

## Consultation response form

Please complete this form in full and return to [BBCiplayerbca@ofcom.org.uk](mailto:BBCiplayerbca@ofcom.org.uk) or:

Samuel Westwood  
Content Policy  
Ofcom  
Riverside House  
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London SE1 9HA

<b>Consultation title</b>	First consultation on proposed changes to BBC iPlayer – call for evidence
<b>Full name</b>	John Mottram
<b>Contact phone number</b>	0203 741 4084
<b>Representing (delete as appropriate)</b>	Organisation
<b>Organisation name</b>	PRS for Music

## Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how Ofcom handles your personal information and your corresponding rights, see [Ofcom's General Privacy Statement](#).

<b>Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential? Delete as appropriate.</b>	Nothing
<b>Your response: Please indicate how much of your response you want to keep confidential. Delete as appropriate.</b>	None
<b>For confidential responses, can Ofcom publish a reference to the contents of your response?</b>	

## Your response

Question	Your response
<p><b>Question 2.1: What do you think of the BBC's proposals and the procedures it has followed in carrying out its PIT?</b></p>	<p>Confidential? N</p>
<p><b>Question 2.2: What are your views on the BBC's assessment as set out in its PIT? Do you agree with its conclusions?</b></p>	<p>Confidential? – N</p>
<p><b>Question 3.1: Do you have any comments or other views on how the sector has evolved or is likely to evolve in the future that we should consider?</b></p>	<p>Confidential? – N</p>
<p><b>Question 3.2: Do you have any views or evidence on how viewing of individual programmes changes over time on VOD services?</b></p>	<p>Confidential? – N</p>
<p><b>Question 3.3: Do you have any views or evidence on how UK VOD viewing might evolve in the future, including viewing to individual services or total levels of viewing?</b></p>	<p>Confidential? – N</p>
<p><b>Question 4.1: What are your views on the methodology and conclusions of the BBC's assessment of public value generated by the proposals? Are there any impacts on public value that have not been identified by the BBC? Please provide evidence to support your views.</b></p>	<p>Confidential? – N</p>
<p><b>Question 4.2: Do you agree with our approach to reviewing the BBC's assessment of public value generated by the proposals? Please provide evidence to support your views.</b></p>	<p>Confidential? – N</p>
<p><b>Question 5.1: Do you agree with the concerns that we have set out in Section 5, or are there any others that we should consider? Please provide relevant evidence to support your views.</b></p>	<p>Confidential? – N</p>
<p><b>Question 5.2: Please provide evidence on whether and how the BBC's proposals could directly impact on rivals' viewing, revenues and investment.</b></p>	<p>Confidential? – N</p>
<p><b>Question 5.3: Please provide any evidence on whether there might be reduced access to content rights, and whether this might reduce the ability of rivals to compete and why. We also welcome evidence on the alternative</b></p>	<p>Confidential? – N</p>

<b>sources of content rivals would consider.</b>	
<b>Question 5.4: How do you think any potential for adverse market impact of the proposals could be reduced?</b>	Confidential? – N

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## PRS FOR MUSIC AND MCPS RESPONSE TO THE OFCOM FIRST CONSULTATION ON PROPOSED CHANGES TO BBC IPLAYER

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*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, and live events, such as the Proms, and online.*

*Mechanical-Copyright Protection Society (MCPS) is the UK collection society that licenses mechanical (or reproduction) rights under copyright on behalf of over 26,000 music publisher and composer members and, through reciprocal representation, overseas collection societies. Accordingly, MCPS represents repertoire in every genre from across the globe. The rights that MCPS represents are licensed to the BBC alongside those of PRS for Music*

We welcome Ofcom's consultation into the possible impacts of the proposed changes to the BBC's iPlayer service on the market and whether the proposed competition analysis will address the relevant issues.

In considering our response, it is important to note that musical rights are unique in that they are entirely independent from the rights held by the producers of audio-visual content. Musical rights are not a right to remuneration from the work but are individual rights owned by the creator and therefore not in the control of the producer or the broadcaster. The overwhelming proportion of revenues generated by musical authors, and their publishers, who compose works for TV and films are the royalties derived from the broadcast, or availability online, of those programmes, as well as their reproduction onto CDs and DVDs. Restricting the availability of those programmes, by either withholding content from the market or through prolonged exclusivity, has a direct harm on music creators, the music industry and the UK's creative industries as a whole.

Therefore, we welcome the opportunity to respond to this consultation and highlight the issues which we believe the BBC and Ofcom must consider in its detailed analysis of the proposed changes to the iPlayer service.

### **Question 2.1: What do you think of the BBC's proposals and the procedures it has followed in carrying out its PIT?**

PRS for Music and MCPS support the case for the evolution and modernisation of the BBC to enable it to remain relevant to UK audiences. In its consultation the BBC evidences a TV market increasingly characterised by declines in linear broadcasting and significant growth of VoD and SVoD services. While the case may have been made for change to the iPlayer services, the appropriate manner and extent of any changes remains an open question; as does the extent to which the unique power,

influence and funding of the BBC justify limitations to protect effective competition and investments.

In the response to the BBC's PIT consultation, and in separate communication to Ofcom, we expressed our significant concerns with the inherent ambiguity of the BBC's proposed changes and the extent to which this prevented an accurate assessment of their likely impacts. Crucially this ambiguity included the actual duration for which programmes would be available on the iPlayer in the future, the triggers by which box sets will become available, and the definition of 'archive content'.

In the BBC's PIT response, they attempt to offer some clarity on these issues, although their clarification serves to reinforce concerns rather than alleviate them. Under the more detailed proposals, programmes will be initially available for a minimum of 12 months but some titles, including 50% of non-returning drama and comedy, will be available for a further 12 months. In the context of returning series, it appears that previous box sets will be available for as long as the BBC wishes them to be "returning". Similarly, the determination of archive content is not linked to the date of creation nor to the date it was last broadcast, but instead to whether it will be a non-returning series. Furthermore, it was revealed that the BBC intends to carve-out specific genres from the 12 months minima, for example children's programming will be available for up to 5 years. In short, it remains unclear to what extent the BBC would be limited in any way from categorising any programme or series as a returning series (thus a box set) or a non-returning series (archive content) and extending its availability beyond the minimum 12 months. A 12 months duration of availability would seem very much to be the exception rather than the rule.

Of greater concern is the BBC's statement in its PIT categorising the numerous concerns of rightsholders as purely a matter of contractual negotiations. There is a clear disparity between the BBC's intention for greater exploitation of rightsholders' works and no obvious new revenue source to fund these changes. Therefore, to dismiss these concerns as merely contractual issues is disingenuous. Nor is it fair to suggest that the views of rightsholders should be dismissed as they have sufficient power in their negotiations with the BBC to protect the value of their works. If this was indeed the case, why did the BBC Board initially approve these changes before the BBC had obtained permissions from rightsholders or even accurately identified the additional royalty costs to acquire these rights?

**Question 5.1: Do you agree with the concerns that we have set out in Section 5, or are there any others that we should consider? Please provide relevant evidence to support your views.**

We would welcome Ofcom's decision to closely examine the competition impact of less BBC content on other services and any possible reduction of investment in new UK content. These are matters of significant importance to the music industry, who rely upon the revenues generated from their works on the BBC's services and then subsequently on SVoD services. We do, however, question Ofcom's provisional decision to exclude the likely impacts on the value of secondary rights from its investigation. This issue of declining secondary rights value is intrinsically linked to impacts of the reduction of BBC content on other services and the possible harm to the UK's music industry.

The BBC consultation analysis, including the report produced by Frontier Economics, takes a very narrow interpretation of the potential harm of its proposals on the secondary market; notably it makes no reference to the impacts on the separate musical works rights and the music industry. Over the last 5 years that broadcast revenues have stagnated, Ofcom's Communication market report 2018 notes the proportion of broadcast revenues from advertising in 2012 and 2017 was 28%.

Composers and songwriters have increasingly relied upon value from the secondary market, in particular where they are available on SVoD services. SVoD services represent an essential revenue stream for music creators and publishers and the value of revenues derived from secondary exploitation can eclipse the value from the original broadcast. Reduced availability of BBC content on other services could seriously reduce the value of the musical works in those programmes; harm which we believe must be considered by Ofcom in its review.

The report by Frontier Economics forecasts counterfactual revenue losses over the next five years to SVoD services will be in excess of £225 million and for BoD services approximately £70 million. As such, it is hardly surprising that Ofcom has identified a potential risk of a reduction in investment. Obviously any reduction of investment in new content in the UK has a directly negative impact on musical authors and publishers both in commissions for new work and in the opportunity to generate value from those rights in both the primary and secondary market.

In addition, we would urge Ofcom to consider closely the underlying assumption in the competition assessment by Frontier Economics that harm to SVoD and BoD services of withdrawing BBC content can be mitigated by the production of new original content or the acquisition of other rights. The production of new original content is not a quick process and in the context of projected declines in revenues resulting from increased competition from the BBC, original productions would represent a higher risk investment. Furthermore, the BBC has been the single largest commissioner of new UK audio-visual programming for around 100 years; to replace its content would not be a simple task. In either instance the harm will be dependent upon the manner in which works are withdrawn, whether staggered or immediate.

We would be happy to meet with Ofcom to discuss what information we can provide to best inform an assessment of the potential impact on musical authors and publishers of the BBC's proposed changes, particularly to the secondary market.

**Question 5.4: How do you think any potential for market impact of the proposals could be reduced?**

At this stage it would be premature to propose specific interventions to mitigate any negative market impacts of the BBC proposed changes, not least as the assessment of these impacts remains incomplete. However, it is clear a balance needs to be struck between providing the BBC with the flexibility it needs to evolve the BBC iPlayer service and ensuring that the resulting harm of their doing so is controlled and appropriate to the broader market.

We are, again, happy to contribute to Ofcom's consideration of such issues as the process evolves.