



PRS FOR MUSIC RESPONSE TO THE CONSULTATION OF OFCOM'S PROVISIONAL DETERMINATION ON PROPOSED CHANGES TO BBC IPLAYER

PRS for Music is a collecting society with over 140,000 composer, songwriter and publisher members in the UK, Europe and around the world. We license, through our network of reciprocal agreements with other societies, the rights for over 25 million musical works from 2 million rightsholders. PRS for Music licenses these rights to the BBC for music played across its national and local radio station, TV services, live events, such as the Proms, and online.

Summary

PRS for Music, alongside many others in the rightsholder community, have consistently raised our concerns about the manner in which the BBC has presented its proposed changes to the BBC iPlayer service and the manner in which it has engaged interested third parties in considering the impacts of the changes. Many of these concerns, including the failure of the BBC to properly set out the nature and rationale behind the changes and the alterations to the initial proposals during the public interest test process, were recognised in Ofcom's Competition Statement. The fluidity and ambiguity of the BBC's proposals have impacted on third parties' ability to provide meaningful input into the assessment process and effective scrutiny of the changes.

Ofcom's initial findings support the BBC's proposals on the basis that the overall derived public value is likely to outweigh the identified harm to the wider market. *PRS for Music* acknowledges the basis of this conclusion alongside the evidenced likely benefits to licence fee payers of an enhanced iPlayer service. We are, however, concerned that Ofcom's initial findings provide no detail of the protections and safeguards necessary to ensure the proposals are delivered in such a way as to minimise the extent of these negative impacts. While we appreciate the BBC's desire for flexibility in its future programming on the iPlayer, this flexibility cannot override the necessity of effective regulatory oversight to ensure the variously identified harms to the competitive nature of the wider online audiovisual market are limited wherever possible. Therefore, we are calling on Ofcom to set out a formal process to monitor, on a regular basis, the implementation of these proposals and the extent to which their day-to-day operation are within the parameters set out by the BBC.

Question 6.1: Do you agree with our assessment of the likely impact of the Proposals on fair and effective competition? Please provide evidence to support your views.

PRS for Music has highlighted the problematic impact on this process resulting from the ambiguity surrounding the exact changes to the iPlayer service proposed by the BBC. Only at this late stage, is it possible to understand, albeit at a very high level, the actual duration that specific genres of programmes will be available on the iPlayer, the triggers by which box sets will become reintroduced, and the definition of 'archive content'.

In this respect we welcome the BBC's shift towards maximum, rather than minimum, durations of availability after initial broadcast; although in respect of box sets and archive content, the BBC proposals are underpinned by an indicative percentage of overall works available, which are by their definition flexible. As these maximum durations and indicative quotas have been the basis under

which the initial assessment has approved the BBC's proposals, it is essential they are subsequently adhered to by the BBC and monitored by Ofcom.

On a more specific point, and as we have previously stated, the definition of archive content provided by the BBC is more a 'catch all' category rather than an indication of an intention, or incentive, to provide access to the BBC's extensive library of historical content. The BBC has access to one of the largest historical archives of audio-visual content, some of which will never have been made available to licence fee payers online. It is therefore disappointing that the BBC has not used the opportunity of these changes to focus on increasing the availability of this content, but instead has applied a broad brush category of any 'non-returning series' which could as easily apply to programmes 2 years old as it does to content 50 years old. Considering the obvious benefits to the licence fee payers, and the BBC's wider public service objectives of a focus on its historical archive, we would urge Ofcom to further challenge the BBC's plan in this area, if not in a competition aspect then certainly in how it is meeting its wider purposes.

Finally, we note the BBC's revised proposals to make children's content available for a minimum of 5 years; a late addition to the original proposals. While *PRS for Music* has no specific objection to this change, we are aware the BBC has provided little or no justification for the adoption of a differing regime for children's programming. In addition, the specific market harm in this area has not been individually quantified. Our own data shows that 25% of the top twenty highest earning programmes for our members on the major SVOD services were children's programmes, a higher percentage than any other single genre type. For this reason, we urge Ofcom to further investigate both the rationale and impacts of the five-year availability window for children's programming before approving this change.

Question 7.1: Do you agree with our provisional conclusion that the public value associated with the BBC's iPlayer proposals justifies the adverse impact on fair and effective competition we have identified? Please provide evidence to support your views.

PRS for Music recognises the basis under which Ofcom has reached its conclusion that the public value of the proposals outweighs the obvious impacts on fair and effective competition.

We do, however, have concerns that such an assessment has been made despite the failure of the BBC to properly evidence the costs of delivering these proposals. Indeed, Ofcom itself notes that "some changes the BBC proposes may harm competition; for example, by crowding out investment from third parties, with ultimately negative consequences for audiences"¹. More concerningly Ofcom notes the BBC's very general assumption that the implementation of these proposals will generate "a small, or seemingly insignificant cost to the BBC". The additional cost to the BBC of securing the *PRS for Music*'s rights necessary to implement its proposals, assuming even a conservative average market pricing, would be in the millions. Therefore, it is worrying that the BBC consider that the costs of acquiring all of the necessary rights to be 'insignificant', and Ofcom has assumed that these additional costs would not impact on the BBC's ability to invest in new programmes. Considering the importance of the possible negative impacts on the BBC's investment on new content to the public value of the proposals, we urge Ofcom to seek a fuller explanation of the likely costs to the BBC based upon current commercial terms offered by rightsholders. In this context we would be happy to discuss with the BBC the initial royalty rates linked to the significant increase in the use of members' works.

¹Ofcom, *BBC iPlayer Competition Assessment: Consultation on Ofcom's Provisional Determination* (2019), p.3.

Question 7.2: Do you agree with our provisional conclusions on the conditions and guidance that should apply to the BBC? Please provide evidence to support your views.

We welcome Ofcom's decision to impose conditions on the BBC to ensure it regularly reviews and reports on the way the new iPlayer will contribute to the delivery of the BBC's mission and public purposes under the Charter. Ofcom must be vigilant in monitoring the impacts of the BBC iPlayer changes upon fair and effective competition. These impacts include those identified by Ofcom as well as the impact upon rightsholders and the secondary market. In addition, it is vital that Ofcom monitor the BBC's full compliance with the proposals, as outlined and approved by Ofcom, such as the window of content availability, the categorisation of content (for example, archive content), and the quota for the number of programmes available for an extended period (for example, up to 50% of current returning scripted titles available as full box-sets). Any such reviews, which should be regularly conducted, would need to include consultation with interested third parties.