
First consultation on proposed changes to BBC iPlayer – call for evidence

CONSULTATION:

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1. Overview

We are opening a BBC Competition Assessment (BCA) to determine whether the public value of the BBC's planned changes to BBC iPlayer justifies any potential adverse impact on fair and effective competition.

What we are consulting on

Last year, we required the BBC to undertake a public interest test (PIT) to allow a public examination of changes to BBC iPlayer. The BBC had taken the view that changes planned for 2018 and 2019 were not 'material' and therefore did not require a PIT. Audiences enjoy access to a wide range of new TV services, being able to watch video-on-demand (VOD) services from multi-national companies such as Netflix and Amazon Prime Video, as well as VOD services provided by the UK Public Service Broadcasters (PSBs). Therefore, we were encouraged that the BBC was seeking to evolve and adapt its services and noted its ambition to accelerate and invest more in BBC iPlayer development. However, we disagreed with the BBC's assessment on the need for a public process and told it to look at a longer-term strategy for transforming BBC iPlayer, so the effects on all interested parties can be properly understood.

The BBC has now completed its public interest test. The BBC ran a 6-week public consultation on its longer-term iPlayer proposals earlier this year and has done further work to understand the impact of the proposals, including undertaking consumer research. It has now concluded its PIT and has published it together with supporting documentation today <https://www.bbc.com/aboutthebbc/reports/consultation/iplayerpit>. The BBC's proposals include making content available on iPlayer for 12 months after the final episode has been broadcast as standard, with some content available for a longer period of time.

We are opening a BBC Competition Assessment. Our role under the Charter and Agreement is to assess whether the public value of the proposed change justifies any adverse impact on fair and effective competition. Our assessment includes reviewing the procedures followed by the BBC and its public value assessment; and assessing the impact of the proposal on fair and effective competition. After this we will decide either that the BBC may carry out the change to BBC iPlayer, that it may not, or that it may do so subject to conditions. We can also require the BBC to reconsider aspects of the proposal.

This consultation is to ask stakeholders for their views on: (i) how they might be affected by the BBC's proposals; and (ii) whether our planned analysis will address the main issues raised by the proposals. We are specifically seeking evidence now from stakeholders on how the BBC's proposals will affect their existing businesses or investment plans.

Next steps. After considering responses and further analysis, we expect to consult on our provisional conclusions in June, allowing stakeholders a final opportunity to comment. We then expect to issue a final decision by August.

This overview is a simplified high-level summary only. The matters we are consulting on and our reasoning are set out in the remainder of this document.

2. Background and approach

- 2.1 The BBC operates in a challenging and evolving sector, where it competes for the attention of audiences against VOD services from well-funded multi-national companies, as well as those from UK PSBs. In Section 3 we outline our wider consideration of the environment that BBC iPlayer operates in and how it has developed in recent years. In this section, we set out the framework for our assessment of whether the public value of the proposals to transform BBC iPlayer are justified by any adverse impact on fair and effective competition.

Background

The BCA Framework

- 2.2 Unlike a normal commercial operator, the BBC does not need to make a profit and can offer its services free at the point of use (subject to a licence fee payment) and free from advertising. As a result, there is a risk that fair and effective competition can be distorted by services that the BBC makes available to the public.
- 2.3 Because of this, the BBC Charter and Agreement requires the BBC and Ofcom to consider the public value and effects on competition of significant changes to the BBC's TV, radio and online public services.¹
- 2.4 Under the terms of the Agreement, if a change is material, the BBC is obliged to carry out a PIT, which is reviewed by the BBC Board. If the BBC Board concludes that a PIT has been satisfied, we are required to carry out an assessment to examine the proposed change before it can be implemented.²

The BBC's iPlayer expansion plans

- 2.5 Last year, we required the BBC to undertake a PIT to allow a public examination of changes to BBC iPlayer.
- 2.6 The BBC Board had concluded in June 2018 that its short-term proposals for changing BBC iPlayer did not constitute a material change. Under the Charter and Agreement, the question of whether such changes are material, and therefore warrant public examination under a PIT, looks solely at whether the changes may have a significant adverse impact on fair and effective competition.
- 2.7 Having carefully assessed the BBC's plans and its own analysis of the potential impact, we concluded that the BBC's short-term iPlayer proposals did represent a material

¹ The 'Charter' is used in the rest of this document to refer to the [*Royal Charter for the continuance of the British Broadcasting Corporation*](#). The [*Agreement between the Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation*](#) is referred to as the 'Agreement'.

² Clause 9 of the Agreement.

change. We published our decision on 2 November 2018.³ We considered that there was a risk that a potentially substantial increase in viewing to BBC iPlayer could come at the expense of its competitors – particularly other UK VOD services⁴ such as ITV Hub, All 4, My5 and Now TV – possibly making it harder for them to make money from their own content. We thought that this could potentially harm competition, by reducing competitors’ incentives to invest in and develop their services, which could in turn result in a reduction in the quality or the choice of VOD content available to UK consumers.

- 2.8 We directed the BBC to undertake a PIT on the BBC iPlayer proposals, which we said should include wider changes the BBC may wish to make to BBC iPlayer in the future. We also directed that the BBC could only partially implement its proposals in the interim, limiting the BBC’s ability to extend the availability of some types of content for longer than 30 days, from 2 November 2018 onwards.⁵

PIT on BBC iPlayer proposals

- 2.9 The BBC published a PIT consultation on 7 January 2019 on the longer term changes it wants to make to BBC iPlayer in the future. In this consultation, it set out high-level proposals, indicating that it seeks to make all programmes available for at least 12 months.
- 2.10 The BBC has today published its PIT⁶, which set out its BBC iPlayer proposals in more detail. The BBC’s proposals include making content available on BBC iPlayer for 12 months after the final episode has been broadcast as standard, with some content available for a longer period of time. The detail of the proposals is set out in Chapter 4 of the BBC iPlayer PIT document. The BBC states that the proposals will “*transform BBC iPlayer from a catch-up service into a destination*”.⁷

³ Ofcom, November 2018. [Review of the BBC’s Materiality Assessment of Proposed Changes to the BBC iPlayer.](#)

⁴ **VOD** (video on demand) includes paid-for subscription video on demand (e.g. Netflix and Amazon Prime Video), free broadcaster video-on-demand services (e.g. BBC iPlayer, All 4) as well as online video content from services such as YouTube and Facebook (excluding short-form video clips). **SVOD** (subscription video on demand) refers to paid-for subscription video-on-demand services such as Netflix, Amazon Prime Video and NOW TV. While these services offer more than just video on demand (e.g. streaming, linear pay-TV channels, as well as content to own or rent) they are categorised as SVOD in this report for ease of reference. **BVOD** (broadcaster video on demand) refers to free video-on-demand services from the major broadcasters, including BBC iPlayer, ITV Hub, All 4, My5 (as above, these services offer more than just on-demand but are referred to as BVOD for ease of reference).

⁵ Details of our interim directions are available at https://www.ofcom.org.uk/_data/assets/pdf_file/0019/130753/BBC-iPlayer-Final-Interim-Directions-Non-Confidential.pdf

⁶ Available at <https://www.bbc.com/aboutthebbc/reports/consultation/iplayerpit>

⁷ BBC iPlayer Public Interest Test, paragraph 21

Question 2.1: What do you think of the BBC's proposals and the procedures it has followed in carrying out its PIT?

Question 2.2: What are your views on the BBC's assessment as set out in its PIT? Do you agree with its conclusions?

Our approach to this BCA

- 2.11 On receipt of a copy of the BBC's published change proposal, we are obliged to assess whether or not the change is material.⁸
- 2.12 In our 2 November 2018 materiality finding, we decided that that the BBC's short-term BBC iPlayer proposals constituted a material change for the reasons outlined above. We consider that the new proposals as set out in the BBC's PIT document are larger in scale⁹ than the BBC's short-term iPlayer proposals, while also being longer in duration (extending beyond the 2018/19 financial year) and "*more far reaching*" (as noted by the BBC in the BBC iPlayer PIT document, Annex 2). Therefore, for the same reasons, we find that the BBC's new iPlayer proposals are also material.
- 2.13 Given our past consideration of the BBC's short-term iPlayer proposals (which were smaller in scale) in our materiality assessment¹⁰ last year ('2018 iPlayer Materiality Assessment'), we have already taken the decision that the BBC's new iPlayer proposals are material, and therefore we are not consulting on its materiality.
- 2.14 Under the Agreement, if we find a proposed change to be material, we are required to decide what form our further assessment should take.¹¹ This means we need to decide on whether to carry out a BCA or a shorter assessment in relation to the proposals. A shorter assessment has a narrower scope than a BCA and would typically focus on concerns with specific aspects of the proposed change or with the BBC's procedure. Our guidance sets out the circumstances where a shorter assessment may be appropriate.¹²
- 2.15 In this case we do not consider a shorter assessment would be appropriate as we have already identified a number of potential competition concerns in our 2018 BBC iPlayer Materiality Assessment, which require a fuller assessment. We are therefore launching a BCA on the BBC's new iPlayer proposals.
- 2.16 We are holding a two-week consultation at the start of this BCA to ask stakeholders for their views on the BBC's proposals. This document sets out the market context, how we expect to assess the BBC's proposals in our BCA and the information we would find it useful for stakeholders to provide. We invite stakeholders' views on whether our proposed

⁸ Clause 9(1) of the Agreement.

⁹ In particular, the estimated number of series in the new proposal is more than was proposed in the short-term proposals, many series are now planned to be available for 2 or more years and the new proposals also include children's programming.

¹⁰ Ofcom, November 2018. [Review of the BBC's Materiality Assessment of Proposed Changes to the BBC iPlayer](#).

¹¹ Clause 9(2) of the Agreement in relation to UK Public Services.

¹² [Ofcom's procedures and guidance](#), paragraph 4.35.

analysis will address the key issues raised by the BBC's proposals. Stakeholders will have a further opportunity to respond to a second BCA Consultation before we make our final decision.

- 2.17 We will follow the approach set out in our guidance which explains that, in accordance with our obligations under the Agreement, a BCA will include:
- a) a review of the procedures the BBC has followed in its PIT (including consultation with third parties);
 - b) a review of the BBC's assessment of public value;
 - c) our own assessment of whether the changes that would result from the BBC's proposal would have an adverse impact on fair and effective competition; and
 - d) a concluding assessment of whether the public value of the proposal justifies any adverse impact it may have on fair and effective competition.¹³
- 2.18 Ofcom's role during the BCA process, as well as the issues that we are required to consider, are set out in more detail in Annex 1 (legal framework).

Our evidence

- 2.19 The BBC has undertaken analysis and gathered evidence in support of its PIT, as listed in the 'Research and Analysis' Annex of its BBC iPlayer PIT document.¹⁴ This includes consumer research by MTM, an assessment by Communications Chambers of how the proposals will increase viewing of BBC iPlayer content and a competition assessment by Frontier Economics.
- 2.20 In addition to the work already undertaken by the BBC, we have been gathering further evidence to support our analysis. To evaluate the scale and likelihood of any adverse impact on fair and effective competition, we intend to draw on consumer research, data on existing VOD usage, and market intelligence on the future growth of VOD services in the UK. As part of this, we have commissioned Kantar Media to undertake consumer research on the potential impact of the BBC's proposed changes on the consumption of other VOD services and on linear channels. We have also commissioned Ampere Analytics to produce a report on developments in UK VOD services.¹⁵ We also intend to gather further information directly from stakeholders.
- 2.21 We are specifically seeking evidence now from stakeholders on how the BBC's proposals will affect their existing businesses or investment plans. We have set out consultation

¹³ Clause 10 of the Agreement. Section 5 of Ofcom's BCA guidance document '[Assessing the impact of proposed changes to the BBC's public service activities](#)' ("the BCA guidance"), explains the analytical approach we expect to apply.

¹⁴ BBC, 2019. BBC iPlayer Public Interest Test. Annex 1

¹⁵ We plan to shortly publish the Ampere Analytics report and will publish the Kantar Media consumer research alongside our BCA Consultation in June.

questions throughout this document in order to provide clarity to stakeholders on the type of evidence we would find most useful to conduct our assessment.¹⁶

Next steps

- 2.22 The Agreement states that we must complete a BCA within six months of a decision to initiate one (although we may allow for a longer period in exceptional circumstances).¹⁷ However, given our previous work and our ongoing preparations for this regulatory process, we intend to complete the BCA on the BBC's iPlayer proposals in approximately three months.
- 2.23 We therefore expect to publish our BCA Consultation in June, which will set out our provisional conclusions, and publish our final decision by August.

¹⁶ The questions are collated in Annex 2.

¹⁷ Clause 10(2) of the Agreement.

3. Sector developments

Background

- 3.1 This section sets out how VOD services are developing and provides the context for our assessment of the BBC's proposals. We explain how audience behaviours are changing and how the available range of services is evolving. We also discuss how the content libraries of different offerings vary, and changes to the production sector.

Audience Behaviour

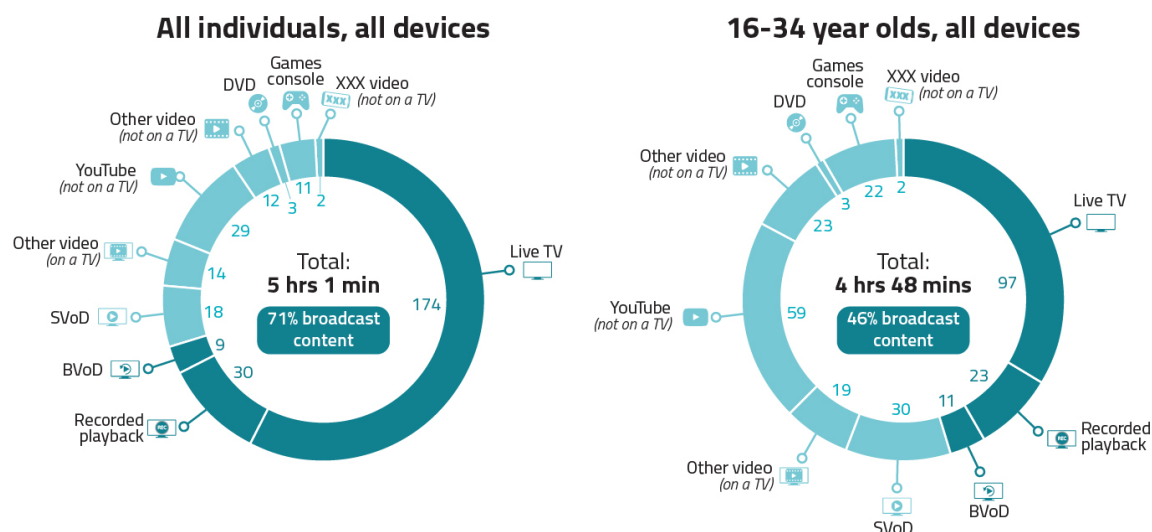
- 3.2 The broadcasting landscape in the UK has been undergoing significant technological and structural changes and, as a consequence, audience behaviour has changed. Major growth in the use of connected devices and superfast broadband has impacted the ways in which people watch programmes and enabled the entry and expansion of a range of online providers. Viewers now have a wealth of choice over how, where, when and what they watch. These developments bring opportunities for broadcasters, but also challenges, with many different TV and VOD services now competing for viewers.¹⁸
- 3.3 Audience preferences are evolving in response to changes made possible by technological developments. As viewing is now possible on many devices, not just TV sets, many people are developing new viewing habits, and many people have already made significant shifts in the way they watch AV content. This trend is more pronounced in some demographic groups, particularly younger audiences; 16-34 year olds spend an average of 34% of their viewing time on devices other than the TV set, and spend less than half their viewing time on broadcast content.
- 3.4 Viewing of live TV on a television remains important, with an average of 90% of individuals watching broadcast TV each week in 2017, including 97% of those aged 65+ and 78% of those aged 16-24. Live TV remains comfortably the most popular form of viewing, accounting for 58% of total audio-visual viewing. However, live TV's share of viewing has been declining since 2010,¹⁹ and declined for all age groups between H1 2017 and H1 2018. This decline poses challenges for broadcasters and particularly those reliant on the advertising revenues associated with linear broadcasts.²⁰

¹⁸ See footnote 4 for definitions of VOD, SVOD and BVOD.

¹⁹ Ofcom/BARB/BARB TV Player (census data)/TouchPoints/ComScore, published in [Media Nations 2018](#), pages 20, 26.

²⁰ Television advertising revenues fell by 7.5% in real terms in 2017. See [Media Nations 2018](#), page 34.

Figure 3.1: Total audio-visual viewing time spent per day, all adults vs. 16 - 34s, 2017²¹



3.5 Last year, we set out some of the significant challenges faced by PSBs as a result of these changes.²² The PSB channels still represent over 50% of broadcast TV viewing and reach 81% of adults each week; however, both their reach and share of viewing is declining over time²³. A particular challenge is the ability of PSBs to continue to attract younger adults and children. Both of these groups are reducing their TV viewing at a faster rate than other age groups.

The range of VOD services

3.6 The PSBs all have their own VOD services (also known as BVOD²⁴ services), which are well established in the UK. Initially these services primarily provided access to ‘catch-up’ content²⁵ in a short period following initial broadcast. Over time these services have started to expand to offer a wider range of content, including archive series²⁶ and VOD exclusives to varying degrees. Channel 4, for example, added foreign-language drama under the *Walter Presents* brand to All 4 in 2015, and has a number of archive series available. The BBC now commissions BBC Three content exclusively for BBC iPlayer. Furthermore, last year the BBC added a small number of archive series and made some series available for a longer period of time.

3.7 UK VOD services operated by PSBs have traditionally relied upon the business models of their parent channels: BBC iPlayer is supported by licence fee funding; ITV, Channel 4 and

²¹ Ofcom, 2018. *Media Nations 2018*, page 21.

²² Ofcom, 2018. *Public Service Broadcasting in the Digital Age*.

²³ Ofcom, 2018. *Media Nations 2018*, pages 27.

²⁴ We use the term BVOD to refer to free VOD services provided by broadcasters.

²⁵ ‘Catch-up’ content refers to TV content made available on a VOD service, which is from a series that has been broadcast within the last 30 days.

²⁶ **Archive series** are series from programmes that are no longer being commissioned. For example, series from past programmes *Gavin and Stacey* and *The Office*.

Channel 5's respective services are largely funded by advertising. In 2017, the commercial PSBs²⁷ earned about 31% of the overall revenue for online advertising-funded video in the UK, which was just over £1bn.²⁸

- 3.8 Given the changing dynamics in the market place, the PSBs are seeking to strengthen their VOD platforms and diversify their business models. ITV has added a paid ad-free tier, ITV Hub+, which also allows users to watch ITV Hub content overseas. Channel 4 is also trialling an ad-free version of All 4,²⁹ as well as using a data-led approach to build more information about its viewers to make them more valuable to advertisers.³⁰ ITV has also announced plans for a new SVOD service, BritBox, as a joint venture with the BBC.³¹ The move is part of a wider strategic move for ITV to depend less on advertising revenue.³²
- 3.9 Over the past decade, subscription VOD services (SVOD) such as Netflix and Amazon Prime Video have entered and expanded in the UK. Netflix and Amazon have attracted millions of subscribers in the UK, and significantly more internationally. Subscription revenue from these and other services generated £895m in the UK, which represented an annual growth rate of 35% in real terms.³³ Collectively, there are now more SVOD subscriptions in the UK (17.2m in Q4 2018) than there are subscriptions to pay TV services from Sky, BT and Virgin Media and others (14.2m).³⁴
- 3.10 In the UK, Sky launched its own SVOD service, Now TV, which brings together various programmes from pay channels available on Sky's satellite platform. It offers some TV, film and sports content exclusive to Sky in the UK, e.g. TV programmes from US broadcaster HBO and films from several major Hollywood studios soon after their cinema release. Now TV and Amazon both also sell devices including Amazon Fire Sticks and Now TV Smart Boxes' that enable customers to watch their services on TV sets, as well as other VOD services including BBC iPlayer.
- 3.11 Other companies are also launching their own, well-funded services. Major international companies, in particular Apple³⁵ and Disney,³⁶ have announced new services which are expected to launch in 2019 and are likely to be available in the UK. Their strategies vary and range from aggregating other providers' content (such as the relaunched Apple TV app) through to taking advantage of strong content libraries developed over the years as film and TV studios, such as Disney+.
- 3.12 Specialist SVOD services, offering premium content or niche interests, such as overseas sports leagues (e.g. NBA League Pass) and arthouse cinema (e.g. Mubi) have also entered the UK marketplace. Video sharing platforms, and YouTube in particular, offer a diverse

²⁷ i.e. ITV, Channel 4 and Channel 5.

²⁸ Source: Ofcom/broadcasters. Ofcom, 2018. *Media Nations 2018*, page 37.

²⁹ TVB Europe, March 2019, [Channel 4 launches ad-free All4 trial](#).

³⁰ For example: The Drum, January 2019, [Boots and Suzuki first advertisers for Channel 4's 'Dynamic TV' ad targeting tool](#)

³¹ BBC Media Centre, February 2019, [BBC and ITV confirm proposals for BritBox - a new transformational streaming service](#)

³² ITV, [Full year results for the year ending 31st December 2018](#)

³³ Source: Ampere Analysis / Zenith Media. Ofcom, 2018. *Media Nations 2018*, page 38.

³⁴ Source: BARB Establishment Survey.

³⁵ Apple, March 2019, [Apple unveils Apple TV+](#).

³⁶ CNBC, November 2018, [Disney's new Netflix rival will be called Disney+ and launch late 2019](#)

range of content, including newer formats like vlogs and ‘how to’ videos alongside more traditional-looking video clips and programmes. There are also a number of VOD services that are either entirely focussed on children’s content (e.g. Ketchup TV and Disney Life) or have specific areas of programming for children (including Netflix, YouTube and Now TV).

Content libraries and production

- 3.13 The BBC has the largest TV content budget of any UK PSB. In 2017 it spent £1.2bn on network TV programmes. Including the BBC, the UK PSBs spent £3.1bn in total on network TV programmes in 2017, £2.5bn of which was on first-run originated content. UK PSBs’ spend on first-run originated content has declined by 28% (in real terms) from its 2004 peak.³⁷
- 3.14 Combined PSB programming spend is notably smaller than Netflix’s reported \$12bn (approx. £9bn) 2018 content budget³⁸ and Amazon Prime Video’s \$5bn (approx. £4bn) budget,³⁹ although these figures represent investment in content on a global basis, as opposed to for a single country. These multinational companies are investing large sums in programming for their services, building sizeable content catalogues and commissioning a range of high-profile, expensive programming.
- 3.15 UK BVOD services draw heavily from their parent companies’ broadcast output, which is aimed at UK audiences, and their catalogue has normally focussed primarily on series that have recently been broadcast on linear channels. In contrast, Netflix and Amazon Prime have larger content libraries. They operate across many countries and often commission and acquire content to cater for global audiences. As a result, they have a content library that is less focused on UK originated programming. Netflix and Amazon Prime both offer a range of locally produced content, but compared to the PSBs they have a smaller proportion of UK content and a lower proportion of unscripted content.⁴⁰
- 3.16 The UK catalogues of Netflix and Amazon include a mixture of acquired programmes (previously shown by broadcasters internationally or within the UK) and original commissions (from UK and international producers). Amongst the acquired programming is a selection of programming that was previously produced for and shown by the PSBs – either by their in-house studios or by external producers.
- 3.17 The balance between acquired and commissioned content is changing over time, as the services – and audiences – place more value on exclusive content. Original commissions now comprise a larger share of Netflix and Amazon Prime’s overall catalogues than content from PSBs. Original commissions made up 6% of the available hours of content on these

³⁷ Source: Ofcom/broadcasters. Ofcom, 2018. Media Nations 2018.

³⁸ Advanced Television, February 2019, [Netflix to boost spend in 2019](#).

³⁹ Digital News Daily, February 2018, [Amazon Expected To Spend \\$5 Billion On Video Content This Year](#)

⁴⁰ BVOD services typically have more UK content (80%+) and are broadly split 50/50 between scripted and unscripted programmes; SVoD services have a majority international content (with ~10-20% local UK content) and highly focused around scripted content. Source: Ampere Analysis.

services collectively in December 2018, compared to 4% originally shown by PSBs.⁴¹ Overall though, SVOD services are still significantly more dependent on acquired content than PSBs, who showed between 60% and 90% original productions on their linear channels in 2017.⁴²

- 3.18 As some global SVOD services have increased the numbers of their original commissions, they are commissioning from UK producers, both by themselves and through co-productions with UK broadcasters. VOD services spent £150m with UK producers in 2017,⁴³ while PSBs have invested in a number of high-profile collaborations with Netflix, Amazon and other high-profile producers, such as *Watership Down*.⁴⁴ Co-production allows broadcasters and SVOD services to share the costs of a production, allowing them to make more expensive programming than they might be able to commission individually. However, at present they represent a relatively small number of productions.
- 3.19 In order to facilitate having content available on their platforms for longer, some PSBs have negotiated new Terms of Trade⁴⁵ with PACT, the producers' trade association. In 2018, both ITV⁴⁶ and Channel 5⁴⁷ agreed new Terms of Trade that allowed those PSBs to keep new programmes commissioned from independent producers available for longer on their own VOD players, in some cases in exchange either for extra payments to producers, or for reducing the PSBs' 'holdbacks' – the time period in which content cannot be shown elsewhere.
- 3.20 These developments in production and commissioning are changing the windowing around new TV content – the time in which different programmes can be viewed in different places. Programmes may be available on BVOD services for longer after their initial broadcast compared to a few years ago, but may also be available on SVOD platforms earlier than previously – particularly if they are co-productions. Some programmes may be available on multiple BVOD and SVOD services, or exclusive to an individual service.
- 3.21 This change in window structures may influence the value of content rights that producers are able to receive, particularly for those rights not taken by the original commissioner, such as sales of the finished programme to international broadcasters, VOD services or on DVD. Some SVOD services may be willing to pay more for content that is available earlier after its first broadcast, or less for content that is not exclusive, or has been available to audiences elsewhere for a longer time period. These rights are important sources of revenue to external producers – secondary rights were worth a total of £480m in 2017 – although they represent a much smaller source of revenue than the roughly £2.1bn combined of revenue to producers from original UK and international commissions.⁴⁸

⁴¹ Source: Ampere Analysis

⁴² Ofcom, 2018. [PSB Annual Compliance Report 2018](#)

⁴³ Pact, 2018. [UK Television Production Survey: Financial Census 2018](#)

⁴⁴ A co-production between the BBC, Netflix, 42 and Biscuit Entertainment.

⁴⁵ Terms of Trade are agreements between individual PSBs and PACT that set out the duration and scope of rights licensed by PSBs when they commission programmes from qualifying independent producers.

⁴⁶ Pact, October 2018, [Pact agrees new terms of trade with ITV for VOD and Secondary Service Rights](#)

⁴⁷ Pact, September 2018, [New Terms of Trade with Channel 5 to benefit smaller indies](#)

⁴⁸ Pact, 2018. UK Television Production Survey: Financial Census 2018.

Impacts of these developments

- 3.22 The evolution of the audio-visual sector over the past few years through the introduction of new services, changes in audience behaviour and developments in the commissioning and production landscape has introduced opportunities for a wide range of stakeholders. Audiences now benefit from greater choice in what they watch, when they watch it and how. Producers have access to new potential sources of commissioning spend, and broadcasters have new ways of reaching their audience through their own VOD players, and in some cases new partners for commissioning programmes they may not be able to afford on their own.
- 3.23 In this new landscape, broadcasters, including the BBC and the other PSBs, are having to adapt to ensure that they continue to attract audiences – making sure that they are commissioning programmes that audiences want to see, and making them available where and when audiences want to see them. This challenge is greatest for younger audiences, whose viewing habits have already changed the most and with whom the PSBs need to build long-lasting relationships. PSBs have started to adapt to these challenges, including evolving their VOD services through wider ranges of content and experimentation with business models, but will continue to need to evolve their offering, both individually and collaboratively.

Question 3.1: Do you have any comments or other views on how the sector has evolved or is likely to evolve in the future that we should consider?

Our approach to estimating BBC iPlayer viewing

- 3.24 In response to these changes in audience viewing behaviours and increased content offering by other VOD providers, the BBC has proposed to extend the availability of its programmes on BBC iPlayer after they are broadcast and make some additional programmes available on demand on BBC iPlayer.
- 3.25 To assess the impact of these proposals, we will need to model how these changes might affect the total viewing of programmes on BBC iPlayer. We will also need to consider the extent to which viewers might switch away from rival services. This modelling is important because it will affect assessment of both the public value generated by the BBC's proposals and the potential impact on fair and effective competition.
- 3.26 In order to estimate this impact, we will model what might happen to BBC iPlayer viewing if the BBC's proposals did not go ahead. This will act as a starting point or base case. This base case will also strip out the extra viewing associated with those parts of the BBC's 2018/19 iPlayer proposals that we permitted under the Interim Directions.^{49,50}

⁴⁹ We discuss our interim Directions in paragraph 2.8

⁵⁰ We will however consider how much of that viewing replaced other BBC iPlayer viewing.

- 3.27 We will compare this base case to the projected viewing associated with the BBC's iPlayer proposals. In order to estimate the changes to the level of BBC iPlayer viewing associated with the proposals, we will consider the amount and type of extra content the BBC will add (such as new/latest vs. previous series of returning series)⁵¹ as well as the performance (i.e. how much it was viewed) of the extra content the BBC added under our Interim Directions.
- 3.28 We will consider how viewing in these two scenarios may evolve over time. For this modelling, we will use BBC iPlayer viewing figures and project them forward using:
- data on the potential growth of the total viewing of VOD services
 - data on how attractive BBC iPlayer would be to consumers in each scenario
- 3.29 We will also consider how any additional viewing to BBC iPlayer will affect levels of viewing to other VOD and linear services, and which services are likely to be most affected. This is because any reduction in viewing to other services due to the changes to BBC iPlayer may affect the public value of the proposals, as well as potentially giving rise to market impacts.
- 3.30 We may use information from consumer research or consultancy work, including research commissioned from Ampere Analysis, information provided by the BBC and other stakeholders, as well as other external data sources to understand how viewing of BBC iPlayer and other VOD and broadcast services might develop in the future.

Information from stakeholders to assist our review

- 3.31 We welcome views from stakeholders on our approach to modelling take-up of BBC iPlayer in our two scenarios, as well as evidence to support our modelling, such as information on stakeholders' experience of how viewing of individual series or programmes declines over time, and the extent to which additional viewing of new series replaces other viewing on their own VOD service.

Question 3.2: Do you have any views or evidence on how viewing of individual programmes changes over time on VOD services?

Question 3.3: Do you have any views or evidence on how UK VOD viewing might evolve in the future, including viewing to individual services or total levels of viewing?

⁵¹ 'Previous series of a returning series' are past series of a TV title that is currently being broadcast, which were originally broadcast in previous years. For example, if a fourth series of a TV title is currently being broadcast, the previous series of this returning series would be series 1-3 of the same TV title.

4. Our approach to reviewing public value

- 4.1 The BBC is required to fulfil the mission and public purposes as set out in the Charter,⁵² and when developing proposals, it should satisfy itself that any change to its services contributes to the fulfilment of the mission and promotion of one or more of the public purposes and consider the public value created.⁵³ The BBC has set out its assessment of how its proposals will deliver public value in Section 5 of its BBC iPlayer PIT document.
- 4.2 When conducting a BCA, our role is to assess whether the public value of a proposed change justifies any adverse impact on fair and effective competition. In doing so, we review the BBC's assessment of the public value of a proposed change.⁵⁴
- 4.3 The nature of this review is different from our consideration of the impact on competition. In considering public value we are principally testing and reviewing the analysis conducted by the BBC, in contrast to our competition role where we carry out our own evaluation.
- 4.4 Our guidance highlights a number of factors we are likely to consider when reviewing the BBC's public value assessment:⁵⁵
- whether the analysis conducted by the BBC is reasonable (e.g. relies on well-reasoned assumptions), complete and objective;
 - whether the BBC's assessment reflects a reasonable view of what constitutes public value;
 - whether the interpretation of the evidence presented is credible and relevant;
 - whether the assessment of public value is consistent with other elements of the assessment (e.g. the take-up assumptions, BCA scope); and
 - whether the analysis is robust under different scenarios.
- 4.5 We have developed a high-level public value framework that we will use to categorise and consider the public value of the proposals as identified by the BBC.
- 4.6 We consider that there are two key recipients of public value associated with the BBC's proposals: individuals and society more broadly. We therefore plan to consider public value in terms of two key categories, personal and social, and also to have regard to any other relevant factors:
- a) Personal value, the satisfaction gained by individuals as a direct result of the proposals, *e.g. entertainment from programmes, convenience from distribution, etc.*
 - b) Social value, the wider societal benefits of the proposals, *e.g. a better-informed democracy, wider understanding of societal groups, etc.*

⁵² Articles 5 and 6 of the Charter.

⁵³ Clause 8 of the Agreement.

⁵⁴ Clause 10(3)(b) of the Agreement.

⁵⁵ Ofcom, 2017. [BCA Guidance](#), paragraph 5.22.

- c) Other sources of public value including those that may be more indirect or long-term, *e.g. fulfilling other BBC Charter obligations that are not covered by categories a) and b) above, future resilience of the BBC, etc.*

- 4.7 The proposals may have a positive impact on personal value by making more content available for longer, giving audiences more choice and enabling them to watch the programmes they find most attractive, in a way that best suits them. As viewing of BBC content can help the BBC fulfil the mission and public purposes, any increased viewing through iPlayer may also have a positive impact on social value.
- 4.8 We will focus on the *additional* public value created by the BBC's proposals, taking into account any reductions in public value as a result of the change (for example any reduction in viewing of other PSB services).
- 4.9 The BBC's mission and public purposes are particularly important to the consideration of social value, as they define the BBC's unique role in the PSB system. While we will have regard to how the BBC's proposals help the BBC fulfil the mission and public purposes in our review, under the three categories set out above, we also plan to consider public value more broadly.
- 4.10 In reviewing the BBC's public value assessment, we currently intend to pay particular attention to:
- the scale of any increase in public value, e.g. how attracted are audiences to the proposals?
 - the impact on other sources of public value, e.g. to what extent is increased BBC iPlayer viewing at the expense of other PSBs (who also supply socially valuable content)?
 - the audience categories affected, e.g. to what extent is there evidence of the impact on under-served audiences such as younger people?

Information from stakeholders to assist our review

- 4.11 We would welcome stakeholders' views on the BBC's assessment of the public value generated by the proposed changes to iPlayer, both in terms of the methodology used and the substance of the public value identified. We will also consider any additional public value impacts identified by stakeholders that the BBC does not reference.
- 4.12 In order for us to consider responses to the BBC's analysis appropriately, we request that evidence is provided in support of any points made.

Question 4.1: What are your views on the methodology and conclusions of the BBC's assessment of public value generated by the proposals? Are there any impacts on public value that have not been identified by the BBC? Please provide evidence to support your views.

Question 4.2: Do you agree with our approach to reviewing the BBC's assessment of public value generated by the proposals? Please provide evidence to support your views.

5. Our approach to assessing market impacts

- 5.1 The BBC is unique and, unlike commercial operators, does not need to make a profit and can offer its services free at the point of use (subject to a licence fee payment) and free from advertising. As a result, there is a risk that fair and effective competition can be distorted by the expansion of BBC iPlayer.
- 5.2 The BBC has set out its analysis of the potential impact of its proposals on fair and effective competition in Section 6 of its BBC iPlayer PIT document, where it considers the potential impact on rival VOD and linear channels, as well as the impact on the vertical supply chain for content.
- 5.3 We have identified five potential ways that competition might be adversely impacted by these proposed BBC iPlayer changes and discuss them below:
- a) **Impact on rivals' viewing reduces investment** - Extending content availability on BBC iPlayer could increase iPlayer viewing at the expense of other competing VOD providers, potentially reducing their incentives to invest and innovate
 - b) **Less BBC content on other platforms** - Allowing the BBC to put more content on BBC iPlayer for longer could reduce the availability of attractive BBC content to other VOD providers after the BBC iPlayer window has passed
 - c) **Reduced value of secondary rights** - Allowing the BBC to put more content on BBC iPlayer for longer could reduce the value of secondary rights in the UK
 - d) **Unfairly favour BBC Studios** - The BBC might favour BBC Studios when making commissioning decisions
 - e) **Restriction of access** - The BBC might restrict the access to BBC iPlayer by platforms and/or devices that wish to carry it
- 5.4 We propose to focus our assessment on the first two of these since these appear to us to be the more plausible and significant risks. We do not propose to address the other three for the reasons explained below, but we are open to reconsidering that position if stakeholders provide us with evidence of potential harm to fair and effective competition.

The key competition concerns that we intend to assess

- 5.5 **Extending content availability on BBC iPlayer could increase BBC iPlayer viewing at the expense of other competing VOD providers** and potentially also linear TV channels. This may reduce profitability of competitors, and reduce their incentives to invest and innovate, which could harm consumers and reduce choice.
- 5.6 We propose to assess this concern by estimating the likely increase in take-up and viewing of BBC iPlayer under the BBC's proposals relative to the base case,⁵⁶ as well as the impact

⁵⁶ We define the base case in para 3.26 above

on viewing of rival VOD services and linear TV channels. We describe how we will assess these effects above, in Section 3. Drawing on evidence on profitability of rival services, we then consider whether the viability of any rival services might be altered. We will also explore whether there is credible evidence that investment plans will be harmed.

- 5.7 **Allowing the BBC to put more content on BBC iPlayer for longer could reduce the availability of attractive BBC content to other VOD providers after the BBC iPlayer window has passed.** If the BBC provides content on BBC iPlayer for longer, this may exhaust the value of this content at the end of the primary window. As a result, this content may be less attractive to audiences of other competing VOD services (compared with now) and this could harm the other VOD providers' ability to attract new audiences and risk losing subscribers.
- 5.8 In some circumstances, some secondary rights (to archive content and older series) that would otherwise have been supplied to other VOD services may instead end up on BBC iPlayer. In principle, this could deny those other VOD providers important content. As a result, the BBC's proposals could undermine fair and effective competition in the supply of VOD services.⁵⁷
- 5.9 To assess this concern, we will seek to understand the extent to which other VOD services currently rely on BBC commissioned or licensed content and how this might change in future. We plan to consider the impact of potentially not having access to this content, and what alternative content sources other VOD providers have if they are not able to secure rights to BBC content (e.g. to what extent VOD providers commission and/or produce their own content).

Other potential issues that are unlikely to distort competition

The impact on external UK producers

- 5.10 **Allowing the BBC to put more content on BBC iPlayer for longer could reduce the value of secondary rights in the UK** as this content has already been widely watched during that first BBC iPlayer window. As a result, producers who rely on these rights could become less profitable, affecting their ongoing viability and risking that they go out of business.
- 5.11 However, producers would need to agree to provide the BBC with the rights to put content on BBC iPlayer for longer, including through the BBC's Terms of Trade negotiated with PACT. Potentially producers could receive higher primary rights payments or other terms from the BBC to compensate for the extended availability on BBC iPlayer and any reduction in the value of secondary rights. To establish that competition in the production sector is harmed we would need evidence that:

⁵⁷ As VOD services provided by the other PSB broadcasters (i.e. ITV Hub, All 4 and My5), do not tend to license BBC rights we would not expect the reduction in the availability of BBC commissioned content to negatively affect these platforms.

- a subset of production companies rely on the BBC for much of their rights revenue, and have very few other potential customers, and these same production companies are the ones that the BBC is seeking an extension to the BBC iPlayer window from;
- extending the time this content stays on BBC iPlayer reduces the producers' income from the secondary rights by more than the increase in payments for the primary rights; and
- this reduction in income will cause these production companies to reduce investment or exit the market.

5.12 Additionally, as a result of its BBC iPlayer proposals, **the BBC might favour BBC Studios when making commissioning decisions** (e.g. the BBC may consider it easier to secure the extended availability of content to go on BBC iPlayer from BBC Studios, whereas external producers may resist).⁵⁸ If the BBC did so unfairly, this could reduce the potential range and diversity of ideas from external producers and adversely affect competition. However, we consider that existing regulation already addresses this concern and we therefore do not propose to investigate it any further.⁵⁹

The impacts on platforms that carry BBC iPlayer

5.13 As a result of its BBC iPlayer proposals, **the BBC might restrict the access to BBC iPlayer by platforms and/or devices that wish to carry it** (e.g. if the BBC makes a 'standard' version of BBC iPlayer widely available, but considers that bespoke arrangements required by other VOD platforms as a result of the additional volume of content impose additional costs to the BBC).⁶⁰ There is a risk that restricting BBC iPlayer access in this way could place other platforms at a disadvantage or distort overall competition, reducing consumer choice. We consider that existing regulation already addresses this concern and we therefore do not propose investigating it any further.⁶¹

Views from stakeholders

5.14 To assess the potential impact on other VOD providers' viability, and longer-term incentives to invest, we would welcome stakeholder views on how the extended BBC iPlayer window may impact viewing and viability of their VOD service. We request that evidence is provided in support of any points made.

⁵⁸ We considered several incentives for the BBC to favour its own producers, or particular external producers in our consultation on [Commissioning for the BBC Public Services](#).

⁵⁹ In particular, Schedule 3, paragraph 7(2) of the Agreement requires the BBC to ensure there is genuine competition between BBC and external producers on a fair, reasonable, non-discriminatory and transparent (FRNDT) basis for the right to make relevant TV programmes and to evaluate any such bids on a FRNDT basis.

⁶⁰ The BBC makes a 'standard' version of BBC iPlayer widely available. Due to the potential for the way the BBC supplies services to undermine competition and innovation, we require that the BBC offers its public services to third parties on a fair, reasonable and non-discriminatory basis. These requirements are set out in our distribution guidelines: [Distribution of BBC public services: Ofcom's requirements and guidance](#)

⁶¹ The BBC is also required under clause 61 of the Agreement to act on a fair, reasonable and non-discriminatory basis in supplying its public services (including BBC iPlayer).

Question 5.1: Do you agree with the concerns that we have set out in Section 5, or are there any others that we should consider? Please provide relevant evidence to support your views.

Question 5.2: Please provide evidence on whether and how the BBC's proposals could directly impact on rivals' viewing, revenues and investment.

Question 5.3: Please provide any evidence on whether there might be reduced access to content rights, and whether this might reduce the ability of rivals to compete and why. We also welcome evidence on the alternative sources of content rivals would consider.

Question 5.4: How do you think any potential for adverse market impact of the proposals could be reduced?

A1. Legal framework

- A1.1 The BBC Charter⁶² and Agreement⁶³ set the BBC's mission and public purposes and the framework for Ofcom's regulation of the BBC.⁶⁴
- A1.2 The Charter provides that we must have regard, in carrying out our functions, to such of the following as appear to us to be relevant in the circumstances:
- a) the object of the BBC to fulfil its mission and to promote the public purposes;
 - b) the desirability of protecting fair and effective competition in the United Kingdom;
 - c) the requirement for the BBC to comply with its duties under the Charter, including its general duties.⁶⁵
- A1.3 The Charter and Agreement recognise that, in order fulfil its mission and promote the public purposes, the BBC may need to make changes to the UK Public Services. However, to protect fair and effective competition, the BBC may only make a material change to the UK Public Services where:
- a) it has carried out a public interest test and determined that test is satisfied; and
 - b) Ofcom determines that the BBC may carry out the proposed change.⁶⁶

The BBC's analysis

- A1.4 The BBC must therefore initially assess whether a proposed change is material. The Agreement defines a material change as:
- a) the carrying out of any activity as a new UK Public Service; and
 - b) any change to a UK Public Service which may have a significant adverse impact on fair and effective competition.⁶⁷
- A1.5 If the BBC considers that a proposed change is not material, it may carry out the change, unless Ofcom disagrees with the BBC on materiality. If we consider that the proposed change is material, we may direct the BBC to:
- a) carry out a public interest test and, if the test is satisfied, publish the change; or

⁶² [*Royal Charter for the continuance of the British Broadcasting Corporation \(December 2016\).*](#)

⁶³ [*An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation \(December 2016\).*](#)

⁶⁴ Section 198 of the Communications Act 2003 provides that it is a function of Ofcom to regulate the BBC. Our general duties under section 3 of that Act therefore apply to the exercise of our functions in relation to the BBC.

⁶⁵ Article 45(2) of the Charter.

⁶⁶ Clause 7(6) of the Agreement.

⁶⁷ Clause 7(7) of the Agreement.

- b) stop carrying out the change in accordance with such directions as we consider appropriate.⁶⁸

A1.6 In order for a public interest test to be satisfied, the BBC must determine that:

- a) the proposed change contributes to the fulfilment of the BBC's mission and promotion of one or more of the public purposes;
- b) it has taken reasonable steps to ensure that the proposed change has no unnecessary adverse impact on fair and effective competition; and
- c) the public value of the proposed change justifies any adverse impact on fair and effective competition.⁶⁹

A1.7 If the test is satisfied and the BBC wishes to implement the proposal, it must publish the proposed change and provide a copy to Ofcom.⁷⁰

Ofcom's role

A1.8 Ofcom must then assess whether the proposed change is material and, if so, decide what type of further assessment to conduct.⁷¹

A1.9 Paragraph 4.33 of Ofcom's guidance document *Assessing the impact of proposed changes to the BBC's public service activities* ("the BCA guidance")⁷² sets out a non-exhaustive list of factors we may take into account when assessing the potential significant adverse impact of a change.

A1.10 If we conclude a proposed change is not material, or six weeks pass without our informing the BBC of our view, the BBC may carry out the change.

A1.11 If we conclude that the proposal is material, we may decide to carry out a BBC competition assessment (BCA) under clause 10 of the Agreement or a shorter assessment drawing on elements of the BCA procedure. Paragraph 4.35 of the BCA guidance explains when each type of assessment might be appropriate.

A1.12 In carrying out a BCA or shorter assessment, Ofcom must:

- a) review the procedures the BBC has followed in carrying out the public interest test;
- b) review the BBC's assessment of the public value of the proposed change to the UK Public Services;
- c) assess any adverse impact of the proposed change on fair and effective competition; and

⁶⁸ Clause 9(6) of the Agreement.

⁶⁹ Clause 8 of the Agreement.

⁷⁰ Clause 8(3) of the Agreement.

⁷¹ Clause 9 of the Agreement.

⁷² Ofcom, 2017. [*Assessing the impact of proposed changes to the BBC's public service activities: Ofcom's procedures and guidance*](#).

- d) assess whether the public value of the proposed change justifies any adverse impact on fair and effective competition.⁷³
- A1.13 Ofcom must consider the scale and likelihood of any public value relative to the scale and likelihood of any adverse impact on fair and effective competition. The Agreement recognises that the determination will require qualitative assessments to be made and that direct comparison of factors relating to public value and factors relating to risks to fair and effective competition may not be possible.⁷⁴
- A1.14 At the end of the process, we will make one of four possible determinations:
- a) that the BBC may carry out the proposed change;
 - b) that the BBC may not carry out the proposal;
 - c) that the proposal may go ahead subject to conditions or modifications that we consider appropriate; or
 - d) that the BBC must reconsider elements of its public interest test or follow any further procedures we consider appropriate.⁷⁵
- A1.15 Ofcom may only make determinations (b) and (c) above where we have carried out a BCA and not following a shorter assessment.⁷⁶
- A1.16 Ofcom must complete a BCA within six months⁷⁷ and a shorter assessment in less than six months.⁷⁸ In either case we will consult stakeholders before making our final determination.

⁷³ Clause 10 of the Agreement. Section 5 of the BCA guidance explains the analytical approach we expect to apply.

⁷⁴ Clause 10(4) of the Agreement.

⁷⁵ Clause 11(1) of the Agreement.

⁷⁶ Clause 11(2) of the Agreement.

⁷⁷ Clause 10(2) of the Agreement.

⁷⁸ Clause 9(2) of the Agreement.

A2. Consultation questions

A2.1 As discussed throughout this document, we have undertaken a significant amount of work in preparation for the BCA. We now seek stakeholder input to enable us to fully assess the BBC's proposals. To conduct our assessment, we will consider stakeholder views but will need stakeholders to provide evidence to support these views. We have set out the following questions in the relevant sections of this document but also include them below:

Question 2.1: What do you think of the BBC's proposals and the procedures it has followed in carrying out its PIT?

Question 2.2: What are your views on the BBC's assessment as set out in its PIT? Do you agree with its conclusions?

Question 3.1: Do you have any comments or other views on how the sector has evolved or is likely to evolve in the future that we should consider?

Question 3.2: Do you have any views or evidence on how viewing of individual programmes changes over time on VOD services?

Question 3.3: Do you have any views on how UK VOD viewing might evolve in the future?

Question 4.1: What are your views on the methodology and conclusions of the BBC's assessment of public value generated by the proposals? Are there any impacts on public value that have not been identified by the BBC? Please provide evidence to support your views.

Question 4.2: Do you agree with our approach to reviewing the BBC's assessment of public value generated by the proposals? Please provide evidence to support your views.

Question 5.1: Do you agree with the concerns that we have set out in Section 5, or are there any others that we should consider? Please provide relevant evidence to support your views.

Question 5.2: Please provide evidence on whether and how the BBC's proposals could directly impact on rivals' viewing, revenues and investment.

Question 5.3: Please provide any evidence on whether there might be reduced access to content rights, and whether this might reduce the ability of rivals to compete and why. We also welcome evidence on the alternative sources of content rivals would consider.

Question 5.4: How do you think any potential for adverse market impact of the proposals could be reduced?

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 10 May 2019.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-3/proposed-changes-bbc-iplayer>. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to BBCiplayerbca@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet (<https://www.ofcom.org.uk/consultations-and-statements/consultation-response-coversheet>). This email address will not be valid after 1st August 2019.
- A3.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Samuel Westwood
Content Policy
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A3.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A3.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A3.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 2. It would also help if you

could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A3.10 If you want to discuss the issues and questions raised in this consultation, please contact Samuel Westwood by email to samuel.westwood@ofcom.org.uk

Confidentiality

- A3.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website, www.ofcom.org.uk, as soon as we receive them.
- A3.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A3.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A3.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further at <https://www.ofcom.org.uk/about-ofcom/website/terms-of-use>.

Next steps

- A3.15 Following this initial consultation period, Ofcom plans to consult on our provisional conclusions in June 2019.
- A3.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications; for more details please see <https://www.ofcom.org.uk/about-ofcom/latest/email-updates>

Ofcom's consultation processes

- A3.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A3.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A3.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A4. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A4.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A5. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

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