



Sky's submission to the Media Bill Committee

Overview

Sky welcomes the opportunity to submit evidence as part of the ongoing scrutiny of the Media Bill. As a major broadcaster and platform operator, Sky is an integral part of the UK content sector and as such has a significant stake in policy discussions around its future.

We welcome the Media Bill and support its aim of ensuring the UK creative economy remains a global success story. The Bill will be important to ensuring the prosperity of the whole broadcast industry. We note and appreciate the level of consultation Government has enabled the Bill to have up until this stage and the number of considered changes to the Draft Bill which have been made.

We believe the new prominence regime for on-demand television complements existing arrangements by ensuring that *all platforms* must include PSB services and make them easily discoverable. The Bill's current drafting of "appropriate prominence" provides a high-level framework to ensure this, mirroring the language used today to ensure PSBs appear first in traditional EPGs, while providing the flexibility for Ofcom to develop guidance and enforce how the regime will work in practice. As drafted, the Bill will allow platforms to make additional technological and innovation choices to help audiences find content from UK broadcasters and beyond that they love.

Elsewhere, we support the Bill's aims to create a more level playing field between linear broadcasters and Video on Demand (VoD) providers. As a broadcaster we understand the importance of protecting audiences from potentially harmful content, and for the vast majority of our content we already apply linear standards of compliance, even where it is only available on demand. We recognise the value that VoD services provide UK audiences and the contribution they make to the UK's cultural economy, so believe the Bill provides a suitable solution to fostering a regulated, innovation-friendly broadcasting sector.

We also understand the Bill's intention to ensure PSBs can meet their obligations in differing ways to their existing provision. Given viewing habits and expectations continue to change as the industry innovates, we believe this change in obligation delivery is reasonable.

We encourage policymakers to ensure the Bill remains futureproof and fit for purpose of both UK broadcasters and consumers throughout the continued scrutiny of the Bill.

Appropriate vs significant prominence

'Significant' prominence requirements could override audience preferences and make it harder for viewers to find the content they want; 'appropriate' prominence already ensures PSBs are easily discoverable on linear EPGs. We do not believe there is a need to go beyond this requirement in the Media Bill.

As one of the UK's leading platform operators and aggregators, we are a critical partner to the PSBs and play a direct role in connecting consumers to much loved PSB content. We appreciate the role the PSBs play in supplying high quality British content and enriching the creative industries - just as the PSBs understand the importance of Sky's platform in reaching their audiences in new and innovative ways.

The current language in the Bill of "appropriate prominence" will ensure PSB content is easily discoverable for viewers. It provides PSBs with the surety that their content will be easily accessible on all platforms under the scope of the regime, while also providing Ofcom with the flexibility to properly adjudicate on the variety of ways prominence can be delivered on online platforms. To illustrate the efficacy of a requirement to give "appropriate prominence", this is the language that currently underpins the prominence regime which sees the PSBs take the first 5 spots on EPGs.

Whilst we acknowledge there have been a number of calls from Parliamentarians to strengthen the provision of prominence in the Bill from "appropriate" to "significant", we advise against such a change. Not only is this



not needed to make PSB services more accessible, but any change could bring forth unforeseen consequences that negatively impact audiences' choice and ability to access the content they want to watch.

The flexibility within 'appropriate' provides Ofcom with enough power to make strong decisions about both current and future arrangements between PSBs and platforms. Ofcom themselves stated that it believes that the current drafting of appropriate prominence in the Media Bill will allow them to properly adjudicate on the range of ways prominence can be delivered on online platforms and the variety of interfaces and user experiences they offer¹.

'Significant' prominence could also directly damage alternative providers of UK content. PSB VOD players are listed first on Sky as standard, but apps will commonly be ranked on the basis of individual usage over time. 'Significant' prominence could require the first six apps to always be the PSBs, even if a household watches no content at all from one or more PSB. Even if viewers are searching for specific content, relevant results may appear fifth or lower on search results if PSBs have to be prioritised. If 'significant' prominence directly damages alternative providers of UK content, it risks dampening the incentives for non-PSBs to invest in UK content.

Further detail on how we believe changing the provision of prominence in the Bill may negatively impact consumers can be found in Annex 1-4.

It is important that the Media Bill passes swiftly

We value the importance that Government, Labour and industry stakeholders have put on the Bill to ensure a timely entry to Parliament, so as to maximise the potential of the UK broadcast ecology in the face of an ever-growing challenge from major streamers. We also acknowledge that the Bill has already undergone a large amount of scrutiny as a result of the pre-legislative scrutiny process and the Bill is now in a place where it has broad support across the UK content sector.

As a result, and given we are now in the final session of this Parliament, we **encourage policymakers to prioritise the swift passage of the Bill, whilst also continuing striking a balance that ensures PSBs prominence from platforms and innovation.** Extended discussions on the Bill risk slowing down its passage and undermining overall benefits the new regime will bring in ensuring British PSB content can be readily found on new platforms.

¹ Pg 11, [transcript](#) of DCMS Committee oral evidence: Pre-legislative scrutiny of the Draft Media Bill with Ofcom



Annex 1 – Appropriate vs Significant Prominence

Benefits of ‘appropriate’ prominence

Platform providers like Sky have a commercial incentive to both carry and give prominence to PSB content as we know our audiences want to watch and easily find this content.

We have a long history of successfully negotiating mutually beneficial deals with PSBs, to the extent that our recent deals with them for carriage of their online services on Sky Glass have been highlighted by Ofcom as examples of an “ambitious and open approach to genuine, strategic partnerships”². The PSBs have also publicly pointed to Sky as undertaking a “constructive partnership approach” to commercial deals³.

These successful partnerships are built on a foundation that enables ‘appropriate’ prominence, underpinned by existing linear prominence requirements overseen by Ofcom. This not only provide appropriate prominence to public service broadcast content, but allows platforms to make additional technological and innovation choices to help audiences find content from UK broadcasters and beyond that they love. (further detail in Annex 2).

The new prominence regime for on-demand television complements these existing arrangements by ensuring that *all platforms* must include PSB services and make them easily discoverable. The Bill’s current drafting of “appropriate prominence” provides a high-level, future-proof framework to ensure this, with the flexibility for Ofcom to develop guidance and enforce how the regime will work in practice. Under the regime in the Media Bill, we believe positive, mutually beneficial relationships will continue with a legal backstop in place.

As with the linear broadcasting regime, “appropriate prominence” provides Ofcom with enough power to make decisions about both current and future arrangements between PSBs and platforms. In the linear regime, Ofcom reviewed and updated its guidance on the EPG Code in 2019 to ensure that the main PSB channels remain easy to find. Measures brought forward included:

- PSB main channels must be placed at positions 1-5 on every EPG
- Nations channels (e.g. S4C, BBC Alba) must be on the first three pages of UK-wide EPGs
- BBC channels must be placed on the first page of every sub-genre (e.g. news, kids)

Ofcom has also stated that it believes that the current drafting of appropriate prominence in the Media Bill will allow them to properly adjudicate on the range of ways prominence can be delivered on online platforms and the variety of interfaces and user experiences they offer⁴. This also futureproofs the regime, allows for flexibility to adapt to new technology, innovation and changing audience expectations and habits.

With appropriate prominence being proven fit to support PSBs and also foster significant growth and innovation in the wider UK content sector, **we would encourage continued support for the use of the wording “appropriate” for the new prominence regime.** This will ensure UK broadcasting remains competitive in the face of future advancements in the broadcasting ecology.

The unintended consequences of ‘Significant’ prominence for consumers

As the Bill is scrutinised throughout its parliamentary passage, **we encourage care to be taken to ensure any debates on introducing significant prominence do not lead to unintended adverse consequences for audiences.**

While there is currently no legal precedence for what significant prominence would entail, given the prominence that an appropriate regime already provides, we are concerned that a requirement for Ofcom to enforce significant prominence could provide negative outcomes for audiences by forcing platforms to override consumer choice.

¹ Paragraph 1.22, ‘Small Screen, Big Debate: Recommendations to Government on the future of public service media’ Ofcom, 15 July 2021 (available here: https://www.smallscreenbigdebate.co.uk/__data/assets/pdf_file/0023/221954/statement-future-of-public-service-media.pdf).

³ Page 21, transcript of DCMS Committee oral evidence: Pre-legislative scrutiny of the Draft Media Bill with ITV Channel 4 and Paramount, <https://committees.parliament.uk/oralevidence/13236/pdf/>

⁴ Pg 11, transcript of DCMS Committee oral evidence: Pre-legislative scrutiny of the Draft Media Bill with Ofcom, <https://committees.parliament.uk/oralevidence/13428/pdf/>



PSB VOD players are listed first on Sky as standard, but apps will commonly be ranked on the basis of individual usage over time. 'Significant' prominence could require the first six apps to always be the PSBs, even if a household watches no content at all from one or more PSB. As illustrated in Annex 3, a regime underpinned by significant prominence could lead to audiences searching for a content such as *Game of Thrones* or *Brassic* via a Sky remote on our platform only seeing the programme they are looking for after PSB content which is less relevant to audience demand. This only disadvantages audiences, who should be able to easily access the content they choose to watch on the platforms they take services from.

A regime of significant prominence may subsequently undermine audiences' ability not just to find the content they want to watch – regardless of whether it is from a PSB – but prevent them from easily accessing "public service" style content they want to watch. Sky is not a PSB, however Sky Arts went free to-air in 2020 to further boost the UK cultural economy and provide public service content, despite Sky not being a PSB. We appreciate support from Members who acknowledged this move in the Bill's Second Reading alongside other non-PSB providers' public service content. Under a regime enforcing significant prominence we are concerned that – even if viewers were searching for public service content from Sky Arts such as *Portrait Artist of the Year* – search results may only provide listings for *Portrait Artist of the Year* after public service content from PSBs which is less relevant to audience demand (Annex 4).

It is also worth noting significant prominence is not an approach widely backed across industry or seen as necessary to the success of the regime. COBA, the organisation representing commercial broadcasters, stated that the wording as debated at the Second Reading is "well understood" and that provisions for "significant" prominence could undermine Ofcom's future regulatory power. As discussed above, Ofcom also assert that "appropriate" prominence "works well" from an enforcement perspective⁵. Public Service Broadcaster ITV also note that appropriate should suffice, given Ofcom's regime on linear channels guarantee the main PSB channels the top slots on EPGs, and that "significant prominence could be appropriate and appropriate prominence could be significant".⁶

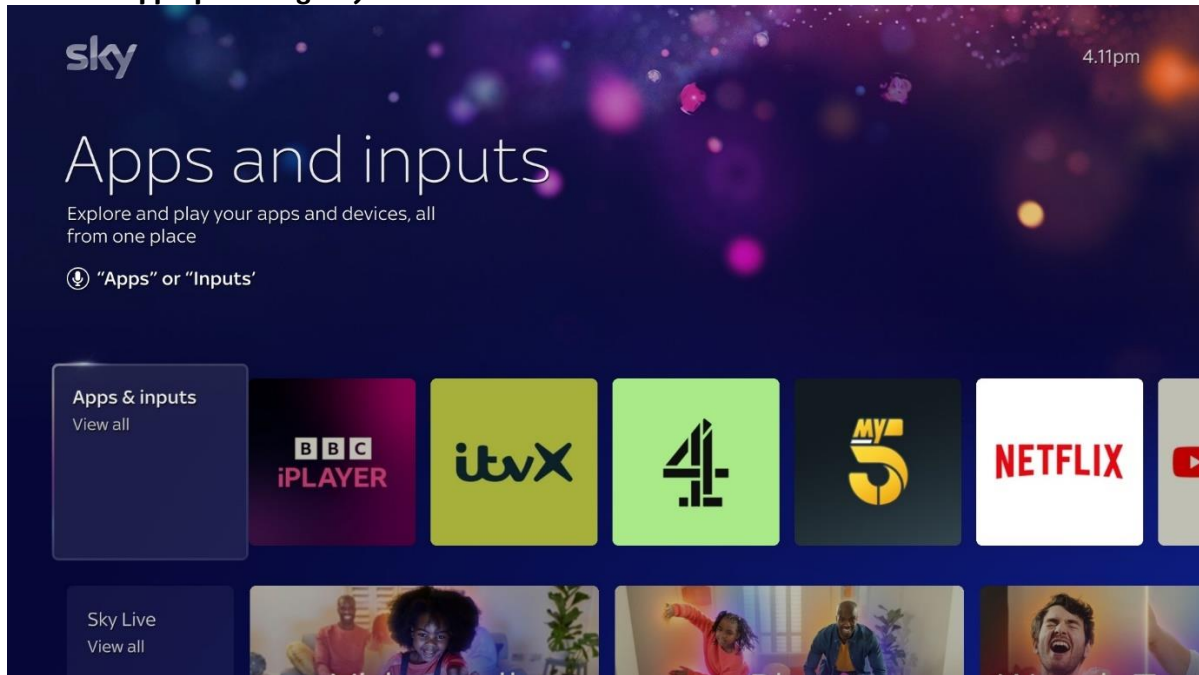
Given this, we would not support a change to the wording "significant prominence" in the Media Bill, given the potential adverse impacts on audiences and the lack of necessity for delivering the core tenets of the new on-demand prominence regime.

⁵ Page 5, ' Draft Media Bill: Government Responses to the Committee's Twelfth and Thirteenth Reports of Session 2022-23 (parliament.uk)

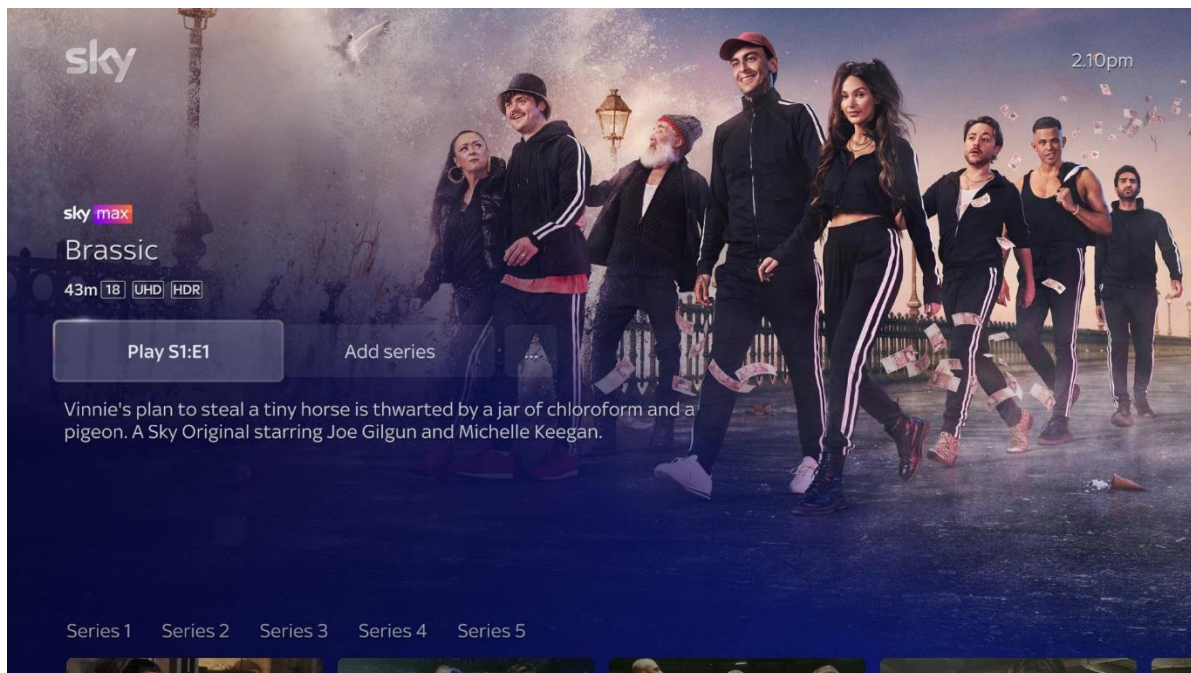
⁶ Response to the DCMS Select Committee pre-legislative scrutiny on the Media Bill - Written evidence submitted by ITV Plc (available here: [Draft Media Bill: Government Responses to the Committee's Twelfth and Thirteenth Reports of Session 2022-23 \(parliament.uk\)](#))



Annex 2 – Current Sky Glass PSB prominence (under existing Sky commercial agreements, which imitate the linear appropriate regime)



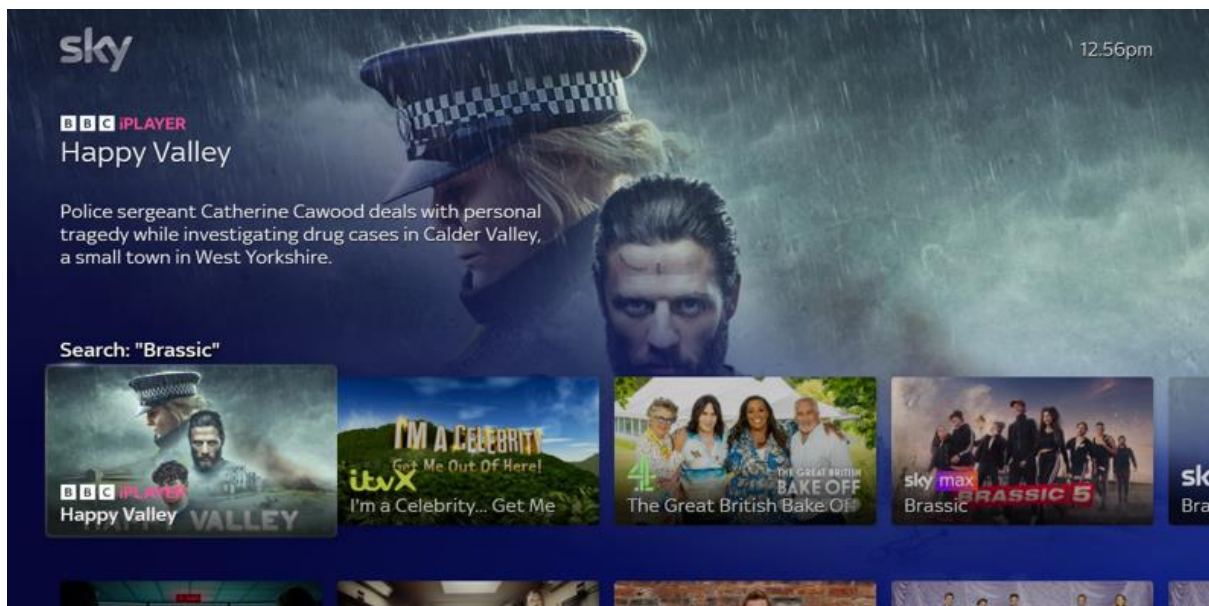
Current landing page at cold start, showing existing prominence given to PSB BVoD services on Sky Glass. Viewer sees PSB apps before any wider SVoD, VSP or wider app-based content.



Current landing page, when viewer voice searches to 'Brassic' on Sky Glass. Viewer is taken straight to complete set of content they have asked to watch.

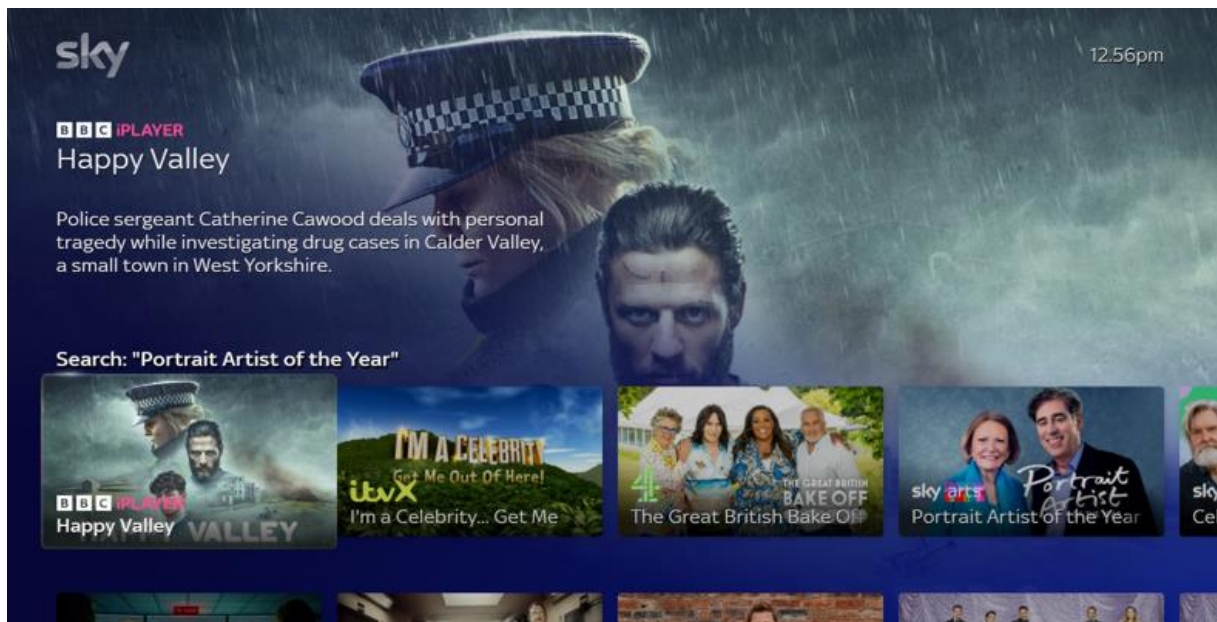


Annex 3 - Potential Sky Glass PSB prominence (under a significant regime)



Potential landing page under a 'significant' prominence regime. When viewer voice searches 'Brassic' on Sky Glass. Viewer is shown PSB results that may be tangentially linked to Brassic, rather than being taken to straight content they have asked to watch.

Annex 4 - Potential Sky Glass prominence of public service content (under a significant regime)



Potential landing page under a 'significant' prominence regime. When viewer voice searches for Sky Arts' 'Portrait Artist of the Year' on Sky Glass. Viewer is shown PSB results that may be tangentially linked to Portrait Artist of the Year, rather than being taken to public service content made and produced by Sky that they have asked to watch.