BT submission to BBC consultation on the BBC’s Draft Distribution Policy, April 2018

Introduction

Overview

BT TV is BT’s digital TV service that combines digital terrestrial television (DTT) delivered Freeview channels with a comprehensive selection of IP delivered channels and on-demand programming. We broadcast four main channels of sports content on BT Sport and offer a range of entertainment channels, including access to AMC. We also offer TV content to our customers via EE TV and YouView TV on Plusnet.

BT is a shareholder, an affiliate ISP and a content provider of YouView. This is a venture in which we are in partnership with the BBC, as well as Talk Talk, Arqiva and the other Public Service Broadcasters.

All of our TV customers across the BT, EE and Plusnet brands can access BBC TV channels and the BBC iPlayer. We know that BBC content is popular with our customers as we cache it within our network, and we can see that there is significant consumption of BBC content across both our fixed and mobile networks.

As a distributor of BBC content, BT is supportive of the BBC’s duties in relation to distribution of UK public services as set out in the Agreement between the BBC and the Secretary of State for Culture, Media and Sport.

We support the requirement placed upon the BBC by Ofcom in the Operating Framework 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” and that “In offering the public services for supply, and in supplying those services, the BBC must act on a fair, reasonable and non-discriminatory basis.”

Overall, we support the BBC’s Draft Distribution Policy. However, given its broad nature, what matters to distributors is how the policy is applied in practice, in commercial negotiations.

At BT, we have a customer-centric approach. BBC content is popular with our customers and it is in our best interests as a distributor, as well as the BBC’s, that we continue to carry BBC services in a way which makes them easily accessible to viewers.

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1 Distribution of BBC public services, Ofcom’s requirements and guidance
The changing media landscape in which BBC content is distributed

The BBC is in a unique position in that every UK household which has a television set or accesses the BBC iPlayer is required to pay to consume BBC services via the licence fee. In this regard, it has a duty under Clause 61(1) of the Agreement 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.’

Television viewing figures remain remarkably stable. Ninety four percent of UK households have a television set. Yet increasingly, audiences are seeking out content in a variety of different ways. For example, almost a third (31%) of adults use Netflix to watch television programmes/films.

The fracturing of the content landscape is likely to make it very complicated for the BBC to maintain its obligation of universal access. The service or platform provider is now increasingly the main controller of how a viewer comes to encounter BBC content, be that through placement in their EPG, through placement of the BBC’s VoD content in their user interfaces, or through the promotion of BBC content through recommendation and discovery services.

Furthermore, the growth of mobile viewing provides a second environment where platform, service and device providers may look to innovate in terms of how consumers discover and enjoy content.

It is important that the BBC’s distribution policy takes into account all of the different ways in which viewers interact with BBC content and services. It needs to provide clear, practical principles by which the BBC can (a) secure appropriate prominence, attribution and control; and (b) work actively to support innovation on third party platforms. We agree that this should be done in a manner that is proportionate and cost effective for both the BBC and the partners with whom it deals.

We agree with Ofcom’s comments that: “Given its central role, we would expect the BBC to be active in ensuring that its services are distributed everywhere that audiences expect them to be. It is understandable that the BBC will want to protect its brand, negotiate for prominence of its on-demand services, and make sure that audiences know when they are watching a BBC programme. At the same time, the BBC should innovate and distribute in ways that reach all audiences and satisfy the demands for greater personalisation.”

We welcome this opportunity to respond to the draft document of the BBC’s distribution policy as part of the consultation process.

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2 Ofcom Communications Market Report 2017
3 Ofcom CMR 2017.
We note that Ofcom is due to consult on the future of EPG prominence later this year

As set out in its Annual Plan for 2018/19, Ofcom is planning to consult later this year on updates to the Code governing electronic programme guides, when it intends to “make recommendations on the possible extension of the current regime to on-demand viewing.”

We look forward to responding to Ofcom’s consultation on this issue in due course. However, whilst we understand the desire for regulation to remain fit for purpose in line with user expectation, we take this opportunity to note the importance of ensuring that there is consistency of regulation across platforms, in order for Ofcom and the BBC to deliver their goal of making PSB/BBC content widely available, in line with the BBC’s public purposes.

It is vitally important that there is parity of regulation between “traditional” set-top box based platforms and other types of devices (such as smart TVs etc.). Without this, there would not be equal capacity to innovate and to surface the full range of content that audiences enjoy, which is important to maintain fair competition amongst services which viewers increasingly do not differentiate between. We would anticipate this being net negative for the BBC.

Consultation questions

1. Has the BBC identified reasonable conditions in relation to the distribution of its public services?

Prominence – the placement of BBC content and services relative to those of other providers should be in line with audience needs and expectations.

BBC television channels have a statutory protection to be prominent in Electronic Programme Guides (EPGs) under the 2003 Communications Act.

The draft Distribution Policy states that “BBC content and services should be given fair and appropriate prominence....where...‘appropriate’ means that the level of prominence of BBC content and services is in line with audience needs and expectations [our emphasis]...”

For BBC iPlayer, given that it is one of the top VoD applications on our platforms, it is appropriate and in line with audience needs and expectations that it has a very prominent position on our TV platforms. Our customers expect to see it, and we want to provide as easy a route as possible for them to access it.

However, our customers have increasingly been turning to other services such as Netflix, to access content that interests them in certain genres. If platforms are to offer a compelling service to consumers, they need the flexibility to respond to the arrival of new entrants who command similar or

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greater audience attention than the equivalent BBC service and to adopt a ‘consumer first’ approach. Fixed rules which afford the BBC prominence at the cost of audience preferences and expectations will undermine the audience experience.

For example, the BBC News and BBC Sport apps do not have the same level of engagement as the BBC iPlayer, yet they fall under the same prominence framework. Taking a pragmatic approach, a more ‘appropriate’ level of prominence for the BBC News or BBC Sport apps could be for these to be afforded a prominent position within the relevant genre interface, rather than being afforded prominence over other, more popular services, on the platform or device home screen.

This approach would be aligned to user expectations, as it mirrors the genre groupings of Electronic Programme Guides (EPGs). We would suggest that it is for platforms, rather than the BBC, to determine what is ‘appropriate prominence’ for subsets of the BBC’s content offer.

We consider that the BBC could do more itself to ensure that its content is prominently displayed and easily discoverable across a wide range of devices, by broadening its consideration of prominence to cover ‘discoverability’ as well as ‘real estate’, and by focusing more on the ‘ends’ (engagement with BBC content) rather than the ‘means’ (guaranteed slots within a user-interface).

For example, in the longer-term, there is likely to be increasing transition towards IP delivery of television content, which would increase the requirement for deep-linking of BBC content so that BBC content and services are accessible in the most consumer-friendly way possible, across a range of different platforms and services.

Content will generally be displayed more prominently and more frequently to a consumer where a content provider participates in all content discovery mechanisms on a given platform (e.g. unified search, content carousels, personalised recommendations).

If, as has historically been the case, the BBC does not participate in enabling its content to be accessible on a range of platforms and devices and via a range of content discovery mechanisms, then the BBC could find its content isolated and marginalised in a competitive environment in which other services are increasingly popular with viewers.

This fits with Ofcom’s statement that PSBs “will need to exploit different distribution channels so that programmes are easy to find wherever the audience is”. 7

**Editorial control – the BBC retains editorial control of its content and its placement**

Unified search – i.e. the ability to search for content by entering its name in a search function - is becoming increasingly popular with consumers as a way of helping them to find the content that they

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want, and to enable them to watch it in a range of different ways, including via BBC iPlayer, Netflix, Apple TV or Amazon Prime Video.

In our opinion, this illustrates two important points. That viewers are increasingly used to seeing free, subscription and pay-TV content intermingled within a single user-interface; and that by integrating search functionality to a greater extent across BBC content, the BBC can ensure more effective discovery of its content.

With regards to the separation between free and paid for content, there are ways in which user-interfaces can help viewers distinguish between the two. For example, the BT TV “free to me” toggle was introduced in the BT Player user-interface in 2017. Although not directly relevant to BBC content, this function enables viewers to clearly see what they can watch for “free” (i.e. within their subscription), and what would require additional payment in order to gain access.

With regards to search, in our experience as a content owner, global platforms are unlikely to allow individual content apps to stipulate the terms of how unified search operates. Going forward, we expect that the acceptance of platforms’ discovery tools will become an imperative as more “super-aggregators” of multiple apps emerge.

Thus, we consider that the BBC should ensure any specific conditions that it places around a discovery tool such as unified search in order to maintain its editorial control are limited and focused and that, wherever possible, they are in line with the expectations of other content providers.

The wording in paras 3.8 and 3.9 of the proposed policy is an addition to the 2016 BBC Distribution Guidelines and, consequently, we would like clarity around the intention of this new proposed wording. Specifically, we suggest that the BBC clarifies the intended meaning of ‘adequate curatorial influence’ as this could, for example, be interpreted as control over the design of user-interfaces.

We seek to clarify that this is not the BBC’s intention with this proposed wording and that it is also not designed to capture less popular portals such as BBC News and BBC Sport, particularly as this could contradict para 3.4(b) of the draft policy.

**Branding and attribution – Users should be able to easily identify which content on a platform is provided by the BBC**

Other than our dedicated BT Sport channels, BT Group is predominantly an aggregator of third-party content services and apps. We benefit from showcasing third-party content brands and we understand the branding benefits of viewers being able to easily distinguish BBC content. For this reason, we have no wish to, nor see any benefit from, separating the content from its origin.

**Quality – users should be able to enjoy a high quality experience of BBC content and services**

We agree that users should be able to enjoy a high quality experience of BBC content and services.

However, we suggest that the wording in paragraph 3.14 which says: ‘…platforms who distribute the service in question will be expected to facilitate the deployment of such features’ should be amended to include: “provided that there is no cost in doing so to the platform, or that the platform considers any associated costs to be reasonable.”
The purpose of this change is to ensure that there is not too onerous an obligation on distributors to sign-up to all of the technical features and functionality of the BBC, regardless of the cost implications, or the technological capability of the relevant platform.

Taking a hypothetical example, if the BBC was to launch an 8k version of the iPlayer, it would not necessarily be appropriate for it to require that all distributors invest in the technology that would be required in order to carry this version of the service, irrespective of customer demand or the financial viability of the service.

Data – the BBC should have access to data about the usage of its services

There may be instances where it is appropriate for the platform operator to share navigational or usage data with the BBC, at an aggregated, anonymised level, subject always to applicable law and regulation – but, where this is the case, the BBC should agree to reciprocal data provision to enable both the BBC and the platform partner to develop improved services for viewers.

The current wording in the BBC Draft Distribution Policy does not specify the type or origin of the data that the BBC expects platforms to collect about the usage of its services. Yet for the purpose of this response, we assume that where the BBC references data usage, it means, in all circumstances, anonymised usage data rather than personal data. We recommend that this is clarified in the policy.

However, we do not agree that an undefined and unqualified right of access to data about usage should be an automatic grant to the BBC.

Free access – users should incur no incremental cost to access BBC content and services

BT is committed to upholding the BBC’s public service model of “free at the point of consumption.”

Value for Money – arrangements should maximise cost-effectiveness of distribution to the licence fee payer

We understand the BBC’s requirement, given its unique funding model, to maximise the cost-effectiveness of the distribution of BBC services to the licence fee payer.

However it is important that in doing so it deals with distributors and potential distributors of BBC content in a way which is fair, reasonable and non-discriminatory, as per the wording in the Agreement.

2. 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?

We do not have any comments to add specifically in relation to how the conditions themselves enable the fulfilment of the BBC’s mission and the delivery of public services.

However, we would suggest (having regard to the “Value for Money” condition) that the BBC may wish to consider whether the duration of its standard iPlayer distribution agreement should be longer than 12 months, given the resources consumed (for both sides) in having to agree a renewal every year, for content which the BBC is obliged to offer in any event, in order to meet its “must offer” obligations and
fulfil its mission in the interests of its audiences across the UK. The resource implications for commercial negotiations can be particularly onerous for smaller distributors.

3. 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?

As noted in the introduction, we are broadly supportive of the BBC’s draft distribution policy, which has not changed significantly since it was published in 2015.

As the BBC moves towards an ecosystem in which the iPlayer increasingly becomes the “front door” to BBC programming, it is important that it continues to maintain strong relationships with its stakeholders, including by having particular regard to the effect of its activities on competition.

In this regard, the implications of the distribution policy should be considered not just in the wording of the policy, but in the spirit in which it is implemented in commercial negotiations.

As well as ensuring that the conditions pursuant to which it enters into distribution agreements are proportionate and targeted, the BBC must continue to adopt a customer-centric approach in the way in which distributes its content and services.

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8 http://www.bbc.co.uk/mediacentre/latestnews/2013/dg-iplayer.html