

Consultation response



Directors UK Response to Ofcom's consultation on modernising the BBC Operating Licence

About us

1. Directors UK is the professional association of UK screen directors. It is a membership organisation representing the creative, economic, and contractual interests of over 8,000 members — the majority of working TV and film directors in the UK. Directors UK collects and distributes royalty payments and provides a range of services to members including campaigning, commercial negotiations, legal advice, events, training, and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of direction and champions change to the current landscape to create an equal opportunity industry for all.
2. Directors UK welcomes the opportunity to respond to Ofcom's consultation on modernising the BBC Operating Licence. Directors UK believes it is in the UK broadcasting and production industry's interest to have a strong and viable BBC, one that is able to compete in a global market.

Question 1: What are stakeholder views on how Ofcom should assess and measure BBC performance?

3. We recognise that the current measures, such as meeting quotas for set numbers of hours, are no longer a sufficient measure on their own of BBC performance. It is no longer a case of simply putting content out on a linear broadcast channel. In the digital market it is as important to make sure it is received and seen by a variety of audiences who are watching in different ways. Performance measures will need to include a combination of quantitative and qualitative measures, alongside any set quota requirements to support delivery of specific content types.
4. However, we continue to have concerns regarding the proposal to remove quota requirements in genre areas covering arts, music, comedy and religious programmes, children's programmes, and specialist factual programmes. Replacing these quotas with transparency obligations may still result in a reduction of output in some genres, particularly the less-popular, more specialist content areas. When the regulatory obligations for children's programmes on ITV and Channel 4 were removed in 2003, it resulted in them no longer commissioning children's content. If the proposal to remove non-news genre quotas goes ahead it will be even more important to measure and assess how many hours of originated programmes are made in each genre, and where they are being broadcast, in order to swiftly identify if any genres are being under-served.

5. If genre quotas are removed and replaced with transparency obligations we have some concerns over the length of the reporting cycle - from the BBC setting out its annual plans, to reporting outcomes in its annual report, and Ofcom's assessment of these. The process that has been outlined takes 20 months. Given the long production lead times from commission to transmission, it could take a long time for Ofcom to identify and correct any gaps or reductions in provision using just this process. The BBC delivering on its transparency obligations is going to be key, with on-going monitoring and assessment throughout the year by Ofcom. It is important that Ofcom continues to have a strong regulatory oversight and actions its stepping in powers, particularly at an early stage, if it becomes apparent that the BBC plans are not meeting expected levels.
6. It is also vital that audiences continue to have universality of access to BBC content and are able to find and watch it easily. As the BBC is seeking to move towards a digital-first, "service-neutral" approach to delivery, it will remain important for Ofcom and the BBC to track how and where programmes are being shown, and how audiences are accessing the content. With the move to digital-first delivery we are concerned that those without digital access, or unfamiliar with digital on-demand viewing, may not be able to access the same breadth of content. How and where audiences are viewing should be an important performance measure.
7. One area where we would welcome more reporting and transparency is in relation to measuring digital/on-demand use. There is a lack of clear and transparent reporting, based on a consistent set of industry metrics (this is not just an issue for the BBC, but across all online viewing providers). Without this it is limiting the ability of stakeholders to quantify or assess the success or use of a work. Traditionally viewing figures, and the volume of hours of content produced and transmitted, provided measures of how the BBC was broadcasting content and how viewers were watching. In the on-demand space detail regarding viewing data is less readily available or shared.
8. Although BARB continues to improve how it measures VOD consumption, there remain limitations in how stakeholders can use the BARB data for meaningful analysis, not least because of the varying quality and reliability of metadata. Importantly, it is not possible to measure the date that content was first available on a VOD platform or how long content has been available for. Whilst the BARB improvements are welcome, the lack of historical data restricts stakeholder ability to have a real overview of online use over time. The BBC does have this data. Broadcasters and streamers have all the data about their on-demand use but are reluctant to share it. We would welcome support from Ofcom to work with the industry to develop an agreed set of metrics, which will facilitate consistency of reporting data for on-demand viewing/online use. This should be an essential element in how the BBC, Ofcom and stakeholders can measure BBC performance and whether it is delivering its public purpose requirements.
9. With regards the proposed introduction of transparency requirements relating to distinctiveness, we are concerned as to how this will be assessed given its subjective nature. We support the inclusion of measures such as the talent used, the subject matter etc. However, reporting and

assessing measures of distinctiveness across the range of genres and volume of hours may be challenging.

Question 2: Do you agree with the proposals for Public Purpose 1? If not, please explain why.

10. Directors UK has no comment on the proposals for Public Purpose 1.
11. However, we do believe it is vital socially and culturally that the BBC continues to be a trusted and impartial provider of news. We support the need for BBC news to be easily discoverable online, as well as on TV and radio. We support the need for greater transparency from the BBC regarding its plans for news and current affairs on its online services.
12. We note concerns expressed by the NUJ regarding recent BBC proposals to merge the BBC News Channel and BBC World News and encourage Ofcom to explore these concerns further.

Question 3: Do you agree with the proposals for Public Purpose 2? If not, please explain why.

13. Directors UK has no comment on the proposals for Public Purpose 2.

Question 4: Do you agree with the proposals for Public Purpose 3? If not, please explain why.

14. Given their increased use by audiences, it is right that the new licence agreement should extend to include BBC online/on-demand services and these should be reflected within the licensing objectives and conditions.

“Objective P3 (1): original UK content *The BBC should provide a broad range of original UK content, including new UK content”*

16. We agree with this objective and Ofcom’s proposal to retain quotas for original and first-run UK originated productions as part of the licensing requirements. We would be concerned about the impact on the BBC’s distinctiveness and on creative sector investment if there was an increase in acquisitions and less original commissions, therefore we support the introduction of a transparency requirement for the BBC’s acquisition strategy.
17. Regarding the proposal that the BBC Agreement and Operating Licence should be updated to allow the BBC to adopt a more flexible “service-neutral” approach to original production quotas and to include productions commissioned for BBC iPlayer, we recognise that changes in audience behaviour and growing competition from the streamers has meant that all broadcasters and platforms are scrambling to respond and deliver more content to audiences in the form in which they

are accessing it – which is increasingly on-demand. The BBC’s entire strategy is moving increasingly towards greater on-demand use and digital first commissioning, as are ITV and Channel 4 etc. While we acknowledge the principle of modifying the requirement for BBC original production quotas away from individual services, to allow them the flexibility to adopt a more service-neutral approach to meet audience needs, our support for this is dependent on ensuring that creative rights holders who make the content are fairly compensated for the use of their work on whatever channel or platform it is shown on. It is important that the BBC and Ofcom recognise that changes to how and where content is used has tangible implications for those creating the content as traditional primary and secondary market windows are being fundamentally altered.

18. Historically, there has been a value attached to the ongoing use of broadcast content after its first broadcast, and this is compensated for in the form of secondary rights payments to rightsholders for repeats and sales of programmes in the secondary market. This is a key part of the value chain in the content production market and is how many content creators earn a living. If the BBC is given the freedom to move further towards “Digital First” commissioning, it is essential that it recognises the knock on impact this has on content creators. The BBC must fairly value and compensate rightsholders for the changes to the use of their work on these digital services, and provide agreed and transparent data for assessing this.
19. We also have concerns that if more content is created for on-demand use, that there may be an impact on the accessibility of new UK originations for those who rely on linear viewing only. It will be essential that Ofcom monitor where UK originations are made available across the different BBC services.

“Objective P3 (2): Breadth of content *The BBC should deliver a wide breadth of output covering a range of genres and content types, including genres that are underprovided or in decline across public service broadcasting (including: music, arts, religion and other specialist factual content, comedy, and children’s programming).”*

20. Directors UK agrees with this objective aimed at delivering a wide breadth of high quality content, including content that may not be provided elsewhere. But it is important that if Ofcom is proposing to remove quota requirements in genre areas covering arts, music, comedy, religious programmes, children’s programmes, and specialist factual programmes, and replacing these with transparency obligations, that this does not lead to a drop in provision of the less-popular, more specialist content. When the regulatory obligations for children’s programmes on ITV and Channel 4 were removed in 2003, it resulted in them no longer commissioning children’s content. Figure 7 (page 52) shows that other channels/platforms deliver significantly less at risk genres than the BBC. If the BBC is setting its own genre objectives there is a risk that less popular genres may become under-served. If the BBC were to drop its output in these areas, because its quota obligations are removed, it would be detrimental to audiences.
21. Not only does it have an impact on audiences, reductions in some of the more specialist genres has an impact on the workforce and emerging talent. As an example, many of our members are,

or have been, employed as directors on children's programmes, and for many emerging directors this can be an important stage in their career path. It is often where they acquire the skills and experience that enable them to go on and direct some of the more high profile and prestigious programmes. The same is true for other niche genres, which are often more likely to provide early career opportunities compared to bigger budget, higher profile productions. If there is a reduction in these types of programmes it can hinder career development opportunities which ultimately can lead to skills shortages across the industry.

22. If the proposal to remove genre quotas goes ahead, the monitoring of the proposed transparency obligations will be critical. As highlighted above, we are concerned about the time lag between the process that has been outlined of the BBC publishing its intended genre hours (annual plan) and the annual report which provides an overview of actual hours. Ofcom will need to step in quickly if there are any concerns over lack of provision in the BBC plans as there is a long lead time between commission, production and transmission of programmes.

Objective P3 (3): High-quality and distinctive *The BBC should ensure that the output on each service is high-quality, distinctive and supports new UK voices and talent. In developing this output, it should innovate, be ambitious and take risks."*

23. We support this objective, particularly in relation to creative risk-taking and supporting new talent. As highlighted above, the BBC has a key role to play in providing opportunities for, and nurturing, new talent, and particularly for under-represented talent on and off screen. Ensuring the BBC's programme output retains its distinctiveness is vital to the uniqueness of the BBC's offering to audiences. How Ofcom assess distinctiveness within its transparency requirements is the key challenge.

Objective P3 (4): Discovery of UK original content *The BBC should ensure all audiences in the UK can easily discover original UK content. The BBC should also continue to explore how it can innovate the ways in which it engages and reaches audiences."*

24. We support this objective to ensure that all audiences can discover original UK content, including at-risk genres, both on linear broadcast and online services. Provided that rightsholders are appropriately compensated for the use of their work on whatever platform or service it is shown, this includes in the case of Ofcom's suggestion of reaching audiences through sharing BBC content on third party platforms (e.g. YouTube).

Transparency Requirements

25. We agree that the BBC should provide more details in its Annual Plan, this will enable Ofcom and stakeholders to assess future impacts of the BBC's plans and its delivery of them.
26. With regards the proposed introduction of transparency requirements relating to distinctiveness, we are concerned as to how this will be assessed given its subjective nature. We support the inclusion of measures such as the talent used, the subject matter, the format, new-v-returning

series etc. and welcome more exploration of how and why productions deliver distinctiveness for audiences. However, reporting and assessing the various measures of distinctiveness across the range of genres and volume of hours may be challenging and would welcome more insight into how Ofcom and the BBC proposes to do this.

27. We agree with the proposal to require the BBC to set out its plans for acquisitions and how these deliver distinctiveness. We would be concerned about the impact on distinctiveness, and on creative sector investment in UK originations, if there was an increase in acquisitions.
28. We agree with Ofcom about the risks attached to adopting a service-neutral UK originations quota, which may result in some services or genres being better or worse served than others. We therefore agree that if this change goes ahead the BBC should be required to set out in its annual plan how it will be distributing first-run originations across all its services. It is important that this provides sufficient detail for Ofcom and other stakeholders to be able to assess the BBC's plans.
29. As highlighted above, we remain to be convinced that removing quotas for at-risk genres and replacing these with transparency obligations will ensure this content continues to be made. However, should this go ahead, in the absence of quotas we agree with the transparency reporting obligations that would require the BBC to set out the volume of hours it will deliver by genre broken down by first-run originations and acquisitions. We welcome the push for more transparency in terms of plans and performance in the Annual Plan and Annual Report, but there must be accountability for non-delivery in some genre areas and Ofcom must be prepared to step in quickly to address any significant drops.
30. We support the introduction of transparency requirements that will ensure and improve the discoverability of content, particularly regards online delivery of content.

Question 5: Do you agree with our preliminary view on the BBC's request to change Operating Licence conditions 2.21 and 2.32 for BBC Four, including our proposal to remove BBC Four's peak original productions quota and set the 'all hours' quota at 65% instead of 60% as requested by the BBC? If not, please explain why.

31. We would be concerned if acquisitions played too big a role in the content mix on BBC Four over originations. Adapting the restrictions from peak hours to all hours seems a pragmatic approach.

Question 6: Do you agree with the proposals for Public Purpose 4? If not, please explain why.

Objective P4 (1): Representing and portraying all audiences The BBC should ensure that its UK Public Services reflect the diverse communities of all of the UK's nations and regions across its genres. It should accurately represent and authentically portray the UK's diverse communities and raise awareness of different cultures and viewpoints. In doing so, the BBC should take steps to ensure that

its content and programme makers reflect the make-up of different communities from all of the UK's nations and regions

32. Directors UK agrees that diversity reporting needs to improve. The BBC, and all broadcasters and platforms, need to do more to represent and reflect the diverse communities of the UK both on- and off-screen. We have been campaigning on this for years and have seen little improvement in the diversity of the freelance production workforce. We support the proposal to strengthen the BBC's transparency and reporting requirements on diversity, representation and portrayal, and for this to be public. We believe for this to be effective there must be meaningful measurement and the broadcasters need to be held to account for what they are doing to deliver change.
33. With regards workforce diversity, targets and reporting must include measurement of the freelance production workforce working for the BBC, as well as BBC staff. A large proportion of the TV production industry workforce are self-employed freelancers yet they often are not captured in diversity data. Without this data we are not getting a true picture of who is making the programmes we watch and whether they are representative of the population. Knowing who is behind the camera and doing the storytelling is very different from knowing who are the staff managing the organisation. We believe if Ofcom wants to improve representation, portrayal and diversity reporting that this freelance production workforce data is fundamental to it.
34. It would also be useful for Ofcom and the BBC to look at the longer term outcomes of their actions on diversity. A broadcaster saying they gave a job opportunity to 20 directors or writers or producers from under-represented groups often doesn't necessarily translate into long term progress. It may just be 20 people getting one gig. It is not cultural change. It is not lasting. It might be a job for a week or even two, but it is performative and short term, not strategic. What is actually helpful would be to support the BBC, and other broadcasters, to reflect on the impact and outcomes of those sorts of offers - e.g. afterwards, how many were given another block on a show, or another job on a different show? How many have gone on to be trained or hired as leaders?
35. Directors UK agrees with Ofcom that the BBC needs to be more transparent about how it holds itself to account and how it holds production companies to account on delivering diversity commitments as set out in the Diversity Commissioning Code of Practice (DCCoP): *"The BBC's reporting has consistently lacked detail on how it holds itself and its suppliers to account for meeting the DCCoP commitments, so it remains difficult to assess how much progress is being made"*. We support the proposal to require the BBC to provide a more detailed report on how it is delivering on its DCCoP requirements and to *"require the BBC to report on the steps it has taken in respect of any commissioned production team that did not meet the expectations in the Code"*. We believe that strengthening accountability and improving transparency on it is key to delivering change.

Objective P4 (2): Supporting the UK's creative industries *The BBC should distribute its investment in a range of productions from across the UK and ensure that it supports sustainable growth in the creative industries across the UK's nations and regions.*

Objective P4 (3): Serving and creating content for the whole of the UK *The BBC should serve and create content of interest and relevance to audiences from all of the UK's nations and regions. It should take steps to reach, serve and engage all audiences and make content easy to discover. In Scotland, Northern Ireland and Wales, this content should include indigenous language content and a broad range of genres*

36. Directors UK supports the proposal to retain quotas for production in the nations and regions on TV and radio . Maintaining these quotas ensures there is work being created that engages talent from across the country and that reflects audiences across the UK.
37. Regarding the proposal to expand this to allow the nations and regions quotas to include productions commissioned for the iPlayer and to give the BBC flexibility to choose which services new originated content is shown, as stated earlier, if this goes ahead it is essential that the BBC continues to compensate rightsholders fairly for the use of their work commissioned for on-demand use. It will also be vitally important that these commissions also engage talent and production companies based in the nations and regions.
38. We also agree that, in making this amendment to include iPlayer commissions in N&R quotas, that it is vital that audiences in the nations and regions without access to digital services are still able to access this content on non-digital services. Transparency reporting to show how many hours the BBC plans to deliver, and is delivering, of first-run content for each service will be essential to monitoring this.
39. Regarding Ofcom's proposals to allow co-commissions between network and opt-out services to count towards production quotas for the nations and regions, as well as the proposed requirement for them to be shown on the opt-out service first, it is important to ensure that if these co-commissions are to be truly benefitting and supporting the workforce in the nation or region that they must engage local production talent and crew. This must be carefully monitored.
40. Regarding the proposal to remove quotas for non-news programmes on each nations opt-out service, as highlighted earlier in relation to network output, we do have concerns that if quotas for non-news and non-current affairs programmes are removed and replaced with transparency conditions that there could be a reduction in output in less popular genres within the nations and regions. If this proposal goes ahead Ofcom would need to act swiftly should this result in a drop in content commissioning in the more at risk genres. We agree transparency reporting should include how the BBC is delivering content to audiences in the nations and regions via its online services and how it is making this easily discoverable.
41. We support proposals to improve the access and availability of local content and the provision of content in indigenous languages. We also support the proposals for a licensing requirement for the provision of non-news and non-current affairs content and first-run programming content on BBC Scotland with transparency requirements.

Question 7: Taken together, do you agree with the proposals for a new Operating Licence? If not, please explain why.

42. Our responses above have set out our position on specific issues of relevance or concern.

**Directors UK
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