

BBC response to Ofcom consultation on guidance for ODPS providers on obligations relating to European works

Executive summary

- The BBC supports the European Works framework, which has supported the production of high quality content for audiences across the UK and Europe, and we welcome the extension of the framework to ODPS providers, which will mean that audiences are guaranteed access to some of the best programming from EU and other qualifying countries.¹ The UK's creative industries are a critical part of the success of UK PLC, and economic investment in UK-made content is a key part of this.
- As an organization with great British content at its core, the BBC looks forward to continuing to bringing the best of Europe programmes to UK audiences via its services including its on-demand programme service iPlayer.
- We support Ofcom's proposal, its guidance and compliance approach. We would welcome a flexible approach in terms of the format that is required for reporting, particularly for the first year (information relating to 2022).

Introduction

The BBC welcomes this consultation and the approach by Ofcom, that will ensure that the UK's approach is in line with that undertaken across the EU. In recent decades, the European Works regime has supported a growing European audio-visual sector, and enabled cultural economies of the UK, EU states and the other countries² who form part of this mutually beneficial system. For example, many programmes made in Europe are now part-funded by pre-sales to UK and EU broadcasters and SVODs.

The European Works framework incentivises industry to invest – driving the European AV industry, creating jobs, stimulating the wider economy of EU member states. In the UK, global sales of British TV shows in 2020/21 were £1,426 million.³ The rules create a virtuous circle of investment, opening up opportunities for joint projects and new revenue streams, and encouraging

¹ Works originating in European Union Member States and also works originating in other European States which are party to the European Convention on Transfrontier Television of the Council of Europe ("the ECTT")

² The UK's creative industries contributed around £116bn to the UK economy in 2019 with around 20% – £23bn – from the Film, TV and Radio industries alone. 2021 estimates from the Department of Digital, Culture, Media & Sport.

³ Pact's TV Exports report, December 2021

investment in skills and programme-making in European Works countries. The beneficiaries are audiences in the UK and across Europe, who have access to a wide variety of great programming.

Research shows that the BBC and other PSBs produce content that is recognised by audiences as more distinctly ‘British’ than that commissioned by global SVOD providers, whether or not that SVOD-commissioned content is made in the UK.⁴ The BBC will continue to create the conditions for growth in the production sector⁵ and our investment in TV production also attracted investment from others too.⁶

Consultation questions

Consultation question 1: Do you have any comments on our proposed guidance on European works requirements?

We support Ofcom’s broad approach, and the ultimate public policy aim of furthering investment in and the availability of European/UK works in VOD services. It is right that Ofcom should take a proportionate approach to securing compliance with ODPS European works.

We note that there are certain incentives within the framework that could be unintended – for example ODPS providers with a large catalogue of content could have a long tail of programmes which attract niche audiences. If these programmes were disproportionately non-European Works then those larger ODPS providers might be incentivized to reduce their long-tail in order to improve their ability to meet the relevant quotas.

We do not foresee these issues being of immediate concern for the BBC or its ability to meet quotas. However we believe that Ofcom may want to consider these incentives in its guidance around calculation of quotas and ongoing regulation of the European Works framework.

We also note obligations on ODPS providers to give European Works due prominence, and also separately that Ofcom and the Government have undertaken to introduce legislation to modernise the regulatory framework to ensure PSB services are prominent and available on all major TV platforms. We

⁴ Enders Analysis, Outsourcing culture: When British shows aren’t ‘British’, March 2020

⁵ Over the last four years the BBC spent around £1.5bn on TV production outside London.

⁶ In 2019 over £1.2bn of third-party production spend was directly attributable to the BBC’s investment. KPMG, An Assessment of the Economic Impact of BBC, 2021

do not believe these two areas to overlap but we would be very happy to discuss further with Ofcom if that is of assistance.

Consultation question 2: Do you have any comments on our proposed guidance on the steps Ofcom will take to secure compliance?

Ofcom's approach can mean that European Works compliance can be reported relatively simply and proportionately. We agree that providers should provide details on a yearly basis, and that the questions in Ofcom's list are the right areas to cover.

Larger ODPS providers will need to develop additional automated processes and systems to report on European Works. The BBC is already working on this, to ensure that all the programmes available on its ODPS service are captured by the automated systems for the purposes of reporting. We note that the timeframe proposed by Ofcom is that providers should give information in Spring 2023 that covers the calendar year 2022. Given that the consultation had not yet been released at the start of that period (i.e. the beginning of 2022), we note the difficulty in having developed automated systems for this time period, and therefore reporting for that period will be more complex. We do not foresee any problems in evidencing that the BBC has met the relevant quotas. We would however welcome a discussion with Ofcom about how best to evidence and report in the first year, and would welcome a flexibility of approach and format for this period.