

Ofcom review of rules for prominence of public service broadcasters and local TV
Response from Viacom International Media Networks (VIMN)
5th October 2018

VIMN welcomes the opportunity to respond to Ofcom's consultation on proposed changes to the linear EPG Code and future of the regime. We agree with its view that if Parliament wishes for PSB to remain easy to find then legislation is needed to reflect the growth in television delivered by the internet, and its support for such legislation in the light of its duties to secure the health of the UK PSB system.¹

Channel 5

VIMN is a very strong supporter of PSB in the UK, having transformed Channel 5 since its acquisition in 2014. A fit-for-purpose digital prominence regime is vital to the protection of our on-going investments and to the channel's long-term future. This year Channel 5 was named *RTS Channel of the Year 2018*, reflecting the benefits of a radical overhaul of its schedule and 40% increase in spend on original UK content since 2014.

This additional investment has enabled Channel 5 to broaden its range of genres to include natural history (*Yorkshire: A Year in the Wild*), history (*Henry VIII and His Six Wives*), and documentaries (*The Accused*, *Slum Britain: 50 Years On* and *Michael Palin in North Korea*). It has also reached new, older audiences with shows such as *Cruising with Jane McDonald* which received 2018 BAFTA for Best Feature.

Channel 5 is also required under its licence to broadcast no less than 280 hours of news programmes with 120 in peak-time, and 130 hours of current affairs programmes. With programmes at 5pm and 6.30pm each weekday, and a single evening programme on Saturday and Sunday, 5 News reaches over 5 million weekly viewers across the UK, with highest performing regions in the Midlands, Yorkshire, the North-East, Scotland and Northern Ireland. It also reaches different sections of the population than other outlets, with 53% of its audience over-65, 62% women, and 67% C2DE. Jeremy Vine recently joined the channel to present the 2-hourly current affairs show every week-day morning.

Channel 5 is also the only commercial PSB to offer a dedicated, branded block of programming for children on its primary linear channel. *Milkshake!* airs from 6am every day of the year, until 9.15am on weekdays and 10am on weekends, offering a wide range of high quality programming including documentaries, wildlife, music-based entertainment and animation. It is behind some of the UK's most popular pre-school shows including *Peppa Pig*, *Thomas and Friends*, *Bob the Builder* and *Ben and Holly's Little Kingdom* and, with 19.6 million viewers in 2017, it is the brand-leader for pre-school television in the UK within its slot.

¹ Para 1.8, Ofcom consultation paper

Prominence and discoverability form the cornerstone to these important contributions to UK PSB, and will become even more important as viewing continues to disaggregate across a much wider number of digital platforms, services and devices. While PSB is highly valued by UK audiences, and viewing to broadcast television remains substantial, there is a downward trend in linear viewing as identified by Ofcom's analysis, particularly among younger audiences. Without a broad and flexible application of prominence rules for PSB content across an increasingly fragmented digital market viewing levels will continue to fall, leading to an erosion of support for the PSB model and a reduction in the public benefits they bring to UK society and culture.

PSBs and platform responsibility

At a time of growing concern over the impact of unregulated digital platforms and services in the form of fake news, hate speech and other harmful content, Channel 5 and other PSBs have a vital role to play in the provision of high-quality news and current affairs programming, and UK-originated content which reflects UK society back to its audience. They are a proven first line of defence against an encroaching wave of unregulated digital content.

While the Government continues to reflect on the difficult and complex task of designing a new regulatory regime for online content therefore, it must also take measures that preserve and strengthen the positive protections which already exist in the form of PSB content, ensuring that this is prominent and easily findable online and through other digital platforms. Culture Secretary Jeremy Wright recognised this in his speech to the RTS London Conference in September, where he described the trust placed in PSBs as a vital commodity in a rapidly changing and increasingly polarized world.

A new PSB prominence regime (Q13 – 19)

VIMN is pleased that Ofcom recognises the potential value of extending the prominence regime to include a requirement that linear EPGs are easily accessible and prominent on EPGs generally², and also to ensure PSB Players can be found easily³ (Q13 and Q16). We do not believe however that these two changes on their own are sufficient to protect the prominence of PSB content in the longer term, which requires more substantive changes to the scope and application of the regime.

Channel 5 and the other PSBs have therefore submitted a joint proposal to Ofcom which we believe will serve as a future-proof solution across all digital platforms, devices and services. This seeks to ensure that public service content remains prominent and findable for all UK citizens while maintaining a flexible, industry-led approach that avoids the need for detailed, prescriptive regulatory intervention.

² Para. 6.7 to 6.10, Ofcom consultation paper

³ Para 6.17, Ofcom consultation paper

First we are proposing that legislation creates a right to ‘significant prominence’ for PSB linear services and associated on-demand services (such as *My5* and *Milkshake!*’s VoD service), along with a power for the Secretary of State to maintain and vary (by Order) a list of these services which are likely to evolve over time. This right would apply across all user-interfaces on all major platforms, devices and services which are designed for the consumption of TV or TV-like content, to be determined by the Government in consultation with Ofcom in the event of dispute. In determining what constitutes a major platform a range of factors would be taken into account, including the number and type of users and volume of viewing.

This approach takes account of concerns that the widening of the scope of the prominence regime might lead to unreasonable burdens on newly emerging technologies, or require UK-specific modifications for devices such as Smart TVs which are manufactured for the global market. While there is often a cost to market interventions which deliver a public purpose, we do not believe that this proposal implies any disproportionate impact, given that the Government and Ofcom would be in a position to take a balanced view over time on a case by case basis. Emerging technologies are unlikely to be covered at their initial stage, and any decision to factor in PSB prominence – or at least the flexibility to make adjustments in the future – would be entirely within their own control. It may or may not include online services such as Facebook and YouTube, depending on levels of numbers and volume of viewing PSB content. The key point is that the new regime should *in principle* allow these services to be included if circumstances dictate.

The joint PSB proposal also gives Ofcom a responsibility to define ‘significant prominence’ within its Code. This would not be a series of detailed, prescriptive definitions for individual technologies, but rather a series of broad principles for operators to take into account. These would include for example requiring prominence on elements of a user-interface that are central to the user-experience (for example first page of a UI, or VOD landing-page), or requiring that a substantial amount of PSB content is prioritised on recommendation and search features.

VIMN agrees that there should also be some broad principles for the new regime which protect viewers’ interests, including transparency in search, and the right to personalise viewing and to receive programme recommendations based on personal preference.

Changes to the existing prominence Code (Qs 1 – 12)

VIMN has no comments to offer on the changes proposed by Ofcom to the existing prominence Code. We are pleased that Ofcom is recommending that all five PSBs are guaranteed prominence on the top five slots of EPGs which brings greater regulatory certainty, and that there will be a 12-month period for EPG operators to consult on changes to their own Codes.