

**Submission to Ofcom's consultation on  
proposed changes to the linear EPG Code  
and future of the regime**

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**September 2018**

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## Introduction

1. Pact is the UK trade association which represents and promotes the commercial interests of independent feature film, television, digital, children's and animation media companies.
2. The UK independent television sector is one of the biggest in the world. Despite the difficult economic climate, independent television sector revenues have grown to over £2.7 billion in 2017.<sup>1</sup>
3. The UK public service broadcasters (PSBs) are by far the biggest investors in UK original content and as such, their future is of paramount importance to Pact and its members.
4. Pact welcomes this opportunity to comment on how the existing regulatory regime in the UK broadcasting sector is working well and the need to consider the market impacts of the Ofcom's proposal changes to the EPG Code and their principles and ideas that could underpin any further changes to the prominence regime.
5. For further information, please contact Pact's Head of Policy, Emily Oyama, at [emily@pact.co.uk](mailto:emily@pact.co.uk) or on 020 7380 8232

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<sup>1</sup> Pact Census 2018

## Overview

- Pact is a strong supporter of the PSB system. Our members benefit from the content investment that the PSBs provide within the sector. Therefore it is important to Pact members to see a healthy PSB system maintained and continued into the future.
- Pact considers that the current public service broadcasting compact – whereby the BBC, ITV (and the other Channel 3 licencees), C4, S4C and Channel 5 (the PSBs) receive certain benefits, such as EPG prominence, in return for obligations, such as a requirement to commission more content from independent producers, works well.
- This is evidenced by the fact that British content is extremely successful both domestically and internationally, with the UK being the second largest exporter of TV content in the world.
- Despite a 20% real-terms decline in content investment by the PSBs in recent years, they still account for over 80% of the total UK commissioning spend (i.e. spend on production with non-broadcaster producers).
- Ofcom data shows that audience expectations of PSBs are being met despite this decline in investment. Independent producers play an important role in this ecosystem, bringing investment of over approximately £200m per year into original UK content creation as the PSBs no longer fully finance the total cost of television programme production. Ofcom has also acknowledged this in its latest Media Nations report where it identifies that contributions to the cost of production from third parties, including as part of a co-production arrangement, deficit funding from production companies and tax credits has more than doubled over the last ten years, from £147m in 2008 to £338m in 2017.
- Pact understands that the PSB compact is a delicate balance between additional obligations which these broadcasters must meet – including a higher independent production quota than their fully-commercial rivals and Out of London production quotas – in return for benefits including a prominent slot on Electronic Programme Guides which is being discussed in this consultation.
- Pact supports any decision which increases the ability of UK broadcasters to invest in more original content – we do not consider that we have sufficient information to fully understand whether extending prominence would be translated into higher levels of investment. What are the fiscal benefits to the PSBs under the linear EPG proposals and the proposed Future prominence proposals and does Ofcom understand whether any additional fiscal benefits will go to programming?
- **The proposals set out by Ofcom in this consultation lack a full impact assessment which makes it difficult to fully understand the detriment and**

**impact of Ofcom's proposals on revenue and thus content investment. This makes it difficult for our members to offer a full unqualified support to those proposals within the linear EPG that involve slots moving and offer a final opinion on how the regime might be adapted to protect the benefits to the PSB in the future.**

- As Ofcom has identified for the Linear EPG proposal moving slots could lead to a decline in viewership and in turn ad revenue for non-PSB channels. It may also incur extra marketing costs to let viewers know that they are moving. In the long term, if revenues do suffer commercial broadcasters may in turn decide to invest less money in content. This is particularly concerning in the case of UK originated content. Multichannel broadcasters have increased their commissioning spend by two-fold over the last 10 years and 62% of its spend last year was on new commissions the highest amount out of all UK broadcasters.<sup>2</sup>
- Another issue that we are unclear about with these proposals are what obligations, if any, PSBs are also willing to accept in return for the proposed extensions to prominence. If any other services (over and above the current EPG) provided by the PSBs receive PSB prominence in the future, they should also be subject to the PSB duties.
- Given the above Pact agrees with the main proposals (under the Linear EPG proposals) for the main PSB channels and BBC News channels because these involve no changes to channel positions. For the other EPG proposals and the possible principles that underpin a future prominence we will offer a final position once a full impact assessment is carried out which explores what the potential detriment to content investment.

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<sup>2</sup> Pact Census 2018

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

1.1 Pact is a strong supporter of the PSB system noting that many of our members benefit from the content investment that the PSBs provide within the sector.

1.2 But we disagree with some of the analysis on TV viewing and believe the strength of TV continues despite recent declines. As Ofcom observes when it comes to long term trends over the last 5 years advertising revenues have grown by 0.4% year on year. TV also continues to have the reach that advertisers rely on. It remains high - reaching 92.5% of individuals and even 86.7% of 16-34 years olds – the very demographic that Ofcom highlights is being lost.<sup>3</sup>

1.3 That said we acknowledge that the continued certainty of EPG positions on the linear EPG is important for PSB investment and we'd support the main PSB channels holding the top five slots on EPGS provided UK wide or in the UK outside of Wales.

**2. Do you agree that on EPGs provided for viewers specifically in Wales BBC One, BBC Two and the relevant Channel 3 service should take the top three slots, with S4C in slot four, Channel 5 in slot five and Channel 4 guaranteed a position on the first page?**

2.1 As with any change in the EPG system we are concerned about what impact this may have on the wider regulatory environment – if greater prominence is secured for these channels then they should also adopt the PSB duties associated. We are also unclear about what any short to long term impact the changes would have on content investment.

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

3.1 Pact is concerned with any change in the EPG system that has an impact on content investment – over the years we have seen an increased investment from multichannels and would not want a change in prominence to impact this stream of investment. Multichannel broadcasters have increased their commissioning spend by two-fold over the last 10 years and 62% of its spend last year was on new commissions the highest amount out of all UK broadcasters.<sup>4</sup>As already identified any impact on channel revenue linked to EPG slots will have a downward effect on content investment and therefore any price paid to producers. Should any regulatory changes further limit the commercial channels' ability to attract advertising revenues around for example children's channels or

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<sup>3</sup> Source: BARB. 2013 – 2017, reach 3min+. Industry standard TV viewing in-home on a TV set

<sup>4</sup> Pact Census 2018

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programming, this could have implications on the market and make it more likely that the publicly funded BBC, now by far the largest provider of children's TV content in the UK, as virtually the sole provider of original children's TV content.

3.2 Until impact on content investment is clearly outlined along with the reciprocal obligations that PSBs will take on Pact cannot fully support this proposal.

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

4.1 Pact has no views on this.

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

5.1 Pact agrees with some elements of this proposal but given the lack of analysis from Ofcom on the impact on children's content investment we cannot fully support. We remind Ofcom that it continues to be a tough market for children's content and that any lack of incentives for commercial broadcasters to invest in children's content is unhelpful especially when Ofcom has recently reserved its position on whether to fully use its new power granted to it by the government under the Digital Economy Act 2017 to introduce criteria on the broadcasters to encourage investment in original children's content into the future. Given that evidence on the extent to which viewing may increase under Ofcom's proposal is mixed and the fact that BBC is given a guaranteed licence funding to support children's content we remain unconvinced to offer firm support of this proposal until more of an impact assessment is carried out.

5.2 We recognise that other commercial channels such as Disney, Nickelodeon and Sky are providing important investment into children's content as outlined in Ofcom's analysis and may be negatively impacted. We welcome further analysis from Ofcom with regard to children's content.

- 6. Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs?**
- 7. Do you agree that local TV should be guaranteed prominence within the first three pages of UK wide EPGs?**
- 8. Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of relevant Nation specific EPGs e.g. S4C in Wales, BBC Alba and BBC Scotland in Scotland?**
- 9. Do you agree that local TV should be guaranteed prominence within the first three pages of relevant regionalised EPGs?**

6.1 Whilst prominence of channels in the nations and regions is welcome to producers supplying those channels, as noted above with any change in the EPG system we are concerned about what impact this may have on the wider regulatory environment - any PSB services that receive PSB prominence should

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also adopt PSB duties. Furthermore, we are still unclear about the short to long term impact these proposals would have on content investment. We welcome further analysis and impact assessment by Ofcom in this regard.

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

**11. Do you agree with our proposals to allow broadcasters to swap HD simulcast variants of their SD designated channels, such that those HD variants could occupy the slots which the SD channels would be entitled to?**

10.1 PSB HD channels contribute to the viewer experience. However, they do not have PSB obligations attached to them, other than being a simulcast of content which has met PSB obligations on the original PSB channel. Pact therefore does not consider it appropriate that EPG prominence should be extended to HD sub-genre menus.

10.2 Should HD PSB channels replace SD channels as the main way in which consumers view PSB content, then it is likely that they would replace the SD versions of the channels on the EPGs, and therefore they would receive prominence protections. However, we are unclear on whether the remaining HD channel slots held onto by the PSBs, once the SD channels become HD, would as they become available be put out to the market to ensure new entrants are encouraged to commission and acquire content.

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

12.1 Pact agrees with Ofcom's proposal to provide a 12-month transition period to manage any impact – a long lead in time would allow for markets to adjust.

### **Future prominence section**

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

13.1 Pact supports the current PSB compact and would consider a qualified support to the extension of the prominence regime to ensure EPGs themselves can be easily found. It is difficult to say whether this is a useful intervention without knowing the full cost implications and impact on the market. There is no evidence on this within the consultation documents. Before Pact could fully support it would need to see the short, medium and long-term impacts of any extension. Pact is interested in what the fiscal benefits the PSBs would receive under the linear EPG proposals and the proposed Future prominence proposals and whether any additional fiscal benefits would go towards programming.

- 14. Do you agree with the broad range of factors for consideration we have identified? Are there other factors that policy makers should consider?**
- 15. Do you agree with the principles we have set out? Are there other principles that should be considered?**

14.1 As we have already identified it is difficult for Pact to make a considered judgement on the factors and principles without understanding the market impact of any of the proposals. That said, in addition to the above factors and principles we believe any future regime should also consider any negative effects it would have on innovation within the industry.

14.2 Innovation within the industry has allowed for new entrants to compete in the market and over the last ten years the impact of online services and non PSB multi-channels have helped broaden the market and increase choice for the consumer – both players are spending more on original content than ever before. Pact strongly welcomes this new investment and would not want any interventions to unduly dampen the additional opportunities this provides for producers who look to a variety of broadcasters and SVOD services to pitch ideas to try and seek a commission.

14.3 We would also want policy makers to consider what impact the extension of PSB prominence to connected devices and online services would have on the obligations that PSBs face. Ofcom notes at 6.23 of the consultation that PSB VoD content is subject to different rules in terms of standards, licensing and must carry/ must offer obligations. Pact is particularly aware of this and would want to make sure that any extension of prominence replicates the obligations PSBs have within a linear environment. Pact is concerned that Ofcom is implying via 6.23 that PSB content and the fact that it is deemed a 'high level standard' is enough of an obligation to merit an extension of prominence. As Ofcom understands the regulatory framework that supports the PSB compact is what makes the UK broadcasting sector work so well. Therefore, we would disagree that only meeting the content standards is enough to maintain the PSB system. Other obligations which PSBs need to meet within a linear environment must be mirrored in any on-demand regime.

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

16.1 As identified above it is difficult to say whether the prominence regime should be extended to ensure PSB Players can be easily found without fully understanding the market implications and the reciprocal obligations that would follow an extension of any prominence.

16.2 Pact would want to ensure any extension of the regime would also mean an adoption of the PSB duties.

16.3 That said, Pact considers that it would make sense for the regulatory framework to be adapted to meet technological changes. It would therefore appear appropriate – subject to a full impact assessment being conducted in

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order to assess the value of EPG prominence being extended to including PSB VOD services.

**17 Do you think that the prominence regime should be extended to ensure PSB content can be easily found via recommendations and / or search? If so, what key parameters would you set for this aspect of the regime?**

17.1 Given its infancy we consider that Ofcom should not extend the regime over a market that is such an unknown –things will get out of date very quickly and before one piece of legislation is finished a new element of technology would make the legislation obsolete.

**18 Do you think that the prominence regime should be extended to platforms and devices not currently captured by the EPG prominence regime? If so, how do you think the regime could be extended and who should be captured?**

18.1 Again, subject to a full impact assessment, Pact would support extending the prominence regime to platforms and devices not currently captured by the EPG prominence regime. We also note that any legislation would quickly become out of date and take interest in how the government and Ofcom believe this could be avoided. Furthermore, given that DTT will continue to have an impact (as identified by Ofcom) over the next 10 years and there continues to be 40% of TV devices unconnected it has not got to the stage where PSB content has become obsolete. If PSB content continues to be found where it is expected Pact also considers that PSB is no less disadvantaged than any other broadcaster or streaming device. High quality content continues to be what drives people towards TV and if PSBs are creating engaging and relevant content it will continue to amass the viewing figures and reach that it already secures.

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

19.1 As already discussed above Pact would want to know what subsequent obligations the PSBs would be extending as result of any extension of prominence. As Ofcom has already identified BBC licence fee is now secured to at least 2022 and the value of the PSB system continues to benefit C5 and ITV and are in balance with the costs of delivering the PSB remit. Given that benefits to PSBs are already set out any additional extending of the prominence regime to other services would be an additional benefit to the PSBs. Pact is also interested in what this would represent fiscally and where it would go – would it go towards programming?