

Guardian Media Group response to Ofcom consultation on the future of public service media

About Guardian Media Group

Guardian Media Group (GMG) is one of the UK's leading commercial media organisations and a British-owned, independent, news media business. GMG is the owner of Guardian News & Media (GNM), which is the publisher of theguardian.com and the Guardian and Observer newspapers, both of which have received global acclaim for investigations, including the Paradise Papers and Panama Papers, and Cambridge Analytica. As well as being the UK's largest quality news brand, the Guardian and Observer have pioneered a highly distinctive, open approach to publishing on the web and have achieved significant global audience growth over the past 20 years. Our endowment fund exists to support the Guardian's journalism in perpetuity by providing financial returns.

Introduction

Guardian Media Group (GMG) is pleased to respond to Ofcom's review of Public Service Media (PSM). We welcome Ofcom's view that the definition of what was previously called PSB (Public-Service Broadcasting) has now expanded to include a wider definition of media that recognises how audiences seek out news, education and entertainment online. Therefore, we respond to this review as both a competitor to existing PSM services, and a business that operates in a sector that is undergoing the continued disruptive effects of global tech platforms on our business.

The pace of change in global media and technology markets has caused UK PSM providers to lose many of the advantages that ensured prominence, autonomy and profitability in a world of broadcast media. As consumer habits shifted from the consumption of PSM content in linear broadcast environments to disaggregated digital environments, PSM providers have seen their brands flattened within the environments of global, digital platforms, including large TV manufacturers such as LG. In addition to disaggregation, PSM providers have suffered disintermediation, that is the loss of control of the consumer relationship, and seen control and value of both user and market data lost to those same dominant global platforms. PSM providers are no longer in control of the relationship with the end user, and as a result have less insight into how and what content users consume. These are problems that publishers have been forced to counter for some two decades and more.

The business models of both publicly funded and commercial PSM providers face fundamental challenges. For the BBC, the disaggregation of their services has diluted the strength of the brand, reducing the relevance and connection that the BBC has with licence-fee payers, potentially reducing the willingness of UK citizens to pay for the licence fee in the long term¹. For commercial PSM providers that largely rely on advertising revenues to fund content production, global online platforms are now competing head-on for an ever greater proportion of converging advertising markets in which the trading mechanics have commoditised commercial inventory. As the

¹ Though we note that the DCMS select committee has upbraided the government for missing the chance to improve broadband services in the UK, meaning that the licence fee is the only feasible way of guaranteeing universal access to the BBC until 2038.

CMA's recent report on online platforms makes clear², the largest online platforms are not competing on a level playing field, instead using conflicts of interest, market opacity and a lack of accountability to generate billions in profits above and beyond what would be expected under normal investment conditions³.

In the context of a digital economy in need of urgent reform, GMG approaches plans for the evolution of the regulation of PSM providers on the basis of three key principles:

- First, GMG supports the broad historic structure of the PSB framework in the UK. The system has served the country well, evolving through the creation of the BBC, ITV and then Channel 4 and Channel 5, through major technological changes such as the development of satellite and multichannel television, and the transition from analogue to digital. GMG would like to see a strong PSB regime maintained in a digital world.
- Second, GMG is strongly committed to the role of the BBC, in essentially its current form, and funded through a universal licence fee, at least for the period covered by the next BBC Charter and until a viable alternative to the licence fee is proposed and consulted on by the government. The BBC remains a cornerstone of the PSM ecosystem, a globally significant broadcaster, and the envy of many countries around the world. Although there are ways in which the BBC could work better with other providers of PSM, the UK benefits hugely from the BBC's role at the heart of the PSM ecosystem.
- Third, we agree with Ofcom that the system of PSM regulation should be updated to reflect the new platforms through which consumers now access content. We are particularly supportive of Ofcom's view that obligations around broadcast prominence should evolve to ensure that PSM catch up services are made available through connected televisions and devices, on terms which support the critical investment by the PSM's in the UK creative ecology.

The broad challenges that PSM providers face, in terms of securing prominence in search and social environments, as well as issues regarding access to audience and viewing data, and the terms on which they licence content to online platforms are issues that are also common to a wide range of commercial media companies trading in the digital economy today. It is vital that the concerns expressed by PSM providers are not treated as somehow different from the concerns of the wider media market. We agree that the concerns of PSM providers are valid, and should be resolved, but their status as historic PSB providers, should not entitle them to special treatment within search and social environments (for example, through promotion or priority over commercial news providers).

There is a case for high quality news to be promoted within search and social media environments. However, any such promotion should apply to a broad class of UK news providers, covering both traditional PSB providers, emerging new PSM providers, and commercial news publishers such as those published by GMG. This broad definition of high quality news is reflected in emerging legislation, notably in Australia, where the news media bargaining code is seeking to equalise relations in the digital economy

² <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study#final-report>

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https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf

by empowering news publishers with the right to expect minimum standards from online platforms, greater transparency of platform algorithms, and the right to negotiate with dominant online platforms on the basis of an arbitration process overseen by a third-party regulator. This code represents a huge step forward in the process to normalise relations between dominant online platforms, and the consumers, advertisers and businesses that now rely on their services to function online.

The establishment of the Digital Regulation Cooperation Forum⁴ is a key step forward in efforts to address issues of unfair competition, and the uneven playing field within the context of the CMA's work to introduce competition into online markets, and the establishment of the Digital Markets Unit. It is vital that all UK media companies, not just PSM providers, should be able to benefit from a fair, transparency and open digital economy.

The need for greater collaboration between commercial and public media

One of the big trends in the commercial news media sector in recent years, is to seek to work more closely together on major projects where they both reduce non-essential investment costs, and also seek to empower the sector in the global marketplace. The consolidation of printing contracts⁵ is one such example, as is the joint working of broadcasters in relation to Digital UK and the Freeview platform.

The next phase of these attempts to power the evolution of UK media brands, may be to look at the shared interests of UK media brands beyond traditional silos. To that end, there are questions about how the BBC and the commercial PSM providers should be working with the commercial media sector to counter the power of dominant online platforms.

In the area of podcasting, for example, the BBC has sought to build a destination for its radio and podcasting content through the creation of BBC Sounds. This investment clearly enables the BBC to attain higher brand attribution, whilst also enabling it to retain first party data about individual users and consumer trends. By contrast, many commercial podcast providers, including GMG, distribute podcasts via commercial podcast platforms such as iTunes and Spotify, which at least enable the delivery of commercial breaks within podcasts, even if access to data about consumption of podcasts on that platform is far below the level we would hope for.

There is an open question about whether the BBC could be taking a leadership position to invest in platforms, in areas such as podcasts and audio content, that are of benefit to the BBC, but also to a wider group of commercial providers? Due to the fractious nature of relationships historically, there would likely be nervousness from both the BBC and commercial providers about working together on such a project. The BBC would likely have concerns about investing in a venture that enabled businesses to commercialise content through advertising or subscriptions, while the BBC's commercial rivals would likely be concerned about whether the BBC would ever agree to host third party providers content on genuinely fair, reasonable and non-

⁴ <https://www.gov.uk/government/collections/the-digital-regulation-cooperation-forum>

⁵ <https://www.theguardian.com/gnm-press-office/2017/jun/13/guardian-media-group-moves-print-titles-to-tabloid-format-as-part-of-three-year-transformation-programme>

discriminatory terms. There is always an additional risk that the BBC threatens to, or actually, changes the rules of the game, potentially in response to negotiations around the level and nature of the BBC licence fee. These concerns notwithstanding, there may be value in the BBC, and other PSM providers, looking beyond their traditional sector boundaries to consider how the broader collective of quality media in the UK can benefit from the relative scale provided by working together more closely on key strategic projects.

In the remainder of this response, we provide feedback on questions posed in the Ofcom consultation.

Question 1: Do you agree that a new regulatory framework for PSM delivery should support a more flexible ‘service neutral’ delivery approach that is more outcomes focused?

Question 2: Do you agree with our proposals for a clear accountability framework?

We recognise the need for PSB providers to modernise in the face of changing models of consumption. This is especially pertinent in the case of broadcast television, linear viewing of which is likely to continue to decline in the coming years.

In the context of the evolution of PSBs in the provision of news in a digital world, commercial news publishers have been bumping up against PSM providers for many years. Whilst it is understandable that legacy PSM providers want to ensure that their content features prominently within online environments, that urge must be balanced against the need to allow space for commercial news publishers to thrive in a sustainable high-quality news ecosystem. A Deloitte report, commissioned by the News Media Association and published in 2016, found that commercial news publishers were responsible for 58 per cent of total investment on news provision in the UK.⁶ It is vital therefore that as the BBC, in particular, seeks to evolve its proposition to licence fee payers, it does not simply see expansion of its services - at a national and local level - as the way to fulfill its mission and purpose in a digital world. We agree with Ofcom that the role of the BBC is to provide '*distinctive content across a range of genres, for audiences across the UK*'. However, in recent years, this has not always been the case.

Distinctive content

As the BBC has seen consumer habits shift away from broadcast news to consumption online, it has sought to change the nature of the content it publishes online. Through irregular review of the BBC's online news output, the BBC has sought to reposition its brand and content with younger audiences.

In 2014, for example, the BBC board commissioned a report by Howard Stringer on the Future of the BBC. Stringer asked in a world of Buzzfeed and Vice, how the BBC could "add character and personality". Stringer suggested that the "*BBC cannot offer an opinion of its own but it could – and should – explore curating opinion online.*"

⁶ http://www.newsmediauk.org/write/MediaUploads/Investigation%20Gallery/Final_Report_News_Media_Economic_Impact_Study.pdf

The report seemed to suggest that the BBC should supplement its key role as a provider of impartial news coverage by moving more into comment and other styles of news, that have traditionally been supplied to the market by commercial news brands.

We would be concerned, if a more ‘service neutral’ approach to delivery and accountability of the BBC enabled the Corporation to exercise ever greater latitude as to the new products and services it launched in response to changing consumer trends. **The danger is that the BBC seeks to fulfill its obligations by focusing on content that drives user engagement, rather than content that is distinctive and unique to the BBC.** During the last Royal Charter process, we raised concerns about use of public funding to create journalism that might be referred to as lifestyle or magazine content. Examples of such recent content include:

- [“For Sale: Wedding Dress. Never worn.”](#) tells personal anecdotes and stories of “10 dresses that never made it to the big day.”
- [“Cats in the office”](#) is a video exploring the benefits of cats in the workplace.
- [“Teen wakes to bear 'crunching' head”](#) charts the story of a 19 year old attacked by a bear
- [“Should washing machines be in kitchens”](#) - headline later changed to “Kirstie Allsopp criticised for washing machine comment”

While the BBC committed to close the ‘Magazine’ section of its news website, it is clear that BBC News continues to commission magazine/feature-style content that does not appear distinct from content that could be found on any number of commercial news or entertainment sites. The BBC has also invested in other areas that mimic commercial provision, including a section of the [BBC News website dedicated to long reads](#), a format that has been [pioneered by The Guardian](#). This continuing commissioning policy appears to run counter to the commitment in the BBC’s recent annual plan to focus on investment in “*impartial, high-quality, distinctive journalism*”.⁷

A key differentiator of the Guardian, and other commercial news brands, from the BBC is the analysis and opinion journalism. The BBC’s distinctive lack of opinion journalism is valued by licence fee payers. The Reuters digital report has previously found that respondents noted that BBC News and the Guardian play different roles in their lives. Finding that when looking at “*at the BBC in the UK, we can see that two-thirds of its users (70%) think it is 'best for' accurate and reliable news but only 28% think it's good at amusing or entertaining. Less than a quarter of Guardian readers (21%) think it is best for reliable news (because the BBC plays that role for many), but almost half (45%) value it for opinion and viewpoints.*”⁸

In the consultation document, Ofcom mentions qualitative research commissioned as part of this process. The research includes many positive views on the services provided by the BBC, including that the BBC’s services are ‘*the best that's out there*’, meaning “*you don't need anything else*”. One respondent is quoted as saying that the BBC should do more in depth journalism, and “*more opinion pieces like The*

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http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/BBC_Annual_Plan_2017-18.pdf

⁸ <http://po.st/lfJFXh>

Guardian". The report suggests that the "BBC's drive to remain impartial limited their ability to provide more challenging in-depth journalism in an online context."

We believe that there is a real danger of the BBC moving away from its core purpose of impartiality, especially when allied with a lighter touch approach to regulation envisaged by Ofcom. It is vital that the accountability framework envisaged by Ofcom does not simply enable the BBC to ape the editorial products and services provided by commercial news media rivals, and continues to focus on producing the highest quality national and international news media coverage.

Linking obligations

One area where the BBC has previously been held to a specific metric around collaboration was in relation to linking out to third party providers of news. We are therefore concerned that Ofcom has decided to remove any form of specific target or quota from the new regulatory framework. GMG has written previously regarding concerns about the mismatch between the BBC's high share of the online news market in the UK, and the relatively poor flow of onward traffic to the originators of commercially funded journalism.

As Ofcom notes, a linking policy was previously set out by the BBC Trust in BBC Online's service licence. In May 2013, the BBC Trust reviewed that service licence, and set out that BBC online should "*encourage users to broaden the range of their media consumption by offering links to external websites and other functions which allow users to navigate beyond BBC Online.*"⁹ The Trust's review document set a "*service licence target to provide 22 million monthly external click-throughs by 2013/14*", and an expectation for "*BBC management to continue to increase the number of external click-throughs, and make them more effective and consistent across the products.*"¹⁰ The BBC Executive's Performance against Public Commitments (PAPC) report in 2013/2014¹¹ listed the volume of click-throughs as falling well short of the 22 million monthly target, standing at 16.75m, over 20% below target. This number grew to 17.8 million in the 2014/2015 PAPC report⁷, still 19% below the target set for the BBC Executive in 2013.

Ofcom's consultation document states that it does "*not consider it appropriate to set an enforceable regulatory condition which relies on audience behaviour, whereby compliance is not directly within the BBC's control.*" While it is true that the behaviour of the BBC audience is not within Ofcom's control, the quota target does provide a data signal as to whether the format and structure of the BBC's website is conducive to users actually clicking on a link to the source of original source article, or remaining within the BBC ecosystem. The absence of links, or indeed the positional placement of links within stories can have an impact on whether users click out to the original source story.

In April 2016, the BBC online website reproduced a version of an exclusive Guardian story about match-fixing in tennis, in which the Guardian had invested significant time

⁹ http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/service_licences/service_reviews/online_redbutton/report_online_redbutton.pdf

¹⁰ Ibid

¹¹ http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC_PAPC_201314_AP.pdf

and resources. The story posted¹² by the BBC contained a BBC/Buzzfeed picture caption (included below), a link out to an older BBC/Buzzfeed story, a link out to review triggered by BBC story, five links to related BBC stories and content, a video of the ATP president, only then providing a reference and link back to the new Guardian investigation. The impact of placing links lower down stories is to reduce the likelihood of readers of that story from finding and clicking on the original Guardian story, and moving out of the BBC ecosystem to the Guardian website.

While a quota would not prevent the BBC entering into such practices, or alter the culture within the organisation, it could provide an indication as to whether there is an issue with the BBC's practises around linking and attribution that warrants further regulatory attention. Therefore GMG would like to see how the light touch form of regulation proposed by Ofcom would ensure vigilance and compliance of the BBC in key areas such as providing "*adequate links to material provided by third parties from BBC Online.*"¹³ We have a strong preference, for example, for Ofcom to require the BBC to publish a clear and binding linking policy.

Question 3: What do you think should be included in the PSM 'offer'?

Question 4: What options do you think we should consider on the terms of PSM availability?

We agree with the joint PSB submission that commercial PSM providers should have greater flexibility in negotiating distribution of a regulated offer, versus enhanced forms of service that might attract greater commercial value from the platforms. Clearly, existing PSM providers remain large and powerful organisations in their own right. It is important that the ability to differentiate between core and premium product offerings is not used as a way to restrict distribution to smaller platforms, or indeed to extract unfair terms from suppliers.

In terms of ensuring wide availability of PSM services, we agree that Ofcom should apply new prominence to "*TV services and platforms used by a significant number of people as a main way of viewing TV.*" Again, such obligations would fit well within the CMA's proposals for individual legally binding codes of practice, implemented by the new Digital Markets Unit, that would impact on businesses with Strategic Market Status.

Question 5: What are the options for future funding of PSM and are there lessons we can learn from other countries' approaches?

We note in the introduction to this response, the value of the steps taken by the Australian government and Competition & Consumer Council (ACCC) to implement a news media bargaining code, that seeks to level the playing field between publishers and platforms.

It is clear the Australian news media bargaining code has resulted in driving more productive licensing negotiations with Google than Facebook. Where platforms rely

¹² <http://www.bbc.co.uk/sport/tennis/35534906>

¹³ https://www.ofcom.org.uk/_data/assets/pdf_file/0025/107089/procedures-bbc-operating-licence.pdf

on news, the combination of the final offer arbitration process, plus provisions that prevent discrimination against publishers that sought payment for news in search, have proven effective in relation forcing Google to negotiate with news publishers.

Where the platform does not care about news, or indeed sees news as an irritant to its business model, the threat of removing news - as a category of content from its corpus of content - is not a threat. Therefore Facebook is quite prepared to remove all news from its platform in Australia, without falling foul of the discrimination clauses within the code. And while Facebook is now negotiating with publishers in Australia for licensing to news tab, it is not clear that the value at the heart of those negotiations is significantly different to those on offer in other territories where Facebook has launched its news tab.

Facebook's decision to remove all news from its platform raises bigger questions about news on Facebook. Should Facebook have an obligation to carry news, given the amount of time users spend on one or other of Facebook's businesses? If so, the code doesn't necessarily answer questions on cementing that obligation, whilst also forcing them to pay meaningful sums to licence high quality journalism on the platform .

While some analysts have suggested that the Australian news media code does not represent good policy making¹⁴, the reality is that developing policy that tries to level the playing field between platforms and publishers is subject to geopolitical tensions. The decision by the US government to proceed with plans to levy additional tax on UK businesses¹⁵, as a result of the UK government's decision to levy an digital services tax on online platforms, demonstrates the protectionism that these platforms can rely on from the US government against policy interventions that seek to create a more level playing field.

In the long term, there may well be a case for considering whether some form of digital tax, applied on the revenues of online platforms, could be used to fund public service media. However, that debate feels a long way away, when governments around the world cannot currently hold the platforms accountable to pay basic levels of tax¹⁶. In that context, proceeding with an Australian style news media code is a pragmatic and logical next step in the process to level the playing fields between platforms and publishers in a timely manner.

Question 6: What do you think about the opportunities for collaboration we have referred to? Are there other opportunities or barriers we haven't identified? p 54

GNM has undertaken successful editorial partnerships with a number of PSM providers over the years. Notably, our business team has developed a close working relationship with ITV News to produce impactful public interest journalism, including:

¹⁴ <https://stratechery.com/2020/australias-news-media-bargaining-code-breaking-down-the-code-australias-fake-news/>

¹⁵ <https://www.theguardian.com/business/2021/mar/29/us-threatens-tariffs-on-uk-exports-over-digital-services-tax>

¹⁶ <https://www.ft.com/content/c2a6808e-ec6d-41d5-85e9-3a27c2b2c1bc>

- [Exposing practices at some of the UK's biggest food suppliers](#), using undercover footage of workers altering the slaughter date at a UK poultry plant supplying top grocers including Tesco, Sainsbury's, Marks & Spencer, Aldi and Lidl.
- Showing how [rogue landlords are flouting the law](#) to exploit tenants in the private rented housing sector.
- [Investigating the finances of Gavin Woodhouse](#), a financier who has raised millions of pounds from private investors and whose businesses have a multimillion-pound “black hole”.

In 2018, the Guardian collaborated with The New York Times and Channel 4 to publish the Observer reporter Carole Cadwalladr's award-winning investigation on political consulting firm [Cambridge Analytica](#) and its use of Facebook profiles.

Last month, [the Guardian announced a new three-part documentary series in partnership with Sky Documentaries and Wonderhood Studios](#). The yet untitled Sky original series will be based on a long-running investigation by Guardian journalist Lucy Osborne, revealing how the modelling industry has facilitated and validated endemic sexual abuse for decades.

The BBC has not, historically, been a particularly good partner to GMG businesses, or to the news industry more broadly. GMG believes that there are opportunities for this review to create a more open, transparent, and accountable BBC. We believe this could be achieved in a number of ways to enable the production of a greater diversity of PSM content.

An explicit commitment in the new Charter for the BBC to build new partnerships and new curatorial relationships with the commercial news media is vital to such an approach. This means the BBC moving beyond partnerships with the likes of the Tate and British Museum, to work with organisations and structures that look less like the BBC and the people who work there.

As we note in response to questions 1 and 2, we do not believe that the BBC's remit and purpose is best served through the investment of licence fee payer revenue in comment and opinion journalism, the likes of which is already produced by the commercial news media. There is however, a key role for the BBC to become a key conduit for the best of commercial news content and opinion produced by the commercial news media.

We believe this review provides an opportunity for the BBC to use its news platform - which has the highest share of references of any news platform or news aggregator in the UK - to highlight the best journalism from commercial news brands, and refer users to that journalism. There is precedent for such an approach in the commercial news sector, where DMG Media has invested in a news aggregation unit which hosts snippets and links to its own, and commercial news publisher, content.¹⁷ There is no clear reason why the BBC could not use its news pages to host a version of such an aggregator, curating content from third party providers, rather than investing in versions of popular stories for its own site.

¹⁷ <https://www.newzit.com/>

Figures from Ofcom's 2020 news consumption survey show that the BBC's website or app is used by three in five (60%) online news users, with the BBC's nearest rivals being the Google search engine (39%) and Sky News (20%). For many citizens, the BBC's digital properties have become the default point of access to online news. It is essential, therefore, that the BBC embraces a truly open and collaborative approach to hosting and linking to third party content.

Question 7: What are your views on the opportunities for new providers of PSM?

As we note in response to question 5, in relation to the funding of a sustainable ecosystem of high quality UK media, in the long term, there may well be a case for considering whether some form of digital tax, applied on the revenues of online platforms, could be used to fund public service media. However, that debate feels a long way away, when governments around the world cannot currently hold the platforms accountable to pay basic levels of tax¹⁸. In that context, proceeding with an Australian style news media code is a pragmatic and logical next step in the process to level the playing fields between platforms and publishers in a timely manner.

In terms of the prominence of new provision, as we have noted above, these are issues that are common to a wide range of PSM and commercial media companies trading in the digital economy today. It is vital that the concerns expressed by PSM providers are not treated as somehow other, than from the concerns of the wider media market. Rather, we agree that the concerns of PSM providers are valid, and should be resolved, but their status as historic PSB providers, should not entitle them to special treatment within search and social environments (for example, through promotion or priority over commercial news providers).

There is a case for high quality news to be promoted within search and social media environments. However, any such promotion should apply to a broad class of UK news providers, covering both traditional PSB providers, emerging new PSM providers, and commercial news publishers such as those published by GMG. This broad definition of high quality news is reflected in emerging legislation, notably in Australia. The news media bargaining code is seeking to equalise relations in the digital economy by empowering news publishers with the right to expect minimum standards from online platforms, greater transparency of platform algorithms, and the right to negotiate with dominant online platforms on the basis of an arbitration process overseen by a third-party regulator. This code represents a huge step forward in the process to normalise relations between dominant online platforms, and the consumers, advertisers and businesses that now rely on their services to function online.

The establishment of the Digital Regulation Cooperation Forum is a key step forward in efforts to address issues of unfair competition, and the uneven playing field within the context of the CMA's work to introduce competition into online markets, and the establishment of the Digital Markets Unit. It is vital that all UK media companies, not just PSM providers, should be able benefit from a fair, transparency and open digital economy.

¹⁸ <https://www.ft.com/content/c2a6808e-ec6d-41d5-85e9-3a27c2b2c1bc>

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April 2021