

## Written Evidence submitted by the BBC to the Public Bill Committee on the Media Bill

1. The BBC welcomes the Media Bill. As the first new piece of major media legislation in two decades, it is essential that it is passed swiftly into law, to futureproof access to great British content and ensure that public service broadcasters continue to thrive in a globally competitive marketplace.
2. The Bill's prominence reforms and commitment to ensuring the biggest sporting events are freely available to everyone across the UK are hugely welcome. Notwithstanding this, we believe there is an opportunity to tighten the Bill further and ensure that it's easy for audiences to watch and listen to great content in the rapidly evolving media landscape – from trusted, accurate news to the latest must-watch dramas to moments that unite audiences across the UK such as major football tournaments, the Coronation and Eurovision.

### Prominence (Media Bill Part 2)

3. The impact of Public Service Broadcasting depends not just on producing high-quality, distinctive public service content but also on providing easy access for people to find and watch it. It's about fulfilling audience expectations: around 7 in 10 UK adults want to see UK life and culture represented on screen,<sup>1</sup> while a similar number think that PSBs deliver well on programmes made for UK audiences.<sup>2</sup>
4. The existing prominence regime hasn't kept pace with technology. It only applies to linear channels delivered via the EPG. The Media Bill is therefore hugely welcome as it introduces regulation to ensure broadcasters' on-demand services ("designated internet programme services") appear prominently on platforms ("regulated television selection services").
5. However, we believe that it could be improved in a number of areas to ensure that it is futureproof and contains sufficient guardrails to achieve its aims.

### *Significant prominence*

6. As we have set out previously – and as recommended by the CMS Select Committee – we think that public service broadcasters should receive "significant" rather than "appropriate" prominence. We believe that this would reflect the level of prominence that UK audiences would expect UK public service broadcasters to receive and give Ofcom a greater degree of direction when setting its guidance.
7. This could be done in section 362AP of the primary legislation (relating to the Ofcom Code of Practice), by setting out that the appropriate degree of prominence is for designated PSB services to be "*among the most prominent internet programme services presented on the regulated television selection service.*" This would be a safeguard on the face of the Media Bill to ensure that the Government's policy intent can be achieved. A further amendment to section 362AP could also set out the areas Ofcom's guidance should cover – for example, search, recommendations, and personalisation – acting as a further safeguard.

### *Must carry*

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<sup>1</sup> Ofcom PSB Tracker 2019.

<sup>2</sup> Ofcom, Media Nations 2023.

8. We believe that the “must carry” requirement in the Media Bill should recognise the distinctive regulatory position of the BBC. Our obligations under the BBC’s Charter and Framework Agreement have been designed and consulted on specifically for the BBC given its unique status in terms of funding, business model, governance, and regulatory status and requirements. Consequently, the BBC is subject to distinctive and comprehensive requirements setting out how we “must offer” our services, set out in our Charter and Framework Agreement. They apply to all UK Public Services, including BBC iPlayer.
9. We are required in our Framework Agreement to publish a Distribution Policy, following consultation with the public and Ofcom, outlining the reasonable conditions under which we will make our output and services available to third parties. These conditions include, for example, securing appropriate prominence, attribution, quality, and value for money. We are legally required to offer the UK Public Services to third parties without charge, and to act on a FRND basis when doing so.
10. The Media Bill recognises the BBC’s distinct regulatory framework and is clear that it does not impose additional must offer obligations on the BBC due to our equivalent obligations being set out under our Royal Charter and Framework Agreement. We welcome this.
11. The Bill also places “must carry” requirements on regulated platforms, setting out their regulatory requirements when they take PSB on-demand services (section 362AK).
12. Taken together, the aim of the must offer and must carry requirements is to create a level regulatory playing field for both PSBs and platforms when it comes to the carriage of PSB content. However, it does not do this for the BBC. The Media Bill doesn’t place similarly comprehensive must carry requirements on platforms when it comes to BBC content, so there is a gap between the outcomes the BBC is required to secure in negotiations versus what platforms are.
13. A major challenge for the BBC is the increasing difficulty in securing compliance with our Distribution Policy conditions when negotiating with – often, global – platforms with little interest in supporting UK PSB. In particular, these platforms will often focus on optimising their commercial interests – for example, by self-preference their own content and services and monetising customers – to the detriment of the BBC’s Public Service and audiences.
14. It’s therefore imperative that the Media Bill places us on an even footing with platforms in our commercial negotiations. Section 362AL of the Media Bill could be amended, to require Ofcom’s guidance to have regard to the BBC’s strategy and policy as developed in response to the relevant BBC Charter and Framework Agreement provisions.

#### *Multi-use devices*

15. While TV-first devices remain the key way audiences watch our content and services, viewing habits are changing rapidly. Over a fifth of people used multi-use devices such as smartphones, tablets, and laptops to access BBC iPlayer between 7<sup>th</sup> January and 9<sup>th</sup> October this year. Video games consoles are used more than streaming sticks to watch TV. And Ofcom research has found that, as well as using TV sets, eight in ten children watched TV on a

different device in 2022.<sup>3</sup>

16. The Media Bill allows the Government to regulate multi-use devices, if they are designated as “internet television equipment” under section 362AE. However, the Government has indicated that it is not minded to do so. We believe that it should, to ensure that the regime is broad in scope. Section 362AE could also require the Secretary of State to regularly review which devices are in scope, to ensure the regime is futureproof and keeps up with technological development.

*Prominence of linear TV – the Electronic Programme Guide (EPG) and remote controls*

17. The way that audiences consume TV is evolving, with a rapidly growing number of IP-only households (who watch TV content via a broadband connection). But the decline in broadcast doesn’t mean the end of universal access to BBC services – or an end to linear TV. The familiarity of linear TV will continue to make it a popular discovery route for audiences, even as they move away from DTT. Its familiarity will help to ensure no audiences are left behind as the UK transitions to an all-digital future – including vulnerable audiences.
18. Taken together, the new, on-demand prominence regime through the Media Bill, alongside the existing, linear prominence regime in the Communications Act 2003, will go a long way towards safeguarding PSB prominence “in the round”, across different routes people use to watch TV. But there is an important gap: when it comes to the Electronic Programme Guide (EPG), PSB prominence is only protected within the EPG. The prominence of the EPG itself is not protected.
19. Remote controls are also an easy way for global paid-for TV services to circumvent the prominence rules. Prominent “hot keys” (proprietary buttons) for global pay TV services are included on almost every remote, with no similar button for BBC iPlayer (or indeed, the other PSBs). In some cases, they are also more prominent than guide or home buttons. We note that this doesn’t reflect what people actually want to watch – with over 6h15m spent watching BBC TV/iPlayer on average per person per week – more than Netflix, Disney+, and Amazon Prime Video combined.<sup>4</sup>
20. In particular, noting the importance of linear TV, the BBC believes that the TV Guide button should be protected, as well as direct and familiar access to our services – such as number buttons that navigate to TV channels. The Media Bill can be used to amend section 310 of the Communications Act 2003 to give EPGs and the routes to access them (such as remote controls) prominence.

**Listed Events (Media Bill Part 1, clauses 20-25)**

21. Sport is fundamental to the UK’s national identity and Listed Events continue to have a profound cultural and social impact. They unite the UK and its constituent nations and regions in ways very few other things can manage. They create national pride. They play a vital role in the nation’s well-being, are important to the UK economy and influential in the UK’s standing overseas.

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<sup>3</sup> Ofcom, Children and parents: media use and attitudes report 2022. While TV sets are still the most common device for watching films and TV, used by 86% of 3-17 year olds, 81% of children reported watching TV content on a device other than a TV set.

<sup>4</sup> Quoted in BBC Annual Plan 2023/24.

22. For nearly 30 years the Listed Events regime has allowed audiences across the UK to come together for the biggest sporting moments, irrespective of their ability to pay. It has benefited sports participation and physical activity and helped build positive role models that continue to inspire the next generation of elite performers.
23. That is why the BBC welcomes many of the changes in the Media Bill, and in particular the updated qualifying criteria and measures that will help close the streamer loophole.
24. But the ways audiences access and consume content is changing fast and we think two further changes are needed if Listed Events legislation is to remain relevant.

#### *Digital on-demand*

25. The current legislation only provides protection for free-to-air live TV coverage and TV highlights, and there is an urgent need to safeguard freely available on-demand availability (on digital platforms) of the key moments from the biggest sporting events, to complement the existing linear protections.
26. As the CMS Committee recently concluded *“digital rights should be included as part of the Listed Events...”* And as an independent report commissioned by Ofcom last year concluded *“as expectations about the availability of live and secondary coverage of sporting events of national interest changes, we think that the current linear TV centred regime risks failing to take into account the increasing popularity of secondary coverage<sup>5</sup>.”*
27. These conclusions are borne out by real-world audience data (of which the BBC is happy to provide further information to the Committee). At Tokyo 2020 the gold medal winning performance by BMX specialist Charlotte Worthington was watched by just 400,000 people at the time due to it taking place overnight; yet in the days that followed different forms of on-demand short-form coverage of the race generated nearly a ten-fold increase in views. And while TV reach to the 2022 Commonwealth Games (Birmingham) was about 20% lower than 2014 (Glasgow), there was around 6 times more views on-demand of digital clips.
28. Without enhanced regulatory protection these shared national moments risk being lost for many behind a paywall. The Government recognises the issue and consulted industry a year ago<sup>6</sup> - but has not yet reported the findings of its review.
29. The Media Bill gives Parliament a golden opportunity to safeguard the future of Listed Events for the next generation. Without action to modernise the legislation the audience and societal benefits of the Listed Events regime will be diluted. Indeed, given the pace of change in how audiences want to consume content, the future viability of the regime itself will be at risk.
30. The current legislation, and the bill as currently drafted, offer no protection at all for digital on-demand rights, now a key way some audiences consume these events. The BBC would support an amendment, or new standalone clause, to secure that adequate digital on-demand coverage of Listed Events, such as clips and excerpts, is made available free of charge to audiences in the United Kingdom.

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<sup>5</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/240553/Ampere-abridged-report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/240553/Ampere-abridged-report.pdf)

<sup>6</sup> <https://www.gov.uk/government/publications/listed-events-digital-rights-review/listed-events-digital-rights-review-terms-of-reference>

### *Multi-sports partnerships*

31. The Bill introduces a new special clause for multi-sport events which was not in the draft Bill and was not subjected to pre legislative scrutiny. It would apply to four current Group A events – the summer Olympics and Paralympics and the winter Olympics and Paralympics.
32. The new clauses would have the effect that Ofcom consent would not be required for multi-sports events if a service in one category has full rights and a service in another has what is termed “adequate live coverage”. The Bill does not define adequacy and it is not clear that adequacy would mean the same things to, say the BBC, as it would to say, a commercial subscription service. Our concern would be that “adequacy” might equate to “incomplete” - for instance by carving out particular sports such that they are only available on pay to view services or otherwise significantly limiting the hours of broadcast or transmission times available to a free to air broadcaster.
33. If such partnerships could by-pass the Ofcom consent requirement where one partner has “everything” and the other merely “adequate rights” this might mean that a subscription service could hold exclusive rights to parts of the Olympics without an Ofcom safeguard in place.
34. We do not believe this is the intention of Government by bringing in this clause, but their intention is not altogether clear and there may be unintended consequences. We are unconvinced that the clause is needed at all – especially given the BBC and Discovery have forged an effective partnership (compliant with Listed Events rules, and without requiring Ofcom consent) in place for the Games until 2032. And it could lead to situations where the PSBs coverage of these events is further limited, even to the extent that certain sports can only be viewed behind a paywall.
35. As a final point, because the listed events rules apply only to live coverage, but any partnership would necessarily involve consideration of on-demand digital coverage alongside the live, it seems to us impossible for Ofcom to assess adequacy of an arrangement when it could only, legally, consider the live aspects. This further illustrates the urgent need for the regime to be updated to capture digital on-demand coverage.
36. The BBC would support an amendment that simply removes these clauses from the bill.

### **Audio (Media Bill Part 6)**

37. The provisions in the Bill protecting access to UK radio on voice activated devices are welcome. UK radio and audio services reach a combined audience of around 49.5 million people each week, or 90% of the adult population. Our services are a vital source of news, entertainment, and information for these audiences, easily accessible and free of charge. This content is accessed across locations and devices, and sector specific legislation is needed to protect access to it.
38. The provisions will ensure that audiences remain able to easily access this vital public service content, as listener behaviour changes. The protections will help the BBC deliver the fullest value to licence fee payers, protecting attribution and access, including through allowing radio providers to specify where playback of their content happens (for the BBC, in BBC Sounds).

39. However, the Bill has missed an opportunity to be future proof, and to reflect the way listeners choose to consume content. Unlike the TV regime, the protections in the Bill are limited to live linear radio and do not extend to on-demand content or internet only streams. Nor do the provisions protect access to radio in-cars.
40. The Bill explicitly excludes protections for on-demand audio content (for example, the Today programme on catchup, or the Newscast podcast). This is a fast-growing area, and listeners are increasingly choosing to access UK radio content on-demand. This is of high value to audiences. We have worked with commercial radio to develop a definition of on-demand content which would offer protections for on-demand content provided by radio services already protected under the legislation,. The Bill could be amended to include this. We believe this is in line with the Government's stated policy objectives, to protect access valuable UK audio content.
41. For live linear radio, the Bill only protects internet radio stations which are live simulcasts of broadcast stations. Again, this is not sufficiently forward-looking. The intent of the Bill is to protect radio content, not a particular means of distribution. It would be perverse if radio stations, faced with audiences all moving to online listening, were unable to move to all-IP distribution because doing so would lead to loss of protections intended to apply to IP listening. A straightforward amendment to the Bill would address this issue.
42. Finally, the legislation does not offer adequate protections for access to audio in car. In-car listening accounts for a large proportion of radio listeners, and it is vital that access in this environment is protected, as we increasingly see connected cars or in-car infotainment systems operated by major platforms. The Bill could be amended to extend the definition of radio selection services to cover in-car systems.

01.12.2023