

**4<sup>th</sup> December 2023**

**techUK submission to Public Bill Committee on the Media Bill**

techUK welcomes the opportunity to engage with the Public Bill Committee on the Media Bill. We have been extensively engaged with the Department for Culture, Media & Sport and a cross-party range of interested MPs throughout the development of this Bill. The latest version follows consultation with a wide range of stakeholders across the UK media landscape, which has provided opportunity to explore the impact that various scenarios would have on consumers.

**The Bill in its current form includes more proportionate measures than the original draft, and strikes a fairer balance between the need to support UK PSBs and the radio sector, whilst reducing some of the originally proposed constraints on innovation.**

The [final report](#) of the Parliamentary Committee for Culture, Media & Sport's pre-legislative scrutiny of the draft Media Bill included many positive recommendations that the government has taken forward, including:

- New provisions to ensure that technical functionality and duration on the market can be considered as part of the designation and de-designation for television selection services;
- Greater clarity within both the Bill and the Explanatory Notes over the 'Agreement Objectives' that connected TV device manufacturers and PSBs should be seeking to achieve.

The government's [response](#) to this report also provides a clear policy rationale for not proceeding with some of the committee's recommendations, which we elaborate on below.

**Part 2 – Prominence on Television Selection Services**

**Regarding prominence on TV selection services, we agreed with the CMS committee's view that *"what matters is ensuring that public service content is always carried and easy to find"* across a diversity of connected TVs.** We engaged the committee and DCMS to demonstrate how our members currently give prominence to PSB platforms while also ensuring that consumers can easily access the content of their choosing.

We do not believe that redrafting the wording of **Section 362AM(1)(a)** from 'appropriate degree of prominence' to 'significant degree of prominence' is necessary, as this would be divergent from the well-established linear prominence regime, which refers to 'appropriate prominence' and has been effective in ensuring that viewers can easily find PSB content. This regime has also provided Ofcom with the power to make decisions about current and future arrangements between PSBs and platforms and there have been instances – as recently as 2019 – where Ofcom has reviewed the guidance on linear prominence to ensure that PSB channels remained easy to find. We further note that during pre-legislative scrutiny of the Bill there was not a consensus among PSBs that this redraft would be helpful.

During the 2<sup>nd</sup> reading of the Media Bill, Minister of State Sir John Whittingdale effectively summarised our key concern about this proposal, which is that *"Significant can indeed be appropriate, but appropriate is not necessarily significant."* We agree with the Minister's view that 'appropriate prominence' would provide Ofcom with greater flexibility in addressing the prominence requirements for regional PSBs, which should not be required to have "significant prominence" throughout the entirety of the UK, as this could have an adverse impact on the viewing experience outside of the

broadcaster's region. In addition, we would also the Committee to consider the impacts of asking RTSS's to provide national prominence – many of our members don't currently hold geolocation data and would be required to ask and store this data from UK consumers. Instead of data collection, we would ask that device manufacturers make available and enable customers to personalise and make national PSBs prominent on their device instead if they so wish.

Additionally, we are concerned that “significant prominence” could have a considerably detrimental impact upon the search functionalities that Television Selection Services integrate into their user interfaces. If, for example, it was determined that PSB content must always be positioned or weighted more prominently than non-PSB content within user search results, this would make it more difficult for consumers to find the content that they are looking for. Consider for example a user that wants to watch the popular Netflix series 'You', who searches for the title from their smart TV homepage and then has to scroll through all PSB content containing the word 'you' within the title, before being able to select the series that they want.

If the Bill proceeds with “appropriate prominence”, Ofcom would have much more flexibility to balance supporting PSBs with the need to deliver an excellent user experience across a range of devices and platforms. It is ultimately in the interest of Television Selection Services to surface the content that the viewer is seeking from that search. It is important that any prominence obligations remain at the app level in order to protect the personalised customer experience.

Implementing these requirements will nonetheless be complex and will require significant technical lift from the providers of Television Selection Services. Unlike other provisions in the Bill, those related to TSS and Must-Offer Must-Carry do not currently confirm an implementation period in the Bill text, and we believe this ought to be realigned with that which has been proposed for radio.

The proportionality of these new requirements will ultimately be determined by the detailed Code of Practice that will be developed by Ofcom, in consultation with industry, to support platforms in demonstrating compliance. We look forward to working with Ofcom to ensure that these provisions are appropriate to the Bill's objectives.

## **Part 6 – Regulation of Radio Selection Services**

While drafting this Bill, DCMS have always been very clear that the objective is to preserve the status quo, which is that consumers are able to easily access radio stations of their choosing via innovative devices such as smart speakers. A November 2023 survey commissioned by techUK found that 83% of smart speaker users reported positive views on the wide choice of radio stations available on their smart speaker, with only 2% reporting being unsatisfied. Similarly, 77% of respondents reported finding it 'easy' to access radio stations that they want to listen to via smart speakers, compared to only 6% who find it difficult. These findings echo a [December 2022 Ofcom study](#) where smart speakers were given to 100 people who didn't previously have them and asked about their experiences listening to radio on these devices. A majority reported a positive overall experience, felt they were able to access radio stations that they want, and that they listened to the radio more than before.

While we believe that the UK radio sector has benefited significantly from technological transformation enabled by voice-assisted radio selection services, and that based on the survey responses above there is no compelling need for legislative interventions in this space, we are nonetheless pleased to see that this latest version of the Media Bill is more proportionate and addresses some of concerns that we rose around the draft Bill.

We welcome the rewording of **Section 362BI** so that designated RSSs must now “take all reasonable steps” to ensure that users can access the live-IP simulcast of licenced radio stations via voice command, and the addition to protect customer preferences. The new powers given to the Secretary of State to prohibit internet radio services from charging platforms to access content are a step in the right direction, though do not provide the certainty that we need to enable technology companies to confidently invest in the sector.

These amendments have partially addressed our concern, raised during oral evidence to the CMS committee, that radio broadcasters could make disproportionate demands on platforms by leveraging a legally binding ‘Must Carry’ without a corresponding ‘Must Offer’. Beyond this, it would be helpful for the Bill to confirm the policy intent by explicitly prohibiting a radio station from charging such a fee, comparable to the obligations on voice assistants not to charge for cost of carriage. At present, this would apply only with the Secretary of State’s discretion, which would not give technology providers the certainty they need to invest and innovate.

We still have deep concerns that Bill will provide radio stations with a preferred route to listeners. This is not only an interventionist policy but it will also be very technically challenging to implement. You could have a scenario where all 600+ stations all demand their own customised routes which is not only is disproportionate but could have long term consequences on innovation and investment in the overall radio experience. Instead we would implore the Committee to change the provision to providing a route to listeners. This would support the objective of providing access to radio stations on voice assistants but would also protect the customer experience and ability for voice assistants to innovate.

With this in mind, we are concerned that some stakeholders are arguing for amendments to considerably widen the scope of this Section to include on-demand content such as podcasts and catchup radio. We agree with the government’s assessment that there is no policy rationale for such an intervention, and goes considerably beyond the privileges associated with a radio license in the UK.

Furthermore, it is unclear how such a proposal would work in practice. Whereas the Bill in its current form applies to a finite number of radio broadcasters that have met all the regulatory requirements to obtain licensing from Ofcom, there are far greater number of podcast creators within the UK that are not subject to these licensing requirements. Podcast creators reach audiences via a number of avenues, including via mobile phone applications and some that exclusively stream on video sharing services such as YouTube. It would be impractical to create a legal requirement for voice-activated devices to ensure that this incredibly wide range of content across multiple formats should be universally accessible, and to the same extent it is not clear why the on-demand content of licensed radio broadcasters should be given additional privileges beyond those due to other content creators.

We have heard some stakeholders argue that on-demand content should be included within the Radio section of the Bill because it is included within the Prominence on Television Selection Services section. We believe that this is a false comparison. The prominence requirements within Section 2 of the Bill relate to the positioning of BVOD apps within a visual user interface, which is not relevant to voice-activated commands for radio. Furthermore, the prominence requirements within Section 2 apply to a small number of named national and regional public service broadcasters, whereas there are a considerably wider number of 600+ licensed radio broadcasters within the scope of Section 6, which includes many commercial broadcasters without a public service remit. Accordingly, there is no equivalence between the prominence regime for on-demand content within Section 2, and proposals to include on-demand content within Section 6.

**Conclusion**

We reiterate that our members contribute considerably to the British media sector by offering innovative devices that enhance consumer choice and help them to discover new content, and that it is not in the consumer interest to impose unnecessary UK-specific burdens on technology platforms. We have worked closely with DCMS and the parliamentary select committee to ensure that this latest version of the Bill is much more closely aligned to the government's policy objective than the original draft. We encourage the committee to reject proposals to make substantive further amendments to the Bill and to prioritise the Bill's smooth passage through the legislative process.

techUK looks forward to working with Ofcom on the implementation details of the Bill, where we hope to resolve outstanding concerns such as the technical challenges encountered by television selection services in meeting regional prominence requirements in some scenarios.

We remain committed to working with members of the House to ensure that the objectives of the Media Bill are achieved in a proportionate and practical manner that delivers the best outcome for consumers. We also note DCMS's recently-released consultation into the regulation of additional EPGs, and emphasise the need for any new measures to align with both the substance and the timing of the Media Bill, as a piecemeal approach will create further compliance challenges for manufacturers and confusion for consumers.

**Contact**

Lewis Walmesley-Browne, Head of Programme: Market Access & Consumer Tech  
[lewis.wbrowne@techuk.org](mailto:lewis.wbrowne@techuk.org)