



# The BBC's Draft Distribution Policy

Consultation Document

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# About the consultation

## Purpose

1. The BBC has opened a consultation in order to seek feedback on its draft Distribution Policy – which governs how its services are made available to the public to watch, listen or use including the conditions it sets for distribution via third parties. This document explains why we are consulting, what we are consulting on and how to respond. Final decisions on the contents of the Distribution Policy will be made by the BBC Board, taking account of responses to this consultation and any views expressed by Ofcom.

## Introduction and Background

2. The Royal Charter<sup>1</sup> requires that the BBC Board set a policy for the distribution of the UK Public Services. The Framework Agreement<sup>2</sup> further requires that the BBC develops and publishes a strategy and policy for the distribution of the UK Public Services, and the BBC must distribute its output and services according to that strategy and policy. Before publishing the policy, the BBC must consult with the public and Ofcom.
3. As set out in the draft Distribution Policy, the BBC's Royal Charter and Framework Agreement set out a number of duties relevant to the BBC's distribution. The Framework Agreement also imposes two key requirements on the BBC in relation to the distribution of its UK public services.<sup>3</sup> Firstly the BBC must do all that is reasonably practical to ensure that audiences are able to access UK Public Services that are intended for them in a range of convenient and cost effective ways which are available or might become available in the future. In doing so, the BBC may impose reasonable conditions under which it will make its output and services available to third parties. However the Agreement also sets out a second requirement that any such condition must not adversely impact fair and effective competition and must be fair, reasonable and non-discriminatory.
4. Ofcom, as the BBC's regulator, has set out two further requirements on the BBC's distribution activities<sup>4</sup>:
  - a. *"The BBC must offer the public services to third parties in response to reasonable requests for supply, except where the BBC has an objective justification for not doing so."*
  - b. *"In offering the public services for supply, and in supplying those services, the BBC must act on a fair, reasonable and non-discriminatory basis."*

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<sup>1</sup> Charter, Article 20 (3h), Principal functions of the Board

<sup>2</sup> Agreement, Clause 62

<sup>3</sup> Agreement, Clause 61

<sup>4</sup> Following a public consultation [www.ofcom.org.uk/consultations-and-statements/category-1/bbc-distribution-guidance](http://www.ofcom.org.uk/consultations-and-statements/category-1/bbc-distribution-guidance)

5. The draft Distribution Policy (“the draft Policy”), on which we are consulting, sets out the principles that the BBC Board considers may be necessary for the BBC to follow to fulfil its duty with regard to these requirements as required by clause 62 of the Framework Agreement (“the Clause 62 requirements”). The draft Policy therefore:
  - a. sets out how the BBC proposes to fulfil its obligations under clause 61 (referred to above) to make the UK Public Services widely available;
  - b. includes the conditions (which must be “reasonable”) under which the BBC proposes to make its output and services available to third parties, for example to secure appropriate prominence, attribution, quality and value for money;
  - c. seeks to ensure that the BBC can only limit the distribution of its output and services to third parties via the BBC’s own services or platforms where it is satisfied this is reasonable and in the public interest; and
  - d. seeks to ensure that the BBC acts on a fair, reasonable and non-discriminatory basis.
6. To provide context to the Policy, we have also published the BBC’s Distribution Strategy (“the Strategy”), though it should be noted that we are consulting only on the draft Policy.<sup>5</sup>

In accordance with clause 62(3) of the Agreement we are seeking views from the public on whether the draft Policy meets the Clause 62 requirements,<sup>6</sup> which are set out above. In particular:

- a) Has the BBC identified reasonable conditions in relation to the distribution of its public services?
  - b) Are the conditions appropriate to ensure that the distribution of the UK public services enables the delivery of the BBC’s public purposes and the fulfilment of the BBC’s mission in the interests of its audiences across the UK?
  - c) Are the conditions proportionate and targeted given the BBC’s duty under Article 11 of the Charter to have particular regard to the effect of its activities on competition?
7. We welcome responses from the public to the consultation on any of the areas covered by the above questions and any other matters that you consider relevant to how the BBC discharges its duties in relation to distribution of the UK Public Services under the Royal Charter, Framework Agreement and Ofcom Operating Framework.

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<sup>5</sup> See clause 62(3).

<sup>6</sup> Agreement clause 62(2)

## Out of scope of the consultation

8. The draft Policy relates purely to the distribution of the BBC's UK Public Services and does not cover the distribution of services by the BBC's commercial subsidiaries and the BBC World Service.
9. As referred to in paragraph [6] above, the BBC's Distribution Strategy is not within the scope of the consultation and we are not seeking views on the objectives contained within it.

## How to respond

10. The consultation is open from 12 February until 9 April 2018.
11. If you would like to respond to this consultation, please email your response to [bbcdistribution.policy@bbc.co.uk](mailto:bbcdistribution.policy@bbc.co.uk) or write to Katherine Humphreys, Distribution Policy Consultation, BBC Corporate Affairs, Room 5045, BBC Broadcasting House, Portland Place, London W1A 1AA.
12. When submitting your response please include a completed confidentiality and data protection statement.

## What happens next?

13. The BBC Board will, taking account the consultation responses we receive, consider whether changes to the draft Policy should be made to ensure it fully meets the requirements set out in the Agreement, in the best way possible. The finalised Distribution Policy will be published on the BBC's website shortly after, together with the strategy.

# BBC DISTRIBUTION POLICY

## 1. Introduction

- 1.1 This document sets out the BBC's policy ("**Policy**") for the distribution of the BBC's UK Public Services<sup>1</sup> in the light of its Mission, Public Purposes and other duties set out in its Royal Charter ("**Charter**") and the Agreement between the BBC and the Secretary of State for Culture, Media and Sport ("**Agreement**").
- 1.2 The BBC's Mission is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain.
- 1.3 The BBC's Public Purposes are:
- (a) To provide impartial news and information to help people understand and engage with the world around them;
  - (b) To support learning for people of all ages;
  - (c) To show the most creative, highest quality and distinctive output and services;
  - (d) To reflect, represent and serve the diverse communities of all of the United Kingdom's nations and regions and, in doing so, support the creative economy across the United Kingdom;
  - (e) To reflect the United Kingdom, its culture and values to the world.
- 1.4 In exercising its functions in relation to the UK Public Services in pursuit of its Mission and Public Purposes, the BBC must comply with a number of general duties set out in the Charter. These are applicable to all the BBC's activities in relation to the distribution of the UK Public Services. They include:
- (a) The BBC must act in the public interest;<sup>2</sup>
  - (b) The BBC must carefully and appropriately assess the views and interests of the public and audiences across the whole of the UK;<sup>3</sup>
  - (c) The BBC must have particular regard to the effects of its activities on competition in the UK. In complying with this duty, the BBC must

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<sup>1</sup> Unless the context otherwise requires, capitalised terms have the same meaning as in the Royal Charter and/or Agreement.

<sup>2</sup> Article 9(1) of the Charter

<sup>3</sup> Article 10(1) of the Charter

- (i) seek to avoid adverse impacts on competition which are not necessary for the effective fulfilment of the Mission and the promotion of the Public Purposes;
    - (ii) have regard to promoting positive impacts on the wider market;<sup>4</sup>
  - (d) The BBC must promote technological innovation, and maintain a leading role in research and development, that supports the effective fulfilment of its Mission and the promotion of the Public Purposes;<sup>5</sup>
  - (e) The BBC must exercise rigorous stewardship of public money.<sup>6</sup>
- 1.5 The BBC's specific duties in relation to distribution of UK Public Services are set out in Clause 61(1) of the Agreement which requires that:
- “The BBC must do all that is reasonably practicable to ensure that viewers, listeners and other users (as the case may be) are able to access the UK Public Services that are intended for them, or elements of their content, in a range of convenient and cost effective ways which are available or might become available in the future. These could include (for example) broadcasting, streaming or making content available on-demand, whether by terrestrial, satellite, cable or broadband networks (fixed or wireless) or via the internet”*
- 1.6 Clause 61(2) of the Agreement permits the BBC to:
- (a) impose reasonable conditions under which it will make its output and services available to third parties; and
  - (b) impose a verification process in relation to the ways in which on-demand programme services are accessed.
- 1.7 Under clause 62(1) of the Agreement, the BBC is required to develop and publish a strategy and policy for the distribution of the UK Public Services. The BBC must distribute its output and services according to that strategy and policy.
- 1.8 The policy referred to in clause 62 must:
- (a) set out how the BBC will fulfil its obligations under clause 61 (making UK Public Services widely available);
  - (b) include the reasonable conditions under which the BBC will make its output and services available to third parties, for example in order to secure appropriate prominence, attribution, quality and value for money;

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<sup>4</sup> Article 11 of the Charter

<sup>5</sup> Article 15 of the Charter

<sup>6</sup> Article 16 of the Charter

(c) ensure the BBC can only limit the distribution of its output and services to third parties via the BBC's own services or platforms where it is satisfied this is reasonable and in the public interest; and

(d) ensure that it acts on a fair, reasonable and non-discriminatory basis.

1.9 Before publishing the policy, the BBC must consult with the public and Ofcom.

1.10 In addition, under the Operating Framework for the BBC prepared and published by Ofcom<sup>7</sup>, Ofcom has set the following requirement that the BBC must comply with:

*"Ofcom requires that the BBC must offer the public services to third parties in response to reasonable requests for supply, except where the BBC has an objective justification for not doing so.*

*In offering the public services for supply, and in supplying those services, the BBC must act on a fair, reasonable and non-discriminatory basis."*<sup>8</sup>

("Must-Offer Obligation")

1.11 In relation to the Must-Offer Obligation, Ofcom has made it clear that an objective justification for the BBC to decline a reasonable request for supply may be derived from its Mission and Public Purpose.<sup>9</sup>

1.12 In setting this Policy, the BBC has had regard to all its obligations arising under the Charter, the Agreement and Ofcom's Operating Framework (collectively, "Duties"). In respect of potential competition impacts, the BBC has in particular given careful consideration to the competition analysis contained in Ofcom's Operating Framework.<sup>10</sup>

## 2. Scope of this Policy

2.1 This Policy covers distribution of the UK Public Services. The term *distribution* encompasses any activity aimed at making the UK Public Services available to viewers, listeners and other users in the UK in a range of convenient and cost-effective ways<sup>11</sup>. Distribution of the UK Public Services takes a wide variety of forms across numerous different technologies and platforms and has to evolve constantly as new technologies and platforms are developed. Broadly speaking, it is possible to distinguish between three different types of distribution:

(a) *Transmission:*

The BBC arranges transmission of its broadcast channels *in-the-clear* for

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<sup>7</sup> Pursuant to Article 46(2) of the Charter.

<sup>8</sup> *Distribution of BBC public services*, Ofcom's requirements and guidance (29 March 2017), paragraph 3.32

<sup>9</sup> *Ibid*, paragraph 3.30

<sup>10</sup> *Distribution of BBC public services*, Ofcom's requirements and guidance (29 March 2017), in particular paragraphs 3.16-3.21

<sup>11</sup> See paragraph 1.5 above.

reception directly by audiences using any compatible device, irrespective of manufacturer or provider. For example, the BBC arranges transmission of linear TV over Digital Terrestrial Television (DTT), and radio over DAB.

(b) *Syndication:*

The BBC syndicates *services* – an editorially cohesive package of content, often with associated metadata, functionality and branding – to a range of third party managed platforms. For example, the BBC syndicates the BBC iPlayer service to TV platforms, and the BBC iPlayer Radio service to mobile operating systems.

(c) *Publishing:*

The BBC self-publishes individual pieces of content on an ad-hoc basis created or tailored specifically for a specific platform or category of platforms, and designed with the user behaviours and expectations, and product features of the platform category in mind. For example, the BBC uploads short videos to accounts on YouTube, Facebook and other social and media sharing platforms.

- 2.2 In this Policy, the term *platform* is used in relation to any mechanism through which the UK Public Services are aggregated and distributed to audiences. It incorporates the devices, software and applications used by the platform to enable audiences to consume the public services (e.g. set top boxes, smart TVs, games consoles, mobile devices and apps) and may be supported by one or more distribution technologies (for example, digital terrestrial TV, satellite, cable, analogue and digital radio, and the internet).
- 2.3 The BBC requires each of the seven conditions set out in the following section to be met. However, compliance may be a matter of degree, and certain elements of the overall Policy may be more or less important depending on the circumstances of the case.
- 2.4 These conditions will apply to all BBC content and services that are made available on a particular platform. The BBC may determine that these conditions are not met, or cease to be met, in any case where a platform does not meet any one or more of these conditions in relation to any element of the BBC content and services available on that platform. In such circumstances, the BBC will withhold or withdraw its content and services if, having considered the factors set out in Paragraph 4.2 below, it is reasonable and proportionate to do so. This might mean, for example, that if a platform would not offer fair and appropriate prominence so that it no longer met that condition, the BBC would not supply BBC iPlayer or could withdraw it from that platform.
- 2.5 This Policy applies only to the distribution of the UK Public Services within the UK. It does not apply to commercial activities of the BBC or content aimed primarily at audiences outside of the UK.

2.6 Nothing in this Policy requires the BBC to distribute content or services in a manner that would infringe third party intellectual property rights, nor does it create any obligation for the BBC to acquire additional rights from any third party in order to meet a request for access to BBC content and services, nor does it require the BBC to meet requests that are vexatious, nonsensical, impractical, or otherwise unreasonable.

### 3. The BBC's Conditions for Distribution

3.1 The BBC will distribute the UK Public Services in accordance with the following seven conditions:

- (a) *Prominence* – the placement of BBC content and services relative to those of other providers should be in line with audience needs and expectations
- (b) *Editorial Control* – the BBC retains editorial control of its content and its placement
- (c) *Branding & Attribution* – users should be able to easily identify which content on a platform is provided by the BBC
- (d) *Quality* – users should be able to enjoy a high quality experience of BBC content and services
- (e) *Data* – the BBC should have access to data about the usage of its services
- (f) *Free Access* – users should incur no incremental cost to access BBC content and services
- (g) *Value for Money* – arrangements should maximise cost-effectiveness of distribution to the licence fee payer

3.2 These conditions form the basis on which the BBC will make its content available to viewers, listeners and other users in a range of convenient and cost effective ways. Given the rapidly evolving market context and the wide variety of different technical means of distribution, both now and in the future, the BBC will apply these conditions on a case-by-case basis having regard to the particular circumstances of each case and in accordance with its Duties. In accordance with its obligations, including its obligation to act on a fair, reasonable and non-discriminatory basis, the BBC will strive to ensure fairness and consistency in their application across comparable platforms and services. These conditions are further set out below.

3.3 As explained in the BBC's strategy, in the case of long-form TV content, the BBC will normally expect to make its content and services available in the form of a standard service product. For online channels and on-demand TV content, this will normally take the form of BBC iPlayer. But as noted above, the BBC will apply this Policy on a case-by-case basis. The BBC will also provide flexible application programming interfaces (APIs) to enable platforms to integrate BBC

programme metadata into third party discovery spaces and enable app-to-app deep-linking to support platform discovery innovations. Where appropriate<sup>12</sup> the BBC will require a third party to enter into a carriage agreement which will be individually negotiated subject to these conditions.

### *Prominence*

- 3.4 BBC content and services should be given fair and appropriate prominence, wherever they appear on the platform, where:
- (a) 'Fair' means that the prominence of BBC content and services is not unfairly disadvantaged relative to that of other content providers, including the platform owner
  - (b) 'Appropriate' means that the level of prominence of BBC content and services is in line with audience needs and expectations, which may take into account factors such as:
    - (i) Audiences' and licence fee payers' expectations in respect of the prominence of public service broadcasting content and services including as to the prominence of the linear electronic programme guide (EPG)
    - (ii) The relative usage of BBC content on the platform (and/or similar platforms)
    - (iii) Whether or not services require additional payment from users
  - (c) Relevant areas of the interface where prominence will be considered may include (but are not limited to) service selection menus, Electronic Programme Guides, content discovery areas, recommendation areas, search results, voice activated discovery, and user notifications (as appropriate).

### *Editorial Control*

- 3.5 In order to comply with legal requirements, the BBC's editorial guidelines or with content standards imposed by Ofcom<sup>13</sup> the BBC must be able to promptly remove or block its content.
- 3.6 The BBC will not supply content to a platform whose activities may, by association, bring the BBC into disrepute (e.g. through the incitement of hatred, promotion of illegal or anti-social behaviour, or the distribution of pornographic content), and may elect to withhold content (or seek other contractual means to limit liability) where there is legitimate doubt over the legality or editorial policy of an aspect of a platform.

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<sup>12</sup> For example, the BBC will not expect to enter into a carriage agreement for linear transmission over DTT.

<sup>13</sup> Schedule 3 of the Agreement

- 3.7 Platforms must not edit the BBC's content or metadata unless otherwise agreed.
- 3.8 Platforms must allow the BBC adequate curatorial influence over the selection and ordering of its constituent programmes that are presented to users within the interface, such that the BBC can introduce a broad range of public service content to users, except in the case of publishing by the BBC.
- 3.9 Platforms are expected to carry the full range of applicable BBC content and services, except where an item demonstrably contravenes a reasonable and objective editorial policy of the platform.

### *Branding & Attribution*

- 3.10 The BBC should have sufficient opportunity to present all relevant visual or audio branding alongside its content and services such that audiences can easily identify content as coming from the BBC at the point of discovery and playback.
- 3.11 The BBC will determine the relevant BBC brand under which content is distributed.
- 3.12 Platforms should not obscure or misrepresent the source of content in a manner that might detract from BBC attribution, or imply that additional payment is required to access BBC content.

### *Quality*

- 3.13 Audiences' and licence fee payers' experiences of BBC content on a platform should be of high quality (comparable to objectively similar platforms), including but not limited to factors such as picture/audio quality, content availability, reliability, accessibility, metadata accuracy, ease of navigation and content loading times.
- 3.14 Where the BBC has developed technical features and functionality that materially enhance audiences' and licence fee payers' experience of a syndicated service, facilitate verification, or have otherwise come to be expected by audiences as part of the UK Public Services, platforms who distribute the service in question will be expected to facilitate the deployment of such features.
- 3.15 Unless objectively in the interests of audiences, platforms should not withhold functionality and enhancements which would be beneficial for audiences (whether audience-facing or otherwise) from BBC's content and services.

### *Data*

- 3.16 In order to best meet audiences' interests, the BBC expects platforms to facilitate the timely and accurate collection of data to enable the BBC to monitor and understand the usage of its content and services.

- 3.17 Where the BBC syndicates services and where necessary for the performance of its Duties, the BBC will expect platforms to facilitate secure sign-in to syndicated BBC services using a BBC account.
- 3.18 Subject to a platform agreeing reasonable reciprocal sharing of its relevant usage and consumption data and where compatible with the BBC's Duties and other legal and regulatory requirements, the BBC will share relevant consumption data with platforms.
- 3.19 The BBC may also need to make new requirements to ensure compliance with the General Data Protection Regulation.

#### *Free access<sup>14</sup>*

- 3.20 Where BBC content appears within a subscription service, BBC content and services must be available in full on the most basic and lowest cost subscription tier.
- 3.21 BBC public service content and services must be made available free of advertising and sponsorship. No advertising or sponsorship (including pre-roll advertisements) may be inserted into or placed adjacent to BBC content or services in a manner that could be interpreted as a BBC endorsement for or connection with a product, service or cause.

#### *Value for Money*

- 3.22 The BBC is required by the Charter to exercise rigorous stewardship of public money in accordance with a number of principles, including securing value for money.<sup>15</sup> The BBC will therefore in any given case generally opt for the distribution solution which best reflects value for money. The incremental audience value delivered by a given distribution arrangement must outweigh incremental costs incurred by the BBC, where:
- (a) 'Incremental audience value' encompasses:
    - (i) The additional audiences reached who would otherwise not have had access to the applicable content and services
    - (ii) The added convenience for those with existing alternative means to access that content and services
    - (iii) The utility of additional features and innovation unique to the platform

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<sup>14</sup> The BBC must not make any charge for the reception of the UK Public Services and associated content - Schedule 3, paragraph 1 of the Agreement

<sup>15</sup> Charter, Article 16.

- (b) 'Incremental costs' include the direct costs of designing, maintaining and operating any platform-specific systems and processes, as well as the indirect costs of additional complexity and management overhead

3.23 For distribution arrangements that would otherwise not represent value for money, the BBC may only agree to implement such arrangements if it is able to recover its direct and indirect costs from the platform.

#### 4. Changes to third party services or use of BBC content and services

4.1 This section describes how the BBC will address the situation where a change ("Change") occurs to a platform on which BBC content and services are made available, the result of which is that the platform deviates from one or more of the conditions set out in this Policy. A Change could arise either as a result of a decision by the platform provider to change its platform or interface or as a result of the platform falling so far behind technological developments that it is no longer compliant with the conditions set out in this Policy.

4.2 In the event of a Change to a platform, the BBC will take reasonable, proportionate and timely steps to ensure that this Policy is complied with. This might involve measures such as requiring the BBC brand to be removed from certain products and could in some instances lead to withdrawal of some or all of the BBC's content and services from the platform in question. The BBC will initially work with the platform with a view to agreeing appropriate steps to bring the platform into compliance. The BBC's decision as to the steps that it may require a platform to take, the time period within which those steps should be taken, and ultimately as to whether to withdraw content and services will depend on all the circumstances of each case. A non-exhaustive list of the factors that the BBC may take into account is set out below:

- (a) The extent of the impact on users of the platform of withdrawing the service, including:
  - (i) The number of affected users
  - (ii) The extent to which affected users would have a convenient alternative means of access to the BBC's content and services
  - (iii) The likelihood that purchase/subscription decisions would have been determined by the presence of the BBC's content and services on the platform, and the scale of the costs incurred by the user
- (b) The materiality of the deviation from the conditions set out in this Policy caused by the Change and the impact that the deviation can be expected to have on audiences and on the BBC's ability to fulfill its Duties
- (c) The impact on competition both of withdrawal and of the extent to which a continuation to supply to a platform that did not comply with the

conditions set out in this Policy might distort competition, for example by conferring a competitive advantage on the platform versus others in the market

- (d) Whether withdrawal of the service is necessary for the fulfillment of the BBC's Duties
- (e) The degree of technical complexity for the platform to remedy the deviation
- (f) Whether the platform is in breach of contractual provisions relating to compatibility with the conditions set out in this Policy in its agreement(s) with the BBC

## 5. Exceptions

As noted above, the BBC expects that the conditions set out in this Policy will be applied to an appropriate degree to all forms of distribution of the UK Public Services. However, there may be instances where the BBC would consider that its Charter Objects would justify some departure from the conditions set out in this Policy. Such instances may include:

### *Events of Exceptional National Importance*

- 5.1 Exceptional circumstances may occur when the importance of making a specific piece of content as widely available as possible may outweigh any or all of the conditions set out in this Policy in the fulfilment of the BBC's Mission. The BBC expects such occasions, by their very nature, to be rare.

### *Promotional activity*

- 5.2 BBC may use content for promotional purposes (e.g. a trail or advert for a BBC programme or service) or deployed in a manner to encourage regular consumption on another compliant destination (e.g. one-off episodes to introduce/tease a full series). Whilst normally the BBC would endeavour to comply so far as practicable with this Policy when making content available for promotional purposes, there may be circumstances in which compliance with all aspects of this Policy may not be proportionate.

### *Experimentation*

- 5.3 The BBC is required under the Charter to promote technological innovation, work in partnership with other organisations, and maintain a leading role in research and development, that supports the effective fulfilment of its Mission and the promotion of its Public Purposes. This extends to the manner in which it distributes content to audiences – and likewise to facilitate, where possible, the innovations of third-parties. It may therefore, from time-to-time, conduct or take part in time-limited trials to test specific, measurable hypotheses in order to

inform future content and distribution strategies. In such circumstances, it may not be proportionate to follow all aspects of this Policy.