

## **BBC response – Ofcom consultation on its approach to making recommendations on Designation of Television Selection Services (TSS)**

### **Introduction**

The BBC welcomes the opportunity to respond to this consultation. In order to achieve Parliament's intent and futureproof access to great UK content for the overwhelming majority of audiences, the Media Act must now be robustly implemented.

We broadly agree with Ofcom's approach to making recommendations on designation of regulated Television Selection Services (RTSS). We have responded to Ofcom's specific questions below.

### **Comments on Ofcom's approach to defining a TSS**

We welcome Ofcom's approach of considering a platform to be a single TSS across all the different brands of hardware on which it is installed where it has general control. We believe that this approach is a futureproof one that will largely mitigate the risk that certain devices or platforms together meet the threshold for regulation, but separately may not have done.

However, we note that there remains the risk that a company launches a new operating system or user interface and argues that it is so different to previous versions that it constitutes a brand new TSS, and is therefore able to avoid regulation if that TSS falls under the user threshold (at least initially). We would find it helpful for Ofcom to set out how it will consider this issue, given it could undermine audience expectations and needs, as well as being challenging for PSBs given the significant time and resource it takes to ensure that our services are included in new OSs.

### **BBC responses to the consultation questions**

*Question 1: Do you agree with our proposed principles and methods for assessing the number of UK users of a TSS?*

The BBC agrees with Ofcom's proposed principles and methods for assessing the number of UK users of a TSS.

We note that Ofcom states that it will use "the best available evidence to provide an objective and reliable basis to measure the number of people in the UK using a TSS". We agree that this is an important principle and that the data used to assess the number of UK users of a TSS should be comprehensive, objective and impartial.

*Question 2: Do you agree with our proposed principles and methods for assessing whether the number of UK users of a TSS is significant?*

*Supplemental question 1: We welcome views on the potential use of "number of TSS installed on ITE devices in UK homes" as a proxy, and on the potential use of an absolute number of UK users when setting a threshold for significant use in our first report setting out our recommendations on designation of TSS.*

The BBC broadly agrees with Ofcom's proposed principles and methods for assessing the number of UK users of a TSS.

In the absence of other data sources, we agree that using the "number of TSS installed on ITE devices in UK homes" could be a proxy for the number of UK users (obviously noting that the number of users is likely to be higher than the number of households).

We agree that an absolute number of UK users is a helpful approach for designating RTSS, in contrast to other methods referred to on page 20 of the consultation (such as market shares) which would be harder to calculate and could fluctuate more often so creating uncertainty in the designation process. The threshold must strike the right balance between regulating where there is greatest need and most benefit to audiences – and securing that PSB services and content continue to be "available to the overwhelming majority of the population" – while minimising the regulatory burden on new and innovative providers.

For borderline cases, it may be valuable for Ofcom to take demographic data into account when determining whether a platform should be in scope. For example, if a particular TSS was used by a high proportion of young audiences relative to other platforms, Ofcom might be more minded to include the platform within the scope of regulation.

We note that Ofcom "might not recommend the designation of [...] a TSS if evidence suggests that its user numbers are declining and are unlikely to be over the threshold for a reasonable period of time after designation". Equally, if a new TSS is projected to grow very quickly, it might be helpful for Ofcom to consider how it could designate that platform at pace to ensure that PSB prominence wasn't eroded.

Finally, subject to our comments below in response to supplemental question 3, we believe that the bar for an RTSS being removed from regulation if it falls below the reach threshold should be different to the bar for designation. For example, there should be a minimum period of time (at least two years) whereby an RTSS's reach should consistently fall below the threshold before it is removed from regulation – in order to reflect the investment that PSBs make in placing our services on TSS, as well as providing certainty for RTSS providers, DIPS providers, and audiences alike.

*Question 3: Do you agree with our proposed principles and methods for assessing the manner of using a TSS?*

*Supplemental question 2: We welcome views on this potential approach to assessing the manner of use of a TSS for our first report setting out our recommendations on designation of TSS. Please provide evidence to support your views.*

The BBC broadly agrees with Ofcom's proposed principles and methods for assessing the manner of use of a TSS.

Ofcom does not set out how it would define what constitutes "active" usage of TSS. At a minimum, the BBC believes that monthly use of a device should mean that a TSS is

regulated (assuming it meets the other designation criteria). We think that this would strike the right balance between securing appropriate prominence for PSBs while remaining a proportional approach. We do not think “active” usage should be defined as requiring more frequent than monthly use of a device.

*Question 4: Do you agree with our proposed principles and methods for advising on the functions that a TSS is capable of carrying out, or may be capable of carrying out?*

The BBC broadly agrees with Ofcom’s proposed principles and methods for advising on the functions that a TSS is capable of carrying out, or may be capable of carrying out.

We understand that Ofcom will take a broad approach to assessing whether a TSS is “capable, or may be capable of” functioning as a regulated TSS by complying with duties such as carrying the designated PSB apps, presenting TV apps and programmes with different levels of prominence, and including accessibility features. We welcome this: as user interfaces evolve to rely more heavily on AI-driven algorithms, recommendations, and personalisation, a broad assessment of capability will be necessary to ensure that the TV prominence framework continues to deliver PSB content to audiences.

*Supplemental Question 3: We welcome views and supporting evidence for our first report setting out our recommendations on designation of TSS on:*

- *The number of people using older versions of TSS that are no longer supported by their provider;*
- *When TSS providers release a new version of their service, for how long do they normally support it?*
- *When IPS providers release a new version of their service, for how long do they normally support it?*
- *The technical limitations and/or costs that are associated with supporting older versions of TSS and older versions of IPS still available in the market.*

The BBC is committed to universal access to our services as required under our Charter and Agreement. We have a commitment to audiences and manufacturers: as long as their devices meet our specifications (which may evolve in line with technical developments and industry best practice) and Distribution Policy conditions, we will support them. We will always look to support audiences where we no longer make our content available on a device.

The BBC does not have a fixed time period for which we will continue to support a device. When reviewing our support of a TV device range, the BBC would consider factors such as: whether there are known severe technical or security issues; performance and quality of user experience; whether the provider is actively distributing or can viably modify an older version of the TSS; how far the device supports or includes other TV applications; the potential impact on universality and accessibility; value for money for Licence Fee payers. Given an RTSS might span different hardware, we note that different issues could arise for different devices.