

*Championing  
excellence and diversity  
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



The Old Rectory Business Centre  
Springhead Road, Northfleet  
Kent, DA11 8HN  
Tel: 01474 338716  
email: [info@vlt.org.uk](mailto:info@vlt.org.uk)  
web: [www.vlt.org.uk](http://www.vlt.org.uk)

**RESPONSE BY THE VOICE OF THE LISTENER & VIEWER  
TO OFCOM'S REVIEW OF RULES FOR PROMINENCE OF PUBLIC  
SERVICE BROADCASTERS AND LOCAL TV**

**October 2018**

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## **INFORMATION ABOUT THE VLV**

The Voice of the Listener & Viewer Limited (VLV) represents the citizen and consumer interests in broadcasting and speaks for listeners and viewers on the full range of broadcasting issues. It uses its independent expertise to champion quality and diversity in public service broadcasting, to respond to consultations, to produce policy briefings and to conduct research. VLV has no political, commercial or sectarian affiliations and is concerned with the issues, structures, institutions and regulations that underpin the British broadcasting system. VLV supports the principles of public service in broadcasting. It is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

### **Executive Summary**

1. VLV welcomes the opportunity to contribute to the debate about Public Service Broadcasting (PSB) prominence and supports the majority of the proposals presented in this consultation. VLV commends Ofcom for the approach it has taken because we consider the issue of PSB prominence to be fundamental to the future of PSB in the UK.
2. VLV agrees that the 'flexibility' in the current EPG Code has 'over time led to some significant variations across EPG providers and to some designated channels being less easy to find depending on the platform and television device used'.<sup>1</sup> This is not beneficial for audiences and we agree 'it may not achieve the policy aims of the legislation'<sup>2</sup>. We agree that the EPG Code needs to 'provide more detailed guidance to ensure the rules can be enforced'<sup>3</sup> and it needs to be revised so that 'it delivers the policy intention set out by Parliament in a way that provides regulatory certainty for the designated channels and for EPG providers about our expectations of 'appropriate prominence'<sup>4</sup>.
3. Current regulation only guarantees PSB prominence on the traditional linear EPG. VLV believes legislation needs to be updated to include connected devices and online platforms. VLV considers it is crucial that principles are established which can underpin any changes Parliament would need to make to the statutory regime in future to maintain the prominence of PSB content and services in an online world.
4. VLV believes that regulation of PSB prominence should apply across all platforms where a substantial proportion of viewing is conducted if the intention of Parliament to maintain PSB prominence is to be fulfilled. This will be beneficial for audiences because PSB content which they value will be easier to find and there will be a greater uniformity of approach across platforms and devices.
5. VLV believes that legislation should require that platforms and broadcasters provide Ofcom with any necessary data related to VoD viewing so that it can fulfil its duties which are *to*

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<sup>1</sup> *Review of rules for prominence of public service broadcasters and local TV*, Ofcom, 27 July 2018 (para 1.13)

<sup>2</sup> *Review of rules for prominence of public service broadcasters and local TV*, Ofcom, 27 July 2018 (para 4.19)

<sup>3</sup> Sharon White speech March 8 2018 <https://www.ofcom.org.uk/about-ofcom/latest/media/speeches/2018/british-tv-digital-age>

<sup>4</sup> *Review of rules for prominence of public service broadcasters and local TV*, Ofcom, 27 July 2018 (para 4.20)

*further the interests of citizens and consumers in relation to communication matters<sup>5</sup> and to have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK<sup>6</sup>.*

6. VLV agrees with all Ofcom's proposals for changes to the EPG except that VLV would like CBBC and CBeebies to have guaranteed positions at the top of the children's EPG section or the genre area in the EPG for children's content and we are concerned that the block of news channels on EPGs without genre areas is not prominent enough.
7. VLV understands the need to allow a period of transition. We would welcome the changes being proposed by Ofcom being carried out as quickly as possible however it will be necessary for Ofcom to finalise the length of this window with EPG providers following this consultation.
8. VLV believes that a link to the EPG should be available on the home page of all user interfaces on TVs. The EPG remains an important means of finding PSB content and should be easily discoverable or the impact of Ofcom's recommendations to change the EPG Code will be undermined.
9. VLV considers that PSB VoD players should be prominent across all platforms. If the PSB system is to be maintained in the UK, the PSBs need to be able to maintain their reach in order to be viable and VoD is already an essential viewing platform for most audiences. VLV believes that rules and protections for PSB prominence should be 'platform agnostic'.
10. VLV agrees only partly with the principles set by Ofcom out for a future regime. We are concerned that if personalisation is encouraged it may lead to an increase in the 'echo chamber' effect, as seen on social media platforms. VLV believes that curated PSB content on VoD players can lead to a broadening of horizons so a balance needs to be struck between prominence for curated PSB content and a level of personal choice in order to maximise the societal value of PSB.
11. We agree that the ability to find recently watched series should not be restrained, but we believe that the promotion of programmes should not be based purely on personal preference for the reasons stated above.
12. VLV agrees that transparency of search is a principle which should be upheld. Platforms should make it clear when content is prioritised due to a commercial agreement.
13. VLV believes there are a number of other principles which Ofcom should consider when exploring how to ensure society benefits from PSB content beyond the traditional EPG. These include equality, the need to promote regulated journalism and the universality of prominence.
14. VLV thinks that the prominence regime should be extended to ensure PSB players can be easily found. VLV would like hardware manufacturers to be required to provide pre-loaded PSB players which are given guaranteed prominence.
15. In order to maintain public policy objective to promote PSB content, VLV believes that the prominence regime should be extended to include recommendations, predicted text search and voice search. Search transparency should be required so that when content is promoted

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<sup>5</sup> (Section 3 (1) of the Communications Act 2003.

<sup>6</sup> Section 3(4)(a) of the Communications Act 2003.

the reasons for this promotion are clear; free PSB content should be promoted when it is available; and PSB content should be promoted in text or voice searches.

16. VLV believes that in the longer term it will be necessary to extend the prominence regime to online services once they become 'significant means' for accessing PSB content.

## **Introduction**

17. VLV welcomes the opportunity to contribute to the debate about PSB prominence and supports the majority of the proposals presented in this consultation. VLV commends Ofcom for the approach it has taken because we consider the issue of PSB prominence to be fundamental to the future of PSB in the UK.
18. PSB is crucial for the health of our democracy. The UK's public service broadcasting system is widely considered to be the best in the world. At a time when our world seems to be increasingly characterised by social division and the erosion of democratic systems, disinformation and echo chambers are proliferating and thriving. The UK's PSBs provide a counter balance to these issues. They hold powerful companies and institutions to account and provide information to engage citizens in the democratic process.
19. Changes to the EPG Code and the future of the prominence regime under consideration by Ofcom are necessary to ensure the sustainability of the UK's PSB system so that high quality, UK produced, original content is promoted and therefore easy to find.

## **The Benefits of PSB**

20. As set out in Ofcom's report *Public Service Broadcasting in the digital age* in March 2018 the benefits of PSB are as follows:
  - The broadcasting sector is integral to a thriving creative economy in UK
  - It provides a wide choice of high quality programmes
  - It provides trustworthy news and current affairs
  - It supports certain types of programming such as arts, religion, original children's programming which otherwise might not be broadcast
  - It reflects the UK back to itself
  - It brings the nation together at key moments
  - It informs and educates society
  - It promotes social cohesion

## **EPG Code**

21. VLV agrees that the 'flexibility' in the current EPG Code has 'over time led to some significant variations across EPG providers and to some designated channels being less easy to find depending on the platform and television device used'.<sup>7</sup> This is not beneficial for audiences and we agree 'it may not achieve the policy aims of the legislation'<sup>8</sup>. We agree that the EPG Code needs to 'provide more detailed guidance to ensure the rules can be enforced'<sup>9</sup> and it needs to be revised so that 'it delivers the policy intention set out by Parliament in a way that

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<sup>7</sup> *Review of rules for prominence of public service broadcasters and local TV*, Ofcom, 27 July 2018 (para 1.13)

<sup>8</sup> *Review of rules for prominence of public service broadcasters and local TV*, Ofcom, 27 July 2018 (para 4.19)

<sup>9</sup> Sharon White speech March 8 2018 <https://www.ofcom.org.uk/about-ofcom/latest/media/speeches/2018/british-tv-digital-age>

provides regulatory certainty for the designated channels and for EPG providers about our expectations of 'appropriate prominence'<sup>10</sup>.

22. Earlier this year Ofcom set out its ambition that its review of the EPG Code would 'ensure PSBs stay easy to find, maintain the top ranking of the main PSBs and give higher slots to smaller PSBs like the BBC's children's channels, BBC News, BBC Alba, S4C and local TV channels'<sup>11</sup>.
23. While the benefits of the changes proposed by Ofcom for the Designated channels may deliver greater public value for society, we acknowledge that these changes are likely to have a negative impact on the commercial PSBs' portfolio channels and other commercial channels. These changes may negatively impact on audiences because some channels will no longer be located where they expect to find them.
24. Nonetheless VLV holds that regulation of the EPG needs to be changed to lead to greater uniformity of approach and that in time this will be beneficial to UK society because PSB channels will be more discoverable.

### **The Future of the prominence regime**

25. The PSBs now face a number of challenges as the broadcasting landscape undergoes fundamental change. The growth in the use of PVRs, online and connected devices, text and voice search and the greater availability of fast broadband has led to shift in viewing habits away from live television. This trend is especially apparent among younger audiences. While these technological developments provide greater choice for audiences, it has made PSB content more difficult to find in a more fragmented and crowded space. Current regulation only guarantees PSB prominence on the traditional linear EPG and VLV believes legislation needs to be updated to include connected devices and online platforms.
26. VLV considers it is crucial that principles are established which can underpin any changes Parliament would need to make to the statutory regime in future to maintain the prominence of PSB content and services in an online world. Any legislation proposed to Parliament to ensure the future of the prominence regime needs to be flexible if it is to be able to take into account new technological developments as they happen.
27. VLV believes that regulation of PSB prominence should apply across all platforms where a substantial proportion of viewing is conducted if the intention of Parliament to maintain PSB prominence is to be fulfilled. This will be beneficial for audiences because PSB content which they value will be easier to find and there will be a greater uniformity of approach across platforms and devices. Greater uniformity of approach will especially help those who are digitally less able to find content and ensure that those who are less media literate have easy access to reliable news and information and are not exploited for commercial ends. Currently it is the commercial interest of companies which drives the design of user interfaces; VLV wants to ensure that public interest drives their design.
28. VLV believes that legislation should require that platforms and broadcasters provide Ofcom with any necessary data related to VoD viewing so that it can fulfil its duties which are *to further the interests of citizens and consumers in relation to communication matters*<sup>12</sup> and to

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<sup>10</sup> *Review of rules for prominence of public service broadcasters and local TV*, Ofcom, 27 July 2018 (para 4.20)

<sup>11</sup> *Public Service Broadcasting in the digital Age*, Ofcom March 2018 (para 4.3)

<sup>12</sup> *(Section 3 (1) of the Communications Act 2003.*

*have regard to the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK<sup>13</sup>.*

29. While there is evidence that EPG prominence affects a channel's performance, Ofcom has not conducted research as yet to establish whether prominence affects channels' performance with VoD viewing. We would urge Ofcom to carry out this research in order to establish an evidence base to support any recommendations it might make.
30. VLV acknowledges that 'designing a prominence regime that is fit for the digital age raises a number of complex questions'<sup>14</sup> but we do not believe this should prevent Ofcom or Parliament from pursuing the policy intention to ensure PSB content remains prominent and easy to find.

## **Consultation Questions**

### **Q1) Do you agree with our proposals that the main five PSB channels hold the top five slots on EPGs provided UK wide or in the UK outside of Wales?**

31. VLV agrees that the five PSB channels, which are the *foundation of the UK's PSB provision<sup>15</sup>*, should be guaranteed their current positions in the top five slots on EPGs operating on a UK-wide basis or outside Wales. This will provide regulatory certainty for the PSBs and we do not consider this proposal will have a negative impact on audiences.

### **Q2) 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?**

32. VLV agrees with the proposal that Channel 4 should be listed on the first page of EPGs in Wales. VLV considers it is crucial that Channel 4 is afforded equal prominence with the other PSBs.
33. VLV believes that S4C should remain in its current slot, position 4 on the EPG in Wales. S4C has played an important role in providing programming in Welsh for viewers in Wales, facilitating national and cultural identity as well as encouraging the practice of the Welsh language.
34. We recognise that these proposals will have a potentially negative impact on commercial broadcasters who will be forced to move down the EPG, however VLV believes that the potential benefits for Channel 4 and for audiences in Wales outweigh the potential negative impact of these proposals. These proposals will also provide greater uniformity in the EPG which will be beneficial for audiences.

### **Q3) Do you agree that BBC Four should be guaranteed a slot within the top three pages of all EPGs?**

35. VLV considers that it would benefit audiences if there were greater uniformity across EPGs on different platforms. In this context we agree that BBC Four should be guaranteed a slot within the top three pages of all EPGs.

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<sup>13</sup> Section 3(4)(a) of the CA2003.

<sup>14</sup> Review of rules for prominence of public service broadcasters and local TV, Ofcom, 27 July 2018 (para 1.9)

<sup>15</sup> Review of rules for prominence of public service broadcasters and local TV, Ofcom, 27 July 2018 (para 5.18)

36. We understand that the potential negative impact of this proposal will be that, following the launch of BBC Scotland in February 2019, Virgin Media may need to move BBC Four up six pages on its EPG.
37. We believe that the potential positive benefits of more guaranteed prominence for BBC Four outweigh the negative impacts this will have on Virgin Media or its customers.

**Q4) Do you agree that the designated public service News channels (currently BBC News and BBC Parliament) should be guaranteed slots on the first page of the news genre section or an equivalent position within the grouping of news channels on the EPG, as applicable?**

38. VLV agrees that BBC News and BBC Parliament should have guaranteed slots on the first page of the news genre sections of platform's EPGs.
39. As stated above, one of the principal outcomes of the PSB prominence regime should be that citizens in the UK have access to high quality, impartial news so that they are well-informed and can participate fully in the democratic process. As the Secretary of State for Culture Media and Sport highlighted recently at the RTS Conference ensuring prominence for trustworthy news is a crucial issue for the Government:  

'...as well as tackling sources of inaccurate information, we want to strengthen and support high quality sources that people can trust. High quality and properly researched journalism is the best possible weapon in our battle against fake news.'<sup>16</sup>
40. However, where platforms do not have genre sections (Freeview, Freeview Play and EE TV) VLV would urge Ofcom to explore whether there is a way to make news channels more prominent. Currently news channels on these platforms are low down the EPG and difficult to find. VLV believes that public interest journalism is important to democracy and that therefore we need regulation to support it and make it more prominent.

**Q5) Do you agree that CBeebies and CBBC should have guaranteed slots on the first page of the Children's genre or area of the EPG, as applicable?**

41. As was highlighted in the recent Ofcom Review of Children's Content, the BBC is overwhelmingly the dominant provider of new UK originated children's content in the UK.
42. Most other channels in the UK aimed at children are dominated by imported content which is not culturally relevant to British children's lives. In this context, VLV believes that there is a strong public interest case for CBBC and CBeebies to be given prominence above all other children's channels in the Children's genre or area of the EPG, regardless of platform.
43. The EPG Code set out that EPG providers should give prominence for designated PSB channels and VLV does not believe that there should be any difference in the approach to content for adults and children. The Designated channels aimed at adults are guaranteed the top slots of the EPG. VLV believes this principle should apply equally to children's content in the children's genre area of the EPG.

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<sup>16</sup> Jeremy Wright MP, Secretary of State for Digital, Culture, Media and Sport: Speech to RTS London Conference September 18 2018

44. Therefore VLV would disagree with Ofcom's proposal. Instead of CBeebies and CBBC having guaranteed slots on the first page of the Children's genre or area of the EPG, they should be guaranteed the top two slots in these areas of the EPG.

**Q6) Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs?**

45. VLV agrees with Ofcom's proposal that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs.
46. VLV understands that the potential negative impact of this proposal will fall on Virgin Media which is the only major platform which currently operates a UK wide EPG.
47. While we understand that this proposal will impact negatively on Virgin Media and its customers, as stated above VLV considers that if the EPG Code is to be effective in ensuring prominence for PSB it is crucial that there is a level of uniformity across EPGs regardless of platform and that audiences need to easily find PSB channels.

**Q7) Do you agree that local TV should be guaranteed prominence within the first three pages of UK wide EPGs?**

48. VLV supports this proposal on the basis of the reasons put forward in response to Question 6.

**Q8) 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?**

49. On the basis of evidence presented in Annex 7 of the consultation document, VLV supports this proposal.
50. We understand that implementation of this proposal will result in Sky having to move Local TV from page five to page three on the Sky Wales EPG and BBC Alba from page six to page three of the Sky Scotland EPG.
51. As stated above, if the EPG Code is to be effective in ensuring prominence for PSB content, it is crucial that there is a level of uniformity across EPGs regardless of platform and that audiences need to easily find PSB channels.

**Q9) Do you agree that local TV should be guaranteed prominence within the first three pages of relevant regionalised EPGs?**

52. VLV supports this proposal on the basis of the reasons presented in response to Question 8.

**Q10) Do you agree with our proposals to ensure prominence for either the SD or HD version of BBC channels rather than both?**

53. VLV supports the proposal for either the SD or HD version of BBC channels to be allowed prominence, rather than both channels, given that most of the content will be duplicated. We agree that it is in audiences' interests to require only one variant of a BBC channel to be granted prominence.



**Q11) 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?**

54. VLV supports the proposal to allow broadcasters to swap HD simulcast variants of their SD designated channels, so that their HD channels can occupy the slots which the SD channels are entitled to.

**Q12) Do you agree with our proposal to provide a 12 month transition period once the Code is finalised?**

55. VLV understands the need to allow a period of transition. We would welcome the changes being proposed by Ofcom being carried out as quickly as possible, however it will be necessary for Ofcom to finalise the length of this window with EPG providers following this consultation.
56. We are concerned that by the end of the agreed transition period the proposed changes to the EPG Code need to have been fully implemented along with the updating of EPG providers' policies. There is a risk that EPG providers will suggest they need to wait to re-arrange their EPGs until slots become naturally available because channels have vacated them. We believe Ofcom needs to be clear that implementation includes the re-arranging of the EPG as well as the updating of EPG providers' policies.
57. VLV would welcome more information from Ofcom on the process required to redraft the Code of Practice on electronic programme guides if the Secretary of State chooses to add to or subtract from the list of Designated Channels. We would also welcome reassurance that this process will not be overly cumbersome because this could prevent new PSB channels which provide public value from being developed.

**Q13) Do you think that the prominence regime should be extended to ensure EPGs themselves can be easily found?**

58. VLV believes that a link to the EPG should be available on the home page of all user interfaces on TVs. The EPG remains an important means of finding PSB content and should be easily discoverable or the impact of Ofcom's recommendations to change the EPG Code will be undermined.
59. Vertical integration of the broadcasting industry means that companies are likely to increasingly produce, distribute and promote their own content. In this context, if the prominence regime is not extended to ensure the prominence of EPGs on user interfaces, the public policy objective to promote PSB will be undermined because the EPG will become more difficult to find.

**Q14) Do you agree with the broad range of factors for consideration we have identified? Are there other factors that policy makers should consider?**

60. We agree with the range of factors for consideration which Ofcom has identified as being relevant for accessing non-linear content on TV platforms, via recommendations and search and accessing PSB content on online platforms.

These are:

- What degree of prominence is desirable?
  - What metrics should define prominence?
  - What type of content should benefit from prominence?
  - What platforms, services or devices should be captured?
  - What elements of navigation interfaces should be captured?
61. VLV considers that PSB VoD players should be prominent across all platforms. We acknowledge that PSB VoD players include content from both PSB and non-PSB linear channels, however we do not believe this should mean they are not given prominence. If the PSB system is to be maintained in the UK, the PSBs need to be able to maintain their reach in order to be viable and VoD is already an essential viewing platform for most audiences.
62. VLV believes that rules and protections for PSB prominence should be ‘platform agnostic’<sup>17</sup>. VLV considers that any significant means for accessing PSB should be in scope for PSB prominence regulation in the short term. In the longer term, it is likely this scope will need to be expanded if online services become a significant means for accessing PSB. Currently the Secretary of State has the power to add channels to the Designatedchannels list. The existing regulations need to be updated to allow the Secretary of State to bring devices other than TV sets into scope. Without such a change in legislation, the regulation will become out of date and irrelevant.

**Q15) Do you agree with the principles we have set out? Are there other principles that should be considered?**

63. VLV agrees only partly with the principles set by Ofcom out for a future regime.

**Personalisation**

64. While the ability to personalise user interfaces is beneficial for audiences in some regards in an over-crowded space, it has to be noted that there are risks in this approach.
65. VLV considers one of the benefits of PSB prominence regulation is that it can help ensure a level of serendipity whereby audiences are introduced to new subjects and areas of interest. This can expand our horizons when content is curated according to PSB principles. Personalisation, on the other hand, has a tendency to narrow the range of content audiences are exposed to because users are mostly exposed to content they already know they will like. If they are not exposed to a range of other content which might challenge their views, there is an increased risk of an ‘echo chamber’ experience which has been seen on social media platforms.
66. If Ofcom supports policies which promote personalisation, audience needs should be prioritised by these policies, rather than the commercial needs of platforms. At the moment personalisation is limited on certain platforms. Some platforms allow a limited re-ordering of VoD apps, for example, whereby their own apps cannot be moved because there is a commercial benefit to them being prominent.
67. VLV believes a balance needs to be struck to allow curated PSB content to expand our horizons while allowing a level of personal choice in order to maximise the society value of PSB.

**Consumer Choice**

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<sup>17</sup> *Review of rules for prominence of public service broadcasters and local TV*, Ofcom, 27 July 2018 (para 6.15)

68. VLV acknowledges that consumer choice is generally beneficial for audiences however we believe a balance should be struck between consumer and citizen interests. We agree that any future online PSB prominence regime should not inhibit active consumer choice, however we are concerned that the needs of society as a whole should be taken into account when this policy is formulated.
69. We agree that the ability to find recently watched series should not be restrained, but we believe that the promotion of programmes should not be based purely on personal preference for the reasons stated above in response to the issue of personalisation because this increases the risk of echo chambers.
70. At the heart of this issue lies the distinction between citizens and consumers. While it's true that people are both citizens and consumers, the needs of citizens and society can differ from those of individual consumers. Society as a whole benefits from the horizons of its population being broadened. It is beneficial for audiences to be introduced to new subjects, content which challenges established views and innovative programmes. Such an approach often runs counter to the strategies of media platforms, however, because they are driven by the need to attract consumers.
71. In the context of broadcasting, consumers will tend to choose what works best for them in the marketplace, regardless of the needs of a universal system which benefits all citizens. Because broadcasting has such an impact on the democratic and societal health of a country, VLV holds that the needs of citizens and society as a whole should be taken into account alongside the stated priority of consumer choice.

#### **Search should be transparent**

72. VLV agrees that transparency of search is a principle which should be upheld. Platforms should make it clear when content is prioritised due to a commercial agreement.

#### **Other Principles**

73. VLV believes there are a number of other principles which Ofcom should consider when exploring how to ensure society benefits from PSB content beyond the traditional EPG.

**Equality:** The challenge of finding high quality PSB content impacts especially on those who are less digitally able. The PSBs have priority in existing EPGs, but newer technology, such as smart TVs, allows viewers to use VoD apps to access content. VLV is concerned that those who are devising the future regulation for PSB prominence are likely to be digital natives. We would encourage them to take into account that many TV viewers are not digital natives.

**Universality of prominence:** As stated above, VLV believes that regulation to ensure PSB prominence should be 'platform agnostic'. VLV holds that the PSBs should not have to pay for prominence on any platform. This will provide uniformity of approach for audiences, strengthen the PSB prominence regime and fulfil the intention of Parliament that PSB should continue to play an important role in our lives.

**Responsible Media:** Licensed broadcast services in the UK are regulated by Ofcom for harm and offence, accuracy and impartiality. Online streaming services are not covered by the existing legislation and this lack of regulation presents a significant threat to democracy and society. In order to understand what is happening in the world citizens need news and content which they can trust but if, for example, you ask the Amazon-produced Alexa service to provide you with news, it may deliver news which is unregulated and possibly out of date. In the most recent test VLV conducted the news provided by Alexa was two days old and its

source was not identified. Content providers who pay the highest fee are promoted and thus commercial considerations now drive what we watch and listen to. VLV believes that regulation needs to be put in place to ensure that accuracy, quality and the public interest are prioritised over commercial considerations on all platforms.

**Q16) Do you think that the prominence regime should be extended to ensure PSB Players can be easily found?**

74. VLV considers that the prominence regime should be extended to ensure PSB players can be easily found. VLV would like hardware manufacturers to be required to provide pre-loaded PSB players.
75. Additionally, VLV would like to see guaranteed prominence for all PSB Players in the top row of apps on the main app page of devices.
76. The PSBs should not have to pay to have their Players pre-loaded on user interfaces in order to maintain the reach of PSB content. This will be crucial as viewing habits change and more people access content via VoD if Parliament's intention to promote PSB content is to be fulfilled.
77. While Ofcom research found that the bigger PSB Players are widely available on devices, VLV's preliminary research found that they are not. On certain smart TVs it is not possible to install the ITV Hub or All4. Current legislation does not require hardware manufacturers and subscription services to carry PSB Players. The availability and prominence of channels' VoD apps on smart TVs is purely determined by financial negotiations.
78. The lack of regulation governing smart TVs in the UK currently reduces audience choice and should be addressed as a priority.

**Q17) 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?**

79. In order to maintain public policy objective to promote PSB content, VLV believes that the prominence regime should be extended to include recommendations, predicted text search and voice search.
80. As Ofcom highlights in the consultation document, currently search is determined by algorithms which help viewers find content, often using an element of 'commercial intent'<sup>18</sup> and this process is not transparent.
81. VLV believes that the search process should favour PSB content to some extent and it should be transparent.
82. **Search transparency:** Transparency should apply across all platforms and should include information about why content is being promoted. This will mean that where a search result is paid for, it should be clearly identified as advertised content.
83. **Free vs Paid for content:** Where PSB content is available free of charge this should be prioritised over paid-for content. Currently if you search for PSB content using voice or text

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<sup>18</sup> *Review of rules for prominence of public service broadcasters and local TV*, Ofcom, 27 July 2018 (para 6.25)

search sometimes a paid-for version of PSB content is prioritised because there is a commercial return for the platform, while a free version of the same content may be available lower down in the list of options.

84. **Voice Search:** Voice search should be governed by the principles we set out above, primarily by transparency. PSB content should be promoted, although the promotion of this content should be transparent. When a voice search is conducted which is vague, such as 'show me the news', this makes regulation more challenging, but if regulations governing transparency are introduced these issues will be less problematic.

**Q18) 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?**

85. Ofcom research demonstrates that audiences are accessing content using a wider range of devices than previously was the case. In this context VLV believes that prominence legislation should be extended to platforms and devices not currently captured by the EPG prominence regime. As stated above, VLV believes that PSB prominence regulations should be 'platform agnostic' so that the public policy objective of promoting PSB content is maintained. VLV considers that any 'significant means' for accessing PSB content should be in scope for this regulation.
86. Currently the menus offered by devices offering VoD vary enormously and they are confusing for audiences, especially those who are less digitally able. It would be beneficial for audiences if the menus and options were more uniform across all devices sold in the UK.
87. VLV notes that Ofcom has not as yet conducted research into PSB VoD content accessed via smart TVs and other devices. While we acknowledge that there is a wide range of products on the market to view VoD and these vary considerably, which makes this research challenging, it is essential that this it is conducted if we are to understand the implications of PSB prominence on smart TVs and other devices.

**Q19) Do you think that the prominence regime should be extended to online services? If so, who should be captured?**

88. As stated above, VLV believes that in the longer term it will be necessary to extend the prominence regime to online services once they become 'significant means' for accessing PSB content. If the regime is not extended, the public policy objective to promote PSB content will be undermined.
89. The regulations governing prominence of PSB online should be governed by the principles we set out above: transparency, universality, equality and the need to promote responsible media.