



Ofcom consultation: How Ofcom regulates the BBC's impact on competition

Proposals for changes to guidance and requirements

About us

1. Directors UK is the professional association of UK screen directors. It is a membership organisation representing the creative, economic, and contractual interests of over 8,000 members — the majority of working TV and film directors in the UK. Directors UK collects and distributes royalty payments and provides a range of services to members including campaigning, commercial negotiations, legal advice, events, training, and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of direction and champions change to the current landscape to create an equal opportunity industry for all.
2. Directors UK welcomes the opportunity to respond to Ofcom's consultation on How Ofcom regulates the BBC's impact on competition, Proposals for changes to guidance and requirements.

Consultation Questions

Question 1: Do you agree with our proposals to:

- a) place a requirement on the BBC to publicise its planned changes to public services?
- b) provide further guidance on how the BBC should set out information about its planned changes?

If not, please explain which changes, if any, should be made to the guidance and where appropriate, provide relevant evidence supporting your view.

3. Ofcom's proposals to publicise planned changes seem appropriate. The more detail the BBC provides in its Annual Plan about planned changes will enable stakeholders to assess future impacts of the BBC's plans.
4. We agree that a consistent means of communicating proposed changes outside the Annual Report process would be useful. It would be helpful if this could include an email alert system that stakeholders could sign up to and receive notifications of any new announcements/proposals.

Question 2: Do you agree with our proposals to put in place more guidance about how stakeholders and the BBC should engage during the assessment of materiality by the BBC?

5. It is important that there is clear guidance on how stakeholders and the BBC should engage during the assessment of materiality by the BBC. In addition, for the engagement between the BBC and stakeholders to be effective, it is important that enough information about the proposal, and time to review it is given to stakeholders in order to be able to provide appropriate insights/feedback.

Question 3: Do you agree with our proposals to include further guidance on what the BBC should include in its public interest test consultation?

6. It is important that any material changes that the BBC wishes to make that could impact the market are subject to appropriate scrutiny, and that Ofcom establishes a clear process for assessing this.
7. As Ofcom has highlighted, it is vital that the BBC provides sufficient details about the proposed changes so that stakeholders can make informed views. We agree that the BBC should be required to share as much detail as possible at the start of their public interest test (PIT) about the proposed change, ideally this would include relevant insights from forecasts or analysis, audience and market impact research, or other evidence which has often been presented at a later stage to Ofcom. We would advocate that the information the BBC presents to Ofcom as part of its proposals for change, and their conclusion regarding materiality from the PIT, should also have been provided to stakeholders as part of the PIT consultation. This is even more important in light of the proposal to streamline the evaluation process, by removing the additional stage of consultation that Ofcom has previously taken with stakeholders following the BBC's PIT.

Question 4: Do you agree with our proposals to provide more detail in our guidance about the materiality assessment process?

8. We agree that it is useful to provide more detail to help stakeholders understand and have clarity regarding the materiality assessment process. What may not be considered a material change by the BBC may be material/have a material impact on another part of the market, it is important to know that there is a regulator's eye across this so that they have the option to intervene if it is felt a proposal may require further exploration.

Question 5: Do you agree with our proposal for additional flexibility for Ofcom to determine whether it is necessary to consult on materiality following a PIT in which the BBC has determined the change is material?

9. We recognise the need to streamline the process, particularly where there is repetition in the stages of consultation, so in principle we support Ofcom having flexibility in this area. Regarding the time frame when Ofcom do seek to consult, we would request that Ofcom ensures stakeholders have enough time to assess the relevant materials, for small organisations a narrow time frame can be prohibitive to do an appropriate review.

Question 6: Do you agree with our proposals to add further guidance on our expectations for the BBC's public value assessment?

10. N/A

Question 7: Do you agree with our proposal to make it clear that the transfer pricing rules apply when the public service is supplying content or IP for secondary exploitation?

11. Directors UK's core priority in this regard is ensuring that the relationship between the BBC's commercial activities and the BBC Public Service does not cause distortion in the market to the detriment of our members.
12. Directors UK members are freelance TV and film directors who interact with the BBC both as freelance employees of BBC Studios working on commissioned content, and as underlying rights holders who are compensated for the secondary exploitation of their work through the onward sales and distribution of programmes and content. They are also engaged as freelancers by non-BBC channels, platforms and production companies in the wider marketplace.
13. Directors UK's concern is to ensure that the relationship between the BBC's Public Service and BBC Studios does not distort the market in which our members are employed, or negatively impact the commercial value and return of the works they create. Ofcom's findings suggest that it is possible that our members may have been negatively impacted by transactions where the true commercial value was not realised.
14. It is therefore critical that this is addressed and Ofcom's proposal regarding secondary exploitation seems appropriate, and should help ensure that directors are appropriately remunerated for the secondary exploitation of their works.

Question 8: Do you agree with our proposal to add a requirement that allows Ofcom to direct the BBC to undertake a review of its internal controls and accounting processes to ensure they are adequate and enable the BBC to comply with the transfer pricing requirements?

15. N/A

**Directors UK
February 2023**