BBC Response to Ofcom's Call for Input – Review of Broadcast Regulation

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1.1 Introduction

We would like to thank Ofcom for the opportunity to respond to its Call for Input on the Review of Broadcast Regulation. This response is submitted on behalf of the BBC Group, which includes the UK Public Service and our commercial operations, including UKTV, a wholly owned subsidiary of BBC Studios.

The future of the BBC is currently being debated as our Charter approaches renewal. The Government has launched its Green Paper outlining proposals for the BBC after 2027, and the regulation of the BBC should be considered within that context. Nevertheless, the BBC also operates businesses that fall under the wider broadcast regulatory regime.

As Ofcom notes, much of today's media regulation was designed for traditional broadcasting, yet supply and demand side changes over the past 20 years have fundamentally transformed how media is delivered and consumed. It is essential that regulation evolves accordingly to ensure a competitive UK media sector can continue to thrive, with public service media at its core.

UK audiences have benefited from the existing regulatory system, and as digital trends accelerate, it is vital that they continue to have access to a wide range of high-quality and safe content. A coherent, future focused regulatory framework is needed to support good outcomes for audiences and citizens, and to ensure they can easily understand and navigate differing services and regulatory environments.

We have set out in this response several key areas that Ofcom should consider as part of its review. These are:

1. Regulatory priorities for a sustainable broadcasting sector
2. Regulation of Arqiva
3. Prominence of PSB products and services
4. Updating Content Standards regulation
5. The Scope of Broadcast Activity
6. Cross-Promotion Code
7. Definition of Qualifying Indie

We would welcome the opportunity to engage further on any of these issues and to provide additional evidence as required.

1.2 Regulatory priorities for a sustainable broadcasting sector

Ensuring sustainable funding for both the BBC and the other Public Service Broadcasters (PSBs) is critical for maintaining a robust broadcasting sector. We support regulatory changes that would strengthen the long-term sustainability of the industry.

However, the broadcast market is undergoing significant change. In particular, the proposed mergers of Comcast (the owner of Sky) and ITV's broadcast and streaming business, and that of Banijay and

All3Media, the two largest independent production companies in the UK. If these mergers proceed, the structure of the UK broadcasting industry will look markedly different from what we see today. In considering any changes to the existing regulatory framework, Ofcom should take these changes into account and where appropriate wait for the conclusion of relevant merger clearance processes before finalising any relevant proposals.

Regardless of the outcome of the proposed mergers, there are several areas that Ofcom should prioritise to support the long-term sustainability of the Public Service Broadcasting regime and that of commercial broadcasters. This includes ensuring that costs are minimised and that PSBs receive adequate prominence.

1.3 Regulation of Arqiva

Arqiva provides the critical broadcast infrastructure on which both TV and radio broadcasters rely. Under the BBC's Charter and Agreement, the BBC must deliver defined levels of coverage on specific broadcast platforms.[1] In negotiating to secure ongoing access to the transmission infrastructure necessary to meet those obligations the BBC has no alternative but to contract with Arqiva — the monopoly supplier of broadcast transmission services. With asymmetric information and limited commercial leverage against such significant market power, the BBC and other PSBs and radio broadcasters depend heavily on effective regulation to ensure fair pricing and to protect customers from the adverse impacts of that market power.

The current regulatory framework derives from Undertakings accepted by the then Competition Commission 17 years ago as a remedy for the lack of competition in the Broadcast Transmission market. The CMA has not reviewed these Undertakings for over 10 years, and Ofcom last considered the position under the Undertakings in its 2016 decision to remove the SMP conditions on Arqiva.[2] At the time, the BBC made clear that the constraint imposed by the Undertakings was insufficient and that a regime directly administered by Ofcom was required.

Meanwhile, the limited protections offered by regulation have continued to deteriorate and the market landscape has shifted significantly: for example, radio customers have now begun exiting MW, and more broadly, customers are gradually moving away from legacy broadcast technologies such as DTT, DAB, and AM/FM. In this context, the current regulatory regime

[1] For example, under clause 44 of the Framework Agreement between the BBC and DCMS, the BBC must continue to ensure that UK households can continue to receive the UK Public Television Services in digital form through a television aerial in accordance with the coverage plan, and under clause 61 of the Framework Agreement, the BBC must do all that is reasonably practicable to ensure that viewers, listeners and other users are able to access the UK Public Services that are intended for them, in a range of convenient and cost effective ways which are available or might become available in the future. These could include (for example) broadcasting, streaming or making content available on-demand, whether by terrestrial, satellite, cable or broadband networks or via the internet. A full list of the BBC's UK public services can be found at updated-list-of-uk-public-services-september-2025.pdf.

[2] Available here: https://www.ofcom.org.uk/siteassets/resources/documents/consultations/uncategorised/7802broadcasting-transmission-services/summary/bts-statement.pdf?v=335487

risks driving progressively worse outcomes for customers (who continue to be reliant on a monopoly supplier) and ultimately their audiences.

The Adjudicator of the Undertakings has also recently highlighted significant limitations to the powers of his role. These constraints, combined with Arqiva's enduring market power and the lack of competitive pressure from future IP-based alternatives — which are not yet viable substitutes at scale — underscore the need for regulatory reassessment as the BBC has consistently advocated for.

As the industry transitions away from legacy broadcast systems, it is essential that these assets can be managed into decline without excessive charges being passed on to customers. The BBC therefore considers that the CMA and Ofcom should review whether the Undertakings remain fit for purpose, whether the Adjudicator's role requires strengthening, and whether there is any evidence of unfair pricing by Arqiva during the 17 years since the Undertakings were introduced. The BBC continues to believe that a regime directly administered by Ofcom would be best suited for the regulation of Arqiva's monopoly position.

While many broadcasters can choose to discontinue their use of TV broadcast distribution, the BBC's specific distribution obligations mean that, without significant regulatory reform, the costs of maintaining these services will inevitably and increasingly fall on the licence fee payer.

1.4 Prominence of PSB products and services

To deliver on our Mission and Public Purposes, the BBC's content and services must be widely available and easily discoverable across all audiovisual devices. However, today's prominence regulation remains centred on broadcast-delivered linear TV services. Through the Operating Licence, Ofcom requires the BBC to demonstrate that a range of content is discoverable on our services, but this is moot if the BBC's services themselves are not prominent and discoverable in the first place.

While the Media Act represents a welcome step forward in extending the prominence framework, its scope is limited and already misaligned with the realities of today's market and audience behaviours. We are disappointed that Ofcom has not grasped the opportunity to significantly improve the prominence of PSBs on connected devices, as we consider was intended by Parliament. We will provide a separate response to Ofcom's specific proposals on prominence and accessibility as part of its Media Act implementation.

Prominence of PSB services should be considered across the full audience journey, from turning on a device, to finding and launching content or services, to playback, and navigating to further content. All pathways through which audiences discover and access content must be taken into account; otherwise, gaps can emerge in regulation and the benefits of such regulation can be undermined. This is especially important at a time when the influence and leverage of PSM is being eroded by:

- **Global content competitors** with significant financial resources, negotiating worldwide distribution deals with device manufacturers and securing preferential prominence, including by making app supply conditional on dedicated remote-control buttons (a route not available to PSM); and
- **Increasing vertical integration** between platforms and content providers, which incentivises and enables platforms to prioritise their own content and services at the expense of PSM.

For TV content, we encourage Ofcom to consider and review the gaps left by the Media Act, particularly in relation to remote controls and the prominence of the EPG. As the market continues to rapidly evolve, it will also be important to keep under review the user threshold that defines when a television selection service becomes subject to regulation, as well as the types of devices in scope (for example, smart screens and games consoles).

Beyond TV content on TV sets and related equipment, Ofcom should also consider the potential role of prominence regulation for PSM products and services across audiovisual and audio devices, operating systems, and algorithmic environments. As viewing habits continue to shift alongside the mechanisms for guiding and curating that consumption and the distinctions between "TV" and "other content" increasingly blur, a more holistic and future-proof approach to prominence will be needed.

We also welcome Ofcom's recent proposals on the regulation of radio selection services under the Media Act 2024. These measures could go further to ensure that audio remains easily accessible across devices, including in connected cars, smart speakers and emerging hybrid linear/ on-demand radio solutions; where there are similar issues to those in TV.

1.4.1 PSM News

The UK, along with the rest of the world, is living with a heightened threat of misinformation and dis-information. We believe Ofcom should consider how to deliver greater prominence of PSM news content on IP-first platforms as a means of ensuring audiences are able to access trustworthy information in an increasingly algorithm-driven environment. This would align with Ofcom's media literacy framework by tackling usability barriers and promoting transparency in digital services.

1.5 Updating Content Standards regulation

The current application of the Broadcast Code extends only to "radio and television content in services licensed by Ofcom" and the BBC's on-demand programme services, i.e. BBC iPlayer and BBC Sounds.[3] This narrow scope of broadcast and its definition, rooted in transmission technology, is rapidly reducing the intended impact of this area of regulation in an environment where UK audiences access and consume content in fundamentally different ways.

As content distribution continues to diversify, and as video-sharing and social media platforms achieve mass, near-ubiquitous reach, Ofcom should reconsider what constitutes a broadcast activity. It should also revisit whether, and how, broadcast or broadcast-like positive regulatory requirements should apply to different types of content and services across a range of environments.

The current situation is incoherent. This is illustrated by connected 'smart' TVs where UK audiences are presented with content and services under very different regulatory regimes.

a) **Broadcast linear TV content** is regulated by the Broadcast Code originating from the 1990 Broadcasting Act, an opt-in licencing regime where licenced services must comply with sophisticated and UK culturally specific high standards for safety and quality, and take editorial responsibility for doing so.

[3] Ofcom, The Legislative Background, 2021

b) Some **VOD services** have been regulated under the On Demand Programme Service rules in the 2003 Communications Act, whilst in due course Tier 1 VOD services are to be held to a higher standard under a new VOD Code.
c) V**ideo-sharing platforms containing user generated content**, are now regulated by the 2023 Online Safety Act. This sets minimum standards for services carrying mostly user generated content, for example, to find and remove illegal content. The service itself does not carry responsibility for content the platform carries or recommends to viewers / users. As a result, even on a compliant service, there is an enormous range of content of varying quality, accuracy and safety.
d) There are also a growing number of **unregulated IP EPGs on connected devices.** IP channels that only appear in these are not licensable by Ofcom and not captured by any content standards regulation or the Online Safety Act. As a result, content that appears side by side on the same TV screen is governed by markedly different standards, yet these differences are not visible or signalled to audiences. This creates clear and growing regulatory gaps and represents a significant departure from the historically consistent, high-quality and safe viewing environment that UK audiences have come to expect.

Ofcom should consider whether consistent regulatory standards should apply to all content and services delivered to TV screens in the UK.

We also consider that Ofcom should aim as far as possible for a clear, coherent spectrum of regulation that is easier for UK citizens to understand and that reduces the burden on individuals to avoid harm, particularly in shared TV environments, across online safety, the new VOD code, broadcast standards and prominence requirements.

1.6 Cross-Promotion Code

We note that both Government and Ofcom recognise the potential benefits of greater PSB collaboration.[4] To support this ambition, we would welcome a review by Ofcom of the Cross-promotion Code to enable PSB joint-venture activity (e.g. Freely) to be considered cross-promotion rather than advertising included in the calculation of permitted advertising minutage.

Ofcom's Broadcast Code currently states that where there is "a 30% shareholding (or less than 30% voting power), there may be insufficient incentives for a broadcaster to provide another channel or service with free airtime and broadcasters will need to demonstrate that no consideration has passed between the parties and that Crosspromotion is justified on the basis of other incentives."[5] This lack of clarity constrains the promotion of Freely by its shareholders, i.e. the four UK-wide PSBs, who each have a 25% ownership.

We would welcome Ofcom's confirmation that the PSBs promoting Freely would be considered cross-promotion for the purposes of the Broadcast Code and that it would be consistent with the BBC's regulatory obligations.

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[4] Transmission Critical: The future of Public Service Media, Ofcom; Creative Industries Sector Plan, DBT and DCMS; Britain's Story: The Next Chapter: the BBC Royal Charter Review, Green Paper and public consultation, DCMS

[5] Cross-promotion Code, Ofcom, January 2021

1.7 Definition of Qualifying Indie

As noted above, two of the largest independent production companies in the UK – All3Media and Banijay – have announced their intention to merge. Furthermore, one of the likely outcomes of the merger of Comcast and ITV, is that ITV Studios may also soon become an independent production company. These developments raise questions about the purpose of the regulatory framework for independent production.

The BBC remains fully committed to the original intent of the requirements of the Communications Act 2003. That is, that this regulatory framework was intended to strengthen "the longer term viability and growth potential of the independent production sector" in the UK. Across 2024/25, we competed 100% of new commissions and worked with over 300 different independent TV production companies and 245 independent radio producers, including 43 TV producers and 42 radio producers we had not worked with before. In TV 50% of network hours were made by independent producers and in radio 31% of network hours were made by independent producers.

However, the current definition of qualifying independent producers (i.e. those producers to which the terms of trade regulatory framework and the QI quota applies) is no longer aligned with these objectives. It is protecting some of the largest global production companies or production companies that are owned by some of the largest media companies in the world. These companies have demonstrated their ability to negotiate commissions with global streamers like Netflix, Amazon, Paramount, etc. without regulatory protections, but under the current system remain protected in their negotiations with UK PSBs. Furthermore, hours commissioned from these giant, global but 'qualifying independent' producers count towards the PSBs' QI quotas, potentially at the expense of those indies the regime was originally intended to protect.

In July 2025, Ofcom decided not to pursue proposals to amend their guidance on commissioning codes of practice to provide greater flexibility for PSBs, citing concerns raised by the production sector and the discrepancy of negotiating power between PSBs and independent producers. This suggests that Ofcom's focus also remains on the original intent of the legislation.

While the definition of qualifying independent producers is set in a statutory instrument and not Ofcom regulation, we consider Ofcom should recommend to Government the need to revisit this definition to both support the independent production sector and PSBs. Additionally, in exercising its regulatory role in relation to terms of trade, Ofcom should take these issues into account.