

Britbox materiality assessment

**Response from the Commercial Broadcasters
Association to Ofcom**

August 2019



A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Introduction

1. COBA is the UK industry body for commercial sector broadcasters and on-demand services. COBA members operate a wide variety of services, including news, factual, children's, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay platforms, as well as on-demand.
2. COBA members are a fast growing sector, increasing their investment in jobs, UK content and infrastructure.
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK television sector's total annual turnover.¹
 - Employment: The sector has doubled direct employment over the last decade.²
 - UK production: Members have increased investment in UK television content to a record £1.1 billion per annum, up nearly 75% on 2011 levels.³
3. For further information please contact Adam Minns, COBA's Executive Director, at [✂] or [✂].

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2019 Content Report, Oliver & Ohlbaum Associates for COBA

Response

- 1) COBA supports the principle of the licence fee and recognises the vital importance of the PSB system and the BBC as part of a mixed ecology that benefits from significant investment and competition from other players, including COBA members. As such, it is vital that competition is fair, and that a well-resourced BBC (one of the most well-funded public broadcasters in the world) does not have an undue advantage in its commercial activities.
- 2) While we acknowledge the need for PSBs to evolve with changing audience demands, we are concerned about some aspects of the BBC's proposals for Britbox, specifically the public service programme release policy that is proposed. The conditions attached to the release policy risk breaching the Charter on at least two counts:
 - They potentially give the BBC's commercial services an unfair advantage as a result of their relationship with the BBC's public activities, and
 - They risk having an unnecessary negative impact on competition and on the health of the wider creative sector, notably programme producers.

The relationship between the BBC's commercial and public activities

- 3) Under the Charter, the BBC's commercial activities must not "as a result of their relationship with the UK Public Services, non-service activities or trading activities, distort the market or gain an unfair competitive advantage."⁴
- 4) Our concern is that the conditions proposed around the new 12 month release policy are sufficiently restrictive that other commercial SVOD services that might wish to acquire secondary rights will not be able to do so. The conditions require qualifying services to "operate a corporate strategy that is designed specifically to invest in and support the UK creative industries and PSB ecology as a whole." It is not clear to us how this will be defined and who would qualify, but it appears potentially likely that many commercial services could be disqualified. In addition, the BBC proposes a number of highly intrusive conditions around the presentation of this content that some services may not be able to accommodate.

⁴ BBC Charter, 18 (b)

- 5) These conditions are in our view highly likely to favour Britbox, giving it a six month advantage over many other VoD services. Although Ofcom states that the change in policy is justifiable on the grounds that it supports the BBC's public purposes, Britbox is clearly a commercial offering that must observe appropriate conditions in order to not to receive an unfair advantage from its relationship with the BBC's public service activity. As Ofcom states, the BBC is participating in Britbox "principally through its commercial arm",⁵ by taking a 10% stake and BBC Studios entering into a content supply deal. The service itself is a subscription offering that is clearly a commercial undertaking.

Risk of negative impact on UK creative sector

- 6) The BBC is also required under the Charter to have regard to "promoting positive impacts on the wider market."⁶ Were the proposals to dampen competition in the market for secondary rights by excluding at least some VoD services, as seems likely, they would risk damaging not only those services but also the UK production sector. COBA members invest significant amounts in buying secondary rights, which are important to many of their business models. COBA's 2019 Content Report reported that COBA members spend more than £100m annually on secondary rights to UK content (BBC or otherwise). In addition to being an important part of the business models for many COBA members, this investment helps sustain a competitive production supply sector by enabling producers to monetise their IP in a healthy market.
- 7) More broadly, by actively excluding other services from competing to buy the rights to UK content, the proposal seems at odds with other policy interventions in this area, such as the new AVMS Directive, on which DCMS is currently consulting. The new Directive includes a new content quota for VoD services to encourage them to show European content. The conditions that the BBC is proposing, however, would seem to make it harder for them to invest in and show UK content.
- 8) In our view, it is in the interests of the UK creative sector and of UK audiences that homegrown content is available to view on a wide range of services, all paying in order to secure the rights to that content and make it available to a wider range of viewers than might otherwise be possible. Furthermore, revenues from secondary sales may be used by producers to fill any gaps in a production budget, effectively augmenting the BBC's own content budgets and meaning that a healthy market for secondary rights is in the BBC's interests.

⁵ Consultation Paper, 1.16

⁶ BBC Charter 11 (2) (b)

- 9) We therefore ask Ofcom to require the BBC to remove these conditions from the programme release policy.