

# SLR

## Media Bill

Call for evidence

Written evidence submitted by the Service List Registry  
(MB16)

December 2023



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## Executive summary

The Service List Registry welcomes the proposed provisions of the Media Bill but draws attention to a significant change that appears to have been included in the text since the original publication of the draft.

- Subsection 362AJ (4) has the effect that the must-offer obligations would not apply where the provider of a designated internet programme service is the BBC.
- This would allow the BBC to withhold access to services such as the BBC iPlayer to third parties or impose conditions that would not necessarily apply to other media providers.
- This appears to be quite contrary to the intent the proposed legislation to provide prominence for and universal access to the services of public media providers such as the BBC.
- The significance of this is that it could allow the BBC to promote propositions in which it is a shareholder to the disadvantage of other participants in the market.
- There is no justification for the exclusion of the BBC from the must-offer obligations.
- For these reasons we strongly recommend that 362AJ is amended and subsection (4) is struck out so that the intended provisions also apply to the services of the BBC.
- There has been some debate over whether a designated service should be given an “appropriate” or a “significant” degree of prominence.
- The term “appropriate” is indeed appropriate and should be clarified in guidance to be drawn up by Ofcom that may be revised from time to time.
- Any interpretation of relative prominence is open to dispute if it relies on linguistic definition.
- For this reason, it is preferable to refer to a Regulated Service List of designated services that can unambiguously define the intended priority and order of such services, providing assurance to consumers and regulatory clarity to all participants in the market.
- Our strong recommendation is that the Media Bill is used to empower Ofcom to draw up a Regulated Service List and an associated Code of Practice specifying how it should be applied and implemented.

On this basis, the Service List Registry supports the remaining provisions of the Media Bill.

## Preface

As Chief Executive of the Service List Registry, I appreciate this opportunity to contribute to the consideration of the Media Bill by the United Kingdom government.

The Service List Registry welcomes the proposed provisions of the Media Bill, particularly with respect to the regulation of television selection services and the prominence of public service media.

These are issues that the Service List Registry aims to address and for which it offers a technical solution. This has been developed in close consultation with industry stakeholders, including the communications regulator Ofcom.

The Service List Registry would therefore be directly affected by the proposed provisions of the Media Bill.

Based on internationally implemented open web standards, the Service List Registry provides a federated global platform to enable audiovisual media service providers to announce services and support service discovery by any compatible device or display. It also provides consultancy services on how best to implement service discovery for audiovisual media services.

The Service List Registry supports the open DVB-I industry standard developed by the DVB Project, an industry-led consortium of the world's leading media and technology companies working together to design open technical specifications for digital media delivery.

Central to this specification is the concept of a Service List that allows media providers to announce services and devices and displays to discover them. The DVB-I specification also includes provision for a national or regional Regulated Service List, enabling national regulatory authorities to authorise ordered lists of services with logical channel numbers and ensure appropriate prominence for public service media. In the context of the United Kingdom, the relevant competent authority is the communications regulator Ofcom.

Beyond compliance with relevant regulations and competition requirements, our primary concern lies with the interests of the consumer. We seek to enable an open market for compatible devices and displays, allowing viewers to access a wide range of services in a way that offers them choice, convenience and control.

There is therefore the opportunity to create a coherent, consistent, compatible, and above all logical channel numbering scheme that serves the interests of media providers and their viewers.

I trust that the government, policy makers, regulators, and other readers will find this response to be a constructive contribution to the issues around the regulation of audiovisual media services and how they are discovered, selected and accessed by users.

The Service List Registry would be pleased to work with representatives of the government and the regulator to discuss further how the ideas presented in this response could be readily implemented in practice.

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## About the author

As Head of New Media Operations at the BBC, Dr William Cooper helped to enable the launch of the Freeview digital terrestrial television platform and operationally supported numerous online and interactive service across multiple channels and platforms.

As the founder of the independent consultancy informtv, William has since advised on broadcast and broadband convergence around the world, including Freeview in Australia. He has also advised the European Commission on matters of transfrontier television and advised other leading management consultancies on television and video services.

With a background as a broadcast journalist, William gained a doctorate for his research on video literacy and how audiences appreciate television. He has a particular interest in viewer experience and user interface design. His weekly *Connected Vision* newsletter has been a regular read for thousands of executives around the world for almost two decades. He has chaired or produced over a hundred international conferences and is a regular judge of industry awards.

William is Chief Executive of the Service List Registry and is responsible for its development.

## Service List Registry

The Service List Registry is a federated online directory of audiovisual media services, based on open standards. Registered regulators, media providers, and distributors can manage lists of offerings available online and through traditional broadcast networks. This enables compatible devices, displays and applications with different capabilities to discover and access relevant services from multiple sources, offering users choice, convenience and control, on any screen.

Supporting the open DVB-I standard for service discovery, developed by the international DVB Project that is responsible for standards used to deliver television services across Europe and around the world, the Service List Registry is committed to enabling a competitive market that supports the requirements of users, media providers, manufacturers of devices and displays, and national regulators.

[www.slrd.org](http://www.slrd.org)

## 1. Open market

1. A key principle of the proposed regulation to provide prominence and universal access to public service media is that designated services should be offered on fair, reasonable and non-discriminatory term and that they should be carried with appropriate prominence on devices and displays.
2. The Service List Registry has been established to provide a technical platform to enable an open market in which service providers can announce services and enable devices and displays to discover them.
3. The approach is based on the publication of a regulated service list that describes an ordered list of services with optional numbering that can be used to determine the prominence of both traditional channels and online audiovisual media services.
4. Such a system has already been implemented in Germany and is likely to be adopted in other territories.
5. The DVB-I standard provides a technical solution to enable this to be implemented automatically in the next generation of audiovisual media platforms.
6. The specification has been developed by the DVB Project, an industry-led consortium of the world's leading media and technology companies working together to design open technical specifications for digital media delivery.
7. The Service List Registry provides an open implementation of the registry element of the DVB-I specification.
8. Further information about the Service List Registry can be found at the [slrdb.org](http://slrdb.org) web site and in a detailed submission to the [Department for Culture, Media and Sport](#).

## 2. Must-offer

9. Subsection 362AJ (4) of the Media Bill as introduced includes an explicit exception for the BBC that was not in the published Draft Media Bill and should be struck out.

*Media Bill Part 2 – Prominence on television selection services*

(p. 39)

### *Must-offer and must-carry obligations*

#### **362AJ Must-offer obligations in the case of designated internet programme services**

- (1) The provider of a designated internet programme service must at all times offer the service as available (subject to the need to agree terms) to be, in relation to every regulated television selection service, included in the regulated television selection service.
  - (2) The provider of a designated internet programme service must do its best to secure that, in relation to every regulated television selection service, arrangements are entered into, and kept in force, that ensure that the service is included in the regulated television selection service.
  - (3) The provider of a designated internet programme service must act consistently with the agreement objectives when entering into such arrangements and while they are in force.
  - (4) Subsections (1) to (3) do not apply where the provider of a designated internet programme service is the BBC.
10. The effect of 362AJ (4) is that must-offer obligations would not apply to an internet programme service provided by the BBC. An internet programme service is defined as an on-demand programme service where the programmes viewed by a user of the service are accessed by the user by means of the internet. That would include a service such as the BBC iPlayer.
11. The implication of this is that the BBC would not be obliged to offer a service such as the BBC iPlayer to a third party, subject to the need to agree terms.
12. This allows the possibility that the BBC could withhold access to the BBC iPlayer or a similar service or insist on terms that are not subject to a dispute resolution procedure regulated by Ofcom.
13. This means that access to a BBC service such as the BBC iPlayer could be on terms that are different and possibly more onerous or less advantageous than similar services offered by other public service media organisations.
14. The BBC has the largest audience share of any broadcaster in the United Kingdom, with a 32% share of all viewing. The BBC iPlayer currently only accounts for 15% of all BBC viewing, although this rises to 37% for those aged under 35.
15. The availability of the BBC iPlayer is therefore a key component of the universal provision of BBC services.
16. Access to the BBC iPlayer or a similar service from the BBC is therefore an important market requirement for television devices and displays.
17. Given the objective of the Media Bill to ensure the prominence of public service media including the BBC, it appears perverse that 362AJ (4) could effectively inhibit this.
18. This language was not present in the Draft Media Bill and there does not appear to have been subject to any public debate on its inclusion.

*Must-offer and must-carry obligations***362AI Must-offer obligations in the case of designated internet programme services**

- (1) The regulatory regime for every licensed public service channel includes the conditions that OFCOM consider appropriate for securing the objectives set out in subsections (2) to (4).
  - (2) The first objective is that any designated internet programme service provided by the provider of the channel is at all times offered as available (subject to the need to agree terms) to be, in relation to every regulated television selection service, included in the regulated television selection service.
  - (3) The second objective is that the provider of the channel does its best to secure that arrangements are entered into, and kept in force, that ensure that any designated internet programme service provided by the provider of the channel is, in relation to every regulated television selection service, included in the regulated television selection service.
  - (4) The third objective is that the provider of the channel acts consistently with the agreement objectives when entering into such arrangements and while they are in force.
  - (5) In this section “the agreement objectives” are—
    - (a) that a designated internet programme service is given an appropriate degree of prominence within a regulated television selection service;
    - (b) that arrangements made between the provider of a designated internet programme service and the provider of a regulated television selection service are consistent with the former being able to meet costs reasonably incurred in fulfilling the public service remit for the licensed public service channel in question or (as the case may be) S4C’s public service remit;
    - (c) that arrangements so made do not disproportionately restrict how the provider of a regulated television selection service may make innovations in the ways that users may select and access internet programme services or programmes included in such services.
  - (6) The reference in subsection (5)(a) to a designated internet programme service being given an appropriate degree of prominence within a regulated television selection service includes a reference to an appropriate degree of prominence being given to public service remit content and any listed channel provided by that designated internet programme service, so far as the prominence of that content or channel is affected by the operation of the regulated television selection service.
  - (7) **The following are listed channels for the purposes of this section—**
    - (a) **any service of television programmes provided by the BBC so as to be available for reception by members of the public;**
    - (b) any Channel 3 service;
    - (c) Channel 4;
    - (d) Channel 5;
    - (e) S4C Digital.
19. There is no justification for the exclusion of the BBC from the must-offer obligations.
20. For these reasons we strongly recommend that 362AJ is amended and subsection (4) is struck out so that the intended provisions also apply to the services of the BBC.



### 3. Appropriate prominence

21. There has been some debate in the discussion of the Media Bill over whether a designated service should be given “an appropriate degree of prominence” or “a significant degree of prominence”.
22. Both terms are necessarily subjective and difficult to define. However, we prefer and approve of the term “appropriate” rather than “significant”.
23. The term “appropriate” or the relevant translation is also used in the European Audiovisual Media Services Directive, so it seems sensible to align with this.
24. The term “appropriate” is used many times in the Media Bill, often in such a way as to allow this to be determined by what Ofcom.
25. This allows further clarification and guidance to be given in a Code of Practice or other statements of what Ofcom defines or deems to be “appropriate” that may be revised from time to time.
26. The real issue is that any interpretation of relative prominence is open to dispute if it relies on linguistic definition.
27. For this reason, the Service List Registry favours the concept of a regulated service list that applies to designated services nationally, regionally, or locally.
28. An ordered list makes the intended prominence of a service unambiguous and less contestable.
29. With associated numbering, a Regulated Service List can facilitate the navigation and accessibility of services.
30. An ordered or numbered list is easily understood by consumers, can be easily implemented in applications, devices and displays, and offers regulatory clarity to all participants.
31. Our strong recommendation is that the relevant regulator in each market, which would be Ofcom in the case of the United Kingdom, should draw up a Regulated Service List and an associated Code of Practice specifying how it should be applied and implemented.