

## Your response

Question	Your response
<p><b>Question 1: Do you agree with the proposed scope of the review of BBC regulation as set out in this document? If not, please explain the areas where you think changes should be made.</b></p>	<p>We believe the proposed scope of the review should encompass the wider issue of the extent to which independent audio production companies' IP is being protected.</p> <p>As BBC Sounds grows and expands its worldwide activity, having protection for producers' IP rights will be ever more important. It would be of great benefit to the sector going forward if Ofcom would recommend the introduction of statutory protections of producers' IP as currently exist for PSB television commissioning.</p> <p>AudioUK has recently been engaging with the BBC on Terms of Trade (ToTs) and due to PSB radio ToTs not being covered in legislation we had to begin from the point of view of separating out various types of IP rights, which is required in the regulated TV commissioning Codes of Practice regulated by Ofcom.</p> <p>Given the success that TV ToTs have had in growing that part of the sector, we believe there is a strong case for introducing such a requirement for PSB audio commissioning and we regard the Periodic Review process as an appropriate time for Ofcom to give due regard as to whether this is something that could be applied to the BBC. We realise this could require legislation however we are aware of the Government's intention to legislate on media issues in the near future and therefore Ofcom could realistically recommend to Government. We would envisage this legislation encompassing all PSB audio commissioning, not just the BBC.</p> <p>To do so would bring a new consistency in the approach to protection of IP in TV and audio commissioning and put TV and audio production companies on a level playing field in terms of protecting IP. This is particularly important given the rise in the wider market for audio content which now give production companies a wide range of options re exploiting their IP and therefore makes their situation much more comparable to TV that it has been in the past.</p>
<p><b>Question 2: Do you agree with the proposed approach to reviewing the BBC Operating Licence? If not, please explain why.</b></p>	<p>We agree with the proposed approach for the review.</p>
<p><b>Question 3: Do you have any views on how to measure the BBC's performance?</b></p>	<p><b>BBC Sounds</b></p> <p>We agree that the scope of the Operating Licence needs to be expanded to encompass iPlayer and BBC Sounds. These services are increasingly central to the BBC's content commissioning and distribution strategy and therefore</p>

need to have specific oversight involving dedicated requirements and measures.

In particular we would like Ofcom to ensure the following:

Firstly, all BBC Sounds commissions should be open to competition to the independent production sector. The new distribution audio platforms allow production companies to produce and distribute their own content, however the presence of the BBC's in-house-produced content provides a major element of publicly-funded competition in such a market, affecting audiences and advertising revenues.

In recent times we have sought to open up BBC commissioning to competition and given this is an entirely new service, which is operating where there is already a lively production sector utilising platforms outside the BBC, we need to see the BBC give the maximum opportunity to win Sounds commissions.

Speaking to the EBU in 2018, the BBC Director of Radio and Education told the audience that Sounds would put every new commission out to competition: "every one of our new podcasts will be contested, helping to grow the independent podcasting sector"<sup>1</sup>. However this has yet to become a reality, with BBC in-house producers often commissioned to produce content without indie producers being given the chance to compete for it.

We have been told by the BBC that BBC Sounds has now curtailed this aspiration in favour of aligning with the 60% competition requirement across BBC radio networks. In our view, as well as impacting on the market this is a missed opportunity to use BBC Sounds to seek out as many new ideas and as much new audio production talent as possible for the benefit of audiences.

Given that the BBC has itself committed to the sector that it will be meeting the 60% competition requirement, we would request that Ofcom requires the BBC to provide regular reporting on whether that target is being met.

In addition we would like Ofcom to recommend to Government that at the next available opportunity, BBC Sounds be required to make available all of its commissions for competition from external production companies.

Secondly, Ofcom should review BBC Sounds on a regular basis. Given the speed with which the market is developing, it is important for Ofcom to be regularly looking at BBC Sounds, its ongoing expansion and its relationship with the independent production sector. We therefore call upon Ofcom to introduce a regime of regular review of BBC Sounds every two years, including opportunities for formal stakeholder input.

#### **BBC Radio Quotas**

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<sup>1</sup> [James Purnell speech to EBU Truth and Power conference – Jun 2018](#)

Elsewhere, we note that para 3.19 of the consultation states that “our regulation should move away from primarily requiring compliance with quantitative conditions and output reporting.”

This is naturally a concern if it means that the BBC is able to move away from some of the activities which makes it most distinctive.

The ‘needs of audiences’ needs to be very clearly defined to mean not just larger audiences but addressing market failure in certain genres. This is necessary to avoid the danger in this approach that it gives the BBC either an explicit or implicit message that Ofcom considers audience numbers more important than the BBC’s role in making a range of distinctive programmes across all genres.

We are already concerned that the BBC’s ‘Fewer, Bigger Better’ strategy will cause those programmes which are important but not attracting large audiences to suffer. The BBC Director General has already spoken of wanting to make fewer documentaries<sup>2</sup>, at which point again there is concern that this will cause reduction of programmes in genres that are an important part of PSB.

At the time of the original Ofcom-BBC Operating Licence consultation, AudioUK (then Radio Independents Group/RIG) made the case to Ofcom<sup>3</sup> that it should in the first instance adopt the radio genre quotas instated by the BBC Trust. We warned that failure to do so could well result in a watering down of the BBC’s provision of certain types of PSB programmes.

Regrettably Ofcom chose to allow the BBC more leeway on genres such as drama and comedy and as a result there has been a reduction in hours. To take drama as an example, with the help of our membership AudioUK has looked at the amount of drama commissioned by BBC Radio in recent years. According to our calculations<sup>4</sup> the numbers of drama hours in regular slots (minus the Archers) has fallen significantly, from 237.25 in 2019-20 to 167.75 in 2021-22<sup>5</sup>.

Looking back further to the last financial year before the publication of the BBC Operating Licence, we can see that, under the BBC Trust, BBC Radio drama figures were much higher, totalling an estimated 413.25 hours (again minus the Archers).

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<sup>2</sup> See <https://www.documentarytelevision.com/uk/bbc-director-general-floats-deep-cuts-to-documentaries-in-smarter-bigger-better-strategy/>

<sup>3</sup> See our full response to the Ofcom consultation at <https://www.audiouk.org.uk/wp-content/uploads/2021/09/RIG-response-Holding-the-BBC-to-account-for-the-delivery-of-its-mission-and-public-purposes-Final.pdf>

<sup>4</sup> Annex with full figures provided separately

<sup>5</sup> Note figures for 2021-22 were compiled using figures supplied to AudioUK by the BBC in July 2020. We have not compared with 2020-21 due to the effects of the pandemic on commissioning rounds)

Prior to the BBC-Ofcom Operating Licence, the Radio 4 Operating Licence agreed with the BBC Trust had the specific requirement to “Broadcast at least 600 hours of original drama and readings each year”<sup>6</sup>.

We believe this type of reduction has been caused by the BBC being given more freedom to reduce it, through removing the BBC Trust quotas.

This provides evidence that Ofcom needs to reconsider its decision to reduce those hours and instead look to reinstate genre quotas for BBC radio services. While the Audio Content Fund has provided an additional source of some drama commissions and also new digital platforms allow for the creation and distribution of drama, the BBC still remains a vitally important commissioner and broadcast of drama content for UK audiences. The same could be said for genres such as comedy.

### **BBC Annual Plan Reporting**

We agree with Ofcom that the BBC’s Annual Plan should be far more metrics-based and more clearly laid out with, as the consultation suggests, more specific commitments and reporting on how the BBC is delivering against them.

These figures should include reporting on not just hours but spend on independent radio and audio productions, including a breakdown of how much is spent outside the M25 on in-house and indie productions respectively.

As Ofcom is aware, the BBC has to meet a requirement of 60% of non-news hours to be available for competition from external producers by the end of 2022.

While the requirement is in hours, we note that where the BBC Agreement stipulates the 60% requirement it also states that: “the BBC must ensure there is genuine competition between BBC producers and external producers (whether independent producers or not) on a fair, reasonable, non-discriminatory and transparent basis for the right to make relevant television, radio programmes and relevant online material”<sup>7</sup>.

We believe that “genuine competition” requires the BBC to offer for competition a fair range of programmes in terms of genres and cost, and that there should therefore be figures published for the value of the programmes put out for competition and also of the programmes commissioned from both in-house and independent producers.

We also note that Ofcom set requirements for BBC spend on its radio services outside the M25, with each of Radio 1, 2, 4 and 5live required to allocate at

<sup>6</sup> [Radio 4 Service Licence. BBC Trust, April 2016, p5](#)

<sup>7</sup> [Broadcasting: An Agreement Between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation. DCMS, Dec 2016, Schedule 3, 7\(2\)](#)

	<p>least a third of their programme production spend outside the M25, and Radio 3 to allocate at least 40% of its programme production spend outside the M25<sup>8</sup>.</p> <p>It would be useful for the BBC to again be required to break that spend down into in-house and indie production, to give a clear picture of how competition is working in general in radio commissioning.</p> <p>We believe it is perfectly possible for the BBC to compile this data using the information provided in the BBC's Proteus commissioning system.</p>
<p><b>Question 4: Do you agree with our proposed scope of the review in relation to content standards? If not, please explain why.</b></p>	<p>We agree with the proposed scope of the review regarding content standards.</p>
<p><b>Question 5: Do you agree with the issues we have identified with the processes for assessing the competitive impact of changes to the BBC's UK Public Services? If you consider there should be changes to these processes, please set out what these are and, if possible, provide any relevant evidence.</b></p>	<p>We agree that there are issues regarding the process, in relation to assessing whether a particular proposed change to by the BBC to its UK Public Services is material.</p> <p>Ofcom is correct to state its role is not clear, as it is involved even at the first stage which is BBC-led. However we would not wish to see any change result in less involvement from Ofcom.</p> <p>Ofcom will be aware that there is widespread concern among the wider broadcasting and production industry that the BBC itself carries out initial assessment of its own proposals with, as this consultation acknowledges, insufficient from stakeholders. The opportunity for the BBC to potentially downplay the material change in order to avoid further scrutiny is all too clear.</p> <p>We would therefore like Ofcom to have a more active role in initial assessments of the extent to which a proposed BBC change to its UK Public Services is material.</p> <p>We believe that this would ensure impartiality in such decisions from the outset. It would also potentially speed up some processes if the process involved Ofcom at the outset, thus reducing the amount of stages involved in cases where it goes beyond the BBC's initial impact assessment.</p> <p>This would be beneficial to the BBC itself as it could allow it to proceed with its plans more swiftly in cases where they are ultimately having to be approved by Ofcom and such approval is given.</p>
<p><b>Question 6: Do you have any concerns about the regulatory framework for</b></p>	<p>Ofcom should as suggested consider within the Periodic Review the role of the public service in the operation of the commercial activities. This scope of this</p>

<sup>8</sup> [Operating Licence for the BBC's UK Public Services. Ofcom, Oct 2017, paras 2.64 – 2.66 - Programme making in the nations and regions: radio services](#)

**the BBC's commercial activities that are not being considered in the review of BBC Studios?**

should be wide-ranging in order that a full range of views can be encouraged on the matter.

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