BBC Distribution Policy

The BBC’s response to the Distribution Policy consultation

June 2018
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1. Introduction

The BBC’s Royal Charter requires the BBC Board to set a policy for the distribution of the UK Public Services.

The Framework Agreement\(^1\) further requires that the BBC publishes a strategy and policy for the distribution of the UK Public Services, and that 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.

Ofcom, as the BBC’s regulator, set two further requirements on the BBC’s distribution activities\(^2\):

\[a. \text{ “The BBC must offer the public services to third parties in response to reasonable requests for supply, except where the BBC has an objective justification for not doing so.”} \]

\[b. \text{ “In offering the public services for supply, and in supplying those services, the BBC must act on a fair, reasonable and non-discriminatory basis.”} \]

The BBC published the BBC’s Distribution Strategy and launched a public consultation on its draft Distribution Policy, taking into account all of its legal and regulatory duties (“BBC duties”), on 12 February 2018. The consultation concluded in April.

The BBC received 26 stakeholder submissions to the consultation. The BBC also met a number of stakeholders from industry and audience groups, as well as Ofcom.

In line with the BBC’s consultation policy, organisational responses to the consultation, where permission has been given, have been published on this website: \[http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/distribution_policy\]

We would like to thank all those who responded for their detailed submissions.

This document sets out the main issues raised during the consultation process and the BBC’s response to those issues including a number of refinements to the Policy and the publication of guidance on the BBC’s process for dealing with requests for distribution.

Taking the consultation into account the BBC Board has now approved the BBC Distribution Policy which can be found [here](http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/consultations/distribution_policy) and is effective from the date of publication, 15 June 2018.

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\(^1\) Agreement, Clause 62
2. Strategic context

The BBC published its BBC Strategy earlier in the year and it is worth drawing out some of the key points as context for this document.

As the BBC approaches its centenary, its universal public service mission remains unique: to offer high-quality distinctive services that inform, educate and entertain. The BBC serves all audiences independent of any corporate or commercial interest.

The BBC Charter Review found that the BBC continues to matter deeply not only to people in the UK but also to people around the world. The BBC's role as a distinctive producer of British content and trusted news is an important asset for the UK and promotes British values around the world.

If the BBC is to continue delivering its mission over the Charter period, it must make the right strategic choices with regard to distribution. In the first place, there is a specific duty on the BBC to ensure that licence fee payers can conveniently access the UK Public Services\(^3\). Secondly, the BBC has a duty to promote technological innovation to support the delivery of its public service Mission and Purposes.

How the BBC distributes its services will be critical to how successfully it delivers its Mission. The more effectively and efficiently the BBC distributes its services, the more valuable they are to people. The more convenient they are to find, the more they will be used and the better value they deliver for licence fee payers. The more robust and higher quality the delivery, the more audiences appreciate the content. The less services cost to distribute, the more the BBC can spend on British content for everyone to enjoy. The clearer the BBC's branding, the more audiences recognise they are receiving public value.

The BBC performs well on these measures: its services are more widely distributed than any other broadcaster in the UK\(^4\) and they are renowned for their robustness and quality, whether broadcast or online, demonstrating good value for money\(^5\). The BBC's aim is to sustain and build on this track record of public service delivery in a fast-evolving competitive environment.

The BBC Board has approved the BBC's Distribution Policy in order for the BBC to meet its Mission and Public Purposes.

\(^3\) BBC Agreement, Clause 61
\(^4\) In addition to the BBC's industry-leading broadcast coverage, BBC iPlayer is available on over 2,500 types of TV device and over 10,000 types of device overall.
\(^5\) The BBC's distribution arrangements for its UK Public Services, Mediatique for BBC Trust, November 2013.
3. Summary of submissions and the BBC’s response

In the following section we summarise the submissions received and set out the BBC’s response at a high-level. The key issues raised in submissions and the BBC’s response are then addressed in more detail in section 5 of this document.

Summary of submissions

The 26 submissions were from public service broadcasters (including Channel 4, S4C, RTE), pay-TV providers (including BT, Sky and TV Player), free-to-air platforms (including Freeview, Digital UK), the commercial radio sector, the device manufacturing and technology sector (including techUK), audience and accessibility groups (the Voice of the Listener and Viewer – VLV – Action on Hearing Loss; the National Association of Deafened People – NADP – and the Royal National Institute for the Blind – RNIB), and a range of trade and membership organisations (including the Commercial Broadcasters Association – COBA – Pact, RadioCentre and UK Music).

Overall there was broad support for the draft Policy from a wide range of respondents but a minority of respondents questioned the extent and clarity of the Policy and the BBC’s processes for implementing it.

Public service broadcaster respondents (PSBs) supported the conditions set out in the Policy, with one respondent seeing them as a potential model for the distribution for all public service broadcasting services and content. The prominence condition was singled out as being central to the impact of public service broadcasting, enabling those PSBs to surface a wide range of public service content to audiences. Access to data was felt to be a necessity for PSBs and thus the data condition received significant support.

Audience and accessibility groups generally welcomed the conditions set out in the Policy believing them to be appropriate, reasonable and proportionate. There was strong support from the VLV for the prominence and editorial control conditions. It was remarked that some platforms, notably subscription services, promote content without consideration of its public value, motivated often by the commercial interests of the platform, and without adequate access service provision.

Free-to-air platforms and bodies also, for the most part, found the conditions reasonable and appropriate to ensure that the distribution of BBC content and services supports the delivery of the BBC’s Mission and Public Purposes. Digital UK remarked that delivering a service consistent with the conditions in their experience is compatible with success for broadcasters, manufacturers, retailers and consumers. Without such conditions for PSBs, it was argued it would be inevitable that global commercial considerations would result in products and services which deliver significantly reduced public value to UK consumers.

There was broad agreement on the Policy from a number of trade and membership bodies, while others did not comment on the Policy overall but raised some important industry specific questions which we have addressed later in this document.
Pay-TV platform operators and the device manufacturing sector argued that the Policy, as drafted, was too high level. They contended that this created uncertainty for platforms in determining the likelihood of securing carriage, and afforded the BBC too much discretion to refuse to make its content available. It was also felt that there was not enough emphasis on the need for the BBC to work in partnership with others to minimise adverse market impacts. A number of stakeholders felt the BBC’s approach of normally syndicating via a standard service product set the BBC up in competition with third party distribution platforms, while one believed the BBC’s support for bespoke arrangements on some platforms but not others could provide an unfair advantage. Overall it was argued that the Policy would give the BBC undue power over third party platforms, inhibit innovation and not be in the public interest. A number of stakeholders argued that the BBC should address these issues and re-consult on the Policy.

A large number of stakeholders also commented on the BBC’s Distribution Strategy. As set out in the consultation, and in line with the BBC’s duties, this is out of scope. The BBC already engages in a number of ways with industry stakeholders on its strategic direction and the way it serves all licence fee payers, and will continue to do so.

**BBC Response: summary**

The BBC exists to deliver its Mission and Public Purposes set out in the Charter and Agreement. The BBC serves all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain.

The BBC Board considers the choices the BBC makes over how it distributes its programmes and services to be critical to its success in fulfilling those purposes and meeting that mission.

Setting the BBC’s Distribution Policy is therefore an important duty which the BBC Board considered carefully.

The BBC Board welcomes that the Policy and the proposed seven conditions received broad support overall.

The BBC notes concerns by device manufacturers and pay-TV providers about the high-level nature of the conditions and their desire for certainty as to how the conditions would apply to their individual platforms. At the same time, the BBC Board’s duty is to ensure the conditions are sufficiently broad and flexible to account for an extensive range of requests for the supply of different services from third party platforms with very different characteristics. It is the BBC’s judgement that the final Policy, as amended, and the explanations given in this publication, provide the appropriate balance between specificity and applicability to the full range of scenarios for distribution of the UK public services.

While acknowledging that a small number of pay-TV providers questioned the expectation in the Policy that, in the case of long-form TV content, the BBC will normally make its content and services available in the form of a standard service product, the Policy also
allows for its duties to be achieved through new and innovative distribution proposals. The BBC Board considers this approach is therefore appropriate to the fulfilment of its duties.

Many respondents raised valuable points about the drafting and application of the Policy. The BBC is responding with a number of changes to the Policy and the publication of new guidance on the processes for third party platforms for dealing with requests for carriage of the content and services the BBC syndicates. These are as set out below.

As a result of the consultation, the BBC has made a number of refinements to the Policy clarify its intention in the following areas:

- The role of the Distribution Guidelines which will be superseded by the Policy with immediate effect. (Policy clause 1.2)
- That, when considering distribution arrangements, the BBC will always be open to new and innovative distribution proposals. It will nevertheless always seek to improve or at the very least maintain the quality of the current audience experience (which in turn will be assessed by the compliance of any new solution with the conditions set out this Policy). (Policy clause 2.3)
- That the BBC will withhold its services where it is reasonable, proportionate and in the public interest to do so (Policy clause 2.4 and 4.3)
- That the BBC is providing guidance as to the process for dealing with requests for carriage of the content and services the BBC syndicates (see below). (Policy clause 3.4)
- Details of the BBC interpretation of audience ‘needs and expectations’ of prominence, providing some indicative guidance. (Policy clause 3.5(b);(d))
- BBC expectations of adequate curatorial influence relating only to the presentation of BBC programming. (Policy clause 3.9)
- The sufficient opportunities the BBC might expect platforms to provide to secure BBC branding and attribution. (Policy clause 3.11)
- The inclusion of access services among the functionality that we will expect third party platforms to deploy. (Policy clause 3.15)
- That the BBC does not seek data beyond that relating to consumption of its own content and which, in deployment of a standard service product, the BBC in practice gathers itself, as well as handling of requests for data the BBC receives on third party platforms. (Policy clauses 3.17-3.20)

The BBC’s new guidance on the process for distribution requests “Applying to carry BBC content and services: a partners’ guide to process” should, taken together with this document, provide valuable additional information to third parties regarding the implementation of the Policy, thus giving further certainty to the market.

The BBC considers that these changes appropriately take account of responses to the consultation and do not amount to a fundamental change in the draft Policy as issued for
consultation. Accordingly the BBC does not consider that it is necessary to re-consult in the light of these changes.

Overall, in the view of the BBC Board, the final Policy fulfils the relevant BBC duties and will play an important role in ensuring the BBC continues to deliver its public mission effectively, via its own services, and by harnessing the dynamism of a competitive platform market. In this way, the BBC will continue to bring the best to every licence fee payer.

4. Key issues raised and the BBC’s response: section by section

Section 1 of Policy: introduction (regulatory and legal context)

In the following section we summarise the comments made on Section 1 of the Policy which introduced the Policy, and set out the regulatory and legal context; the BBC’s response to those comments and, where relevant, set out any amendments we have made to the conditions or further guidance we have issued.

Clarification of the status of the 2016 Distribution Guidelines:

YouView and one other respondent sought clarification that the BBC’s Distribution Guidelines, published in 2016, would be superseded by the BBC’s Distribution Policy.

**BBC response**

The Distribution Policy does replace the 2016 Distribution Guidelines. In April 2017, the BBC Board determined that the Guidelines should remain in place until such time as they had set the Policy intended to supersede the Guidelines. We have amended the Policy to now make this clear (clause 1.2). The Policy reflects the BBC’s duties under the current Charter.

Predictability of processes and timing of supply

A number of respondents, including Sky and TV Player, argued that a lack of detail on the implementation of the Policy created uncertainty for third parties seeking supply. The BBC was asked to set out clearly the processes partners and potential partners would need to follow to secure new distribution arrangements; ascertain ongoing BBC product enhancements which may affect their platforms; the process for device certification; how the BBC will handle potential deprecation of BBC services on non-compliant devices; and how it handles complaints.
BBC response

We recognise that it would be beneficial to provide third party platforms with more clarity about how the Policy will be implemented. We are therefore separately publishing a guidance document “Applying to carry BBC content and services: a partners’ guide” outlining the BBC’s processes for dealing with distribution requests.

This is available here.

The BBC will keep this guidance under review and update it from time to time in the light of the BBC’s evolving experience in handling the requests and its distribution via third party platforms.

Making content available outside BBC services.

A number of third party platform respondents, including Sky and TV Player, pointed to various provisions of the regulatory framework applicable to the BBC which they argued obliged the BBC to make its content available to platforms on a disaggregated basis outside BBC services.

Sky argued that Clause 61 of the Framework Agreement created a presumption of supply by the BBC to third parties outside of a BBC environment such as the iPlayer app. They also pointed to Ofcom’s must-offer obligation, suggesting that Ofcom’s use of the term “public services” is broader than the term UK Public Services in Clause 61 and hence imports an obligation to supply on a disaggregated basis.

TV Player placed particular emphasis on the phrase “or elements of their content” in Clause 61 which, it was said, contemplates the provision of access either to the bundle of elements that are comprised in a particular services or, in the alternative, to unbundled elements of their content, and obliges the BBC to do all that is reasonably practicable to ensure that users have access on either basis.

Another respondent also referred more generally to Clause 61 as the basis for arguing that the BBC must provide its content on a disaggregated basis.

BBC response

The BBC does not agree with this interpretation of its regulatory obligations. Clause 61 neither requires nor precludes any particular form of distribution or arrangement with third party platforms, nor does it create a presumption that any particular form of distribution is to be preferred over another. In particular, the phrase “or elements of their content” in Clause 61 does not bear the weight some respondents put on it. Instead, Clause 61 is aimed to ensuring that, within the bounds of what is reasonably practicable for the BBC, viewers, listeners and users are able to access the UK Public Services, or elements of their content, in a range of convenient and cost effective
ways. Arrangements with third party platforms for the distribution of BBC content and services are a means to that end, but they are not the end themselves. In any case, even if the phrase "or elements of their content" did require the BBC to supply third party platforms on a disaggregated basis, the BBC’s obligations to third parties under clause 61 would only apply to the extent that they are reasonably practicable for the BBC. This must be interpreted in the light of totality of the BBC’s regulatory duties, including the BBC’s general duties under the Charter and Framework Agreement and also the specific obligations placed on the BBC by Ofcom under the Operating Licence, for example the BBC’s obligations in relation to the range of content it must provide for audiences.

The BBC also disagrees that a "presumption of supply" on a disaggregated basis is evident from the wording of Clause 62(2) (c). Clause 62(2) (c) makes it clear that, in accordance with its Policy, the BBC can limit distribution to its own services or platforms where the BBC is satisfied that this is reasonable and in the public interest. The Distribution Policy sets out the conditions that a platform would need to meet if it wished to distribute content on a disaggregated basis.

Finally, with regard to the argument made in relation to Ofcom’s must-offer obligation, the BBC does not interpret the phrase “public services” as being intended in all circumstances to cover the provision of individual items for content for inclusion in a third party service. The BBC notes that, in response to Ofcom’s consultation preceding the imposition of must-offer obligation, representations were made arguing that the obligation should impose an express requirement on the BBC to meet all reasonable requests for content. Ofcom rejected this and retained the reference to the public services in the final version of the must-offer obligation.6

Section 2 of Policy: scope

In the following section we summarise the comments made on Section 2 of the Policy on its scope; the BBC’s response to those comments and, where relevant, set out any amendments we have made to the conditions or further guidance we have issued.

Rights

A number of stakeholders raised the issue of rights. Respondents from the pay-TV sector argued that by not acquiring rights beyond those relevant for BBC iPlayer, the BBC was weakening the availability of its content and the innovation on their platforms.

Pact raised the need to consider the indirect competitive impact of rights awarded to third party platforms, the branding of broadcaster as opposed to producer, in particular, they were concerned that their members’ rights to secondary revenues should not be compromised by social media distribution arrangements.

6 Regulating the BBC’s impact on competition: statement on requirements and guidelines, 29 March 2017 – paragraph 5.7
UK Music argued that the BBC should explicitly state that we will not make our content available to unlicensed platforms.

**BBC Response**

The BBC is both a rightsholder and one of the UK’s leading users of rights. The BBC recognises the very important role of independent producers in the UK creative economy, and can confirm that as part of its overall competitive impact duties, considers the direct and indirect competitive impacts that its distribution activity has upon them to the extent relevant.

The approach to rights and the processes to acquire, clear and exercise them is highly complex, operates in a fast-moving market and extends well beyond questions of distribution. The BBC’s Distribution Policy is therefore not the place to determine nor set out the BBC’s approach.

Nevertheless, while it may not be possible to foresee all future requests for distribution rights on third party platforms, the BBC will typically seek to secure rights that encompass distribution over a range of platforms and services (in addition to the BBC’s own services) where to do so is reasonable, proportionate and consistent with the conditions of the Policy and the BBC’s wider duties and legal responsibilities.

The BBC takes its obligations to the music industry seriously. We believe that the Distribution Policy as currently drafted should provide adequate comfort to UK Music and its members that the BBC has the ability to withhold content and services where it is appropriate to do so.

**Section 3 of the Policy: the BBC’s conditions of distribution**

In the following section we summarise the comments made on Section 3 of the Policy on the context and specifics of the draft Policy conditions; the BBC’s response to those comments and, where relevant, set out any amendments we have made to the conditions or further guidance we have issued.

**Deviation from standard products**

The Policy sets out in this section that in the case of long-form TV content, the BBC would normally expect to supply its content and services via its standard service product. Two stakeholders felt there was insufficient detail on when the BBC would agree to supply content in a non-standardised form. One argued that the BBC Framework Agreement ‘presumption’ is that the BBC will supply outside of BBC iPlayer (62(2) (c))\(^7\). Another argued that the BBC was not meeting the requirement to be fair, reasonable and non-discriminatory (FRAND) in its treatment of requests for bespoke products.

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\(^7\) ‘The Policy must… 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’
BBC Response

The BBC’s standard service products have been developed to be widely compatible with third party platforms and to support full compliance with the BBC’s distribution conditions. However, the BBC considered it was right to also make clear that it would always apply the Policy on a case-by-case basis and that our aim is to support any supply arrangement which meets our conditions. Applying our published Policy conditions is designed to give our partners assurance of consistency of approach while still leaving room for flexibility where appropriate. We have amended the relevant section of the Policy (clause 2.3) to clarify that, when considering distribution arrangements, while the BBC will always be open to new and innovative distribution proposals, it will nevertheless always seek to improve or at the very least maintain the quality of the current audience experience (which in turn will be assessed by the compliance of any new solution with the conditions set out this Policy).

(i) Prominence: (the placement of BBC content and services relative to those of other providers should be in line with audience needs and expectations)

This condition attracted the greatest level of feedback from the majority of stakeholders.

Several respondents, including the Commercial Broadcasters Association, Sky and BT, stated the BBC’s requirements go beyond current regulatory and legal provisions for Electronic Programme Guide (EPG) public service prominence with some arguing it could pre-empt Ofcom’s upcoming review of public service prominence. However, the VLV was supportive of the condition and other public service broadcasters argued that the condition as drafted is essential and is in the spirit of the PSB compact – which argues for appropriate prominence, irrespective of platform.

Whilst there was broad agreement that BBC prominence should be ‘appropriate’ and in line with audience ‘needs and expectations’, views differed as to what this meant. Several stakeholders argued that the BBC’s definition of ‘fair’ and ‘appropriate’ was too vague and required greater specificity such as which discovery paradigms are in or out of scope, for example, last-used, favourites etc.

A number of stakeholders queried how the BBC would assess or measure audience needs and expectations, suggesting their users may expect equal, or greater, prominence of some non-PSB content. They argued that it is for platforms to determine ‘appropriate’ prominence. They similarly expressed concern that the BBC’s prominence requirement as written would inhibit development and innovation of their own user interfaces.

Other respondents questioned how the prominence condition would be applied to individual platforms and to individual areas of user interfaces not referred to in the draft Policy.

**BBC response**

The BBC considers that a condition relating to prominence can reasonably be applied to all the UK public services, including elements which are on-demand as well as linear, as a means of discharging its duty to distribute its services and content in a range of convenient and cost effective ways.

The BBC judges this to be consistent with our regulatory requirements. The BBC Framework Agreement (clause 62(2)(b)) is explicit that the Policy “must... 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” (BBC’s emphasis).

The BBC has a duty to assess the views and interests of the public and audiences, including licence fee payers, and engages in analysis of industry data and conducts its own audience research. Its views of the needs and expectations of audiences in relation to prominence are shaped by this. For example, in assessing audience expectations, the BBC will typically consider the share of requests or consumption of BBC video-on-demand content relative to other content providers among other factors. This has now been made clearer in the Policy (clause 3.5(b)(i)).

For prominence, as for all the conditions, the BBC will apply the Policy flexibly on a case-by-case basis. User interfaces vary and thus the precise manifestation of appropriate prominence may vary accordingly.

Nonetheless, in response to the consultation, the BBC has amended the Policy to now include, as an indicative guide, examples of the BBC’s current assessment of the needs and expectations of the audience (clause 3.5(d). The BBC’s conditions apply to third party platforms, not individual platform users. They do not prevent users from choosing to reorder services or content (for example by selecting ‘favourites’) on the platform where such functionality is present.

(ii) **Editorial Control:** (the BBC retains editorial control of its content and its placement)

There was strong support for this condition from other PSB respondents, audience and accessibility groups and Pact. It was argued that the provisions are essential to the integrity of public service content and critical to ensuring the discoverability of a broad range of public service content.

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9 Article 10, BBC Royal Charter.
Whilst other stakeholders agreed with the condition in principle a number including YouView also asked the BBC to define and issue further guidance on what is meant by ‘adequate curatorial influence’ (clause 3.9) they also sought assurance that this condition would not lead to control over the design of third party user interfaces. One platform operator questioned whether the BBC would allow platforms to pick or curate BBC content.

TV Player raised the issue of platforms being required to take services they do not want, referring to the requirement in clause 3.10 to typically take the full range of applicable BBC content and services.

**BBC Response**

The BBC would not seek changes to user interfaces beyond what is necessary to secure these public service objectives in relation to how BBC content is presented.

The BBC has clarified the Policy (clause 3.9) to be clear that it seeks to exert adequate curatorial influence over the selection and ordering only of the BBC’s own programmes.

With regard to the BBC’s requirement under clause 3.10, the BBC considers it important that licence fee payers get the services intended for them and for which they have already paid. This includes nations and regions variants of programming.

**(iii) Branding and Attribution: (users should be able to easily identify which content on a platform is provided by the BBC)**

A number of stakeholders, including other PSBs and the VLV strongly agreed with this condition citing it as crucial in order for audiences to recognise the value they derive from British funded and created PSB content.

Pay-TV platforms and the technology sector were more qualified in their agreement. Whilst acknowledging the right of the BBC to use logos and the importance of audiences understanding provenance, it was argued that the attribution condition should not allow the BBC to exert too much control over third party user interfaces. Sky suggested that there needs to be further clarification on aspects of the condition in particular the statement in clause 3.11 of the Policy “sufficient opportunity to present all relevant visual or audio branding alongside its content and services”.

PACT argued that the application of the branding and attribution condition should not be at the expense of the branding of independent producers.
In relation to branding and attribution, the BBC does not require changes to user interfaces beyond what is necessary to ensure users are able to easily identify which content on a platform is provided by the BBC.

User interfaces vary and thus the precise nature of the opportunities to present all relevant BBC visual or audio branding will vary accordingly.

Nonetheless, the BBC has added to the Policy (clause 3.11) indicative guidance as to the mechanisms which might be available to platforms in this regard.

In relation to Pact’s concerns, the way the BBC implements its Policy in relation to branding and attribution will give due consideration to artists and producers consistent with the BBC’s branding guidelines and terms agreed with those parties.

(iv) Quality: (users should be able to enjoy a high quality experience of BBC content and services)

One stakeholder suggested whilst the BBC was insisting on the inclusion of its own enhanced functionality, the application of the BBC’s other conditions would constrain the ability of third party platforms to enhance the functionality of their own user interfaces. Another argued that the replication of the technical features and functionality of a BBC service by a platform should not be a condition of supply. BT sought the inclusion of a statement in the policy that there will be no additional cost to platforms for delivery of enhanced features (or costs beyond what platforms would consider reasonable).

Pact, whilst in broad agreement on the principle, did suggest that there was a risk that a focus on providing the highest quality services the BBC could miss out those who need access to the service for as low a cost as possible.

Action on Hearing Loss (AoHL) strongly agreed that platforms should not withhold functionality and enhancements to make the BBC’s content and services accessible, and could not foresee circumstances in which removal of access services would be ‘objectively in the interests of audiences’, given their importance to viewers. The National Association of Deafened People (NADP) felt that more prominence should be given to subtitling as a requirement in the draft Policy. It argued that where platforms could not provide subtitles themselves, BBC content should be provided with subtitles “burned in” (i.e. open subtitles). The RNIB raised a concern around Ofcom’s ‘must offer’ requirement which they felt could result in BBC content being displayed on platforms and services that lack accessibility where the content would have been more accessible had it been displayed on BBC iPlayer.

S4C asked the BBC to consider that as it develops functionality to its services, consideration should be given to dual language functionality.
BBC response

‘Quality’ is included as an example of the objectives the reasonable conditions can seek to secure under 62(2)(b) of the Framework Agreement. The BBC remains of the view that it is important for the BBC to ensure a high quality experience of BBC content and services on third party platforms. This includes the types of technical feature and functionality set out in clause 3.14 of the Policy.

We welcome the acknowledgement given by AoHL, NADP and RNIB for the work the BBC does to set the standard on access services. The BBC is committed to making our broadcast and online services as accessible as possible. Subtitling on BBC iPlayer can be found across a wide range of platforms and devices, including over 2,500 different TV devices. We are currently working with Sky to enable subtitles for BBC iPlayer on Sky and will continue to explore whether a cost efficient way can be found of enabling subtitles on BBC iPlayer on Apple TV. The BBC is also working with industry partners and standards organisations to try and achieve a common set of standards for the delivery of subtitles online. Live subtitles are currently available on the BBC iPlayer website and we plan to roll this out to TV and mobile apps in the future. NADP’s proposal in relation to the “burning in” of subtitles raises some complex technical questions. The BBC is committed to working with individual platforms to deliver the same assurance and robustness of subtitling as would be offered by NAPD’s preference.

In response to the submissions from RNIB, AOHL and NADP, we propose to amend the Policy such that it is explicit in clause 3.15 that access services feature among the functionality we will expect third party platforms to deploy.

The BBC disagrees with suggestions that it does not support platform innovation, or partner sufficiently with industry in this regard. As stated earlier, the Policy will be applied on a case-by-case basis, and is explicit in recognising that third party innovation may shape its decisions as to the type of distribution arrangement agreed on any one individual platform (the “utility of additional features and innovation unique to the platform” is listed a factor under clause 3.23(a)(iii).

In relation to whether the BBC is willing to pay for costs which a platform might attribute to the BBC’s service innovations, the BBC would point to the importance and popularity of its services to audiences, which it provides to third party platforms without charging carriage fees. This provision without such charges is not the market norm but recognises the BBC’s specific Charter Mission and Public Purposes, its funding and its regulation. The BBC does not consider it would be consistent with its duty to exercise rigorous stewardship of public money for the BBC to pay platforms for the costs attributable to BBC service innovations.

In relation to new functionality and Welsh language audiences, the BBC considers the Policy is appropriately drafted such that platforms will be expected to facilitate the

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10 Article 16 of the BBC's Royal Charter
deployment of any developments that materially enhance audiences’ and licence fee payers experience of a syndicated service – or otherwise come to be expected as part of the UK Public Services (clause 3.15).

(v) Data: (the BBC should have access to data about the usage of its services)

Other PSBs strongly agreed with the provisions around the data condition on the basis that it is crucial to demonstrating value and allows PSBs to prioritise investment. The VLV argued that BBC needs to give due attention to the policies that third party platforms have on collecting, processing and sharing data from viewers and listeners. These policies should be equivalent to those of the BBC itself and should not allow more permissions. The NADP argued that the BBC should request information on how access services are used (specifically subtitling) on the basis that BBC iPlayer is able to identify this.

A number of third party platforms sought clarification on what ‘timely and accurate collection of data’ entails, with some arguing that that an undefined and unqualified right of access to data about usage should not be an automatic grant to the BBC. The cost to platforms of providing this information (both in terms of its capture and commercial value) was questioned. BT sought clarification on the level of anonymity of the data, while techUK argued that the General Data Protection Regulation (GDPR) would restrict how customer data can be shared with other organisations.

Pact argued that where data refers to content made by independent production companies it should also be shared with those companies and not just platforms.

There was, however, interest in reciprocal sharing of data. A number of platforms sought to understand the BBC’s definition of ‘reasonable reciprocal sharing’.

BBC response

The Data condition of the Policy is best seen in the context of the BBC’s wider approach to data and privacy. The BBC collects and processes data for the benefit of its audiences, specifically:

- To give audiences a better experience
- To improve our services
- To fulfill our responsibilities as a public service

The BBC’s privacy policy sets out some examples of the BBC use of personal data as follows:

- Recommending things we think you’ll like, like TV and Radio programmes
- Notifying you about things you’ve told us you like, like a new series of your favourite TV show
- Personalising parts of the BBC to your tastes, including emails, radio, news, iPlayer and music.

11 The current policy is available at www.bbc.co.uk/privacy/ and may, from time to time, be updated.
We also use it for business, regulatory and legal purposes, like:

- Dealing with any requests you make or content you submit
- Getting in touch if we need to tell you about something, like a change to our policies or issues with a service
- Giving you the right version of the BBC for where you are.

The BBC does not use personal data to target advertising of third party products, nor sell personal data to third parties.

In relation to third party platforms, the BBC does not seek through its Policy to obtain personal data beyond that relating to the consumption of its own content, and which – in deployments of a standard OTT product – the BBC in practice gathers itself. Where the BBC deploys a bespoke non-OTT implementation, the BBC would expect the platform to provide access to a broadly equivalent set of data relating to the consumption of the BBC’s content to that which the BBC would otherwise be able to obtain itself, in particular the time and duration of all playback instances of any BBC asset. The BBC has sought to clarify this in the revision to clause 3.17 of the Policy.

In the vast majority of implementations, it is the BBC that captures data relating to the consumption of its content, rather than the platform. In recognition that such data – appropriately anonymised and aggregated – can also be used by platforms to improve the service they offer to users, the BBC will meet any reasonable request by the platform for access to such data. We have sought to clarify this in revisions to clause 3.19.

In relation to concerns raised about platforms' compliance with GDPR, nothing in the Policy should be considered to compel platforms to breach their obligations under GDPR – nor the BBC to breach its own – and the BBC encourages all platforms to ensure that they are transparent with their users regarding the fair and lawful basis and purpose for which they are processing any personal data.

In relation to Pact’s comments, the BBC provides data of individual programmes to the producers that made them in order to enhance their understanding about the programme's performance.

In relation to the suggestion that the BBC should pay third party platforms for data, the BBC reiterates that it provides its content and services to platforms without charging carriage fees. This is not the market norm but recognises the BBC’s specific Charter mission and public purposes, its funding and its regulation. The BBC does not consider it would be consistent with its duty to exercise rigorous stewardship of public money for the BBC to be charged by platforms for the data necessary to improve its services for licence fee payers.

Fuller and up-to-date information on the BBC’s data and privacy policy can be found at https://www.bbc.co.uk/usingthebbc/privacy/
(vi) Free Access: (users should incur no incremental cost to access BBC content and services)

There was general agreement around this condition. However, a number of stakeholders, including RadioCentre, sought clarification on whether the BBC viewed internet distribution as ‘free’ and the potential exclusion of users who might not be able to afford the connectivity required to access BBC services online.

**BBC Response**

The BBC considers internet distribution to be consistent with its duty not to charge for receipt of its services (Framework Agreement, schedule 3.1) and with its definition of ‘free access’ in the Policy.

(vii) Value for money: (arrangements should maximise cost-effectiveness of distribution to the licence fee payer)

It was argued by pay-TV respondents that the BBC needed to set out more clearly in this condition the circumstances in which the BBC would depart from its ‘normal’ strategy of the standard BBC iPlayer – enabling third parties to determine whether they are required to take the standard product or might benefit from a non-standard arrangement (we have addressed this on pp 11-12 – deviation from standard products).

One respondent argued that the Policy should state clearly that the condition would be met where a third party agrees to meet the BBC’s reasonable incremental costs of supplying that third party platform. There should be no additional test or condition, as the additional availability provided by the third party platform ought to be sufficient justification in terms of ‘incremental audience value.’

Another respondent argued that the condition should not be a default reason for the BBC to refuse requests for new ways of distributing content because it would not represent a good use of licence fee payers’ money. Additional costs should be viewed against the benefits that accrue to consumers even if they are on a pay-TV platform.

They argue that the high-level nature of the Policy will lead to extended negotiations between parties. This should not be a factor when determining whether to supply.

BT said the BBC should consider whether the duration of standard BBC iPlayer distribution agreement should be longer than 12 months, given the resources consumed in having to agree a renewal every year, for content which the BBC is obliged to offer in order to meet its “must offer” obligations.
One platform agreed with the principle in general but was concerned that this clause could be used to restrict BBC content from platforms with a smaller audience size.

**BBC response**

Matters in relation to the BBC’s normal expectation to deliver syndicated services via standard service products is addressed in the BBC’s response set out on page 12.

In relation to the concerns raised about the treatment of smaller platforms, the BBC distributes its content to a wide range of partners, large and small. The Policy sets out that the BBC will generally opt for the solution which reflects best value for money and provides details of how the BBC measures the incremental audience value and incremental costs of any given distribution arrangement. The BBC judges this the appropriate balance between specificity and applicability to the full range of scenarios for distribution of the UK public services.

**Section 4 of the Policy: changes to third party services or use of BBC content and services**

There were concerns expressed by the pay-TV and device manufacturing sector around non-compliance with the Policy conditions, seeking clarification on the Policy, its proportionality and the processes the BBC would use.

One respondent suggested that the BBC had failed to mention the only Agreement specified consideration – that the BBC must not adversely impact fair and effective competition and be fair, reasonable and non-discriminatory. They also argued the BBC should not be allowed to unilaterally decide on the changes required and that there should be full consideration of any implementation costs to the third party.

One respondent argued that the BBC should seek to maintain supply of BBC products for the lifetime of a device. The DTG noted the BBC mentioned a platform “falling so far behind technological developments” might be cause for withdrawal of services. They suggested defining and creating a minimum service specification for the iPlayer (a ‘baseline version’) and ensuring this is delivered using industry-standard technologies and subject to minimum change would likely ensure standardised testing and conformance, and increase the longevity of the platform.

**BBC response**

The BBC considers that in setting out a non-exhaustive set of factors that would be applied within our overall regulatory framework, it has set out the basis for an approach which is proportionate as well as consistent.
We have also clarified in clause 2.3 of the Policy that, in considering distribution arrangements, we will always seek to improve or at the very least maintain the quality of current audience experience.

In relation to concerns regarding certification of services and the lifecycle of devices, these matters are clarified in the accompanying guidance on the BBC processes for dealing with requests for carriage of the content and services the BBC syndicates.

Section 5 of the Policy: exceptions

TechUK suggested that the BBC should give detailed notice of any trials resulting in test content being received by devices in the marketplace.

NAPD noted the potential flexibility afforded to platforms under the exceptions, stating that it believed that subtitles should not be missing from any events of exceptional national importance.

Pact expressed concern that experimentation could have a negative impact on the production sector by leading to unfavourable terms for new producers. They cited the distribution of BBC content on global social media platforms and BBC Three in particular. They called for systematic evaluation of the value of projects and not just a focus on incremental audience value.

The News Media Association (NMA) stated their interest in exploring whether the ‘exceptions’ might permit advertising around syndicated BBC content – such as pre-roll advertisements around BBC News Hub content.

BBC response

The BBC is under a duty to promote technological innovation and to maintain a leading role in research and development that supports the fulfilment of the Mission and promotion of the Public Purposes. This involves the BBC working in partnership with other organisations and sharing (as far as is reasonable) its research and development knowledge and technologies. However, this does not require the BBC to give detailed notice of testing which is happening with particular providers, some of which may be commercially confidential. Further, we note that, if any trials or testing would lead to material changes to the BBC’s Public Service and non-service activities, those changes would be subject to the material change and competition assessment provisions of the Framework Agreement before they could be implemented. This applies to the BBC activity on social media and to BBC Three whose move online formed part of a Public Value Test informed by a Market Impact Assessment by Ofcom. The BBC ensures that all distribution arrangements for the UK public services – including trial arrangements – are fair, reasonable and non-discriminatory in line with the requirements set by Ofcom’s Operating Framework.

The BBC welcomes the NMA’s support for the BBC News Hub partnership and notes their
interest in exploring advertising around the content it syndicates as a potential ‘exception’. The Policy does allow for time-limited trials to test specific, measurable hypotheses for which it may not be proportionate to follow all aspects of the Policy (clause 5.3).

In relation to access services, the BBC agrees that events of exceptional national importance should be accessible to all audiences and is committed to achieving this on its own services. In relation to third party platforms, we have already strengthened the ‘quality’ condition to be explicit about the expectation of access service provision by those platforms overall. Where events of exceptional national importance are being made available to third party platforms under this exception, the BBC will seek that those platforms provide access services with BBC content and services where to do so is foreseeable, technically and economically feasible, and possible within the available timeframes.

5. Conclusion

The BBC Board would like to thank all respondents for the time and consideration they have given in making submissions to this consultation.

As a result of the feedback received, the BBC has made several amendments to the Policy, clarified a number of areas of interpretation for stakeholders in this document, and produced supporting guidance on the processes for dealing with requests for carriage of the content and services the BBC syndicates.

We are publishing the finalised Distribution Policy alongside the guidance (“Applying to carry BBC content and services: a partners’ guide to process”) on the BBC website at http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/applying_to_carry_bbc_content_and_services.pdf It is effective immediately and supersedes the 2016 Distribution Guidelines.

The BBC Board considers the Policy to meet its duties relevant to the distribution of the UK public services, and to support the fulfilment of the BBC’s Mission and the promotion of its Public Purposes.

The Board will continue to review the BBC’s distribution activities as part of its general oversight role in monitoring the BBC’s performance against its duties under the Charter and Agreement and its compliance with the regulatory obligations set by Ofcom.

ENDS.