as it arises. The initiative has established a “fast alert” system with a focus on particular events and elections, including the coronavirus pandemic and the US elections, to alert each other to disinformation relevant to those events, so that content can be reviewed promptly by platforms, whilst publishers ensure they don’t unwittingly republish disinformation. We also held a major online public conference earlier this year, where TNI partners shared their insight, knowledge and experience to a global audience.

In the UK, the content that is commissioned and distributed by PSBs (‘PSB Content’) accords to very high standards including the BBC Editorial Guidelines that are based on – and which in many instances go beyond - the Ofcom Broadcasting Code. They apply to all our content, wherever and however it is received.

We are pleased that Ofcom’s Guidance recognises that PSB Content should be subject to protections by platforms. We believe this approach is right because it reflects the fact that such content already meets the highest standards by virtue of it being subject to BBC and Ofcom regulation. However we believe that the Guidance should be more detailed and prescriptive in relation to the protections for PSB Content, outlined in our response to Q2 below.

Ultimately, it is in the interests of UK audiences that they are able to access the BBC content that they themselves pay for via the licence fee. We set out our approach to distribution - on our own services and via the services of third parties – in more detail in our response to Ofcom’s ‘Small Screen: Big Debate’ consultation on the Future of Public Service Broadcasting.<sup>9</sup>

The BBC also welcome’s Ofcom’s commitment to work with digital regulators in the UK and abroad. The BBC’s content is distributed by VSPs internationally, across borders. The largest VSP platforms that host the most BBC content will not be regulated by Ofcom because they are not within Ofcom’s jurisdiction. However they will be the largest in terms of scale of the third party intermediaries which deliver BBC video content to UK audiences. Therefore, it is particularly important that the interests of UK audiences are best served by making sure that audiences can continue to access high quality, trusted PSB video content and news.

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<sup>9</sup> <http://downloads.bbc.co.uk/aboutthebbc/reports/reports/ssbd-psbr-bbc-response.pdf>

The safeguards for PSB content which are contained in Ofcom’s guidance should also appear in all other regulator’s approaches. In this regard, we are grateful for Ofcom’s extensive engagement with national regulators in the EEA in ensuring a consistent application of the AVMSD and we welcome Ofcom’s commitment to continuing to work to ensure cross-border compliance with the harmonised rules. We are pleased to see Ofcom’s approach will be to continue the exchange of best practices with national regulatory authorities in the EEA on an ongoing basis as set out in paras 2.24 and 2.25 of the consultation document. As part of this we would encourage Ofcom to advocate for safeguards for freedom of expression - as set out in their own guidance and as we propose in this consultation response – that should also be adopted by other regulators.

### **Consultation questions**

#### **Question 1: Do you have any comments on Section 3 of the draft guidance on harmful material and related definitions?**

We agree that it is right that the definition should include material that is likely to incite violence or hatred against a number of groups. There should be protections for everyone, and children in particular, from online abuse and bullying, particularly on the basis of being part of a group by reference to the grounds listed in Article 21 of the Charter of Fundamental Rights.

We note certain complex challenges with some of the most subjective categories – in particular in relation to grounds of ‘belief, political or other opinion’. We note that this could be used as a ground to stifle legitimate comment or coverage, because it could be broadly construed.

We broadly agree with the guidance on restricted materials for children and relevant harmful material. We also note that media literacy is key so that young people understand the world around them and the need to ensure that restrictions are not interpreted so broadly that they lead to heavy-handed censorship. The BBC serves children with high-quality, distinctive and duly impartial output and services which inform, educate and entertain. Ensuring the content they have access to is appropriate is considered throughout the Editorial Guidelines and, specifically, in Section 5 Harm and Offence. We believe that children’s right to receive information under the ECHR and under the UN Convention on the Rights of the Child should also be reflected in these sections.<sup>10</sup>

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<sup>10</sup> Article 10 of the European Convention on Human Rights and Article 13 of the United Nations Convention on the Rights of the Child.

**Question 2: Do you have any comments on the draft guidance about measures which relate to terms and conditions, including how they can be implemented?**

We are pleased that Ofcom recognises the significant risk to freedom of expression that lies in requiring platforms to regulate content.

We note the guidance in 4.48 and 4.145 that special consideration should be given to disputes concerning material on a VSP uploaded by a regulated broadcaster as broadcast content is subject to stricter rules under the Broadcasting Code. We welcome Ofcom's position that it would generally not expect this content to raise an issue under the specified areas of harm in the VSP regime if it has already been complied for broadcast. We believe that it is intended that such special consideration should apply not just when moderation and takedown decisions become a matter of dispute between a VSP and a user, but also when PSB Content is flagged or highlighted for moderation/takedown in the first place. This would be consistent with the position that PSB Content will not generally raise an issue under the specified areas of harm in the VSP regime and with 5.35 that states

*'In designing and implementing protection measures, VSP providers should also take into account the impact such measures may have on the general public. For example, some content which might initially seem harmful, may actually be in the public interest. Videos containing news content are likely to fall within considerations of general public interest and in Section 4 we suggest ensuring that robust dispute resolution processes are in place which give careful consideration to this content.'*

We would welcome an even clearer statement of this, including in 5.35, so that it is clearer that PSB Content should be given special consideration in areas such as flagging and takedown. Furthermore, we suggest that the principle that PSB Content is given special consideration given that it is highly regulated should also be acknowledged upfront in section 4 (for instance, following paragraphs 4.13 and 4.14 on fairness and user's rights). This would clarify that it is a general principle which VSPs must have regard to for the benefit of consumers.

Given Ofcom's agreement that PSB content should not raise an issue for VSPs in this way, VSPs should therefore be required not to take down content unless they can show that there is an exceptional circumstance – such as the example that Ofcom uses whereby an edit or clip of broadcast content has not retained the same contextual considerations as the original material.

Ofcom Guidance should state that VSPs must operate a presumption that PSB materials do not contravene the standards provided within Part 4B of the Communications Act. In

effect, their systems should be able to recognise PSB Content and create a special process for such content to guard against overcautious filtering or other practices that VSPs might decide are appropriate measures and which would otherwise result in the removal of PSB Content which has been made to broadcast content standards. We would be interested to explore whether platforms have the technical means to create ‘allow lists’ that allow a quick and clear way to identify them. Given similar technologies for identifying copyrighted material on platforms, we assume that similar technical solutions could be brought to bear on this.

Where appropriate, VSPs should provide notifications to PSBs in advance of removal of PSB Content together with a reasoned explanation which relates to the individual content in question.

It is right, as Ofcom suggests that some platforms – particularly those with scale who reach large UK audiences – should have an expedited process for the handling of disputes from broadcasters and other media outlets, and we would like to see Ofcom give a firmer steer on this point so that UK audiences are protected from the misuse of PSB content. The default position for VSPs should be that there is a separate process for PSBs/trusted news providers to report.

Previously, PSBs have wished to report misinformation and disinformation that used PSB branding or logos but have had no special status in reporting such cases and have been forced to use copyright procedures.

For many platforms, it is possible for any person to report individual posts as false/suspicious/harmful but the process is even less effective than the process for reporting IP infringements. In particular, the reports do not give the BBC, as the complainant, an opportunity to set its complaint out in full, or to be confident of an urgent response as required. For this reason the BBC generally relies on copyright and/or trade mark rights when filing complaints with platforms about fake news and disinformation, e.g. impersonation accounts that use BBC branding or fabricated videos using BBC footage.

By way of example, a social media account impersonating BBC Breaking News tweeted that the Prime Minister had died whilst in hospital with Covid-19, and was retweeted hundreds of times before being deleted.<sup>11</sup> In another example, a fabricated image of a supposed BBC News story in late June about the health of another public figure made it appear as if the BBC had accidentally published a story ahead of time and quickly removed it. On an almost day-to-day basis, we encounter social media accounts impersonating the BBC/BBC News, including the World Service language services. In

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<sup>11</sup> <https://fullfact.org/health/boris-johnson-coronavirus-death/>

many of these cases, they retweet or post actual BBC content to give the false impression that they are an official BBC account or otherwise post low quality content, editorially, which we would not wish to be associated with and which fall below BBC standards.

It is very important that audiences can trust content that bears PSB and trusted news branding and logos. Therefore it is crucial that the process for PSBs to report brands being misused is effective.

**Question 5: Do you have any comments on the draft guidance about reporting or flagging mechanisms, including on Ofcom's view that reports and flagging mechanisms are central to protecting users?**

Please see our response to question 2.

In particular, and where possible, VSPs should provide notifications to PSBs in advance of removal of PSB Content together with a reasoned explanation which relates to the individual content in question. Without this level of transparency it is not possible for PSBs to make representations on behalf of their audiences to ensure that freedom of expression is protected and that legitimate content is not taken down.

We would also suggest that whilst complying with GDPR, PSBs should have access to VSP's data and information insofar as it relates to their content, in order to check if these mechanisms are working to protect users. PSBs are well placed to understand these matters and would provide a valuable level of scrutiny in addition to the expert regulatory oversight that Ofcom will bring.

**Question 11: Do you have any comments on the draft guidance about media literacy tools and information?**

We welcome Ofcom's suggestion that VSPs should 'Provide tools and information for users with the aim of improving their media literacy and raise awareness of the availability of such tools and information'.

By way of background, the BBC currently provides media literacy – for example the Beyond Fake News season launched by the World Service aims to fight back with a focus on global media literacy. Work done in schools to explain disinformation and how to recognise it is effective in helping young people to critically assess what they are seeing



and to make good decisions about it.<sup>12</sup> Literacy work around disinformation could, helpfully, become an essential part of citizenship work in schools.

In addition, we also note the need for the source of content to be ‘checkable’ - to counter content that purports to be from a reputable source but has been manipulated or fabricated – an issue the BBC is actively working on with partner organisations in Project Origin. This seeks to develop a way of indelibly ‘marking’ content at the point it is published so that it can be identified wherever it ends up online. Further detection techniques which would show where ‘marked’ content has been manipulated could then be added into the process.

**Question 12: Do you have any comments on the with the draft guidance provided about the practicable and proportionate criteria VSP providers must have regard to when determining which measures are appropriate to take to protect users from harm?**

Please see our response to question 2.

In addition, we would welcome better facilitation by social media platforms to allow us to easily monitor comments from users of third party platforms when they sit alongside our content on those third party platforms. The BBC has editorial responsibility for all BBC branded channels on social media regardless of the reporting functions or moderation services of the individual platforms. This means that comments below our content are affected by the various prevention and moderation procedures on those third party platforms – and that may include platform’s approach to enforcing their terms and conditions, flagging and moderation of comments, complaints functions and other measures.

The BBC has many social media accounts, including those on Twitter, Facebook, Instagram and YouTube, and we invite everyone to share their opinions and comments on our posts. When it comes to checking these comments, we mainly rely on the platform’s own moderation service. However, we may remove comments ourselves if they are abusive, illegal or otherwise harmful, or if they involve the promotion of commercial interests. BBC spaces on social media should reflect the same values and audience expectations as our on-platform brands.

Our duty of care, particularly towards children and vulnerable contributors on social media requires careful consideration. This is set out in more detail in our editorial guidance on third-party websites.

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<sup>12</sup> <https://www.bbc.co.uk/mediacentre/latestnews/2018/beyond-fake-news>

Different platforms offer different capabilities for third parties to understand what users are saying in their comments and contributions. For example, some platforms allow us a flagging functionality, to flag words that – if used by a commenter – would automatically alert us of a probable breach of our standards. However this list of words is likely to be limited to a small number of words – and would be much more helpful to us if it was much longer or unlimited.