

Professional Publishers Association (PPA) Response to Ofcom Consultation: How Ofcom Regulates the BBC

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About Us

The Professional Publishers Association (PPA) is the membership network for UK consumer magazine media and business information publishers, representing around 160 of the UK's most renowned publishing houses. With more than 40 million adults in the UK reading magazine media every month, the sector is worth £3.74 billion to the UK economy, employing more than 55,000 people.

The PPA's membership incorporates the UK's largest publishing houses, including Bauer Media Group, Centaur, Condé Nast, The Economist, Haymarket Media Group, Hearst UK, Immediate Media, and William Reed Business Media as well as many smaller independent publishers. A full list of members can be found here: <https://www.ppa.co.uk/members>

Question 2: Do you agree with the proposed approach to reviewing the BBC Operating Licence? If not, please explain why.

We agree with Ofcom that:

"...the Licence should enable us to hold the BBC to account for its delivery across all its services, not just its television and radio services. By expanding our Licence to cover the BBC's online services, such as BBC iPlayer and BBC Sounds, more comprehensively, we would seek to achieve greater transparency as to how the BBC uses those services give to deliver for audiences, as well as the BBC more recognition for the contribution these services make to the delivery of the Mission and Public Purposes."

From a magazine and business media publishing perspective, this new approach would be particularly important in relation to BBC News Online and BBC Sounds. In Ofcom's *Operating Licence for the BBC's UK Public Services*¹, BBC Online is currently considered as a single service (replicating the *Agreement between the Secretary of State for Culture, Media and Sport and the BBC*²), despite its varied and disparate scope, and its continued growth. The definition reads:

"As online services designed for users across the United Kingdom, BBC Online: a comprehensive online content service, with content serving the whole range of the BBC's Public Purposes and including the BBC's news and sports websites, BBC iPlayer and BBC Three for younger adult audiences."

¹ *Operating Licence for the BBC's UK Public Services*, p.37:

https://www.ofcom.org.uk/__data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf

² *Agreement between the Secretary of State for Culture, Media and Sport and the BBC*, p.50:

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/agreement.pdf

BBC Sounds is not mentioned at all, despite the BBC's Annual Plan 2020/2021 describing the service as "at the heart of our audio strategy"³, and the BBC News Online website is not distinguished as a standalone service. These services should be treated as standalone, consistent with the way that the BBC's television channels and radio stations are classified. This should include a clear statement as to the scope and remit of BBC News Online and BBC Sounds, and the role the services play in delivering the BBC's public purposes. Without clarity on what the BBC's online services are, it is doubtful that Ofcom can carry out its duties in regulating these services' competitive impacts. Indeed, the lack of distinction has contributed to a lack of transparency around the BBC's online services, inhibiting appropriate scrutiny.

We further agree with Ofcom that:

"...the Licence should enable Ofcom to hold the BBC more effectively to account by requiring greater transparency and more effective reporting from the BBC, both when it sets out its plans for delivering its Mission and Public Purposes and when it assesses how it has delivered against those plans. We believe increased transparency is key to a new Licence, and any changes to give the BBC more scope to decide how to deliver its Licence obligations cannot be delivered without it."

One area that would benefit from more transparent and effective reporting is the BBC's obligation to provide links to third party content.

Under the Operating License, the BBC must ensure that it provides adequate links to third party online material, particularly within news.⁴ In its *Review of BBC News and Current Affairs*⁵, published October 2019, Ofcom stated that its work indicated that the BBC could provide more links to external, third party content. Ofcom acknowledged that external links support the wider industry and benefit audiences by providing access to a wider range of material.

In the BBC's *Annual Report and Accounts 2020/2021*, in a table setting out the BBC's compliance with the regulatory conditions in Ofcom's operating licence, the BBC indicated that it had met its quota for "Adequate links to material provided by third parties"⁶ on BBC Online. However, a figure was not provided for the target "Quota", or the actual number of links "Achieved". Therefore, it is not possible to understand whether the BBC's target Quota was appropriate, which sources were linked to, or whether there was any improvement year-on-year.

Furthermore, In the BBC's *Annual Report and Accounts 2019/2020*, in a table setting out the BBC's progress in achieving its Annual Plan commitments to make the BBC distinctive, the BBC indicated that

³ BBC's Annual Plan 2020/21, p.25:

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf>

⁴ *Operating Licence for the BBC's UK Public Services*, p.6, p.12:

https://www.ofcom.org.uk/__data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf

⁵ *Review of BBC News and Current Affairs*, p.5, p.19-20:

https://www.ofcom.org.uk/__data/assets/pdf_file/0025/173734/bbc-news-review.pdf

⁶ *BBC Annual Report and Accounts 2020/2021*, p.127:

<https://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/2020-21.pdf>

it has achieved the commitment to: “Look at the most effective ways to support wider industry by hosting or signposting to their content across BBC Online. Continue to implement editorial guidelines to ensure we are linking out from our stories where editorially appropriate”.⁷ In doing this, the BBC stated it was “assessing our provision of adequate links following Ofcom’s review of BBC News output. Alongside our Editorial Guidelines, we have further guidance on feeds and links”.⁸ This statement does not give any indication as to the substance of the assessment or the further guidance for feeds and links, preventing stakeholders from assessing whether these actions are likely to be effective.

In its *Annual Report on the BBC 2019/2020*, Ofcom stated that it had engaged with the BBC on this issue, and that the BBC had explained its new compliance process⁹ – it seems this compliance process has not been made publicly available for scrutiny. Ofcom also reported that the BBC confirmed it would be providing further guidance to journalists to ensure that links and attribution would continue to be provided across its online news content. Furthermore, Ofcom also referenced the BBC’s *Annual Report and Accounts 2019/2020*, despite these offering no evidence of progress made or the targets set. The heading of the section concerning third party links was entitled: “The BBC has acted on our recommendation on linking to online sources outside the BBC”.¹⁰ Unfortunately, the absence of figures or detail makes it hard for external stakeholders to discern whether this truly is the case.

To achieve transparency, we agree with Ofcom that:

“...the BBC’s Annual Plan could be the key vehicle for the BBC to provide a clear and full explanation of how it plans to comply with the quantitative and qualitative Licence requirements we would set, and deliver the Mission and Public Purposes.”

In its Annual Plan 2020/2021, the BBC set out examples of its commitment to distinctiveness. These included: “The BBC will improve the quality of links within news articles to provide our audiences with relevant further information, sources or resources.”¹¹ Also: “We are committed to supporting the wider news industry, so will continue to provide strong attribution and linking to other news providers where relevant.”¹² Whilst this is an acknowledgement of its plans to comply with the Licence requirement to provide adequate links to third party online material, these statements do not constitute an explanation of how the BBC will comply with these requirements.

To remedy this and other transparency issues, we support the notion that Ofcom should require the BBC, through enforceable reporting obligations, to make specific commitments in the Annual Plan for

⁷ BBC Annual Report and Accounts 2019/2020, p125:

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/2019-20.pdf>

⁸ BBC Annual Report and Accounts 2019/2020, p125:

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualreport/2019-20.pdf>

⁹ Ofcom’s Annual Report on the BBC 2019/2020, p.36:

https://www.ofcom.org.uk/__data/assets/pdf_file/0021/207228/third-bbc-annual-report.pdf

¹⁰ Ofcom’s Annual Report on the BBC 2019/2020, p.36:

https://www.ofcom.org.uk/__data/assets/pdf_file/0021/207228/third-bbc-annual-report.pdf

¹¹ BBC’s Annual Plan 2020/21, p.50:

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf>

¹² BBC’s Annual Plan 2020/21, p.50:

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf>

the year ahead for how it plans to deliver Ofcom's regulatory requirements. This should include quantitative commitments; an explanation of how such commitments would deliver its Mission and Purposes; and an explanation of how the BBC will monitor the impact of any changes. In the case of third party links, this would provide clarity on the proportion and volume of the third party links that the BBC is aiming for; clarity on how this will meet the Mission and Purposes; and clarity on how the BBC will measure the success of third party links in supporting the wider news industry.

We also support a requirement for the BBC's Annual Report and Accounts to explain how the BBC has met its own commitments and provide clear evidence and explanations. This would provide further clarity on the BBC's progress towards making adequate provisions of third party links. We hope these disclosures could provide reassurance to commercial publishers that the BBC is fulfilling its commitments on third party links, and also explain what the BBC's specific aims are in this area and how it will quantify success. We further support a requirement for the BBC to set out what actions it will take to address any areas of concern.

Question 5: Do you agree with the issues we have identified with the processes for assessing the competitive impact of changes to the BBC's UK Public Services? If you consider there should be changes to these processes, please set out what these are and, if possible, provide any relevant evidence.

Both BBC News Online and BBC Sounds have expanded through incremental changes which individually may have had a limited impact on competitors, but which taken together constitute a significant change which has expanded the scope of the services. The creeping expansion in scope of the BBC's Online services go unscrutinised due to shortcomings in the present process for assessing the competitive impact of changes to the UK's Public Services.

Despite the prevailing lack of clarity on the purpose of BBC News Online and BBC Sounds, an absence of regulatory oversight has allowed their scope to expand. The current assessment procedure begins with the BBC developing changes and conducting a materiality assessment; if the changes are material, it must then conduct a Public Interest Test. Ofcom reviews the BBC's materiality assessment, and determines if the changes are material and whether the BBC must conduct a Public Interest Test.

The key limitation of this process is that it allows the BBC to design incremental changes to its services which do not meet the materiality thresholds and are thus not scrutinised. (This may be intentional, yet it could also be that a lack of direction or uncoordinated changes create material changes that are not scrutinised due to a lack of coherent planning. Regardless, the impacts are equally harmful.) Indeed, the opening of, or outcomes of such materiality assessments are rarely made public, preventing stakeholder engagement. The BBC's own *Policy on material changes to the BBC's public service activities and commercial activities* document states: "The BBC will take account, where appropriate, of the views of third parties in reaching a decision on materiality. The BBC's Annual Plan will reference potentially material changes to the UK public services that the BBC intends to make over the coming year."¹³ However, this stakeholder engagement and trailing of plans has not occurred in some significant cases.

¹³ *BBC Policy on material changes to the BBC's public service activities and commercial activities, Part 2.21:*
http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/policy_material_changes.pdf

We will now highlight developments in the BBC's Online News and Sounds offerings which constitute significant changes, which have not received significant scrutiny or stakeholder engagement due to these shortcomings:

- ***BBC News Online***

The scope of the BBC News Online offering has widened significantly in recent years. Recent developments include:

- BBC Stories was launched in late 2016. In its *Annual Reports and Accounts 2016/2017*, the BBC stated: "*BBC News continues to refresh its output to attract new audiences. New formats such as BBC Stories are helping to reach a broader audience.*"¹⁴ In the same document, the BBC stated: "*We will build on the success of BBC Stories, offering more mobile and social-focused content aimed at different audience groups...*"¹⁵
- In its *Annual Plan 2020/2021*, the BBC stated: "*Our new approach to digital storytelling will power the modernisation of the BBC News online offer and News app. Later this year the app will be completely refreshed and rebuilt from the ground up.*"¹⁶
- In its *Annual Plan 2021/2022*, the BBC stated it would "*increase investment in our News online product, enabling us to deliver a range of improvements including new article formats [...] and rolling out changes to the BBC News app to deliver a more personalised, intuitive and visual experience.*"¹⁷

The success of BBC Stories is reflected in high readership numbers documented in the 2018 Reuters Digital News report, which found that 14% of people surveyed only accessed the BBC online in the past week for their news (app, website, social media), meanwhile the figure elsewhere in Europe is 5% or lower.¹⁸ In Finland, for example, there is considerable investment in public media, but most citizens use the public broadcaster to supplement news from other commercial sources. This suggests that BBC News Online output has created an over reliance on free news from public service broadcasters.

A contributing factor of this reliance is likely the BBC's decision to pursue more magazine style content (BBC Stories is the successor to BBC Magazine – the BBC Magazine page now links directly to BBC Stories). This is arguably encroaching on, duplicating, or even displacing the efforts of independent UK

¹⁴ *BBC Annual Reports and Accounts 2016/2017*, p.15:

<https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/reports/pdf/bbc-annualreport-201617.pdf>

¹⁵ *BBC Annual Reports and Accounts 2016/2017*, p.21:

<https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/reports/pdf/bbc-annualreport-201617.pdf>

¹⁶ *BBC Annual Plan 2020/2021*, p.27:

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf>

¹⁷ *BBC Annual Plan 2021/2022*, p.17:

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2021-22.pdf>

¹⁸ *Reuters Digital News Report 2018*, p.26: <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/digital-news-report-2018.pdf>

media. This reduces the distinctiveness of the BBC's output and raises competition concerns, as it is creating content that may well disincentivise audiences to pay for content.

The decisions the BBC has taken which have led to the growth of BBC News Online, and its 'magazine' style content, are clearly a key part of the Corporation's future vision and efforts to attract new audiences. However, these incremental decisions have not been subjected to adequate scrutiny: any materiality assessments are not formally made public, meaning there is no opportunity for stakeholder engagement. This widening of scope has caused a substantial change in the scope and output of BBC News Online, that has not been subject to publicly available materiality assessments.

- ***BBC Sounds Podcasts***

Ofcom permitted the creation of BBC Sounds in 2018 based upon a materiality assessment, and in 2018, the BBC first "*commissioned new series which aren't made up of on-air programmes and exist first and foremost as podcasts*".¹⁹ The details of the materiality assessment (which included the creation of 'podcast-first' content not included in BBC Radio schedules), were not made public at the time. This allowed no stakeholder engagement on the decision to create what has become a distinct, individual service, and with it a new form of content (podcast-first content). This also came despite the BBC's commitment to taking account of the views of third parties, "*where appropriate*".²⁰ It would be interesting to learn of the BBC's criteria for judging whether stakeholder engagement is appropriate or not.

The scope of BBC Sounds has expanded since launch. Recent developments in podcasts (none of which were in place at the beginning of 2018) include:

- In 2018, the BBC added archived content to BBC Sounds for the first time.
- In 2019, the BBC increased the number of categories in the BBC Sounds app from 12 to 40.
- In 2020, the BBC announced it will host non-BBC podcasts.²¹

These recent developments are all potentially material changes, as they significantly expanded the scope of BBC Sounds beyond what was originally envisaged when Ofcom permitted the creation of BBC Sounds. It is unclear if potential anti-competitive impacts have been adequately considered in these decisions: for example, whilst hosting non-BBC podcasts may appear to be positive for commercial publishers, this could further entrench BBC Sounds market position as the 'must have' platform for

¹⁹ *BBC Annual Report and Accounts 2017/2018*, p.37

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724568/bbc_annualreport_201718.pdf

²⁰ *Agreement between the Secretary of State for Culture, Media and Sport and the BBC*, p.7

http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/agreement.pdf

²¹ *BBC Annual Plan 2020/2021*, p.26:

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2020-21.pdf>

podcast listening. Furthermore, the ability of publishers to monetise their podcast content could be impacted by BBC terms and conditions, disincentivising further investment in podcasts.

It should be noted that BBC's *Policy on material changes to the BBC's public service activities and commercial activities* lists some of the factors that are taken into account when understanding the scale of adverse competitive impacts. One of these factors is: "Distinctiveness (e.g. how will the proposal differ from commercial services and to what extent is usage likely to be complementary or substitutional?)".²² Much of the BBC's new podcast offerings are focused on young adults and are indistinct from content that would be developed by commercial publishers in a properly competitive market. Yet a lack of transparency in the materiality assessment means there is no guarantee that distinctiveness of content is properly scrutinised.

Materiality, BBC PIT and Ofcom BCA

Taking into account the above, the PPA agrees with Ofcom that:

"More clarity on the initial materiality process could be beneficial".

However, this is the bare minimum that should be expected. Ofcom states that:

"We plan to consider whether any changes are needed to the BBC PIT and Ofcom BCA processes to ensure the BBC can effectively meet audience needs and that fair and effective competition is protected."

Ofcom should:

- (a) Consider limiting the frequency with which the BBC can propose changes, preventing the BBC making such frequent incremental changes which constitute a substantial shift in scope over time.
- (b) Consider implementing a formal consultation process for all changes that the BBC proposes that warrant a materiality assessment, providing stakeholders with the opportunity to fully engage with the process. (This would provide the initial clarity on the initial materiality process that Ofcom believes could be beneficial).

Materiality Criteria

Ofcom could also consider scrutinising the criteria that the BBC uses to decide whether or not a materiality assessment is necessary. In its *Policy on material changes to the BBC's public service*

²² BBC *Policy on material changes to the BBC's public service activities and commercial activities, Part 2.18*: http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/policy_material_changes.pdf

activities and commercial activities, some of the changes listed that would not generally be treated as material are:²³

- *“Distributing an existing channel in a different technical format, or a distribution arrangement undertaken in line with the BBC’s policy and Ofcom’s Operating Framework.”*
- *“Changing the genre mix or volume in services, to the extent that it does not substantially alter the character of the service.”*
- *“Changing online functionality, discovery or navigation, to the extent that it does not substantially alter the character of the service.”*

As part of a move to providing greater clarity on the materiality assessment, it would be useful to understand the criteria for what the BBC considers a substantial alteration to the character of a service in the above contexts, and why distributing an existing channel in different technical formats is not considered a potentially material change. For example, the BBC’s distribution of BBC Newsbeat material in written online content has fundamentally different potential impacts on competition than its Radio format. If the BBC Online Newsbeat page were to be planned today, it would be unreasonable for the BBC to consider it an immaterial change purely based on the fact that it is distributing an existing channel in a different technical format. Comparable future changes should not be dismissed for materiality assessments on this basis only. This, and clarity on the criteria for what the BBC considers a substantial alteration to the character of a service in the above contexts, would reassure stakeholders that the BBC is properly accounting for competition concerns.

Ex-Ante Regulation

The existing Ofcom BCR framework is concentrated on current harms with a full evidential basis. This is not effective in preventing anti-competitive harms in rapidly developing digital markets such as podcasts. The BBC’s Annual Plan 2020/2021 states: *“we will focus our commissioning spend to ensure we are delivering bigger, world-leading podcasts as well as long-running commissions that will become favourites for years to come”*.²⁴ Commercial publishers, which do not have the benefit of substantial funds from the license fee, are still developing their podcast strategies. The BBC’s stated aim of being a world-leader in podcasts must be scrutinised by Ofcom immediately, rather than allowing the Corporation’s dominance to stunt the growth of potentially valuable new revenue streams for commercial publishers. This is particularly troubling given the BBC’s targeting of young adults, which are particularly valuable for commercial publisher, with podcasts that are indistinct from what would be produced by a fully developed commercial market.

²³ *BBC Policy on material changes to the BBC’s public service activities and commercial activities, Part 2.3:*
http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/policy_material_changes.pdf

²⁴ *BBC Annual Plan 2020/2021, p.26:*

<http://downloads.bbc.co.uk/aboutthebbc/reports/annualplan/annual-plan-2021-22.pdf>

Ofcom's *News Consumption in the UK: 2020* study shows that magazines are valued over any other media platform for their 'depth of analysis and content not available elsewhere,'²⁵ whilst the *2020 Reuters Institute Digital News Report* states that 50% of all respondents to its survey said that 'podcasts provide more depth and understanding than other types of media'.²⁶ Hence, if the BBC is able to use its funding and other advantages to duplicate a critical element of magazine publishers' USP, the journey to sustainability in the digital age will become more challenging.

Deloitte estimates that the podcast market could top \$3.3bn globally by 2025²⁷, around three times its current size. With much of this global increase set to come from advertising, there is a danger that the BBC's ad-free content will make it difficult for UK competitors to monetise their podcasts, leaving UK podcast production lagging behind global leaders such as the US. Indeed, the *2020 Reuters Institute Digital News Report* shows that 39% of Australians and 37% of Canadians said they would be willing to pay for podcasts they liked, compared to only 24% of people in Sweden and 21% in the UK²⁸ – as the report observes, many popular podcasts in the latter two nations come from free-to-air public broadcasters. This has the potential to hurt magazine publishers' revenues across their entire business, preventing investment not only in podcasts, but all forms of high-quality journalism.

Put simply: the BBC's huge funding, data, and other advantages can allow it to become dominant in a market before commercial businesses have developed their own strategies. This not only impacts commercial publishers' ability to monetise podcasts, but also their ability to attract talent and the distinctive nature of their content. Furthermore, the BBC publishes some podcasts exclusively on BBC Sounds before other platforms; where its podcasts are published on other platforms, it clearly intends to pull consumers into the BBC Sounds platform. Therefore, the BBC is forcing out competitors as the emerging podcast market develops. Ofcom's approach of not opening a BCR until entrenched anti-competitive impacts have fully developed is not appropriate for fast growing digital markets, allowing the BBC to cement its dominance unchecked.

The Government's consultation on a new pro-competition regime for digital markets sets out a framework for ex-ante regulation which will be conducted by the Digital Markets Unit.²⁹ This logic of this new regime is underpinned by the reality that digital markets and technologies are developing too rapidly for ex-post regulation to prevent anti-competitive harms occurring. One of the aims of the new pro-competition regime is to boost the sustainability of the press by reducing the likelihood of anti-competitive harms occurring at all, rather than remedying them after the harms have begun to occur. Ex-ante regulation of the BBC could bring similar benefits.

²⁵ *News Consumption in the UK: 2020*, p.72:

https://www.ofcom.org.uk/__data/assets/pdf_file/0013/201316/news-consumption-2020-report.pdf

²⁶ *2020 Reuters Institute Digital News Report*, p.11:

[:https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR_2020_FINAL.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR_2020_FINAL.pdf)

²⁷ *Digital News Project: Journalism, media, and technology trends and predictions 2021*, p.26:

https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-01/Newman_Predictions_2021_FINAL.pdf

²⁸ *2020 Reuters Institute Digital News Report*, p.27:

https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR_2020_FINAL.pdf

²⁹ *Consultation: A new pro-competition regime for digital markets:*

<https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets>

At present, particularly in relation to podcasts, there is a danger that the BBC's market power will allow it to further cement its dominance in podcasting before publishers have had the opportunity to properly develop their own strategies. This means it may take some time for a clear evidential basis of harm to fully emerge in this fast-growing digital sector, by which time it will be extremely difficult to reverse these anti-competitive impacts.

Therefore, Ofcom's BCR process should be adequately forward looking, and reflect the future impact of BBC services and its impacts on fast growing developing digital markets. This would make the BCR process significantly more effective in creating a regulatory environment that is conducive to competition.