



PRS FOR MUSIC RESPONSE TO THE BBC PUBLIC INTEREST TEST CONSULTATION ON BBC IPLAYER PROPOSALS

PRS for Music is a collecting society with over 135,000 composer, songwriter and publisher members. We license, through our network of reciprocal agreements with other societies, the rights for over 25 million musical works from 2 million rightsholders. PRS for Music licenses these rights to the BBC, for music played across its national and local radio stations, the musical composition in its TV programming, live events, such as the Proms, and online.

The proposed changes to the iPlayer, as set out in the BBC's consultation, undoubtedly represent a material change in the characteristics of the BBC's services. It is our view these changes are likely to have a significant impact on both the Video on Demand (VOD) and the Subscription Video on Demand (SVOD) market in the UK and on rightsholders whose works are included in BBC programming. However, in the absence of any specific market analysis, by either the BBC or Ofcom, it is difficult to determine the exact scale of the impacts and what mitigations are necessary.

Therefore, we welcome the opportunity to respond to this consultation and highlight the issues which we believe the BBC and Ofcom should consider in a more rigorous and comprehensive analysis of these proposals.

Q 1 - What do you think about the potential public value of our proposals for enhanced availability of BBC content, including the extent to which our proposals contribute to the BBC's mission to serve all audiences through the provision of high quality and distinctive output and services which informs, educates, and entertains?

PRS for Music recognises the necessity for the BBC to innovate and modernise its services in order to maintain its competitiveness and relevance in a changing market. A strong BBC, with a clear focus on its public policy objectives, is a benefit to the UK's creative economy. However, when the BBC's operations become too commercialised, whether through the scope of its services or its commissioning processes, it can negatively impact upon the wider market and the UK's creative sector. Therefore, we are concerned the consultation provides little assessment of the possible market impacts or the extent to which the BBC's specific proposals, such as the duration of availability, properly balance the benefits to licence fee payers with impacts on the audio-visual (AV) market. For this reason, we welcome the opportunity to respond to the BBC's consultation and look forward to Ofcom's full market assessment.

Q2 – What do you think about the benefits to consumers who will use the service, as well as wider potential social and cultural impacts?

The making available of more, previously broadcast, content online would support the BBC's objective to make the iPlayer a 'destination for audiences' and the data provided in the consultation suggests that licence fee payers would welcome such changes. We understand the making available of more of the BBC's archive content, some of which will not have previously been accessible to current licence fee payers, holds perhaps the most obvious cultural benefit.

However, we are concerned that, as noted in Ofcom’s assessment of the proposed changes, there is the real potential for “crowding out investment in UK content and services from other companies”¹ which will ultimately adversely impact audiences and the UK’s creative sectors. SVOD services are major investors in new UK content, across all genres, and any reduction in their ability to invest will have a negative social and cultural impact and ultimately reduce consumer choice.

Q 3 - What impact (positive or negative) do you think our proposals on enhanced availability might have on fair and effective competition?

The growth of SVOD services in the UK has brought increased competition and choice for audiences, as well as essential new investment in the creative sector. Figures released in September 2018 by PACT² suggest that Netflix and Amazon Prime alone represented 7% of investment in UK AV content, amounting to approximately £150 million. These new UK-produced programmes, such as *The Crown*, have won international acclaim. The new revenue streams provided by SVOD services are set against decreasing revenues for traditional linear broadcast advertising. Figures released by Ofcom show television advertising revenues fell by 7% in real terms in 2017, and pay-TV operators, such as Sky and Virgin Media, suffered declining revenues³.

As part of its review of the proposed changes to the iPlayer, Ofcom noted the BBC’s own analysis showed the proposed changes could significantly increase its share of VOD viewing and its own assessment suggested the actual impact “may be towards the upper end of its projected range”⁴. Ofcom’s assessment is unsurprising considering the BBC is unique in its ability to offer content online free of charge without any advertisements, as well as having access to decades worth of high-quality public-funded programming. We share Ofcom’s concerns that owing to the BBC’s unique funding model, the corporation would hold a significant competitive advantage against other broadcasters’ online services and SVOD providers.

Indeed, BBC-produced content represents a significant proportion of the programmes consumed on SVOD services. The availability of such content on SVOD services undoubtedly adds value to these providers and, in so doing, aids them in growing their subscription base both in the UK and internationally. Equally, it is evident that SVOD subscribers benefit from access to BBC content and that they are willing to pay for access to it as part of a wider suite of content.

It is unclear from the consultation the extent to which the proposed changes to the iPlayer would, by association, result in fewer programmes being made available to SVODs. This is a fundamental factor in accurately determining the impacts of the changes.

Reduction in the availability of BBC content to SVOD services, alongside the enhanced iPlayer service proposed by the BBC, will clearly affect the attractiveness of these services to UK consumers and could negatively impact upon their ability to grow subscribers and revenues. As evidenced above, SVOD services are important investors in new UK content and increasingly represent an important part of rightsholders income. We also note the BBC itself benefits from additional revenues from its content on SVOD services.

¹ Review of the BBC’s material Assessment of the proposed changes to the BBC iPlayer: <https://bit.ly/2QfVpsj>

² PACT report on the TV production sector: <https://bit.ly/2oHdP9j>

³ Ofcom Communication report 2017/18: <https://bit.ly/2GcCptA>

⁴ Review of the BBC’s material Assessment of the proposed changes to the BBC iPlayer: <https://bit.ly/2QfVpsj>

Therefore, it is essential to properly quantify the likely market impact of the BBC's proposals in order to have clarity on whether this will diminish the availability of BBC programming on other online services in the UK. Any increased exclusivity could negatively impact rightsholders in the UK.

Q 4 - Are there any steps you think we could take to minimise any potential negative effects on fair and effective competition or to promote potential positive impacts?

We welcome Ofcom's decision to require the BBC to conduct a public interest test of the proposed changes to the iPlayer, as the changes may have far-reaching and unintended consequences upon the market. For example, the popularity of streamed BBC content on subscription VOD services Netflix and Amazon Prime Video suggest that any move to make BBC content exclusive to the iPlayer service may distort the UK market or create an unfair competitive advantage.

We are concerned that the BBC's proposed changes are very open-ended, setting few limitations to protect against harmful market impacts. While we accept the BBC's argument that the duration of availability may differ depending upon the genre, this is not in itself justification for an unlimited timeframe based upon a minimum period (12 months). We also query the assertion that the necessity to clear rights for programmes will act as an effective limitation to any market impacts, particularly taking into consideration the BBC's ability to leverage considerable influence in negotiations with rightsholders.

We would also note there are no clear conditions under which the BBC can withhold or withdraw series box sets for a returning series. The market impacts are likely to vary considerably depending upon both the genres of titles provided and the period of time during which they are unavailable on other platforms before and after the beginning of the new series.

Finally, it is unclear from the BBC's consultation how it will define 'archive content', or why it proposes that it should only ever be a small proportion of the iPlayer.

While we strongly support the BBC's objective to modernise its services to meet the changing needs of younger audiences, we are concerned that the proposed changes to the iPlayer are too broad and unsubstantiated. Therefore, we request that the BBC and Ofcom carry out a full competition assessment to determine the overall market impact of the proposed changes to the BBC iPlayer service before a decision is made.