



BBC response to Ofcom's Proposed Annual Plan

February 2017

Introduction

The BBC welcomes the opportunity to respond to Ofcom's Proposed Annual Plan for 2018/19. Ofcom's Annual Plan is an important guide for stakeholders to Ofcom's work priorities and schedule.

Market context

In its proposed Annual Plan Ofcom briefly describes the market context for broadcasting:

"The way consumers watch content continues to change. The major subscription on-demand streaming services continue to increase their subscription base. In 2016 the average time spent viewing broadcast TV per person continued to decline moderately: however, there was a steep decline in average viewing of broadcast TV among children aged 4-15 and adults aged 16-24, while average viewing for over-64s increased slightly. Despite these changes broadcasting has been resilient and an important part of Ofcom's work will be to continue our regulatory activities in broadcasting and content regulation, and maintaining and strengthening public service broadcasting."

It is clear to the BBC that the changes in broadcasting market are significant and it is important that Ofcom takes this into account with its role of strengthening public service broadcasting which is vital to the creative economy and the showcasing of diverse British talent.

The changes in viewer and listener behaviour are profound as younger viewers and listeners, in particular, shift from linear broadcasting to on-demand services. A key challenge for the BBC is how we fulfil the BBC's mission and public purposes in this new environment. We consider that it is essential for Ofcom to fully understand the changes that are occurring in the market, the pace of that change and the implications of these for the regulation of public service broadcasting. It is critical that Ofcom ensures there is a level playing field for the PSBs with the global players who are operating in, and changing the nature of the UK market. Ensuring changes are in line with consumer expectations, public value and market norms will be critical so that the unique value of the BBC and the PSBs is strengthened.

Regulation of the BBC

In its proposed annual plan, Ofcom highlights its role in ***Regulating the impact of the BBC on fair and effective competition***. It particularly focuses on considering the potential adverse impact on competition of new BBC public services or material changes to existing public services proposed by the BBC.

As the first of these assessments, Ofcom's ***BBC Competition Assessment (BCA) of the BBC Scotland proposals*** will be an important piece of work. It is essential that Ofcom fully considers and gives appropriate weight to the public value of the proposal balanced against any potential competitive impact.

The BBC is also keen to engage with Ofcom on its project to ***Collect evidence on BBC Studios activity*** in advance of its decision whether to review BBC Studios by April 2019.

During 2018 the BBC will be carrying out its review of its commercial activities in line with its obligations under the Agreement, and will publish the findings by the end of the calendar year.

We will also engage with Ofcom in its monitoring of the BBC's compliance with the trading & separation regulations. Independent auditors are currently carrying out the annual external Fair Trading audit of the BBC's trading & separation arrangements, which will be published in the Annual Report and Accounts.

Ofcom has announced that it will publish its ***first annual report on the BBC's compliance*** against the specified requirements in the Operating Framework and Operating Licence. This will be an important document, but necessarily a transitional one. Many of the obligations set in Ofcom's Operating Framework and Operating Licence were only introduced during the past year. For example, the Operating Licence did not come into effect until 1 January 2018, and several of the conditions relate to reporting for either the calendar year ending 31 December 2018 or for financial year ending 31 March 2019.

Diversity in broadcasting

Diversity in broadcasting is essential. The BBC's Equality Information Report demonstrates the BBC has one of the most diverse workforces in the UK. The BBC is committed to delivering against the on-air, workforce and leadership targets in the 2016 Diversity and Inclusion Strategy.

Ofcom's ***first thematic review on how the BBC reflects and represents the diverse communities of the UK's nations and regions*** is an important piece of work. The BBC will engage closely with Ofcom on the terms of reference for this review and will share relevant audience research and information.

We also note that as part of its objective to ***Promote diversity and equality of opportunity in broadcasting***, Ofcom intends to publish its second annual report on the UK TV industry and its first report on the UK radio industry. The BBC fully supports these publications and will be engaging with Ofcom to ensure that the reports capture the unique position of the BBC as an integrated television, radio and online organisation.

Ofcom's regulation of public service broadcasting

We welcome Ofcom's important ***review of its EPG Code and PSB prominence***. Following Ofcom's recommendation in its 2015 PSB Review that policymakers look to modernise the PSB prominence regime, the case and urgency to do so has strengthened significantly as the means and incentives for platform providers to diminish PSB prominence have grown. In light of Government's commitment to introduce statutory changes if recommended by Ofcom, we welcome the prompt manner in which Ofcom has launched this review and would encourage

Ofcom to make recommendations in good time for any statutory recommendations to be made in this Parliament.

The BBC has submitted evidence to Ofcom's ***Children's Content Review***. As the leading investor in British children's content, the BBC will continue to play its part in ensuring that children and parents across the UK can continue to enjoy and find a breadth of trusted content on devices where they want it.

We note that Ofcom is planning to ***review the guidance to Public Service Broadcasters for production outside of London***. The BBC is fully committed to establishing and further developing sustainable productions bases in the devolved nations and English regions. As such we agree it is important that the guidance is fit for purpose and we will work closely with Ofcom to support their work in this area. We would also note that significant changes to the definitions may require amendments to the quotas in the Operating Licence.

With regard to Ofcom's project ***Reporting on outcomes for UK audiences***, we support Ofcom's intention to publish a new annual report taking a broad look at how UK audiences are served. We particularly welcome Ofcom's intention to also cover video-on-demand and radio content.

Other relevant aspects of Ofcom's work

We welcome Ofcom's ongoing role in monitoring market developments and compliance in relation to ***net neutrality*** laws which will require ongoing vigilance in light of international regulatory trends and fast-developing business models.

We support Ofcom ongoing work to prepare for the ***World Radiocommunication Conference (WRC-19)*** and its efforts to maintain the UK's reputation for leadership and expertise among international spectrum stakeholders. BBC will engage with Ofcom directly on agenda items of interest. It is also important that Ofcom offers stakeholders an opportunity to input their views on all agenda items.

With regard to Ofcom's project to ***Safeguard and promote UK businesses and consumers' interests throughout the Brexit process***, we welcome Ofcom's role in providing technical advice to Government. It will also be important for Ofcom to consider how it would regulate according to the future UK relationship with the EU and market and consumer outcomes. The BBC contributed to the Creative Industries Council (CIC) and British Screen Advisory Council (BSAC) reports on Brexit and the creative industries.

We welcome Ofcom's ongoing engagement in EU legislative negotiations and policy development on the ***Audiovisual Media Services Directive (AVMS)*** as relevant to UK industry and consumers. The current reviews of the AVMS Directive and the EU Electronic Communications Framework are important opportunities to secure modernised rules for the digital era for both content standards and distribution, whether in the UK itself or for UK companies offering services in the EU

For example, the ‘country of origin’ rule is being reviewed in the AVMS Directive. We would want to avoid an increased administrative burden when broadcasting across borders in the EU, for example for BBC World News and BBC Worldwide channels like BBC Earth. Regarding the telecoms framework, the regulatory backstop tools to secure distribution of PSB channels on the main TV platforms refer to broadcast channels and should be modernised to ensure that audiences receive other PSB services including BBC iPlayer and 4OD or BBC Red Button.

Conclusion

The BBC will work with Ofcom on this important agenda over the next year. The BBC will be publishing its own Annual Plan in March 2018 and our Annual Report and Accounts in July 2018 which will outline our key proposals and progress made.