



Ofcom: Review of proposed increased amount of archive content on BBC iPlayer

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 members are the TV and film directors, and underlying rightsholders, who make the distinctive programmes which help deliver the BBC's public mission.
3. Most directors are freelance and a proportion of their income and livelihood is dependent on the payments they receive from the royalties/residuals earned for the repeat and ongoing use of their work in the secondary market. As the industry moves increasingly towards digital first content delivery it is important that the models for compensating creators keep pace and are fit for purpose if we are to ensure we have a talent pipeline to draw upon.
4. 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 thrive in a global market. However, as the BBC seeks to move increasingly towards greater digital content delivery through the iPlayer, there must be fair remuneration for the rightsholders upon whose work continued growth and success is built.
5. Any changes or additions to the availability and use of content on the iPlayer must be addressed in the agreements struck with rightsholders to ensure that audiovisual authors (writers and directors) receive fair compensation for all uses of their work and reflect the increased digital use.
6. It is also important culturally that the BBC continues to invest in the UK production sector through commissioning UK originated programming, and employing UK based production companies and production talent.

Consultation questions:

- 1: Do you agree with the BBC's assessment in the BBC PIT submission about the market impact of the Proposal? If you disagree, please provide any evidence supporting your reasoning.
- 2: Do you agree with Ofcom's initial assessment that the Proposal is not material? If you disagree, please provide any evidence supporting your reasoning.

3: If you consider that the Proposal is material, please explain whether you consider Ofcom should undertake a BCA or a Shorter Assessment of the Proposal.

Directors UK Response:

7. Whilst we recognise the need for the BBC to be able to respond to the new viewing dynamics and audience expectation in the rapidly changing market, our primary concern is to ensure that rightsholders are fairly compensated for any additional use of their work, and that the BBC continues to invest in and commission new original works that employ the UK's creative talent.
8. Subject to there being no detrimental market impacts we don't object to the principle of the BBC making more content available to audiences on the iPlayer, provided that rightsholders are fairly compensated for this use and that rights remuneration models and agreements are fit for purpose for the proposed changes to the iPlayer. With increasing pressure for on-demand content and longer windows of availability fundamentally changing the market dynamic, it is more important than ever that creators are fairly remunerated for all uses of their work - both on traditional linear TV and for on-demand digital use.
9. In Directors UK's response to the BBC PIT consultation (July 2022) we highlighted our concerns over the lack of information and analysis provided in order to make an informed assessment of their proposals. We welcome the additional information provided in the PIT submission to Ofcom, however we note that the modelling and analysis of potential impacts was conducted by the BBC themselves rather than independent of the BBC. We also note Ofcom's comments about the challenge in assessing the robustness of this analysis.
10. We note that the BBC has said that it cannot set out detailed plans of the exact shape and size of the expanded archive on BBC iPlayer "*Instead the size and mix of the BBC iPlayer catalogue will vary over time, adapting to audience tastes, current events, contractual arrangements with rightsholders and other trends*", and so has based its modelling on guide percentage increases in volume of content (300% and 600%), and on their expected spend on additional archive not exceeding 1% of PSB TV Spend, with the cost of archive being subject to the market.
11. The BBC says it is not proposing to change the standard 12-month availability of programmes, or any other change that would require a renegotiation of its Terms of Trade with Pact or agreements with other underlying rightsholders. It also states that: "*The BBC's proposals to enable increased access to archive content on BBC iPlayer are intended to be managed through existing freely negotiated deals with underlying rightsholders. Such deals are negotiated periodically and, as part of such regular discussions, the BBC would expect to manage any changes with underlying rightsholders as part of the normal course of business alongside other matters*".
12. We reiterate the importance of ensuring that there must be fair compensation for the use of directors' works on the iPlayer. To achieve this the BBC needs to be more transparent with rightsholders about its on-demand data and uses to make these discussions meaningful. Where types of use and windows for rights are changing, there is currently no standard way of measuring the before and after impact. We still don't have the relevant data to be able to fully assess whether our members have been compensated fairly for the 2019 changes to the iPlayer.

13. The broadcasting sector has changed dramatically in recent years, and in another 2-3 years it is likely it will look very different again. This has a knock on impact on content creators and rightsholders who earn their income from the compensation for the ongoing use of their works. The challenge for us as rightsholders is that the deals currently negotiated are based on the existing market sector. As the BBC moves towards greater on-demand/iPlayer led viewing the risk is that the current model won't be fit for purpose and we will need to agree new terms to fairly compensate for use. It is vital that the agreements struck between the BBC, PACT and rightsholders reflect the increased value and use of streamed and on-demand works, if we are to ensure the continued viability of the rights system in a digital market.
14. With regards type of content that will be added, we recognise the BBC has to make catalogue choices based on what it is allowed to use, overall affordability, and what performs well on-demand, however we would be concerned if this meant that some genres or audiences became underserved by the choice of content on the iPlayer.
15. We would also be concerned if in the future the BBC was able to make further changes to use, or duration of use, of content on the iPlayer without obligation to consult with the stakeholders and rightsholders who would be affected, and welcome Ofcom's position that, *"as the BBC develops BBC iPlayer, the regulatory framework set out in the Agreement still applies and the BBC will need to consider whether any developments it wishes to make are material"*. It is also right that Ofcom recognises that *"similar future changes may be more incremental in effect, and so may never be material individually"* and that they would consider launching a BCR if there was concern that a BBC public service activity is having a significant adverse impact on fair and effective competition.

Directors UK

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