



# **Public Service Content in a Connected Society**

SUBMISSION TO OFCOM'S THIRD REVIEW OF PUBLIC SERVICE BROADCASTING

February 2015



# I Executive Summary

- I.1 This Review occurs in the context of a Public Service Broadcasting (PSB) system that works in theory and in practice. In the UK, there is widespread recognition of the enduring purpose of PSB and the success of the public service broadcasters (PSBs) in delivering significant audience and wider societal value. In doing so, the PSBs also generate growth, jobs and exports in the UK's creative economy. The PSBs are the engine of UK original content investment, providing c80%-85%<sup>1</sup> of investment in original UK content at c£2.5bn per year. The BBC accounts for over 40% of total investment in UK original content<sup>2</sup>, yet only c.22% of total TV revenues.
- I.2 UK broadcasting works as a network, with strong inter-relationships and dependencies between the constituent parts. Competition for quality between UK broadcasters, with different remits and funding structures, has led to higher levels of investment and better, more varied output. When the BBC performs well, others have to raise their game to compete for audiences, which challenges the BBC to aim higher – in a positive feedback loop. Far from crowding-out the market, the BBC's existence, as Ofcom suggests, maximizes overall content investment.
- I.3 Channel 4, as a publicly-owned but commercially funded organisation, plays a special role as a spur for creative innovation and risk-taking across the broadcast sector. ITV invests heavily in high quality original UK content and is the second largest news provider in the UK across national, international and regional news.
- I.4 Despite the explosion of media choice, audiences still want television to deliver the PSB purposes and characteristics, for them personally and for society as a whole. Overall, audience satisfaction with the performance of the PSB system is high.
- I.5 In this Charter period, the BBC has improved how it delivers its mission to educate, inform and entertain. As a result, public support for the BBC has

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<sup>1</sup> The precise figure depends on the methodology used, in particular whether sports production is included (giving 80% PSB investment, COBA) or excluded (giving 85% PSB investment, Ofcom). Sports rights are excluded in both approaches

<sup>2</sup> Both including and excluding sports production from the methodology

risen. Almost all of the UK uses the BBC each week (97% of UK adults)<sup>3</sup>. The public choose the BBC 150 million times a day<sup>4</sup> and prefer the licence fee to other models of funding<sup>5</sup>.

- I.6 The next 10 years will mark a transition towards an IP world, affecting the whole value chain in which PSBs operate. We expect to see important changes in both audience behaviour and technologies. Our linear services are much loved and will endure but we will see a shift towards delivery of audiovisual content over IP to multiple devices.
- I.7 UK broadcasting will exist in a global English-language market, which could become dominated by a few giants that exploit economies of scale in content creation and ‘network effects’ in its consumption. Far from becoming an anachronism, PSB will be more and not less important in this environment. It will be needed to secure:
- High quality, original UK programmes and services *for everyone*;
  - A well-informed society and democracy through trusted and independent journalism;
  - A more enjoyable society, where the nation can come together in a common conversation about national events, live sport or UK entertainment and drama; and
  - A world-class creative sector
- I.8 Not only is the need for PSB greater but the internet presents opportunities to deliver public service objectives in new and different ways and to serve audiences better than ever before.
- I.9 The nature of PSB – what it is and how it is delivered – must consequently change and adapt. The BBC has already made huge strides in using connected technologies to deliver our mission. BBC iPlayer is the most popular long-form video destination in the UK<sup>6</sup>; BBC Online is the only UK-based website in the top five most-used websites in the UK<sup>7</sup>.
- I.10 In Charter Review, we will propose a reinvention of public service

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<sup>3</sup> Overall BBC weekly reach and time spent and BBC Online weekly reach: GfK for the BBC, Cross-Media Insight Survey, 6,000 UK adults per quarter

<sup>4</sup> BARB/RAJAR/ComScore Digital Analytix(iStats), 2014

<sup>5</sup> BBC, ‘Why the licence fee is the best way to fund the BBC’, July 2014

<http://www.bbc.co.uk/blogs/aboutthebbc/entries/9637e45d-c96c-36c6-9e3f-af141e81cab4>

<sup>6</sup> GfK for the BBC, Cross-media Insight Survey, 6,000 UK adults per quarter, 2014

<sup>7</sup> comScore, January 2015

broadcasting for the internet age. This means becoming platform and device-neutral, to cover both main screens and mobile and tablet usage. It means long and short-form content, live and on-demand; and fusing content with functionality to enable curation, recommendations, onward journeys. It means new formats and telling stories in interactive and immersive ways – and providing services that go where the audience is. PSB has always been about getting you the programmes that matter, as well as the ones you love. TV and radio channels will perform that role for a long time to come. The internet will work alongside, allowing us to provide new and distinctive public service experiences and making a huge difference to our role as a trusted guide.

1.11 Ofcom's review is right to highlight the risks as well as the opportunities for PSB in a connected world. We would highlight the following as the key downside risks to the reach and impact of the PSB system over the longer-term:

- It may become harder to ensure that PSB content and services are widely available and easily discoverable. To reach audiences, PSBs have to secure carriage over distribution networks and access to audiovisual platforms and user interfaces. This distribution chain is becoming more complex, is mediated and potentially costly. There is the scope for misalignment of the incentives of PSBs and platforms, which may want to cherry-pick content, disaggregate content from public service functionality and/or allocate prominence on purely commercial grounds
- Intense competition could fragment audiences in a globalising media market with strong new entrants like Netflix and Amazon, and bring consolidation and vertical integration across the value chain. This will make competing for the best talent and ideas increasingly expensive (particularly in high-end drama, sport and landmark documentaries)
- As Ofcom makes clear, the BBC is the cornerstone of the PSB system. A funding reduction in this Charter period has already put pressure on content investment and led to tough choices, such as the

planned transition of BBC Three from a TV channel to online<sup>8</sup> earlier than we might otherwise have done. We share Ofcom's concern that a continued real terms reduction in licence fee funding would undermine the quality of public service output – and it would also stifle the BBC's ability to continue innovating and contributing to the UK creative economy

- I.12 These risks require a response. There needs to be a new 'PSB compact' to support the achievement of the PSB purposes in the internet era, where the distribution and consumption of PSB content and services via the internet becomes as important as broadcasting. It is up to the BBC and others to reinvent how we deliver PSB; it is up to policy-makers to modernise the regulatory framework to support a new, more flexible model.
- I.13 If the goal remains – as we firmly believe it should – to ensure that PSB content achieves universal reach and impact in a connected world, then a number of building-blocks must be in place:
- *A suitably funded BBC* (which is a matter for the forthcoming Charter Review process) competing for quality and innovation with sustainable commercial PSB institutions, to maximise investment in a range of high quality original UK content
  - *Universality*: this does not mean ubiquity but reaching all audiences. PSB must be accessible on all significant distribution networks and audiovisual platforms. Robust net neutrality and backstop rules such as on minimum quality of service are needed to deliver PSB to all connected devices over-the-top (OTT)
  - *Payments between commercial platforms and PSBs*: the system should guarantee that the BBC faces zero fees in this Charter period for carriage on existing and new platforms, without the risk of channel 'black-outs'
  - *Prominence*: EPGs and other user interfaces have evolved materially since the current regime was introduced. The policy framework is over-due an update to strengthen enforcement for PSB linear

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<sup>8</sup> Subject to approval by the BBC Trust

channels, and to cover on-demand on new content gateways

- *The listed events regime*: this is essential for ensuring all audiences are able to watch sporting events, which are a core part of our national culture. The PSBs should be guaranteed access to listed events as their coverage consistently reaches the largest audiences – it forms a core de facto part of the PSB compact with audiences and regulators. From the World Cup opening ceremony to the end of the Commonwealth Games, over 50 million – or 86% of the UK population – watched the BBC’s sports coverage<sup>9</sup>

I.14 PSB audiences benefit from a supply of high quality, original UK content. There are some risks to this in future, with greater consolidation and vertical integration in the production sector. Ofcom should be given the power to vary the level and/or definition of the independent production quota if there is evidence that the range and quality of content is under threat. The terms of trade between broadcasters and independent producers must be sufficiently flexible to reflect changing audience expectations and balance risk with reward.

I.15 It is essential that policy-makers and regulators have the right toolkit available to achieve these desired outcomes. The scope of the current regulatory framework needs to be re-considered to sustain the 'virtuous circle' of reach, funding and investment, on which the PSB system is based. Current interventions are primarily focused on linear TV channels on traditional TV platforms and EPGs. It is also essential that the policy tools are sufficiently flexible to be able to respond swiftly and effectively to problems that emerge, while also being proportionate. Ofcom must closely monitor market developments and be ready to take action if necessary.

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<sup>9</sup> BARB/TRP Research, Sport genre. 15 min+ consecutive reach, 11+ regions, summer of sport 2014 (start of World Cup to the end of the Commonwealth Games)

## 2 The context for Ofcom's review

**Question 1: Do you agree with our assessment of the context in which the PSB system operates, and how the trends identified might affect the PSB system? In particular, do you agree with our analysis of the independent production sector?**

**Question 10: How might incentives to invest change over time?**

### *Enduring role and importance of PSB*

- 2.1 The BBC's starting point is that this Review of public service broadcasting (PSB) occurs in the context of a PSB system that works in theory and in practice. There is widespread recognition of the enduring purposes of PSB, which go beyond correcting 'market failures', and of the success of public service broadcasters (PSBs) in delivering significant audience value and wider social and cultural goals. These goals include: reflecting and shaping the nation's culture and values through a range of UK-originated distinctive content; securing plurality of high quality news and information to help the public engage in the democratic process; and ensuring that PSB content and services are universally available and easy to find.
- 2.2 In doing so, the PSBs also generate growth, jobs and exports for the UK's creative economy. The PSBs are the engine of UK original content investment, providing c80-85%<sup>10</sup> of investment in first-run non-sport content at c£2.5bn per year. The BBC accounts for over 40% of total investment in UK original content<sup>11</sup>, yet only c22% of total TV revenues.
- 2.3 UK broadcasting works as a network, with strong inter-relationships and dependencies between the constituent parts. Competition for quality between broadcasters with different remits and funding structures leads to higher levels of investment and better, more varied output. As Ofcom highlights, the BBC is the cornerstone of the PSB system. When the BBC performs well, others have to raise their game to compete for audiences, which challenges the BBC to aim higher, in a positive feedback loop. Far from crowding-out commercial investment, the PSBs support overall market

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<sup>10</sup> The precise figure depends on the methodology used, in particular whether sports production is included (giving 80% PSB investment, COBA) or excluded (giving 85% PSB investment, Ofcom). Sports rights are excluded in both approaches

<sup>11</sup> Both including and excluding sports production from the methodology



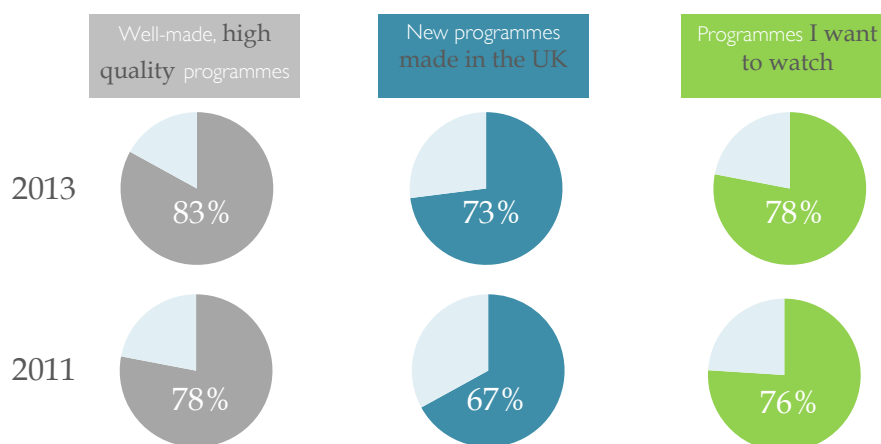
growth. This is a dynamic that can be observed in other countries with strong PSB and commercial broadcasters<sup>12</sup>.

- 2.4 Channel 4, as a publicly-owned but commercially funded organisation, plays a special role as a spur for creative innovation and risk-taking across the broadcast sector. ITV invests heavily in high quality original UK content and is the second largest news provider in the UK across national, international and regional news.

#### *Audiences highly value PSB*

- 2.5 Despite the huge changes to the media landscape, audiences still want television to deliver the PSB purposes and characteristics, for them personally and for society as a whole. Ofcom's data shows that trustworthy news is particularly important (87% of respondents) while the percentage of respondents attaching importance to high quality and original UK, innovative and challenging content has increased c5% since 2011 to over 70%. Overall audience satisfaction with the performance of the PSB system is high. Innovation in new functionality such as HD and on-demand has increased the value generated.

The percentage of people who think it's important that PSB provides...



**Figure 1 The importance attached by audiences to different PSB characteristics<sup>13</sup>**

- 2.6 In this Charter period, the BBC has improved how it delivers its mission to

<sup>12</sup> BBC, 'Public and Private Broadcasters across the World – the Race to the Top', December 2013  
[http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc\\_report\\_public\\_and\\_private\\_broadcasting\\_across\\_the\\_world.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_report_public_and_private_broadcasting_across_the_world.pdf)

<sup>13</sup> Ofcom PSB Annual Reports 2012 and 2014

educate, inform and entertain despite increasing media choice and a decreasing share of market revenues. As a result, public support for the BBC has risen. Since the beginning of the current Charter people's general impression of the BBC is up, trust in the BBC is up, and their view of the quality and freshness of BBC programmes is up.

- 2.7 Almost all of the UK uses the BBC each week (97% of UK adults) and these audiences spend a considerable amount of time with BBC services (around 18 hours per week, on average). 82% of people watch BBC TV overall each week. BBC One reaches more people than any other broadcast TV channel in the UK irrespective of age, socio-economic group and location. 66% of all adults listen to BBC Radio per week<sup>14</sup>. BBC Online is the only UK-owned website in the top five most-used websites in the UK, used by half of all UK adults per week<sup>15</sup>. Overall, the public choose the BBC 150 million times a day<sup>16</sup>.
- 2.8 The public's high usage of the BBC is directly connected to their high appreciation of the quality and impact of BBC content. Data from Ofcom shows that BBC One and BBC Two are rated the best for showing 'high quality well-made programmes'. The BBC also emerges as a global leader on quality – in a 2013 international survey of 14 countries BBC One was rated highest out of 66 major TV channels<sup>17</sup>.

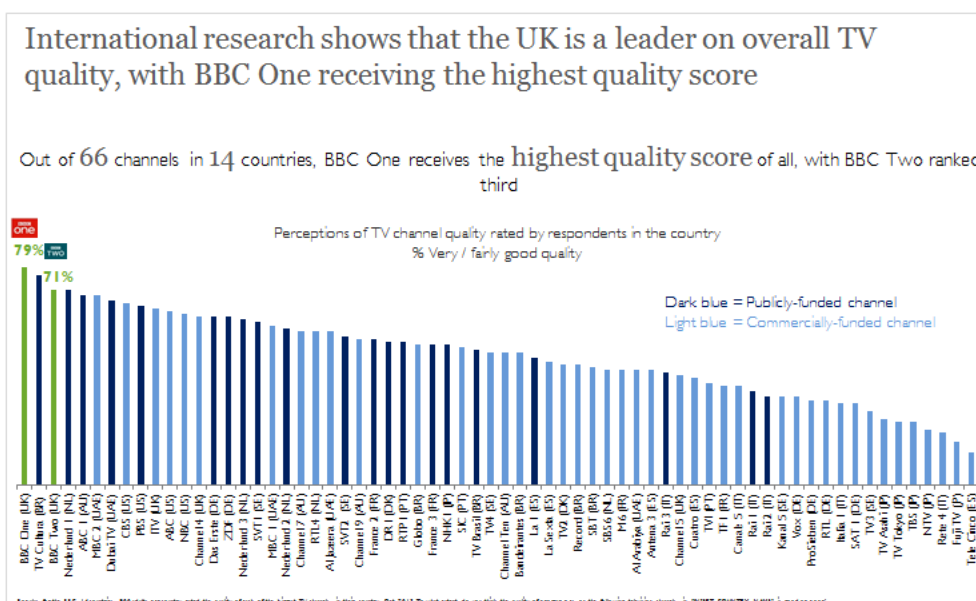
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<sup>14</sup> Overall BBC weekly reach and time spent and BBC Online weekly reach: GfK for the BBC, Cross-Media Insight Survey, 6,000 UK adults per quarter; overall BBC reach 15 mins or more per week; BBC Online reach 3 mins or more per week. Average weekly BBC TV reach and BBC One reach: BARB, individuals 4+, reach 15+ min cons. Average weekly BBC Radio reach: RAJAR, adults 15+, reach 15 mins, Q4 12-month weight. Top five most used websites: Comscore, MMX, January 2015

<sup>15</sup> Cross-media insight survey (CMI) by GfK, c6,000 UK adults per quarter, Q3 2013, average weekly reach (3 mins+) of BBC Online. comScore Media Metrix, UK 6+, November 2013(desktop only)

<sup>16</sup> BARB/RAJAR/ComScore Digital Analytix(iStats), 2014

<sup>17</sup> Populus for the BBC, 14 countries, 500 adults per country rated the quality of each of the biggest TV channels in their country, Oct 2013



**Figure 2 International research shows the BBC is a leader on quality**

- 2.9 The next 10 years will see a transition to a connected world, affecting the whole value chain in which PSBs operate: distribution networks, platforms and gateways, devices and content. We also expect to see important changes in audience behaviour, with a greater diversity of needs and interests and more fragmented consumption across platforms and services.
- 2.10 As the Culture, Media and Sport Select Committee said<sup>18</sup>, the licence fee remains the best way of funding the BBC in the next Charter. It promotes universality, though free-to-air provision and, by sharing the cost of BBC services across a broad base of households, ensures affordability; it provides risk capital for the British creative sector and talent; extends choice for audiences in the quality and range of British content; and promotes independence and accountability. Twice as many people identify the licence fee as the best way to fund BBC, compared to advertising or subscription<sup>19</sup>. However, the licence fee should, as the Culture Media and Sport Select Committee's recent report says, be modernised at Charter Review to reflect changing audience behaviour and new technologies. The ideas the Committee

<sup>18</sup> Culture, Media and Sport Committee, 'Future of the BBC', February 2015

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcumeds/315/31502.htm>

<sup>19</sup> BBC, 'Why the licence fee is the best way to fund the BBC', July 2014

<http://www.bbc.co.uk/blogs/aboutthebbc/entries/9637e45d-c96c-36c6-9e3f-af141e81cab4>

BBC, 'Why subscription isn't the best way to fund the BBC', July 2014

<http://www.bbc.co.uk/blogs/aboutthebbc/entries/8d83c25d-f2ba-34c7-8e03-edbf806e83c0>

has put forward around extending the licence fee to catch-up television or a universal household levy are well worth exploring<sup>20</sup>.

*Market changes affecting PSB*

- 2.11 Two of the key trends are:
- (i) High broadband and connected device penetration<sup>21</sup> enabling growth in IP distribution, new ways for audiences to access content and new business models; and
  - (ii) New digital content services and gateways, changing the competitive landscape. Global giants exploit economies of scale in content creation and ‘network effects’ in its consumption
- 2.12 From a relatively simple free / pay divide, TV platforms will evolve to a more complicated ecosystem with many more choices – e.g. free plus OTT, pay-lite, bundled services with TV as an element. To reach everyone, DTT will remain important as a universal, low cost access to the PSB services and to maintain TV platform choice. At the same time, we recognise the need to meet the growing appetite for new and innovative forms of consumption made available via IP-based networks.
- 2.13 The pay TV sector is reacting to competition in the UK by becoming consolidated and vertically integrated as triple and quad play companies, and internationally by merging to form multi-territory businesses.
- 2.14 This results in a mediated distribution chain, controlled by platforms that often have their own content interests. There is scope for misalignment of the incentives of PSBs and platforms, which may seek to cherry-pick content and disaggregate public service content from functionality. This results in outcomes inconsistent with audience expectations. It may become harder to ensure that all PSB services are widely available and easily discoverable across all types of platform.
- 2.15 Competition by both pay TV and subscription Video on Demand (sVoD) is

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<sup>20</sup> Culture, Media and Sport Committee, ‘Future of the BBC’, February 2015 <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcmuds/315/31502.htm>

<sup>21</sup> Smartphone ownership 61% of adults in Q1 2014, up from 27% in Q1 2010. Household take-up of tablets reached quadrupled in two years reaching 44% in Q1 2014 from 11% in Q1 2012. Ofcom Communications Market Report 2014

manifested as a battle to control ‘must have’ content assets, especially premium acquisitions in sports, movies and drama, which can drive subscription and consumer switching. This is causing cost-inflation in talent and the best ideas. Sky and BT will spend a combined total of over 1.7 billion pa on Premier League rights from 2016/17. That is equivalent to the BBC’s total TV content spend budget.

- 2.16 This competition is also leading to (global) consolidation in supply between producers and channels, in order to control content choice and rights.
- 2.17 On devices, the battle for market share by operating systems (iOS, Android) is starting to spill over into connected TV viewing, with these players seeking aggregation, data and advertising benefits.
- 2.18 We see similar broad trends affecting Radio and Music, with the rise of global subscription and ad-funded digital music services. Services are being offered by platforms, such as Spotify with Vodafone, iTunes with iOS devices and YouTube/ Google Play Music with Android. At the supply level, digital services are starting to look to Radio for presenters and curatorial talent, as they recognise the value to audiences of Radio’s hand-picked recommendations and trusted human guides to new music.
- 2.19 These market developments clearly carry risks as well as opportunities for PSB in a connected world.

#### *Audience changes*

- 2.20 The BBC’s linear TV and Radio services will still be important for a long time to come, delivering enormous audience and wide social value. But we see a shift to on-demand and IP-based services alongside, meeting audience needs for choice, immediacy and a more tailored experience. The pace of change will vary by audience group and by genre. Young audiences are blazing the trail but more and more audiences are now choosing to watch what they want, when they want and where they want. BBC iPlayer ignited catch-up TV; Netflix has done the same with binge-viewing; and YouTube (and most recently Twitter and Facebook) with short-form, mobile and shareable native video consumption.
- 2.21 As diversity becomes the norm, audience needs and interests are evolving and fragmenting. This is changing expectations about how and where media content should be available, including PSB.
- 2.22 While young people still use the BBC more than any other service, there are

structural shifts in their media consumption habits.

2.23 60% of children aged 6-11 years claim to use tablets each week, compared to 38% of all adults. This means that in terms of weekly reach of devices, tablets are ranked second among this age group after TV sets (high at 97%), but eighth for all adults<sup>22</sup>. Young audiences will still look to linear for high impact and shared event viewing. BBC One is the broadcast TV channel with highest reach among 16-24 year olds<sup>23</sup>. However, they will increasingly complement this with on-demand. Smartphone reach is 88% among the 16-24s (2014)<sup>24</sup>. In 2013, viewing to the TV set was down c13% on 2010 for this age group, while non-linear viewing to TV and other screens represented 25% of average daily consumption<sup>25</sup>. Young audiences are also three times more likely than older people to get their news online<sup>26</sup>.

2.24 Far from becoming an anachronism, PSB will be more and not less important for the creative economy. It will be needed to secure:

- *High quality, distinctive UK programmes and services for everyone.* By the mid-2020s, we expect a broadly similar percentage of original UK content investment to be from the PSBs<sup>27</sup>. As argued above, this high level of investment sustains jobs, growth and exports by the wider creative industries. While subscription VoD (sVoD) spend on UK original content is likely to increase it will remain a very small proportion of their total content spend. OTT providers such as Netflix and Amazon have different goals to the PSBs. To reach everyone, DTT will remain important as a universal, low cost access to the PSB services and to maintain TV platform choice. At the same time, we recognise the need to meet the growing appetite for new and innovative forms of consumption made available via IP-based networks

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<sup>22</sup> Ofcom Communications Market Report 2014. In 2013, viewing to the TV set was down c11% 4-15 year olds, Enders Analysis, January 2014

<sup>23</sup> BARB average weekly reach, 15+ consecutive minutes, 2014

<sup>24</sup> Ofcom Communications Market Report 2014

<sup>25</sup> Enders Analysis, January 2014 (BARB)

<sup>26</sup> Ofcom PSB Review, 2014

<sup>27</sup> O&O for the BBC, 2014

## We produce more quality content, for less

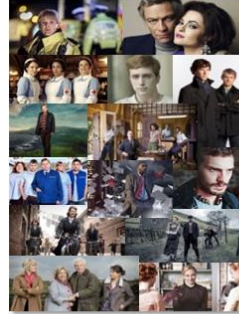
\$100 million looks like...



### House of Cards

- 2 series / c22 hours of content
- Viewed by 6% of UK adults
- Viewer appreciation 8.0 out of 10

It also looks like...



### BBC drama series

- 14 series / c79 hours of content
- Viewed by 72% of UK adults
- Viewer appreciation 8.8 out of 10

House of Cards: Ipsos MORI, 1,035 UK adults 16+, July 2014; BBC: BARB, Pulse / GfK



**Figure 3 The BBC produces more quality content, for less<sup>28</sup>**

- *A well-informed society and democracy through trusted and independent journalism.* Central to our democracy is that we all proceed on the basis of shared information. The BBC's 'Future of News' project<sup>29</sup> has highlighted the risks of information inequality in the internet age. While the internet has brought ever more data and opinion, the risk of misinformation, partial information and disengagement has grown. Some audiences are excluded through lack of online access or digital skills. The BBC is able to act as a trusted guide, keeping everyone informed, encouraging audiences to interact with different kinds of media, and helping society to hold decision-makers to account. During the recent events in Paris, a record high of 71 million devices accessed BBC News over the week<sup>30</sup>
- *A more enjoyable society, where people can share experiences and can come together in common conversations.* The BBC exists not only to enhance individual lives but also to enhance our collective and national

<sup>28</sup> House of Cards: Ipsos MORI, 1,035 UK adults 16+, July 2014; BBC: BARB, Pulse / GfK

<sup>29</sup> BBC, 'Future of News: News v Noise', 28 January 2015 <http://www.bbc.co.uk/news/magazine-30933261>

<sup>30</sup> iStats Digital Analytix

life. This role will become more important as media fragments and society becomes more diverse. The BBC can be the place where the nation meets; where we celebrate together and share moments of crisis; the place we join in debate and argument. Take three recent examples. The *Eastenders* 30<sup>th</sup> anniversary week was watched by over 23 million. BBC's World War One coverage across TV, radio and online has been consumed by 4 in every 5 people<sup>31</sup>. Reach (15 min+) for the FA Cup so far on the BBC is 31.5m and on BT is 4.7m, meaning that the BBC has brought a unique audience of 26.8m (84% of the total audience)<sup>32</sup>

- *A world-class creative economy.* As argued below, the BBC occupies a hub position in the UK's creative industries, densely connected to many other firms through supply-chain linkages, induced investments and positive spillovers. It is these inter-connections that underpin the BBC's contribution to growth, jobs and exports in the creative economy



**Figure 4 The BBC brings the nation together around events<sup>33</sup>**

*PSB in the internet era*

<sup>31</sup> Ipsos MORI for the BBC, 1,034 UK adults 18+, November 2014

<sup>32</sup> BARB / TRP Research

<sup>33</sup> BARB, 4+



- 2.25 The nature of PSB needs to change and adapt to the capabilities of new technologies and to what audiences expect. IP creates opportunities to enhance the impact and delivery of the PSB purposes to deliver PSB in new and exciting ways. The rapid take-up of tablets and smartphones since Ofcom's last review in 2008 was unexpected, but has transformed the ways audiences engage<sup>34</sup>. BBC iPlayer is now available on over 750 devices and was used by 4 million per week in 2013. In 2013, 41% of all BBC TV iPlayer requests came from mobiles or tablets, up from only 6% in 2010<sup>35</sup>.
- 2.26 These changes require the BBC to reinvent how we deliver PSB. This means becoming platform and device-neutral, to cover both main screens and mobile or tablet usage. It means fusing content (long and short-form, live and on-demand) and functionality (enabling curation, personalisation, onward journeys). It means telling stories in new ways – personal stories, interactive and immersive stories – and providing services that go where the audience is. PSB has always been about getting you the programmes that matter, as well as the ones you love. Channels will perform that role for a long time. The internet will work alongside, allowing us to provide new and distinctive experiences and making a huge difference to our role as a trusted guide.
- 2.27 The BBC has already made strides in using connected technologies to deliver our mission, and our strategy is to go further and faster:
- *BBC Three*: We will be the first broadcaster to transition a linear channel to online with BBC Three, subject to regulatory approval. This will bring high quality, distinctive and innovative UK long form, short form and new form interactive content to 16-34 year olds. Moving BBC Three online will act as a pathfinder to test and understand how PSB can and should evolve in a digital world, starting with younger audiences who are the most connected. By taking risks with ideas, talent and technology it will also help to expand the market for digital entertainment, information and education for 16-34 year olds in the UK, and aid the discovery and promotion of the best of British talent
  - *BBC iPlayer*: This is most popular long-form video destination in the UK. In 2013 there were 261 million requests per month to BBC

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<sup>34</sup> At the time, mobile Internet had only just begun to take off with the iPhone 3G and arrival of mobile 'apps', tablets were for business, Netflix was a postal DVD service, and there was no Android

<sup>35</sup> BBC iStats

iPlayer TV and Radio<sup>36</sup>. While simulcast and catch-up content (now with a 30-day window) will remain the primary purpose of BBC iPlayer, we propose to broaden the service's appeal by including 'online first', 'online only' content and selected commissions by third party partners. Functionality is an integral part of the PSB experience on BBC iPlayer. This leads to our syndication approach of providing the standard BBC iPlayer product wherever possible, ensuring audiences have access to the full experience consistently across platforms. We will continue to innovate with curation and onward journeys to deepen audience engagement and increase yield

- *MyBBC*: Reinventing PSB through data, MyBBC will enable the audience to become schedulers. As the BBC, we will always focus on audiences as citizens and not consumers. MyBBC will use insights to tell you what citizens like you would like to watch and need to know. Such insights will also support commissioning and creative decisions so that audiences' voices shape the BBC's output
- *BBC Music/ BBC Playlister*: BBC Playlister builds on the BBC's leading position as a trusted music guide for UK audiences. Each year, the BBC showcases more music than any other broadcaster across its radio, TV and online services. However, once broadcast, it could be difficult for audiences to find the music again. Across BBC Online and BBC iPlayer, music fans can now 'click' to remember a track they hear on the BBC and add it to their personal playlist; discover new hand-picked tracks and related content from favourite BBC DJs who share their passions and expertise; and easily export their playlist to their chosen digital music service to replay whenever they want

2.28 If PSB delivery must be more flexible and responsive, so must the regulatory framework. Creative renewal must be matched by policy modernisation in order to secure the benefits of PSB for the next decade. This means targeted updates to the regulatory toolkit, and Ofcom closely monitoring market developments and standing ready to take action. We discuss these points further in response to Questions 9, 11 and 12.

#### *The Independent Production Sector*

2.29 We believe that a healthy UK television supply system has five characteristics:

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<sup>36</sup> BBC iStats

1. *It ensures UK audiences receive a wide range of high quality original content that delivers the PSB purposes and characteristics*
2. *It allows for strong, well-funded commissioners of content, with a mix of commercial and public funding models.* As set out above, the PSBs are by far the main source of demand for UK original content but their commissioning spend has been under pressure in recent years
3. *A growing and diverse supply sector with strong skills and talent base across the UK.* A diverse supply base, made up of different kinds and sizes of producers, is important to sustain a plurality of ideas across different genres and give broadcasters access to the best content for the widest range of audiences
4. *Balanced relationship between commissioners and producers, with a rights model that maximises investment in UK original content*
5. *It serves the UK's interests internationally by bringing the best of the UK's ideas to the world market*

2.30 The BBC plays a pivotal role in delivering a healthy UK television supply system, both as a commissioner and as a producer. Commissioning is critical to defining and shaping our offer, but the way content is supplied also goes to the heart of our service to licence fee payers and we need a thriving independent sector to deliver top-quality programmes.

2.31 We have previously floated a package of proposals to modernise the BBC's supply arrangements, in response to changing audience and market conditions. This includes the idea of creating a new production vehicle. This new entity would compete with third parties for BBC commissions and also have the creative freedom to work for other broadcasters. It would have a public service mission: inspiring audiences with bold British creativity. We would propose the removal of the overall 'in house guarantee' for BBC production, opening up greater opportunity to the independent supply sector. In short, the package is designed to secure the supply of a range of high-quality original content that meets audience needs; create long-term value for Licence Fee-Payers through retaining and exploiting intellectual property; and stimulate the UK production industry by injecting further competition. The production vehicle would operate on an arms-length basis

to comply with the BBC's legal regulatory regime.

- 2.32 Alongside these planned changes, we have undertaken an analysis of the UK supply sector to assess the likely future challenges and risks, and the potential impact of these on the characteristics of a healthy supply market, as described above. We have also considered whether the current policy interventions in relation to the supply sector remain necessary or require change (see Question 14).
- 2.33 We agree with the main points of Ofcom's analysis of the independent production sector. There has been real-terms growth in the UK independent sector since 2009. But, while PSBs remain the biggest buyers of UK originated content, the increase in independent revenues has been driven by ancillary and international income – the value of UK independents' international revenue now significantly outweighs that of their UK secondary rights. There is a mutually beneficial relationship between independents and the PSBs – the shop-window for programmes provided by the PSBs helps the generation of this secondary income. The table below briefly summarises changes in the production sector over the last seven years.
- 2.34 We also recognise the Review's characterisation of an increasingly consolidated and foreign-owned independent sector. As a result of the quality of the UK supply base, its talent and the rights ownership model, UK independents are attractive acquisition targets for larger, international companies including broadcasters. The sector has seen remarkable change in the last decade. In 2009 there were very few independents owned by foreign broadcasters and now a number of the most prominent companies such as All3Media and Shine Endemol have non-UK parent companies. Our analysis suggests that foreign-owned groups of companies have increased their share of revenue from the UK production sector steadily over the last decade and now own about 60% of the independent market.
- 2.35 Our view is that in many respects the UK production sector is in rude health. However, supply-side trends and funding pressures facing the PSBs point to uncertainty about the future shape of the market and its ability to supply a range of high quality original content that meets audiences' changing needs. We have identified a number of risk factors:
- *Greater vertical integration limits commissioner choice.* As a result of the consolidation of the UK market over the last decade, more independents have become vertically integrated with broadcasters and

therefore ceased to qualify as independent producers. We forecast that within 10 years consolidator-owned producers could have a share of around 80% of current UK PSB commissioning revenues. It is understandable that in a financially uncertain and competitive environment, many companies feel that they benefit from increased scale and the ability to generate more rights. This, in itself, is not a bad thing but it does risk changing the dynamics of the sector. As a result of parent companies growing in size and global reach we believe that PSBs could increasingly be the smaller, more financially constrained partner in production negotiations. Between 2006 and 2013 we estimate that the proportion of PSB spend on independents owned by conglomerates larger than the BBC increased from 19% to 48%. There is also a risk that continued vertical integration between independent producers and broadcaster parent companies – largely arms-length at the moment – could change as competition for the most lucrative ideas increases. This could result in PSBs becoming increasingly reliant on groups with incentives to restrict access to quality content

- *Fewer qualifying independents restrict diversity of supply.* Consolidation also presents a long-term editorial challenge for the BBC, which is committed to various quotas for independent production. Specifically, the BBC is bound by the Charter and Agreement to fulfil a 25% independent production quota on both BBC One and BBC Two and is required via legislation to fulfil a 25% pan-BBC quota<sup>37</sup>. Our analysis shows that as of 2013 less than 25% of total revenues in the industry derive from non-group owned independents. If more group-owned companies follow the trend of becoming non-qualifying, the pool of eligible independents could reduce further in the future. Commissioners may come under pressure to make choices on the basis not of the best ideas or value for licence fee payers, but primarily by the need to fulfil the quotas. This would be at odds with the original intention of the quota and would not serve the best interests of PSB audiences

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<sup>37</sup> This is in addition to a long list of other commitments in the Charter and Agreement including maintaining the WoCC and in-house guarantee, providing a certain amount of news and current affairs programming and meeting quotas for spend and hours of production from outside London and the UK's nations and regions

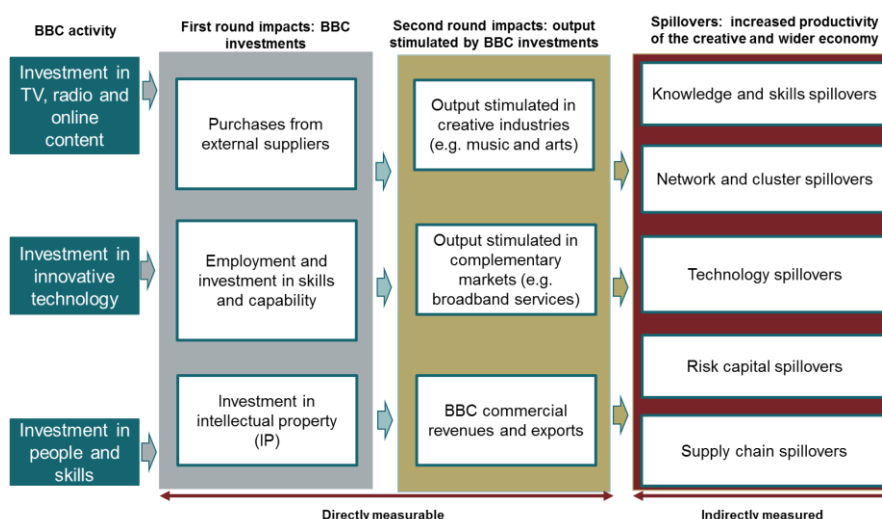
- *Greater stratification reduces diversity of supply in some genres.* Although small independents continue to compete in the market alongside larger and non-qualifying independents, some genres are more likely to be dominated by non-qualifying independents than others. We see some evidence within the BBC of certain genres becoming a greater focus for consolidated independent groups as both BBC in-house production and smaller independents lose share. The emerging risk is that over time, non-qualifying independents come to dominate the most commercial genres and that smaller and newer qualifying independents are limited to certain genres that have less of a market outside PSBs. As more global players enter the market competing for the best ideas from the biggest independents in the most commercially attractive genres, the risk is that costs could increase and the BBC and other PSBs may no longer be able to secure some of the content audiences want

#### *BBC contribution to wider UK economy*

- 2.36 In its Statement, Ofcom intends to explore further the PSBs' broader contribution to the UK creative sector. In support, we set out further detail on the BBC's economic impact.
- 2.37 Previously the BBC used multiplier analysis<sup>38</sup> to assess our contribution to the UK economy, finding that BBC spending in 2012 generated gross value added of around £8 billion – that's £2 of value for every £1 of licence fee spent. To build on this analysis, we've looked at how the BBC helps to create the conditions for a high growth creative economy.
- 2.38 The BBC occupies a hub position in the UK's creative industries, densely connected to many other firms through supply-chain linkages, induced investments and positive spill overs. Working with Frontier Economics, we have identified a three-stage 'transmission mechanism':

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<sup>38</sup> BBC, The Economic Value of the BBC: 2011/12, January 2013  
[http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc\\_economic\\_impact\\_2013.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_economic_impact_2013.pdf)



**Figure 5 BBC transmission mechanism**

- 2.39 *First-round impacts:* In 2013/14, the BBC directly invested c£2.2 billion of licence fee income into the creative industries by producing and purchasing goods and services, from TV programmes to web apps. This included c£1.2 billion outside the BBC, with around £450 million on small and micro-sized creative businesses. The BBC supported over 2,700 creative suppliers and over 80% of those were small or micro-sized. A further £1.5 billion was invested outside of the creative industries in the UK, often in the digital and high-tech industries.
- 2.40 While the licence fee accounts for c22% of UK TV broadcast revenues, it is converted into over 40% of the investment in original UK TV content. This increases the overall level of stable demand in the creative economy and provides risk capital for ideas and talent. In some cases, these generate big economic returns through secondary sales and global exports.
- 2.41 *Second-round effects:* The BBC also makes a significant contribution through commercial exploitation of intellectual property and by stimulating additional demand and output in connected industries. BBC Worldwide is the largest distributor of finished TV programmes outside the major US studios. It represents content from over 250 British independent production companies. The BBC connects great ideas with funding and an audience, and acts as the best ‘shop window’ to the world for UK talent and programme-makers.
- 2.42 The ‘ripple effects’ from the BBC’s investments in content and technology go far and wide in the creative economy. For example, the invention of the BBC

iPlayer acted as a catalyst for the development of VoD and generated demand for broadband connectivity. Back in the mid-2000s, the BBC was able to overcome the uncertain investment conditions and co-ordination problems associated with VoD. Its Charter-based mission to 'bring new digital technologies to everyone' gave it a mandate and its funding model, expertise and trusted brand gave it the means. The success of BBC iPlayer increased demand for VoD services to the benefit of all market participants. Reed Hastings, Chief Executive of Netflix, recently said: *"The iPlayer really blazed the trail. That was long before Netflix and really got people used to this idea of on-demand viewing."* Out of Europe's top five economies, the UK has both the broadest free-to-air catch-up viewing and the strongest commercial revenues – more than two-and-a half times greater than the next biggest market<sup>39</sup>.

2.43 *Positive spillovers:* The BBC's activity has spillover effects that strengthen the productive capabilities of the creative economy. These are hard to quantify but important nonetheless. Public institutions like the BBC and Channel 4 nurture the creative talent and expertise that the sector needs to flourish. Or consider the next generation of British musical talent championed by *BBC Introducing* – 25 artists have signed to major record labels in the past 12 months. Similarly, the BBC's role in training and skills development including apprentices, when combined with high labour mobility, benefits the creative content industries.

2.44 It is often easiest for inter-connected organisations to share knowledge, skills and ideas when geographically located together. During this Charter period, the BBC has devolved significant activities outside London and the South East, and has acted as an anchor tenant for 'clusters' of creative businesses in different parts of the UK. MediaCityUK, with c.200 firms and c6,400 jobs, has become one of the largest media clusters in Europe. NESTA reveals that a number of UK cities now have high concentrations of creative sector activity.

**Question 2: Have we identified the key differences in Northern Ireland, Scotland and Wales?**

**Question 5: Given the resources available, does the PSB system deliver the right balance of spend and output on programming**

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<sup>39</sup> Ofcom ICMR 2014, Screen Digest



**specifically for audiences in Wales, Scotland and Northern Ireland and programmes reflecting those nations to a UK-wide audience?**

- 2.45 Ofcom's summary of the market context in the Nations seems reasonable, as do the observed differences in audience expectations. The devolved nations are not a single entity, and the political, social and audience issues they face are different. Alongside ethnic diversity, notions of identity in the UK will also become increasingly multi-faceted. The BBC has a responsibility to tell the story of the UK to the whole of the UK and back to the individual Nations themselves. Our approach has been to provide a range of programmes and services that supplement the pan-UK offering, responding to particular audience needs.
- 2.46 The BBC has strong overall reach and impression figures across the three devolved nations, although long-standing differences do remain. We have successful Nation-specific services, valued by licence fee payers and performing well in the market. Finally, the BBC plays an important role in sustaining indigenous languages, in partnerships with others such as S4C and MG Alba.
- 2.47 It is fair to say that there is unmet audience demand for greater representation on-air and on-screen in the network services of the PSBs. This is an area that the BBC is seeking to address. The balance of spend and output between English language content and indigenous language content is also an important issue. How the BBC responds to a multi-national UK and how it supports National and regional self-expression will be key themes for Charter Review.

### 3 PSB performance

**Question 3: Do you agree with our assessment that the PSB system remains strong overall?**

**Question 6: Is declining investment affecting the quality of PSB and is it a cause for concern?**

- 3.1 PSB matters more than ever and overall it has delivered in the period 2008-2013. As set out in Question 1, the PSBs provide c80-85%<sup>40</sup> of investment in first-run non-sport content at £2.5bn pa. Taken together, the PSBs play a vital role in providing distinctive, UK content such as drama, landmark factual and children's. We deliver high reach for sports coverage.
- 3.2 Considering spend and hours by PSB genre, the BBC provides unparalleled breadth and range. As noted by Mediatique<sup>41</sup>, the BBC's content strategies have an important influence on content investment by the commercial PSBs. There is 'competition for quality' within the PSB system.
- 3.3 In line with our mission, we are delivering content that:
- *Informs*: While most people use one or more additional news sources, the BBC provides an anchor of trust, accuracy and impartiality, with a variety of tones and voices across our outlets. 53% of audiences said that BBC News is the *one* source they are most likely to turn to if they want impartial news coverage<sup>42</sup>
  - *Educates*: 82% of all adults say they have watched, listened to or read some of the BBC's WWI centenary content. Democracy Day on the BBC marked the 750th anniversary of England's first Parliament. BBC content helped awareness almost double overnight. Of those aware the day after the anniversary, 84% heard about it from the BBC<sup>43</sup>.

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<sup>40</sup> The precise figure depends on the methodology used, in particular whether sports production is included (giving 80% PSB investment, COBA) or excluded (giving 85% PSB investment, Ofcom). Sports rights are excluded in both approaches

<sup>41</sup> Mediatique report commissioned by Ofcom, 'Ofcom PSB Review: Investment in TV genres', 1 December 2014

<sup>42</sup> Ipsos MORI for the BBC, UK adults 16+ who follow the news (1,873), Feb 2013. Of all the news sources (TV broadcaster, radio, newspaper, magazine or website), which ONE source are you most likely to turn to if you want impartial news coverage? Newspaper titles include the Sunday editions

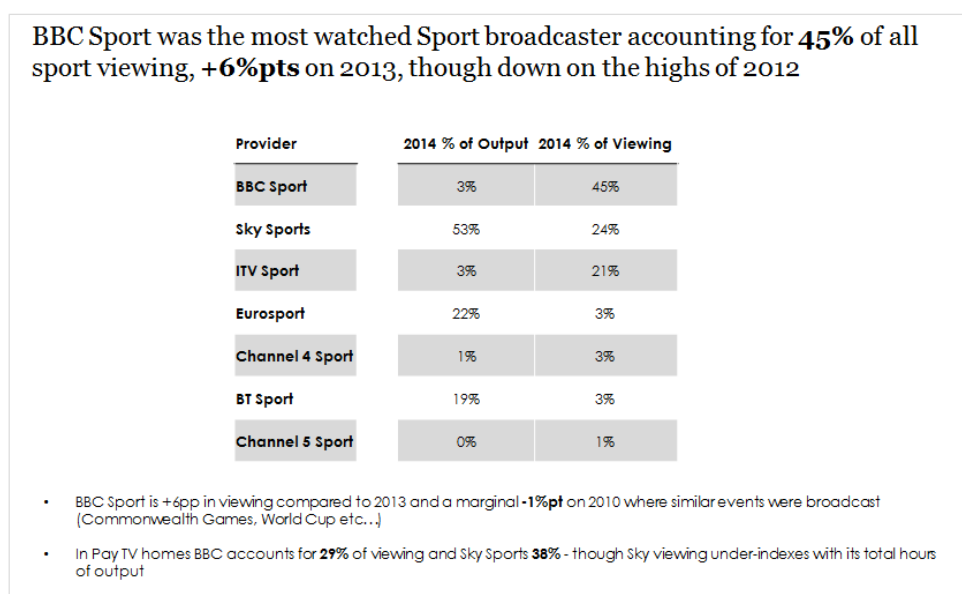
<sup>43</sup> The day before Democracy Day (19 January), 19% were aware of the anniversary. The day after Democracy Day (21 January), 34% were aware of the anniversary. 82% of those aware the day after

Meanwhile, the BBC's formal learning content including Bitesize has 2.7m average weekly unique UK browsers<sup>44</sup>

- *Entertains*: We make content that audiences find highly engaging – and for less (\$100 million buys 22 hours of the US remake of House of Cards. For the same value, UK audiences got 14 series and nearly 80 hours of drama; from Luther to Crimson Field, from Call the Midwife to The Fall, from Sherlock to Burton and Taylor<sup>45</sup>)

3.4 In recent years the BBC has renewed its commitment to Arts and Music, with prime time coverage and partnerships with other public institutions.

3.5 The BBC is successful in attracting audiences to sporting events. 8 of the top 10 most watched sports/sports events last year were on the BBC. Last year, it provided 3% of all sport coverage, but provided 45% of all of the viewing<sup>46</sup>:



**Figure 6 BBC Sport share of output and share of viewing<sup>47</sup>**

3.6 In terms of coverage of the Premier League football, two thirds of the

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heard about it from the BBC. Populus for the BBC, 1,054 UK adults 18+, 19 Jan 2015; 1,075 UK adults 18+, 21 Jan 2015

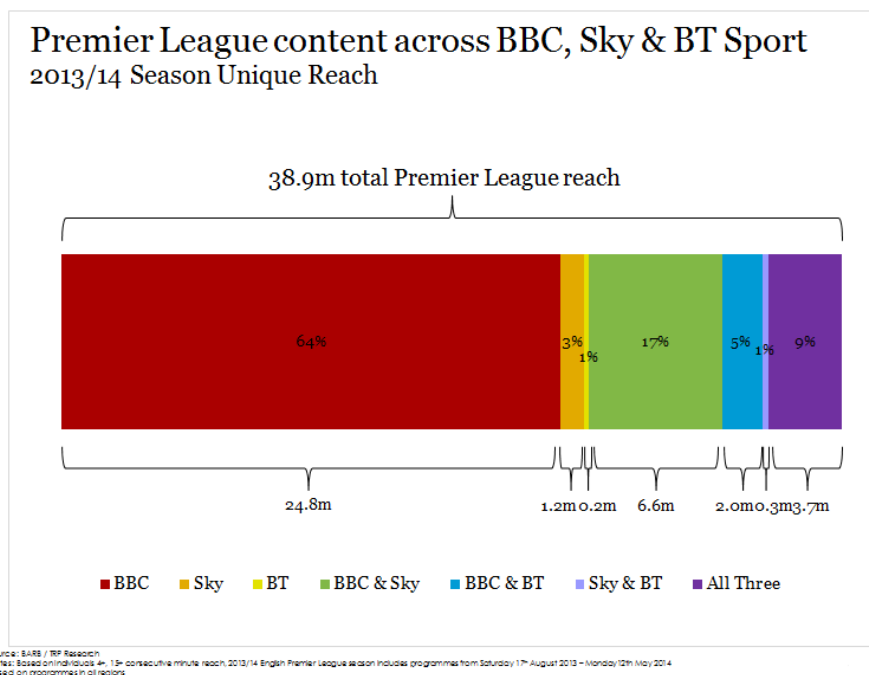
<sup>44</sup> DAX Comscore: BBC formal learning: average weekly unique browsers, November 2014

<sup>45</sup> House of Cards: Ipsos MORI, 1,035 UK adults 16+, July 2014; BBC: BARB, Pulse / GfK

<sup>46</sup> BARB/TRP Research. Other channels (ESPN) not shown on chart so columns do not add to 100%

<sup>47</sup> BARB/TRP Research, other sport i.e. ESPN not shown on chart so columns will not add to 100%

audience (24.8m) was unique to the BBC<sup>48</sup>:



**Figure 7 Premier League football 15 min. reach 2013/14 season<sup>49</sup>**

- 3.7 However, reductions in real terms funding in this Charter period mean the BBC is already facing tough choices at a time of changing audience expectations and significant market changes.
- 3.8 Ofcom notes that the BBC has reduced spend on TV services over the financial years 2007/8-2012/3 in real terms by 12.5%<sup>50</sup>. This can partly be attributed to efficiency savings. In addition, the amount of the licence fee income available for spending on TV content has fallen as a result of the additional obligations that the BBC has taken on in the 2010 licence fee settlement (e.g. broadband rollout, S4C, local TV). Overall, the funding available for the BBC's UK public services will be 26% lower in real terms than it would have been in 2016/17 as a result of the licence fee freeze and

<sup>48</sup> BARB/TRP Research. Based on Individuals 4+, 15+ consecutive minute reach, 2013/14 English Premier League season includes programmes from Saturday 17th August 2013 - Monday 12th May 2014. Based on programmes in all regions

<sup>49</sup> BARB/TRP Research. Based on Individuals 4+, 15+ consecutive minute reach, 2013/14 English Premier League season includes programmes from Saturday 17th August 2013 - Monday 12th May 2014. Based on programmes in all regions

<sup>50</sup> Paragraph 3.8 of the Review

additional obligations placed on the BBC<sup>51</sup>.

3.9 We are doing all we can to mitigate the impacts on-screen and on-air. The BBC has a strong track record of efficiency savings. We will deliver £1.5 billion of cumulative savings by the end of the Charter period 2017 – overall this will mean savings of over 30% of our addressable cost base. Over 90% of controllable spend is attributable to content and distribution<sup>52</sup>. Together with efficiencies, strategic choices such as focusing spend on high quality original content at peak times and on BBC One, making BBC archive gems available in the afternoon on BBC Two, and technology innovation in BBC iPlayer, have all increased yield from the available investment and sustained overall audience satisfaction.

3.10 But we are running out of road. If the real terms reduction in licence fee income continues, Ofcom is right to highlight the risk that that declining investment will weaken the PSB system and the BBC's contribution to the wider creative economy.

*External factors affecting the on-screen impact of broadcaster investment*

3.11 Ofcom seeks views on how it takes into account the external factors that affect how far broadcaster investment goes in the current market. Co-production and deficit financing improve the quality felt by audiences on screen but are not captured by Ofcom's spend data (landmark factual can no longer be funded by the BBC alone, and the same applies to some drama). And there will be complex interactions between the different factors, such as whether co-production cancels out the effects of inflation. It is preferable to look at such factors by genre given variables like scarcity of talent or the presence of new entrants.

**Question 4: Given the resources available, to what extent is the system meeting the needs of as wide a range of audiences as practicable?**

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<sup>51</sup> This includes the 6 years of the licence fee freeze, the impact of additional obligations placed on the BBC (such as broadband rollout), and is based on the level of the licence fee. (Ofcom's statement that 'BBC licence fee income has fallen 6% in real terms over the review period from 2008 to 2013' uses a different approach – it is based on the period of the PSB Review (FY 2007/8 – FY 2010/13), does not take account of the additional obligations placed on the BBC, and is based on licence fee income). Both approaches apply CPI

<sup>52</sup> BBC, 'Driving efficiency at the BBC', November 2014

[http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc\\_efficiency\\_report\\_2014.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_efficiency_report_2014.pdf)

- 3.12 It is the BBC's aim to offer something of value that is truly BBC to everyone, with relevance and impact across all demographic groups. For the BBC, our remit and funding model means that serving the audience is an end in itself rather than a means to revenue or profit maximisation.
- 3.13 There are many examples of how we are delivering this objective. While BBC One's reach varies across different audiences, it is the channel that reaches most people in every demographic group, regardless of age group, socio-demographic group, ethnicity or locality<sup>53</sup>. 97% use the BBC every week<sup>54</sup>. Similarly, our 'hammocking' of news bulletins such as within Radio 1, BBC Three and just before *Eastenders*, means that BBC News serves the small part of the UK population that otherwise would not get any news at all (around 10%). We also provide targeted services where users want to be treated as a distinct group – Nations and Local services are one example, as is Radio 1 for young people – although such audiences also derive value from across the portfolio of services. As Ofcom notes, +1 channels are also an important way to extend the reach of PSB content, as reflected in the BBC proposals to launch BBC One +1<sup>55</sup>.
- 3.14 Considering the future, we are actively looking at practical ways to better reach and engage all demographic and geographic groups with content that informs, educates and entertains, as we adapt to the connected world (see Question 1).
- 3.15 Alongside our linear channels, this means exploiting the possibilities of IP. We need to use functionality to increase the 'yield' from our content and to recreate 'hammocking' for the digital age to better meet the needs of audiences as individuals. This means dynamic curation, personalised recommendations and onward journeys, which might include text, audio, video or games. For this reason, BBC Connected Red Button and BBC iPlayer must not be disaggregated into atomised content, as audiences would miss the integral PSB functionality. Equally, third parties should not 'cherry pick' the most attractive content commercially for their platform.
- 3.16 Attribution back to the BBC is also vital for content that we syndicate to third party spaces. An example of this is the Radio 1 space on YouTube,

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<sup>53</sup> BARB, average weekly reach (15+ minutes cons.), 2014

<sup>54</sup> GfK for the BBC, Cross-Media Insight Survey, 6,000 UK adults per quarter, 2014; average claimed weekly reach 15+ mins

<sup>55</sup> Subject to approval by the BBC Trust.

designed to reach young audiences in places they already are and provide an 'on-ramp' to the BBC. This is underlined by Ofcom's observation that young audiences often find PSB content away from the main channels, and at the same time are less likely to identify content as 'PSB'.

3.17 We pick up these challenges in response to Question 12.

## 4 The delivery of the public service objectives by the wider market

**Question 7: Do you agree with Ofcom's provisional findings in the Review of C4C's delivery of its media content duties?**

**Question 8: To what extent do you agree with our assessment of the degree to which the non-PSB services play a role in helping to deliver the public service objectives? In doing so please set out your views on the delivery by the PSB portfolio channels, other non-PSB channels, on-demand and internet services and also radio services separately.**

**Q.13 Should we explore the possibility of giving greater flexibility to PSB institutions in how they deliver public service content, including examining the scope (in some or all cases) for regulating by institution, not by channel.**

- 4.1 The BBC welcomes the increased contribution of non-PSBs to UK content investment, which increases the overall audience offer and provides an additional spur for innovation. However, the market would not provide the optimal level of PSB range and breadth, ensure universal availability and engagement across all demographics, or invest the same large amounts in high quality original UK content. Many non-PSB providers are behind a paywall and/or targeted at niche audiences (in terms of communities of interest or commercial value), which as Ofcom notes '*limits their contribution to the delivery of public service content, in comparison to the universally available PSB channels*'.
- 4.2 As Ofcom discusses, Channel 4 has a special place in the PSB ecology and wider UK creative economy by acting as a spur for innovation and risk-taking, supporting new talent and creative diversity. Channel 4's portfolio channels – and their 4OD VoD player – play an important role in expanding the scope for cross-subsidy between more commercially attractive content and core PSB genres. They also increase the overall reach of PSB content through Channel 4 +1 and 4Seven and repeats or PSB-like commissions on portfolio channels that can be demographically targeted. Notably, Channel 4 delivers additional public service obligations on education online. As such, we can see merit in the idea of introducing greater institutional flexibility for Channel 4, although the benefits and obligations would need to be balanced in practice



for this to be viable.

- 4.3 Multichannel pay TV providers have increased investment in original UK content. This is a positive development. However, the investment made by pay TV is still heavily skewed towards the acquisition of premium content on an exclusive basis to drive subscription revenues. At c15-20% of total UK original investment<sup>56</sup>, it corresponds to the pay TV sector's c55% share of TV revenues. By the mid-2020s, we expect a broadly similar percentage of original UK content investment to be from the PSBs<sup>57</sup>.
- 4.4 New OTT entrants also offer welcome consumer choice and competition. In some ways they face similar commercial pressures to pay TV, centering on a few high-profile content pieces to drive buzz and subscriptions. Netflix spent an estimated c£10m on UK television content in 2014 across 111 titles, mostly acquisitions in the secondary exploitation window (including BBC titles from BBC Worldwide). While UK content investment is likely to increase considerably it will remain a small proportion of total content spend. Investment in original content will be biased towards potential global hits like *Marco Polo*. In general, international sVoD services have catalogues dominated by US Hollywood films and US comedy or drama series. In August 2014, of c2685 titles on Netflix, just c145 or 5% were UK programmes<sup>58</sup>.
- 4.5 BBC Radio stations are unique and provide high-quality radio output that is different from commercial radio. As an industry, we seek to cooperate on technology innovation such as DAB roll out and the joint RadioPlayer app, while competing for quality in output.
- 4.6 Our strategy in recent years has been to drive distinctiveness even further and, as a result, the difference in market share between BBC and commercial radio is the narrowest it has been in more than a decade. For example, Radio 1 is hugely different musically from comparable stations like Capital. Across a month (all hours), Radio 1 plays 3,394 different tracks compared with 369 a month on Capital. While many of the tracks played by Capital (30%) can be heard on BBC Radio 1, only 3% of the tracks played on Radio 1 are shared with Capital. Plus, half the songs played on Radio One in daytime weren't

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<sup>56</sup> According to the methodology used, in particular whether sports production is included (giving 80% PSB investment, COBA) or excluded (giving 85% PSB investment, Ofcom). Sports rights are excluded in both approaches

<sup>57</sup> O&O for the BBC, 2014

<sup>58</sup> Ibid

played on any comparable station. It has an amazing track record of finding and promoting great new British music. 54% of the Radio 1 playlist is made up of artists without a Top 10 single, compared to 9% on Capital. Radio 1 also offers a rich mix of news, speech and live events coverage:

- Two 15-minute Newsbeat programmes in daytime, attracting 1 million 16-24s listeners a week (more than BBC One's 10 O'Clock News)
- More than 40 new documentaries a year and social action initiatives like the Radio 1 Academy
- Radio 1's Big Weekend tours the UK – recently visiting Glasgow and Derry~Londonderry; Radio 1's Teen Awards celebrates some of the UK's 'Teen Heroes'<sup>59</sup>

4.7 BBC Radio 2 is similarly distinctive. 70% of the songs played on Radio 2 in daytime weren't played on any comparable station. There are over 1,100 hours of specialist music a year on Radio 2, including programmes focused on jazz, folk, country and brass band music, which receive little exposure elsewhere. Radio 2 also offers an unrivalled mix of speech and documentary programming:

- 50% of daytime output is speech based, with 18 hours of News and Current Affairs each week, including Jeremy Vine on weekday lunchtimes
- Unique programmes from the past 12 months include Chris Evans live from Normandy for the D-Day anniversary; The JFK Assassination: Minute by Minute; and 500 Words – the story writing competition for children that attracted almost 120,000 entries in 2014<sup>60</sup>

4.8 In the case of online services from other public institutions, their investment increases the richness of public service content available to audiences, including in underserved genres like the Arts. To combine this additional creativity and other public service voices with the BBC's universal reach, we

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<sup>59</sup> R1 and Capital Tracks, comparemyradio.com 30 days to 25 February 2015, all hours. Cross over between Capital and R1 (& vice-versa), comparemyradio.com, 30 days to 25 February 2015, all hours. Commercial Radio Crossover, Radio Monitor, 30 days to 26 September 2014, all hours. Playlist data - BBC analysis based on weekly published playlists in 2013 for Radio 1, Radio 2 and Capital. Newsbeat, RAJAR (Q4 2014). Documentary data, BBC Performance Against Public Commitments 2013/14 [http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC\\_PAPC\\_201314\\_AP.pdf](http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC_PAPC_201314_AP.pdf)

<sup>60</sup> Commercial Radio Crossover, Radio Monitor, 30 days to 26 September 2014, all hours. Hours of Specialist Music, BBC Performance against Public Commitments 2013/14 [http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC\\_PAPC\\_201314\\_AP.pdf](http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC_PAPC_201314_AP.pdf). News and Current Affairs, BBC Performance against Public Commitments 2013/14 [http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC\\_PAPC\\_201314\\_AP.pdf](http://downloads.bbc.co.uk/annualreport/pdf/2013-14/BBC_PAPC_201314_AP.pdf)

have engaged in projects and partnerships with different institutions including The Arts Council England (The Space), the Tate (*Private View*, BBC iPlayer exclusive tour of the Matisse exhibition with musician Goldie), and *BBC Arts at Hay Festival*. Building on these experiences and to help *all* audiences find and engage with online content from other public institutions, it makes sense for the BBC to think about how best to use its reach and curatorial, creative and technology expertise in further public partnerships. We are developing ideas in this area.

## 5 Potential future market developments

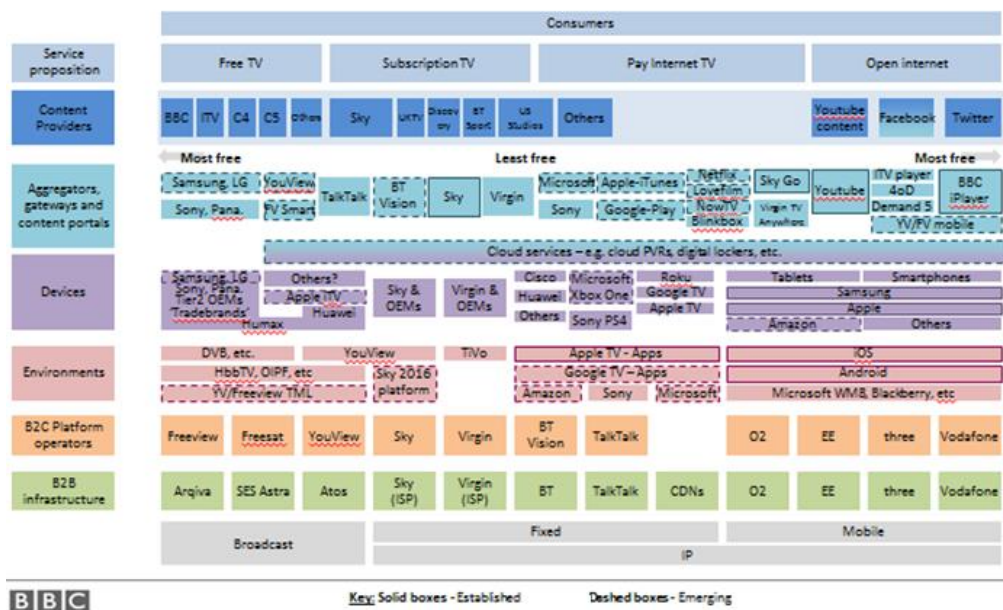
**Question 9: How likely are we to see steady evolution and have we identified all of the potential alternative scenarios and risks to the system?**

- 5.1 We regard Ofcom's 'steady evolution' scenario, projecting forward based on current market and audience trends, as on the conservative side. On balance, we expect faster and more profound change in viewer behaviour and service innovation in the next 10 years. The transition to a connected society presents new opportunities to better serve audiences. This will require PSB to adapt and change, as we have set out. At the same time, there are risks to the PSB system that affect its ability to deliver impact and investment in original UK content.
- 5.2 It may become harder to ensure that PSB content and services are widely available and easily discoverable. To reach audiences in future, PSBs will have to secure carriage over a patchwork of distribution networks, audiovisual platforms and user interfaces. This distribution chain is becoming more complex, is mediated and potentially costly.
- 5.3 From broadcast to set-top-box (STB), the distribution chain can now also involve IP over-the-top (OTT) for on-demand requests to services such as BBC iPlayer and Amazon Prime; managed networks (satellite, cable and IPTV<sup>61</sup>) for linear channels over broadcast or IP; platforms and content gateways (Sky+, YouView, Virgin TiVo); multiple connected devices (e.g. STB, smart TV, tablet); and integrated or competing operating systems and user interfaces (e.g. Samsung, Android TV, iOS app store).

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<sup>61</sup> Currently using multicast technology. Platforms either use their own network (BT) or the BT wholesale multicast product

## Key players in the television distribution environment



**Figure 8** The distribution environment is increasingly complex

5.4 Together with increased consolidation and vertical integration (e.g. the rise of triple and quad play), there is a real risk of misaligned incentives between platforms and PSBs, leading to potential public policy concerns:

- Loss of prominence
- Disintermediation and disaggregation by gatekeepers, e.g. cherry picking PSB content according to commercial strategies, or refusing to support the functionality that is an integral part of the BBC's content and services. Both instances could undermine delivery of the PSB outcomes by obstructing BBC-determined curation, attribution and onward journeys. Any weaknesses in the copyright regime would exacerbate the risk of disaggregation and disintermediation by reducing PSB control of how their content is used by platforms
- Increasing costs of distribution to get on-demand and linear content to end-users, including over IP routes with ISP gatekeepers

5.5 As outlined in response to Question 1, intense competition could fragment audiences in a globalising media market with strong new entrants, consolidation, and vertical integration across the value chain. One of the challenges is how PSBs can stretch constrained budgets in a world where competing for the best talent and ideas will become increasingly expensive (particularly in high-end drama, sport and landmark documentaries).

- 5.6 As Ofcom makes clear, the BBC is the cornerstone of the PSB system. A significant real terms funding reduction in this Charter period has already put pressure on BBC content investment and led to tough choices, such as the planned transition of BBC Three from a TV channel to online<sup>62</sup>. We share Ofcom's concern that a continued real terms reduction in licence fee funding could have system-wide effects: *'Not only might the BBC's direct contribution weaken but its impact through stimulating investment by the wider market through competition would also weaken were programme investment to fall'*.
- 5.7 Separately we are conscious that the listed events regime is very important to audiences. The listed events regime was created to ensure events of national resonance were available to the widest possible audience. Specifically, listing increases public value by:
- Maximising the reach of the major sporting events and ensuring that as many people as possible have the opportunity to watch events which have national resonance; and
  - Having a social/cultural impact – a key characteristic of listed events is that they are not only of personal value to the audiences who watch them, but they also have a positive impact on society as a whole, partly as a function of their significant reach
- 5.8 Listed events are not just sporting events. They have a profound cultural and social impact. They are part of a national conversation. They unite the nation in ways very few other television events manage. They create national pride. Audiences place a high value on free-to-air access to the major sporting events as a core part of PSB.
- 5.9 Historically, the criteria used to determine the list of 'qualifying' services has meant that only Channel 3 (ITVI), Channel 4, BBC One, BBC Two and Channel 5 (Five) have met the conditions. The PSBs have been very successful in attracting audiences to sporting events and so maximising public exposure for these sports. Last year the BBC provided 3% of all sport coverage, but provided 45% of all of the viewing (see Figure 8). From the World Cup opening ceremony to the end of the Commonwealth Games, over 50 million – or 86% of UK population – watched the BBC's sports coverage<sup>63</sup>. Reach for the FA Cup so far on the BBC is 31.5m and on BT is 4.7m, meaning that the BBC has brought a unique audience of 26.8m (84% of

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<sup>62</sup> Subject to approval by the BBC Trust

<sup>63</sup> BARB/TRP Research, Sport genre. 15 min+ consecutive reach, 11+ regions, summer of sport 2014

the total audience).<sup>64</sup> Going forward it is important that audiences have free to air access to events of national importance. And it is also important that PSBs have access as part of the compact.

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<sup>64</sup> BARB/TRP Research, reach 15+mins

## 6 Maintaining and strengthening the system

**Question 11: Have we identified all the relevant ways in which the PSB system might be maintained and strengthened?**

**Question 12: Does universal availability and the easy discoverability of PSB remain important and how might it be secured in future?**

- 6.1 As Ofcom makes clear, the PSB system is based on a ‘compact’ which balances ‘obligations’ and ‘benefits’. The PSBs have public service obligations, are required to provide a wide range of UK original programmes, have minimum amounts of certain types of programming including news and current affairs, and commission in the Nations and regions. The licensed PSB channels have ‘must offer’ provisions regarding platforms used by a significant number of end-users as their principal means of receiving television programmes<sup>65</sup>. Under the BBC Agreement, the BBC shall make the UK public services ‘widely available’. In return, the PSBs are reserved capacity on the digital terrestrial TV (DTT) platform, assured appropriately prominent positions on the EPGs of TV platforms and, in the case of the BBC and S4C, public funding.
- 6.2 To maintain and strengthen the PSB system, the UK needs (a) a suitably funded BBC as the cornerstone of PSB, (b) sustainable commercial PSBs with a mix of remits and obligations under new 10 year licences, and (c) a modernised policy framework that re-balances PSB benefits and obligations for a connected world. In particular, this must secure the availability and prominence of free-to-access PSB.
- 6.3 As in Question 1, while the objectives and desired outcomes of PSB are enduring, the BBC must adapt and be flexible in how it delivers PSB to audiences, both in terms of content and services and how they are distributed. In turn, Ofcom and policy-makers must modernise the regulatory framework to encompass and support a more flexible PSB model.
- 6.4 The scope of the current regulatory framework needs to be modernised to sustain the ‘virtuous circle’ of reach, funding and investment on which the PSB system is based. Current interventions are primarily focused on linear TV channels on traditional TV platforms and EPGs. It is also essential that

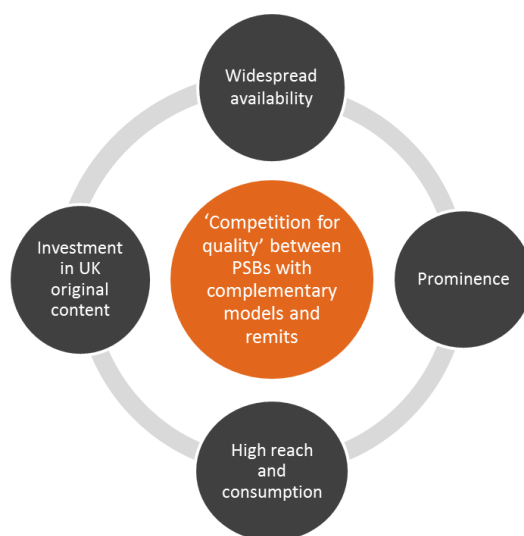
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<sup>65</sup> Section 272 Communications Act 2003



policy tools are sufficiently flexible to be able to respond swiftly and effectively to problems that emerge, while also being proportionate. Ofcom must closely monitor market developments and be ready to take action if necessary.

- 6.5 The PSBs already cooperate in a number of areas to sustain the ‘virtuous circle’ within their own constraints. For example, we jointly invested in YouView, Freetime from Freesat and now Freeview Play to ensure high quality free-to-view connected services are available to consumers. There may be opportunities to collaborate further in future.
- 6.6 Nonetheless, an updated regulatory framework is essential. We’ve identified the following policy priorities to maintain and strengthen PSB. The success of PSB depends not only on producing high quality distinctive content, but also on providing opportunities for as many people as possible to consume it. In turn, this means that our content and services should be widely available and easy to find.



**Figure 9 The virtuous circle supporting PSB investment in original UK content**

#### *Universality and Availability*

- 6.7 Universality does not mean ubiquity. The principles governing the BBC’s approach to distribution are contained in the BBC Agreement, particularly the undertaking that licence fee payers’ interests are met in relation to the expenditure of licence fee income to distribute efficiently the BBC’s UK services in a range of convenient ways. The BBC Trust requires the BBC to ensure that every licence fee household has convenient access to each

relevant BBC service, free at the point of use. Therefore we would propose a different focus from Ofcom's three possible concepts of universality in its Figure 53, to focus on reaching audiences rather than screen types.

6.8 To secure the PSB objectives and ensure value for money, we seek distribution and syndication where it will make a meaningful difference to audiences, which may be a particular age group, and in accordance with objective criteria. This also means that we provide standardised BBC services for distribution wherever possible, ensuring audiences have access to the BBC's full and consistent PSB experience.

6.9 Therefore, it is important for the regulatory approach to universality to:

- Be proportionate
- Encompass all of the BBC's services, content and functionality, including on-demand
- With net neutrality, ensure that PSBs are able to reach all audiences with connected devices OTT, delivering our standardised products like BBC iPlayer, and without payment. As delivery of PSB services over IP is set to grow, best efforts carriage of PSB services like BBC iPlayer OTT will become increasingly important in reaching connected audiences. Draft EU laws should be principles-based in safeguarding the open internet, while empowering national regulators like Ofcom with robust, practical and clearly-defined tools (such as minimum quality of service). Such laws should not restrict network innovation or hinder the availability of managed services where that is compatible with open internet safeguards. We note Ofcom's previous statements on net neutrality, and ask what the equivalent of PSB 'must carry' obligations would be online and what interventions might be necessary to secure public service content delivery should the open internet be degraded. We believe these issues merit further consideration by Ofcom as well as Government<sup>66</sup>
- Through effective application of the public policy and ex ante competition frameworks, ensure that PSBs can reach audiences through all distribution networks and platforms that are used by a

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<sup>66</sup> For example, Ofcom stated 'Public service broadcasters are currently able to ensure delivery of their content over traditional TV platforms, by means of 'must carry' obligations placed on those platforms. There is a question as to whether similar obligations should apply to public service content delivered online, and if so, what commercial arrangements should apply. We regard this as a matter of public policy, to be decided by government'

significant number of end-users, again with our standard products wherever possible. It is necessary to consider if the policy frameworks at UK and EU level (e.g. the ‘must carry’ provisions and the definitions of electronic communications networks and services) are fit for purpose and capture the means by which an increasing proportion of audiovisual consumption will take place, which may vary significantly by audience segment

#### *Prominence*

- 6.10 Under the current legislation, platform operators are required to give ‘appropriate prominence’ to the main public service channels. The prominence rules are designed to aid easy and universal access to these PSB services.
- 6.11 Prominence is an essential lever to secure the economic and social benefits of PSB. For the commercial PSBs, we note Ofcom’s assessment that: *‘In the long-term.... the commercial sustainability of the Channel 3 and Channel 5 licences is to a large extent dependent on a significant benefit resulting from the right to appropriate EPG prominence’*<sup>67</sup>. For the BBC, prominence is one means by which a universal service reaches the greatest possible audience who have paid for the content, thereby allowing the BBC to fulfill its public purposes.
- 6.12 Today’s licensed EPGs will continue to be a key entry point for accessing PSB channels. To date, the main PSB channels remain at the top of the ‘all channel’ list on existing linear EPGs. However, subsequent channel launches have not received the same degree of prominence and developments in EPG design, such as genre-specific or HD-only menus, are eroding the ease of access to public service channels. It is not clear, for example, how the public service children’s channels, which are provided by the BBC, appearing at numbers 13 and 14 (or page 3) on BSkyB’s EPG Kids sub-menu is consistent with the concept of prominence.
- 6.13 The current regulatory framework gives a high degree of discretion to EPG providers. It is important to maintain regulation of the existing licensed EPGs, and desirable for the regime to be more prescriptive than it is today to secure meaningful prominence for all PSB channels. We welcome Ofcom’s commitment to review its EPG Code under its Annual Plan 2015/16.

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<sup>67</sup> Ofcom, ‘Licensing of Channel 3 and Channel 5: A report to the Secretary of State under section 229 of the Communications Act 2003’, May 2012

- 6.14 The current prominence provisions are limited to linear EPGs. This is not fit for purpose in a connected world of on-demand content and services and new gateways and user interfaces such as Catch-up or VoD menus. The commercial incentives of these gateways may collide with the public interest in achieving a high profile for and high consumption of original, high quality UK content from the PSBs. A gateway may choose to reach a global commercial deal for a certain slot, for example.
- 6.15 To date, the high quality experience offered by the BBC iPlayer has afforded the BBC a prominent position on some new content gateways, such as STB Catch-up menus. However, if the universality of public service content is to be sustained, effective tools must be available to maintain prominence as the market develops. Otherwise, the BBC's position will become uncertain and increasingly dependent on the commercial incentives of digital media companies.
- 6.16 In 2012 research for the BBC, 64% said they would expect a default Catch-up or VoD menu to reflect the ordering of the linear EPG, i.e. with PSB prominence. 79% expected BBC iPlayer to be first. 63% said that in a menu including Catch-up VoD, other VoD and other apps (YouTube, iTunes) they would still expect Catch-up VoD to be listed first. BBC iPlayer was preferred in first position<sup>68</sup>.
- 6.17 The Government and Ofcom should strengthen and update the prominence framework in the Communications Act 2003, to extend the principles to PSB on-demand content and services and to new content gateways. Unless updated, the existing regulations will gradually lose their force and it will be harder to deliver current policy objectives of PSB reach, impact and investment.
- 6.18 Thresholds to trigger regulation could be established, to maintain proportionality and target regulation at, for example, on-demand access points used by a significant number of end-users to access TV-like content. This measure could have regard to audience segments. Such an approach allows for ongoing innovation in new content discovery.

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<sup>68</sup> YouGov survey, BBC iPlayer Prominence in a Connected TV Environment, November 2012. Published in Communications Chambers for the BBC, 'PSB Prominence in a converged media world', December 2012  
[http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc\\_psb\\_prominence.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_psb_prominence.pdf)

- 6.19 Discussion over the prominence framework should be kept separate from discussion of content fees and platform charges. The former is rooted in the PSB compact to secure the economic and social benefits of PSB in the connected era, including content investment. The latter is primarily about the appropriate value exchange between platforms and PSBs.

**Question 14: Do the current interventions in relation to the independent production sector need to change in light of industry developments?**

- 6.20 The main interventions that currently apply to all PSBs are: (i) the statutory independent production quota, which means that not less than 25% of qualifying programme time on the PSB channels is allocated to a range and diversity of independent productions; and (ii) the statutory requirement for every provider of PSB to have a code of practice setting out the principles that it will apply when agreeing terms for the commissioning of independent productions, known as the 'terms of trade'.
- 6.21 These interventions, alongside the demand for quality UK content generated by the PSB system, have helped to deliver a strong supply sector, as set out in Question 1<sup>69</sup>. The intention of the independent production quota, introduced back in 1990, was to promote cultural diversity and to open up the production system to new energy and voices; to stimulate the growth of small and medium sized enterprises, promoting creativity and fostering new talent; and to tackle vertical integration within the UK programme supply market<sup>70</sup>. The intention of the terms of trade, introduced in the Communications Act 2003, was to help address any power imbalance in negotiations between independent producers and broadcasters and to provide a clear framework for commercial agreements between independents and broadcasters<sup>71</sup>. These remain important aims but the interventions were put in place at a time when the market was structurally different. It's equally important that there should only be regulation in the TV supply market where it is still needed and that it is sufficiently flexible so as

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<sup>69</sup> Public Service Content in a Connected Society, Ofcom, December 2014, para 6.52

<sup>70</sup> See para 7.2, Explanatory Memorandum to the Broadcasting (Independent Productions) (Amendment) Order 2014

[http://www.legislation.gov.uk/ukdsi/2014/978011118825/pdfs/ukdsiem\\_978011118825\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2014/978011118825/pdfs/ukdsiem_978011118825_en.pdf)

<sup>71</sup> See Ofcom's Review of the television production sector, March 2006, para 1.28

not to get in the way of creativity and innovation.

- 6.22 The BBC will take any positive action it can to help support diversity among our supply base. The BBC remains strongly committed to both out of London production (where we already go above and beyond the statutory requirement for 30% of eligible network spend) and training and skills development for the production sector. The BBC is also keen to understand what more it can do to better support smaller qualifying independents and encourage new talent in the sector and is currently developing proposals in this area. The BBC continues to work with a large number of independents, around 280-300 different companies. There is also turnover within this group – in 2012 the BBC used 59 new suppliers and in 2013 it used 43 new suppliers. The BBC will, wherever possible, use flexibility within the existing frameworks such as its terms of trade or New Media Rights Framework to agree rights arrangements with the sector. The BBC will continue to engage with the sector about their current implementation and future arrangements.

*Independent Production Quota and Definition*

- 6.23 As outlined above, a healthy supply market means the availability of a wide range of high quality original content that delivers the PSB purposes and characteristics, and a growing and diverse supply sector with strong skills and talent base across the UK. The independent quota is intended to support this. However, if the risks we set out above materialise – such as fewer qualifying independents and greater vertical integration – the current level of the quota (25%) may prove unrealistic and unachievable for PSBs. The BBC will remain committed to working with a wide range of independents, supporting new entrants to the supply market from all over the country. But even in this context, there is a risk that the level of the quota could distort commissioning decisions and the diversity of programming reaching audiences could suffer.
- 6.24 To make the current system more flexible, there is an argument for Ofcom to be given the power now to:
- Amend the level of the independent quota and/or
  - Alter the definition of a qualifying independent in the Broadcasting (Independent Productions) Order 1991
- 6.25 Ofcom would only be able to exercise these powers where it established that the current interventions were no longer serving their purpose and/or

were causing harm. For example, Ofcom would be in a position to act swiftly if:

- There was evidence that the 25% quota was distorting commissioning decisions and resulting in less high quality content for audiences

and/or

- There was evidence that the definition of a qualifying independent was no longer effectively targeting the businesses who need it most and therefore failing to stimulate the growth of SMEs. This might suggest the introduction of a size threshold for qualifying independents or a greater specificity in the definition about the degree to which the parent is exerting control, thereby incentivising the supply of content to a range of commissioners, despite the trend towards vertical integration

6.26 We recognise that this approach would require legislation in the first instance (to give Ofcom the power to act flexibly). But we believe that it is justified because it would ensure regulation is focused where it is needed and ensure interventions remain proportionate to the problems they are designed to address. This delegation of authority to Ofcom would give the regulator discretion to make evidence-based adjustments and move quickly in response to changing market conditions.

#### *Terms of Trade*

6.27 The terms of trade were introduced in audience and market conditions that were very different to today. They provide the framework for business negotiations between PSBs and qualifying independents, so it is vital that they can evolve and remain flexible enough to reflect changing audience expectations and market realities. For example, the current terms of trade are focused on linear transmission but digital-first delivery may well cause new challenges in terms of reaching agreement with rights holders. The BBC has, to date, been able to agree terms of trade with trade bodies. But if in future they are to deliver one of the key characteristics of a healthy supply market – a balanced relationship between commissioners and suppliers – the terms of trade must match risk with reward and keep pace with how audiences expect to consume PSB services.

6.28 In the fast-changing environment we outlined in the answer to Question 1, it is appropriate for the PSBs to keep their terms of trade under review to

ensure that they remain ‘fit for purpose’ and ensure access to the content rights that are necessary to provide the services that audiences expect. It is equally critical that as the regulator, Ofcom’s role is principles-based and it sends a clear signal that the terms of trade should evolve in line with audience and market conditions.

**Question 15: Have we identified the right options when considering potential new sources of funding, are there other sources of funding which should be considered, and which are most preferable?**

- 6.29 As argued above, an appropriately funded BBC – a matter for Charter review – is a critical to the health of the PSB system. However, Ofcom is right to identify risks and pressures on investment across the PSB system as a whole and to consider a range of options.

*Payments between commercial platforms and PSBs*

- 6.30 Ofcom raises the question of content fees and platform charges. At present these are determined through commercial negotiations conducted within a complicated framework of legislative and regulatory provisions<sup>72</sup>. As Ofcom explains, while each of these provisions on its own is based on ‘specific underlying policy objectives’ not necessarily related to payments between PSBs and commercial platforms, they constitute an overall framework which nonetheless ‘may have some influence’ on these payments.
- 6.31 Given the framework’s complexity, the most sensible way to assess these effects is to start from the key principles that a good system for governing payments between commercial platforms and PSBs should serve. These principles should primarily include recognition of the value that PSB content and services bring to such platforms and of the value that platforms bring to the PSBs.
- 6.1 Imbalances in the framework, however, mean that these principles are not properly reflected. Section 73 of the CDPA 1988 creates a copyright exemption that has recently been interpreted as making retransmission of public service channels on cable and fixed internet legal without permission (under appeal). Imbalances are inherent in the obligations placed on the PSBs

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<sup>72</sup> It includes section 73 of the Copyright, Designs and Patents Act 1988, the technical platform services (TPS) regime, the must-carry and must-offer provisions of the Communications Act 2003, and the BBC Agreement



as set against the Technical Platform Services (TPS) regime for BSkyB and the (never invoked) ‘must-carry’ provisions for electronic communications networks like cable. While the BBC and other PSBs are required to make their public services available across platforms (‘must offer’), these platforms derive benefit from providing access to PSB services in terms of attracting and retaining customers. This is illustrated in part by the fact that in 2014 for example, the PSB channels accounted for just under and just over 50% of viewing share on the Sky and Virgin Media platforms respectively<sup>73</sup>. These effects should be included in any calculations of the balance of payments between PSBs and platforms.

- 6.2 It is important, therefore, to consider the options for updating this framework. A purely deregulatory approach under market-based negotiations would raise the prospect of BBC or other PSB channel ‘black-outs’ and cannot be consistent with the separate policy aim of ensuring the widespread availability of PSB content. This is why the system should guarantee that the BBC faces zero fees in this Charter period for carriage on existing and new platforms, without risking screens going blank. The future funding of the BBC is a matter for Charter Review. As new IP-based platforms and devices become a more important distribution mechanism for BBC content and services during the next Charter, it will be important that these protections apply and that the regulatory framework is sufficiently flexible to enable this. The important point is that any options for reform would need not only to navigate the risk of unintended impacts but also start from policy outcomes and key principles rather than from the complexities of the current legislative framework.

#### *AIP charges*

- 6.3 We welcomed Ofcom’s decision to postpone the imposition of administered incentive pricing for broadcasting until at least 2020. There are good public policy reasons against the application of AIP to the spectrum used by the PSBs<sup>74</sup>. Applying AIP to broadcasting spectrum is unlikely to have any additional impact on incentives for the efficient use of the spectrum. PSBs have little flexibility to change their spectrum use, which is, in large part, a function of their coverage requirements and remits including regional

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<sup>73</sup> BARB 2014 (weeks 1-52), based on viewing through the platform, individuals 4+ on a TV level. Total BBC TV is all BBC channels including Kids, Red Button and HD

<sup>74</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/aip13/responses/C4.pdf>

commitments. Not only would AIP be unlikely to have its intended effect, but there is a serious risk that it could do harm by increasing the costs borne by the PSB system and so reduce the funding available for UK original content.

*Other Ofcom suggestions*

- 6.4 While the TV advertising rules do not directly affect the BBC, to the extent that amendments would further delivery of the desired PSB outcomes by the commercial PSBs, they merit further consideration.
- 6.5 New quotas would seem to run contrary to the need for institutional flexibility to adapt to delivering PSB in a connected world. It is also sensible to focus on measuring PSB impact and outcomes rather than overly specifying inputs.
- 6.6 The BBC supported the introduction of the high-end TV drama tax credits and believes it has had a positive impact.
- 6.7 We note that Ofcom does not advocate contestable funding that would involve ‘top-slicing’ the licence fee but rather states that *‘it would require additional funding to be identified – any use of current PSB funds would reduce other forms of provision’*. This is to be welcomed as it recognises that diverting licence fee funds to other purposes weakens the BBC in principle and in practice, and risks de-stabilising a broadcasting model that works. There needs to be a debate at Charter Review about the ‘top-slicing’ that has already taken place to fund Government policy initiatives. Is it appropriate to use the licence fee for other purposes? Do licence fee payers support this? Has it led to good outcomes and value for money?

## **Annex I: The BBC's changing context**

See slide pack

