BBC Trust

Changes to BBC Radio:

The introduction of downloads protected by digital rights management (DRM) for all BBC Radio catch-up content.

Assessment of significance

May 2013

BBC | Trust

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The Trust's decision

The Trust has considered the BBC's proposal to make changes to its offer for radio catch-up to introduce downloads protected by DRM technologies for all radio content. The Trust has formed the view that the proposals do not constitute a significant change to the UK Public Services. It has therefore decided that a Public Value Test is not required in this case.

In reaching this decision the Trust considered the likely impact of the proposals on users of the services and on others, the financial impact, the novelty of the proposals and their proposed duration.

1. **Impact on users** –the proposal's impact on users, while likely to be positive and worthwhile, is unlikely to be significant in the context of total hours the audience spends listening to radio.

2. **Impact on others** – the proposal is likely to have little impact on the wider market.

3. **Financial impact –** the projected cost to the BBC of implementing and operating the proposal is not significant.

4. **Novelty** – the proposals are not novel. They do not make any new content available on iPlayer (it is already available to stream) and they bring the iPlayer functionality for radio into line with what already exists for television.

5. **Duration –** the proposed changes will be permanent.

This rest of this document describes the background to the Trust's decision including the nature of the BBC Executive's proposal and the public value case for introducing the change.

The document then sets out the Trust's reasoning for its decision in each of the above areas in more detail.

Background to the Trust's consideration

BBC Radio DRM Download proposal

The current offer

1. The BBC's iPlayer radio catch-up offer currently consists of programmes available on-demand for seven days after broadcast, which may be accessed by streaming only.

2. Up to 15% of all radio catch-up programmes may be series-stacked. This means that users may stream multiple episodes of first-run series up to seven days after the last episode[1].

3. Currently the BBC also makes available the following services - in line with Service Licence permissions - which are not affected by the proposals assessed in this document:

   - streaming clips of music performances available for 7 or 30 days from broadcast;
   - streaming clips of speech content available for an unlimited period after broadcast;
   - streaming access to the Permanent Collection, where some 'low value' Radio 3 and Radio 4 content is made permanently available upon expiry of the catch-up period; and
   - Downloads that are not protected by digital rights management technology ('podcasts') of clips and full programmes, mostly speech, which are available for download during 7 days, 30 days, or an unlimited period after broadcast and can be kept permanently following download.

The proposal

4. The BBC Executive proposes to extend access to existing BBC radio catch-up programmes by a digital rights management (DRM) download delivery mechanism. This would be available during the catch-up window only, including any series stacking. The option of access by a DRM delivery mechanism would be available for the 7,600 hours of newly available catch-up offered each week. The available volume or genres of radio catch-up programmes would not be affected.

5. DRM is a class of technologies that allow rights owners to set and enforce terms by which people use their intellectual property. Its purpose is to prevent unauthorised redistribution of digital media and restrict the ways consumers can copy content they've purchased. Typically DRM is implemented by embedding code that prevents copying, specifies a time period in which the content can be accessed or limits the number of devices the media can be installed on.

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[1] Eligible series are 'those with a distinct run, with a beginning and an end, and a narrative arc'

6. The proposal would allow users 7 days to download, 30 days to store before opening, and, once opened, 7 days to listen to the content before it would expire through the triggering of the DRM technology (a 7-30-7 window).

7. By offering access by DRM download for radio catch-up, the BBC would have a consistent audience proposition for TV and radio. The BBC has provided access to TV catch-up programmes by both DRM download and streaming since the launch of iPlayer over five years ago.

The public value of the proposal

8. The BBC Executive assert the following two key objectives underpin the public value case for the proposal:

   - To provide licence fee payers greater choice and control over when and how they consume BBC radio content.
   - To help BBC radio remain relevant to all listeners particularly younger audiences.

Greater choice and control

9. The Executive consider that radio is well suited to out-of-home consumption and the download delivery mechanism would allow users greater opportunity to access and consume catch-up content as conveniently as possible. 55% of listeners who currently download podcasts rated the ability to listen when they want as the primary benefit of this functionality.[2] At present, the podcast (non-DRM download) offer is available for 6% of original BBC network radio output, in line with permissions and rights availability, and is weighted heavily towards speech content on Radio 4 and Radio 4 Extra.

10. The Executive believe that DRM downloads for radio would provide an improved quality of service to listeners. It would allow users to access radio catch-up content when there is a reliable mobile data or WiFi connection and listen later. They argue that at present, when trying to access catch-up by streaming on the move, users face several challenges including limited mobile data packages, the higher cost of mobile data compared to WiFi (especially home WiFi), and the risk of patchy mobile coverage or higher latency.[3]

Remaining relevant

11. Rapid market and technology developments have changed the way the audience access and consume audio content. The Executive believe that the BBC as well as the wider radio industry need to respond to these changes to keep their offer current and relevant.

12. Over the past decade, total UK radio listening hours for all audiences have fallen by 8.1% to 22.2 hours. The decline is most pronounced for 15-24 year olds, dropping by

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[2] MIDAS November 2011

[3] The majority of UK smartphone users have a data package of 2GB or less, equivalent of up to seven hours of streamed BBC radio listening a month.

22.2% to stand at 16.3 hours in an average week in 2012. The average time 15-24 year olds spend listening to BBC Radio specifically has declined by 17.5% between 2002 and 2012, with Radio 1 (which specifically targets a young audience) experiencing a 22.5% drop during this time. [4]

13. The proliferation of other services and devices that can provide audio content could offer some explanation for this declining trend. Apple's iPod was launched in 2001 and online streaming services continue to grow in popularity, particularly among younger listeners. The latest figures available show that radio now accounts for 26 percentage points less 'share of ear' for 15-18s than for all adults, with radio accounting for 56% of listening hours, compared with 82% for all adults. [5]

14. Meanwhile, there is increasing demand to access and consume content on mobile devices. Figures for the first quarter of 2012 show that 39% of UK adults own a smartphone, up 12 percentage points on the preceding year. Ownership is highest among younger age groups; 66% of those aged 16 to 24 have a smartphone, compared to 2% of those aged 65 and over. 16 to 24s are also most likely to choose their mobile as the medium they would miss the most (40%), compared to 1% of the 65+ age group. [6]

15. In sum, the Executive believe this proposal will likely appeal primarily to 'on the go' listeners, and these listeners are the most likely to be in the younger age group where radio listening has declined the most.

Testing the BBC's proposals for their significance

16. Under the terms of the BBC's Framework Agreement with the Secretary of State, the Trust may need to undertake assessments of certain of the BBC Executive's proposals in order to determine when a Public Value Test (PVT) must be applied.

17. The PVT is a formal assessment process requiring the Trust to assess the public value of the proposed change, Ofcom to assess the market impact of the proposed change and two periods of public consultation. Ordinarily the overall assessment process lasts approximately six months.

18. The Trust recognises its responsibility to undertake a PVT where there is evidence that a proposal constitutes a significant change to the BBC's UK Public Services. It also recognises that the purpose of clause 25 of the Framework Agreement is accordingly a necessary filter to ensure that the PVT is reserved for significant changes.

19. In deciding whether a proposal constitutes a significant change to the UK Public Services, the Trust must have regard to the four considerations set out in clause 25(2) of the Framework Agreement; that is, the impact, financial implications, novelty and duration of the proposed change.

20. In July 2011 the Trust made a commitment to expand its relationship with Ofcom to take full advantage of Ofcom's understanding of the wider communications sector and, in particular, to invite Ofcom to provide its view of the 'impact on others' (e.g. providers or potential providers of alternative products and services) of a proposal

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[4] RAJAR, all adults and 15-24 year olds,2002 - 2012

[5] BBC Share of Ear report 2010

[6] Ofcom Communications Market Report 2012

from the BBC Executive that the Trust considers should be subject to a significance test.[7] Ofcom's view of the 'impact on others' will inform the Trust's decision in respect of its significance test, and in particular, the Trust's view of the 'impact on others' of the proposed changes.

21. This document relates specifically to the proposals relating to the introduction of downloads protected by DRM technologies for all BBC radio catch-up content. The Trust is not considering here any proposals relating to the BBC's provision of non-DRM radio downloads (podcasts).

22. As set out in clause 25 of the Framework Agreement, whether proposals meet the criterion of significance is a matter for the judgment of the Trust.

Changes to "key characteristics" of service licences

23. The proposal would require changes to the key characteristics of each individual BBC Radio station service licence and the BBC Online service licence. We set out the changes to the wording which would be required below.

24. Clause 25(3) of the Framework Agreement states that where proposed changes require the alteration of key characteristics of BBC service licences the Trust should presume that the changes ought to be subject to a Public Value Test, unless the Trust can justify departing from the presumption. This document explains why the Trust has decided that a Public Value Test is not required in this case.

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[7] This commitment has been codified in an Addition the Memorandum of Understanding between the BBC Trust and Ofcom, agreed in November 2011 and published in December 2011 (see

http://www.bbc.co.uk/bbctrust/assets/files/pdf/about/mou_addition_dec2011.pdf)

Required changes to BBC service licences

BBC Radio Station service licences:

Changes to Key Characteristics (Section 2):

Existing text (as standard for each Radio station)

On the same platforms, it may allow users retrospectively or prospectively via pre-booking to stream multiple episodes of first run series (known as 'series stacking') until a date no later than seven days after the last episode in the relevant series. This includes series where there is a break in scheduling between sub-sections of the series. The aggregate volume of such "series stacked" content must represent no more than 15% of all content offered on demand.

The service may offer its programmes streamed on-demand for a limited period after broadcast.

Required changes to text

On the same platforms, it may allow users retrospectively or prospectively via pre-booking to stream **or download** multiple episodes of first run series (known as 'series stacking') until a date no later than seven days after the last episode in the relevant series. This includes series where there is a break in scheduling between sub-sections of the series. The aggregate volume of such "series stacked" content must represent no more than 15% of all content offered on demand.

The service may offer its programmes streamed **or for download** on-demand for a limited period after broadcast.

BBC Online Service Licence – iPlayer and TV

Changes to Key Characteristics (Section 2):

Existing text

It [BBC iPlayer] may also offer BBC broadcast television content on the internet for seven days after it has been broadcast (both streamed and for download), and give users 30 days after download during which they may first access the content.

Required changes to text

It may also offer BBC broadcast television **and radio** content on the internet for seven days after it has been broadcast (both streamed and for download), and give users 30 days after download during which they may first access the content.

Test of significant change

Impact

25. The Trust looked at the potential impact of the proposals on users and others.

Impact on users

Our Approach

26. Drawing on primary data and supporting analysis provided to us by the BBC Executive and by Ofcom on potential growth in this area, we have considered the extent to which the proposal is likely change audience consumption patterns.

27. While there is consensus that consumption of BBC radio catch-up content through the introduction of DRM downloads will very likely increase due to the 'convenience' factor, it is important to highlight that forecasting the actual amount of additional listening which might result is inherently difficult. The BBC offers a wide range of radio content, which appeals to different audiences with diverse preferences on what they like to listen to and how they like to listen to it. As such, there is not a universally agreed approach on how to undertake this analysis and, since the Executive and Ofcom have each taken their own approach, we have considered the findings from each of their respective approaches as well as carrying out our own supplementary analysis when reaching our assessment on significance.

Current position

28. To set this assessment in the overall context of BBC radio listening, the Executive highlight that absolute levels of consumption of radio catch-up content are extremely small relative to broadcast radio consumption, amounting to 0.4% of hours spent listening to the BBC.[8] Catch-up radio content also contributes very little if any unique reach, so we do not expect this proposal to increase the reach of BBC radio.[9] In other words, it is reasonable to assume that almost all those who choose to download BBC radio content will already be BBC radio listeners.

29. Based on the historical growth in the usage of streaming and downloads to consume BBC catch-up programmes and the growth in broadband usage, the Executive estimate that the 0.4% of hours currently spent listening to BBC radio on-demand will experience a compound annual growth rate of 11%. This represents the 'counterfactual' level of usage, in the absence of the proposal going ahead.

Consumption forecast

30. In forecasting possible consumption levels based on the proposal proceeding, the Executive based their calculation on a ratio of audience requests for access by non-DRM downloads (podcasts) versus streaming for the station that has the largest sample of whole programmes available by both means, Radio 4.

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[8] BBC Network Radio Timeshifting Study Q2 2011. Includes catch-up programmes by streaming, clips, Permanent collections and non-DRM downloads.

[9] Brand TouchPoints Research, Kantar/BBC A&M Audiences, March 2012

31. Using this methodology, the Executive estimate that the availability of catch-up programmes via DRM download would increase listening to downloads from the counterfactual amount of 5.4m hours a month to a total of 16.2m hours a month (an increase of 10.8m). The Executive anticipate that half of this listening is anticipated to be to Radio 4 and Radio 4 Extra content as speech programmes are typically well suited to time-shifted listening. Early analysis by the Executive of as yet unpublished figures indicates a beneficial impact in particular on 'listening on the go', the key mode of listening driver for the proposed change.

32. While this projected uplift would represent a worthwhile increase, the Executive highlight that it would still be a very small proportion (less than 0.5%) of total BBC radio listening (2.94bn hours a month[10]) . To put this potential change in scale, the anticipated increase using the Executive's methodology would amount to growing download listening by four minutes a week, on average, per BBC radio listener.

33. In their advice to the Trust, Ofcom suggested that Executive's methodology does not offer a representative enough account of the range of BBC genres that would be made available to audience as downloadable content as a result of the proposal. It believes more account should be taken of trends on accessing catch-up through streaming as well as data on podcasts. Ofcom's view is that non-podcast Radio 4 (and Radio 4 Extra) content along with BBC Radio music programming may drive DRM download consumption and contribute most to any incremental growth.

34. Reflecting Ofcom's advice, we have also considered the potential consumption effect of making more music content available through DRM downloads. Instead of using Radio 4's ratio of audience requests for access by non-DRM downloads (podcasts) versus streaming as the basis of the calculation, we asked the Executive to re-perform their consumption forecast using updated (January 2013) figures and Radio 1 as a proxy. We chose Radio 1 given its appeal to younger audiences who tend to make up the bulk of on-the go listeners. For example, in 2012 weekly reach amongst 15 – 24 year olds for Radio 1 was 41.4% compared to 6.2% Radio 4.[11] The results project that Radio 1 download consumption would likely increase through the introduction of the proposal but this growth would not be material and therefore would not affect either our or Ofcom's respective assessments.

Assessment of significance

35. Our overall assessment of the proposal against the impact on users' consideration is that, while such a change would be likely to prove beneficial to audiences, it is very unlikely to result in a significant change relative to total hours spent listening to BBC Radio

Impact on others

36. Ofcom have written to the Trust setting out their assessment of the likely impact of these proposals on others. Ofcom's full response is published alongside this document. Their overall conclusion is as follows :

> " Overall, the available information suggests that the proposal has the potential to increase BBC Radio catch up particularly non-podcast Radio 4 (and Radio 4 Extra)

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[10] RAJAR, first quarter 2013

[11] RAJAR

Comedy and Drama as well as BBC Radio Music programming although other genres like Factual may also drive Radio DRM downloads. We consider this growth is likely to result in limited substitution and impact on others in most cases. Some impacts may occur in specific cases, for example, on commercial providers of radio catch up services although it is not possible to be definitive about the scale of these impacts. Also, potential cumulative impacts from the proposal may be more notable for affected providers of both linear radio and catch up services.

The Trust may wish to consider these potential impacts when making its overall decisions on whether the proposals are significant. "

37. Ofcom preface their conclusions by stating their views are based on the assumptions that BBC Radio content made available for DRM downloads will contain no new material (i.e. broadcast the same content as is streamed) and/or that the download material is not packaged any differently. We have sought and received assurances from the BBC Executive that these assumptions are correct. While music track listening information will be available to on-demand audiences, the Executive has no plans to 'sign-post' songs within a catch-up programme accessed by DRM download so listeners will not be able to click between individual music tracks. In other words, the integrity of the radio programme and the music curation within it will be retained for DRM download just as it is for streaming.

38. We agree with Ofcom's overall assessment that the changes proposed are likely to result in limited substitution and impact on others in most cases, and hence we consider such impact is likely to be insignificant.

39. In reaching this decision, we have considered the potential negative impacts in the certain specific cases Ofcom refers to, which they expand on in the preceding sections of their letter. We respond to these cases below:

• **Catch up radio**

40. Ofcom suggest that some substitution may occur in relation to music radio DRM downloads, although state that it is difficult to forecast the impacts. One example they give is the potential increased consumption of some Radio 1 dance music content generated by DRM downloads, which they feel could reduce requests for similar catch up content provided by commercial stations via streaming.

41. We consider that, for the most part, any substitution would have already occurred in this instance as both commercial and BBC radio programmes would be available via streaming. In certain limited circumstances there might be a convenience effect whereby a listener opts to switch from streaming commercial content to a BBC Radio DRM download if that was available (for example, to move in and out of the streaming coverage) but we consider this unlikely to be significant. 46% of commercial radio's listening hours come from audiences who only listen to commercial radio. [12]

42. We also concur with Ofcom's assertion here that any effect could be additive to the extent that commercial radio stations are able to develop competing DRM downloads and counter the potential impact of the proposal on their catch-up services.

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[12] RAJAR, quarter 4, 2011

- **Recorded music - music subscription services**

43. Ofcom envisage potential substitution in limited situations where users of music subscription services are passive listeners who choose to rely heavily on recommended playlists and those playlists have similar music content to BBC Radio music programming, which Ofcom feels could drive DRM download consumption.

- We note there are some free, ad-based music streaming services available for mobiles. However, in those situations where subscribers to the services that offer download functionality are paying customers, such customers are less likely to be the kind of passive listeners referred to by Ofcom. In addition, while the availability of music tracks on these services is conditional on on-going payment through subscription, this would nevertheless amount to more than the temporal availability of BBC Radio DRM downloads. In the former case the consumer can chose to prolong the availability by keeping on paying the subscription fee. In the latter there is no choice as content availability would expire at the end of the catch-up window.

- **Recorded music - downloads and CDs**

44. Ofcom suggest the proposal could generate some impacts in the specific case of full programme downloads of concerts and classical music performances.

45. We feel that, although DRM downloads of BBC classical music programmes might encompass only one specific piece of content (contrary to other music sub-genres programmes which would contain many more shorter tracks), the nature of classical music would suggest that listeners' preferences for permanent ownership are stronger (i.e. one wants to listen to a piece of classical music time and time again) than for other music genres. It is likely therefore that the temporary availability of DRM downloads would allay any substitution concerns. This is reinforced by the likelihood that the incremental impact of the download functionality will be lower for classical music than for other music genres, since the former is typically more suited to contemplative listening at home (where access by streaming is already a convenient option) rather than whilst on the move. The Executive also inform us that the number of long classical music pieces that would be made available through DRM downloads would be low.

Financial implications

46. The Trust does not believe the projected additional cost of the proposal is significant.

47. Implementation of the proposal would require a one-off technical development cost of £100k-£150k to build the infrastructure and update the iPlayer Radio mobile app.

48. The on-going spend for rights payments and for IP distribution would amount to an on-going cost per listener hour of 0.1p. For context, this is small compared to 1.7p per listener hour for the BBC broadcast radio portfolio, 10.2p per user hour for BBC Online or 4.2p for the BBC overall.

49. The BBC Executive assert that they can fund both the set up costs and running costs from within existing budgets.

Novelty

50. The Trust does not consider the proposals to introduce a DRM download functionality to be novel. They do not make any new content available on iPlayer (it is already available to stream) and they bring the iPlayer functionality for radio into line with what already exists for television.

Duration

51. The proposed change is intended to be permanent. When considered alongside the other criteria, we do not think that duration is likely to be a source of concern.