

Holding the BBC to account for the delivery of its mission and public purposes **Directors UK public consultation response**

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Context

Under the new Royal Charter and Agreement, regulation of the BBC passes from the BBC Trust to Ofcom on 3 April 2017. One of Ofcom's central responsibilities is to hold the BBC to account for fulfilling its mission and promoting its public purposes.

As part of its new responsibilities, Ofcom is required to publish an operating framework containing provisions to secure effective regulation of the BBC. In relation to the BBC's performance, Ofcom must set an operating licence for the BBC, and it may set measures to assess the BBC's performance. The licence must set out the enforceable regulatory conditions that Ofcom considers appropriate to ensure the BBC fulfils its duties.

This consultation seeks views on Ofcom's proposals for:

- a) the BBC operating licence, and the process for amending this in future; and
- b) Ofcom's performance measures, and the process for amending these in future.

Alongside responses to this consultation, Ofcom will also consider the BBC's interim annual plan, which it is required to publish by 3 July 2017.

Ofcom intend to publish a statement setting out our decisions, including the final operating licence, by the end of September 2017.

Introduction

Directors UK is the professional association and Collective Management Organisation for UK screen directors, representing the creative, economic and contractual interests of 6,500 members – the overwhelming majority of working film and television directors in the UK. Directors UK collects and distributes royalty payments and is a membership organisation providing a range of services including campaigning, commercial negotiations, legal advice and support, events, training and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of directing and champions change to the current landscape to create an equal opportunity industry for all.

We welcome this opportunity to comment upon this consultation regarding the BBC's operating licence and Ofcom's performance measures. In answering the questions

we will be focusing on television channels and content, rather than radio or online services.

Directors UK members work all over the world and experience at first hand the extraordinarily high regard in which the BBC is held. It is unequivocally considered to be the international gold standard for broadcasting and widely regarded as the epitome of all that is the very best of UK culture and society.

Consultation questions

Questions about the operating licence

Q.1 Do you agree with our overall approach to setting the operating licence?

Annex 5

- 1) Directors UK broadly welcomes an approach that is designed to measure accurately (and thereby assist the promotion of) distinctive services and programmes, and the diversity of perspective and storytelling that programme making from across the nations and regions can deliver.
- 2) We would advocate that the process undertaken by Ofcom to determine whether the BBC is fulfilling these specific conditions should go beyond the setting of aggregate quotas and the measurement of traditional quantitative metrics such as overall budget spend if we are to be truly able to understand the impact on the commissioning and production of BBC television.

Q.2 Do you agree with the approach we have proposed for public purpose 1*, including the high-level objectives and regulatory conditions we are proposing?

Public purpose 1: to provide impartial news and information to help people understand and engage with the world around them

No comment

Q.3 Do you agree with the approach we have proposed for public purpose 2, including the high-level objectives and regulatory conditions we are proposing?

Public purpose 2: to support learning for people of all ages

No comment

Q.4 Do you agree with the approach we have proposed for public purpose 3, including the high-level objectives and regulatory conditions we are proposing?

Public purpose 3: to show the most creative, highest quality and distinctive output and services

- 3) Formalising the concept of distinctiveness in the new operating licence is in many ways a welcome addition to the BBC's mission and public purposes. The way in which the BBC delivers distinctiveness has been and continues to be guided by the existing and long-standing values, which have served it well to date, but these can usefully be augmented and developed if the BBC is to continue to be appreciated by the full diversity of audiences in the UK.
- 4) Regarding the proposed high-level objectives and regulatory conditions relating to public purpose 3 (To show the most creative, high quality and distinctive output and services), we are supportive of an approach that will capture and illuminate the key qualities set out in the Draft Operating Licence. We broadly agree that Ofcom should avoid measures which have a distorting effect on the BBC's editorial policies. We are pleased that focus will be placed on services and not specific programmes.
- 5) We agree with the approach that first-run originated programmes are key to delivering distinctiveness and quality and we support the setting of production quotas and minimum levels for first-run UK originated work on key channels. However, we are concerned that spend on new programmes in recent years has declined (as noted in section 4.85). There is rightly an expectation for the BBC to deliver more new content of a high standard but to do so within much tighter resource and financial constraints. There is a clear risk that these two objectives may not be compatible, and that limited budgets negatively impact quality or over-stretch the achievable resources of production teams.
- 6) The definition of distinctiveness in para 4.71.1 gives the impression that distinctiveness is essentially about being "different from" what other channels provide or are failing to provide. That is certainly one of its meanings, but the passage following this makes it clear that Ofcom is also aware of the second sense of the word i.e. "of distinction, high quality". We have previously made Ofcom aware of our concerns about forcing the BBC to operate in a way that is different from other channels.
- 7) We remain concerned if the BBC's ability to distinguish itself will be determined through a process of comparison with other providers. The parameters for assessing the creativity and originality of BBC content in terms of distinctiveness cannot be determined by being seen to fill the 'gaps' left by other providers. If the BBC is forced to focus solely on content deemed too niche, unpopular or safe by competitors, it would set the BBC down a path that increasingly devalues the relationship between the license fee payers and BBC services, eroding support for the funding platform on which the BBC is based. The BBC must offer programmes of distinction for everyone, not just to an elite or to an aggregation of minorities. If the BBC's audience diminishes too far it undermines its whole case for continued large-scale public funding.
- 8) It is essential that the approach taken by Ofcom in the 'defining and evidencing of distinctiveness' does not inadvertently provide a means with which market

competitors are able to stall, stifle or prevent the BBC from legitimately pursuing its other public purposes and maintain universality, high quality and distinctive content and services. We are in no doubt that the BBC's competitors would exploit such an opportunity if allowed to do so, as they have shown time and again by the way in which the best new ideas from the BBC (and the talent that makes them) are poached, copied and re-purposed by commercial competitors. The BBC is well-placed to respond to an ever more fractured audience through its breadth of services and content, performing a distinctly different role than commercial providers. Ofcom's approach to determining what constitutes distinctive should not result in a significant retrenchment of the BBC's range of services or content.

- 9) We are also concerned as to why in sections 4.71.4 and 4.93 Ofcom makes specific reference to reducing long-running series without providing any further explanation as to why this form of television drama is not considered to be distinctive. We challenge the notion that long running series are generally not regarded as being sources of innovation. While their format may be steady and consistent over time, the ability of their storylines to challenge and innovate to a wide audience is unsurpassed.
- 10) The BBC's long-running continuing dramas like *EastEnders*, *Doctors* and *Casualty* have a rich history of bringing societal issues to the fore and in doing so challenge the audience to engage with subject matter from a range of perspectives. These long-running series continue to push boundaries with innovative, ground-breaking storylines which handle complex and controversial subjects such as domestic violence, mental health, child abuse, substance misuse and sexuality. Precisely because of their format and reach, long-running series such as these offer a unique opportunity to bring distinct and diverse issues to the broadest audiences on a grand scale and an opportunity to highlight the information and support available to viewers who may be affected by them. To arbitrarily force the BBC to actively reduce its long-standing series, which are often the most popular shows bringing in the largest audiences, would also set the BBC on a course that steers it away from vast swathes of its viewers and license fee payers.
- 11) We note the challenges highlighted in sections 4.79 and 4.81 in terms of the complexity of identifying and setting appropriate regulatory conditions for distinctiveness and the differing views on the perception of distinctiveness from different audience age groups. We regard this as an example of how the definition of "distinctive" can be perceived in two different ways as stated in paragraph 6 above. However, despite this we believe that Ofcom should be actively seeking to assess and report on the BBC's creative ambition and innovation (Section 4.79.4) given that these characteristics directly contribute to distinctive content.
- 12) We recognise Ofcom's reluctance, as expressed in section 4.99, to propose any measures which may impact on the BBC's editorial freedom and creativity. However we believe there are other ways in which Ofcom could explore and assess how the BBC creates an environment that supports and encourages innovation, creativity and distinctiveness in its output. Assessing innovation and

risk-taking should go beyond the audience and be viewed from a broader perspective.

- 13) For example, Directors UK members have often commented that their experience of working in and for the BBC has been defined by a noticeably positive creative environment in which innovation and ideas are encouraged and supported. Our members consistently credit the BBC's creative environment as one that encourages innovation, risk-taking, a diversity of views, and is supportive of individual programme-makers. It is the antithesis of the environment that can be found in many independent production companies where the prime aim is often to produce (and re-produce) heavily-formatted concepts that are tried and tested, and suitable for exploitation in high volume, on a global scale.
- 14) We firmly believe that much of the distinctiveness in the BBC's programming derives from this programme-making culture. We believe Ofcom could and should assess these aspects of the working environment through the use of both industry metrics external to the BBC together with more internal qualitative measures i.e. focus groups, workforce surveys, research. Ofcom could explore ways in which the BBC continues to provide an innovative environment, looking at how much writers and directors are given the freedom to be distinctive. Creatives need to push boundaries and this brings with it failures that should be looked at alongside the successes as a measure of truly pushing innovation. We regard Ofcom's role as being one that shines a light on the culture and working practices of the BBC that in turn give rise to the content and services being monitored and measured.
- 15) We also believe that Ofcom should also look to how other industry bodies recognise and celebrate distinctive, high quality productions through awards and accolades. Creative industry institutions such as BAFTA, the RTS, the Grierson Trust and many festival organisations are bound to have insight on the recognisable measures they use to assess and accredit productions as high quality or distinctive content for the purpose of making their awards.

Q.5 Do you agree with the approach we have proposed for public purpose 4, including the high-level objectives and regulatory conditions we are proposing?

Public purpose 4: to reflect, represent and serve the diverse communities of all the UK's nations and regions

Nations & Regions

- 16) Whilst the previous Charter agreement set out clear parameters as to how the BBC should develop the level of content produced in the nations and regions, there remains much to be done if each nation and region of the UK is to be truly reflected. The nature of the BBC's public funding means that it remains the PSB with the most far-reaching and comprehensive commitment to representing the UK's Nations and Regions, by a significant margin. Along with BBC Three online,

BBC One and BBC Two are the only channels in the UK to offer dedicated programmes within their schedule targeted at the individual nations and regions of the UK. The increase in the proportion of UK-wide programmes made in the nations must be built upon to ensure long-term change established, ensuring that the shift in production in turn supports a broadening of the creative talent across the UK.

- 17) The BBC has set itself a creative challenge in response to its audiences - that it must tell the story of the changing UK. Distinctive and authentic stories will only come through when the full range of stories and storytellers are enabled to make it on to our screens. Greater devolution of decision making could have a positive effect through the decentralisation of commissioning, as well as production. Widening out the commissioning across the UK is a practical way of improving how the BBC portrays and represents all parts of the UK on its network.
- 18) Previously the focus and commitment has been on pushing out network television production spend roughly in line with the Nation's population size. We believe that assessment of this in relation to public purpose 4 (to reflect, represent and serve the diverse communities of all the UK's nations and regions) should also consider what the longer-term impact such investment has had on the skills and opportunities available to indigenous creative talent and the diversity of stories and perspective reflected in the content.
- 19) We would draw attention to the important role that the BBC's presence in the nations and regions plays in its performance against purpose 4: Contextual factors: impact on creative economy'. For example, in Salford the BBC's impact on more localised talent and skill bases is having both an immediate and longer-term effect on production in the nations and regions. Not only is more production created in the Nations and regions leading to greater diversity of voice and story, but the aim should be that those being employed to make the content changes over time and the trend of 'lift and shift' where skilled labour is routinely brought in from London and the South East to other parts of the UK.

Diversity

- 20) While we agree with much of the proposals addressing diversity, we are concerned that they fail to acknowledge the significance of the BBC's own workforce and that of its independent production company suppliers and the impact that changes to their demographic makeup could and would have on the distinctiveness of its content and services. Given that the BBC has publicly committed to improving the diversity of its workforce and is a broadcaster partner in project Diamond, Ofcom's reluctance to measure performance for the off-screen workforce to the same extent as on-screen is a puzzling missed opportunity.
- 21) By not formally incorporating workforce diversity into the performance measures just as most of the rest of the industry is supporting or adopting new data measurement in this field Ofcom is in danger of undermining the importance of the issue and appearing to be alarmingly out of touch or indifferent. . No adequate reason is given for this omission in section 4.134. We have evidence

from our own members that the off-screen environment does directly influence the diversity of the on-screen content, stories and perspectives shown.

- 22) Our own research in this areas shows the impact a diverse crew off-screen can have on the story and characters on-screen. In our report ***Adjusting the Colour Balance – BAME Directors in UK Television Direction (2015)*** a high proportion of BAME directors interviewed got their first break into television through the industry through the publicly-funded broadcasters BBC and Channel 4. Often entering the through a specific scheme or entry series specifically aimed at supporting new and diverse talent, recognising the positive impact that diverse creative teams have on on-screen content.
- 23) Television remains a closed, exclusive sector that is over-whelming white, male and middle class, and the BBC's pursuit of its public purposes and high level objectives presents a structured and comprehensive opportunity to positively impact this situation. Our report confirms that the industry's culture must be tackled head on and the BBC has a key role to play in doing so:
- 24) *“Crews themselves are very much closed networks, predominantly white working-class men. Executives are largely white upper middle-class university educated men who get to know the tried and tested routes in and up the industry. BAME kids are put off pursuing careers in film and TV as they don't see BAME role models and they don't have the family background to equip them with working knowledge of the industry.”¹*
- 25) *“I 'd like to go into somewhere that's not all white and middle class, with a real mixture of people good at their jobs and bringing different things with them, reflecting the nation. Not the usual situation of feeling I'm the only one in there. It's class, it's gender and it's race that need tackling. God help you if you're all three!²*
- 26) Our 2016 report ***Cut Out of the Picture – Gender Inequality in UK Film*** confirms wider research that clearly shows the positive effect having a women director has on the gender balance of a production crews and that of the story's lead creative, the writer. In the research sample take over a ten-year period the study found:
- 27) *“30.9% of crew working on a film directed by a woman were women, compared with only 24.1% of crew on films directed by men.”³*
- 28) *“The difference is most stark for that of writers, where 65.4% of writers on projects directed by women were women, compared with just 7.4% on films directed by men.”⁴*
- 29) The BBC is in an unrivalled position in terms of the transformative impact it can exert across the UK audio-visual production - what content gets made, where

¹ Adjusting the Colour Balance. BAME Directors in UK Television Direction, p22 2015

² Adjusting the Colour Balance. BAME Directors in UK Television Direction, p22 2015

³ Cut Out of the Picture – Gender Inequality in UK Film

⁴ Cut Out of the Picture – Gender Inequality in UK Film

it is made and who gets to make it. The richness of the diverse communities which can be found across the UK can only be accurately reflected when their voices and stories are heard. This is an aspect of the operating framework assessment Directors UK are keen that Ofcom should continue to monitor and to encourage the BBC to pursue through its public purposes and regulatory conditions.

Question about setting and amending the operating licence

Q.6 Do you agree with Ofcom's approach to how we will set and amend the operating licence, as set out in Annex 5?

- 30) We would expect any significant amendments to the operating licence to be taken out to public consultation with detailed proposals.

Questions about performance measures

Q.7 Do you agree with our proposed overall approach to performance measurement?

- 31) On the whole we agree with the approach to the performance measures and that they look at a range of factors: Availability, Consumption, Impact and Context.
- 32) As highlighted in paragraph 7, we have concerns about the BBC being measured in comparison to other providers. We believe that the BBC's more popular content cannot be taken out of BBC's universal content provision, as this is central to the rationale for the BBC being funded via a licence fee system. Reduction of the BBC's more populist services and content could set the BBC down a path that would increasingly separate the service providers from the licence fee payers who fund it.
- 33) In our response to the White Paper on the BBC Charter renewal, we set out the following characteristics and the desired qualities for determining distinctiveness. Many of these are addressed within the metrics outlined in the proposed performance measures.

Table 1.

Qualities that indicate distinctiveness	Qualities that suggests a lack of distinctiveness
Original i.e. first-run	Repeats
Innovative – i.e. different from anything that already exists	Programmes made to a format
Not on another channel	Readily available on other channels
The product of a strong authored (probably single) voice	The product of a collaboration, showing lack of clear single authorship
Risky	Safe
Challenging and ambitious	Predictable
Of high quality (could be also relative to other programmes)	Of low quality
Serving a higher purpose e.g. education, enlightenment, socially valuable, inspirational & entertaining	Content that is exploitative, cruel, demeaning, sleazy, denigrating
Designed to help alleviate suffering or to solve problems	Content that is socially divisive or destructive

34) We believe there is more that Ofcom could be doing within the measure of Context, as outlined in our answer to Q4 above. We believe Ofcom could and should assess the contextual factors such as the creative working environment, freedom to innovate, industry recognised metrics for awards, without restricting editorial freedom and creativity.

Q.8 Do you agree with the proposed framework of: availability; consumption; impact; contextual factors?

Question about the operating framework for the performance measures

Q.9 Do you agree with Ofcom’s approach to how we will set and amend the performance measures?