

*Championing  
excellence and diversity  
in broadcasting*



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**VLV RESPONSE TO  
DCMS SELECT COMMITTEE CALL FOR EVIDENCE:  
PRE-LEGISLATIVE SCRUTINY OF THE DRAFT MEDIA BILL**

**May 2023**

## INFORMATION ABOUT THE VLV

The Voice of the Listener & Viewer (VLV) is an independent, not for profit membership-based charity, free from political and sectarian affiliations. VLV supports high quality broadcasting which maintains the democratic and cultural traditions of the UK. We support the independence and integrity of the BBC and encourage work which demonstrates commitment to the principles of Public Service Broadcasting (PSB). VLV is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

## EXECUTIVE SUMMARY

1. VLV supports the overall purpose of the draft Media Bill to reform the legal framework for the regulation of broadcasting in the UK 'so that the UK public service broadcasters ...and UK radio thrive in the long-term'<sup>1</sup>.
2. VLV supports many provisions in the Bill which include PSB prominence on hardware; content regulation on VOD platforms; the requirement for VOD platforms to provide subtitles, audio description and signing; allowing the PSBs to satisfy their remits via online content, not just linear programming; the regulation of smart speaker platforms so that they ensure access to all licensed UK radio stations; Listed Events being only available on PSB services.
3. However, we have a number of concerns about the Bill. These include the revision of the existing PSB Remit which VLV believes will lead to an even faster decline in societally valuable genres of PSB content; the definition of prominence for PSB content and channels which we consider to be too loose; the lack of regulation of online audio content which VLV believes should mirror proposals for the regulation of content on VOD platforms; the risk that Channel 4 will become less innovative as a result of its new responsibility to ensure its sustainability; and the lack of digital rights in the Listed Events regime. We also believe that failings of the existing Communications Act should be addressed. These include a more specific definition of News which would provide greater clarity for the regulation of due impartiality and measures to ensure that Ofcom has stronger 'teeth' in ensuring the delivery of PSB content.
4. VLV considers this Bill provides an opportunity to strengthen impartiality regulation and ensure that societally valuable content is provided for the coming decade or more but within a new framework which includes online delivery. In this way the Bill will be beneficial to British democracy and society. While Ofcom is excellent at analysing the content audiences value, it is not its role to decide which content is societally beneficial. That is Parliament's responsibility.
5. Broadcasting legislation until now has imposed policy interventions to ensure delivery of what is considered societally valuable content. It has done this by defining the remit of PSB, to ensure that audiences have access to a range of high quality, informative content which tells them about a range of issues relevant to their life in the UK. The draft Media Bill does not define PSB in these terms. It only sets out provisions to ensure that audiences have access to News and current affairs, new/original UK content made by a combination of broadcasters and independent producers, which are not only situated within the M25, and content for children and young people. The proposed new definition of the PSB remit removes the responsibility for the PSBs to provide genres of content which are considered societally valuable which are also considered less

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<sup>1</sup> Memorandum from the Department for Culture, Media and Sport to the Delegated Powers and Regulatory Reform Committee, para 4.

commercially successful: education, sport, ‘science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist Interest’<sup>2</sup>.

6. In light of the decline of societally valuable PSB content, VLV is disappointed by this revision of the PSB remit in the draft Media Bill removing any mention of these genres in legislation or regulation of PSB. VLV considers that the new Media Bill will only accelerate its decline further. While some might argue that the publicly funded BBC can be left to provide such content, this will result in the BBC following a ‘market failure model’ which will reduce its reach and impact and lead to its demise.

7. Last year’s Media White Paper celebrated the huge growth in media choice<sup>3</sup>. VLV agrees that there is greater choice, but highlights that choice has grown unevenly; citizens have greater choice in popular, commercial genres such as drama and entertainment and less choice in the less commercially viable ‘at risk’ genres, which are those considered by many to be the most societally valuable. As a result of the Communications Act not providing Ofcom with appropriate powers, these genres have been in decline for the past two decades<sup>4</sup>.

8. Citizens are dependent on Parliamentarians to now ensure that their and society’s interests are delivered in this Bill. Without wanting to be overly paternalistic, Parliamentarians need to make an active decision on what PSB should deliver for the benefit of society, not just for the benefit of industry. We hope that they are able to ensure that citizen interests are delivered.

9. VLV makes the following recommendations:

10. **Making the Draft Media Bill more accessible:** the DCMS should provide a Keeling schedule or similar document which brings together all the provisions referred to in the draft Media Bill. This would make the task of scrutinising the draft legislation far more transparent for citizens.

11. **Definition of prominence:** wording in the Bill should be revised from ‘appropriate prominence’ to ‘significant prominence’ which would make the intention of the legislation clearer. VLV recommends the criteria used to decide whether a service should be designated a ‘regulated television selection service’ should be specified. Since the prominence framework also applies to “public service remit content”, the exact scope of this obligation should be clarified.

12. **Delivery of the PSB Remit:** the definition of ‘an appropriate degree of prominence’ for online content on PSB platforms should be more clearly defined and it should be made clearer what powers Ofcom has to improve online promotion of PSB if it is considered inadequate.

13. **PSB Remit:** the new proposed PSB Remit should be examined carefully by the Committee to consider whether it will undermine delivery of societally valuable content. The Committee should also consider what additional powers should be afforded to Ofcom to ensure the delivery of societally valuable content in the future.

14. **Channel 4:** the C4C board should be required to achieve a balance between delivering the Channel 4 remit and ensuring the corporation’s financial sustainability. Any decisions about the in house supply from Channel 4 should take into account the views of Channel 4 and the independent production sector. In house C4 production should function at an arm’s length basis, similar to the model followed by the BBC and BBC Studios, with full transparency to prevent anti-competitive behaviour.

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<sup>2</sup> *The Communications Act 2003*, Clause 264.6

<sup>3</sup> *Up Next: The Government’s vision for the broadcasting sector*, April 2022, pg. 12, para 1.2

<sup>4</sup> [https://www.smallscreenbigdebate.co.uk/\\_data/assets/pdf\\_file/0032/208769/consultation-future-of-public-service-media.pdf](https://www.smallscreenbigdebate.co.uk/_data/assets/pdf_file/0032/208769/consultation-future-of-public-service-media.pdf)

15. **Listed Events:** digital rights should be included in the legislation for Listed Events.
16. **Tier 1 Standards:** the Bill should be more specific about the consequences if Ofcom determines that audience protection measures on a Tier 1 platform are not adequate.
17. **Regulation of Content on VOD platforms:** the government should go ahead with its planned regulation of content on VOD platforms despite warnings from global streamers that they may reconsider their distribution of content to UK audiences.
18. **Online Audio Content:** online audio content should be regulated in the same way as content on VOD platforms in order to protect audiences. On demand and online-only content should be included in the new regulation. Broadcasters should be provided with access to data by online services.
19. **The diversity of analogue radio:** Changes in the Bill meaning Ofcom will no longer be required to ensure a diversity of national analogue stations or a range and diversity of local analogue services should be reconsidered in order to maintain a range and diversity of analogue radio services.
20. **Regulation of commercial radio:** the Committee should examine the further relaxation of regulation of commercial radio. While this is likely to reduce the costs of operators which could be beneficial for their sustainability, VLV is concerned that it could result in a reduction in the range and quality of local content for audiences.
21. **Terms of Trade for audio producers:** Terms of Trade for audio producers should be included in the Bill.
22. **Impartiality regulation:** the Bill should more clearly define which output should be subject to due impartiality rules and not leave this to Ofcom's discretion. It should also amend the 2003 Communications Act so that impartiality is assessed within individual programmes and not allowed across all the programmes in the service in question.

## INTRODUCTION

23. VLV ran a panel session at its recent Spring Conference to discuss provisions in the draft Media Bill. The speakers were Tim Suter (Perspective Associates and former DCMS/Ofcom), Lord McNally, Sophie Chalk (VLV), Anna McNamee (Sandford St Martin Trust). A full recording of this session can be found at: <https://www.youtube.com/watch?v=8WgDofknjig&t=1s>.
24. VLV supports the overall purpose of the bill, which is to ensure provision of British content for audiences in the UK, regulating online as well as traditional broadcast TV content, and ensuring the sustainability of UK Public Service Broadcasting (PSB) and radio<sup>5</sup>.
25. VLV supports many of the provisions in Media Bill which include:
- To ensure PSB prominence on hardware
  - To regulate content on VOD platforms

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<sup>5</sup> Memorandum from the Department for Culture, Media and Sport to the Delegated Powers and Regulatory Reform Committee, para 4.

- To provide subtitles, audio description and signing on VOD platforms
- To allow the PSBs to deliver their remit with online content as well as linear content
- To regulate smart speaker platforms so that all licensed UK radio stations are accessible
- To mandate that Listed Events have to be broadcast on a PSB service

26. VLV is however concerned that the Bill goes too far in reducing the PSB responsibilities of the Public Service Broadcasters. The Bill quite rightly reduces the burden on traditional linear broadcasters which are facing stiff competition from the global streaming platforms, but in doing so VLV considers it inadvertently disregards the interests of citizens. The Bill will allow the PSBs to no longer provide content which has been considered societally valuable but is less commercially viable, such as religion and arts programming, and will allow commercial radio greater flexibility which could undermine the delivery of local content.

27. VLV considers the Media Bill to be an opportunity to ensure that a plural supply of societally valuable content continues to be provided for UK citizens within a framework which also includes online delivery. While Ofcom is excellent at analysing what audiences value, it is not Ofcom's role to mandate which content is considered societally beneficial. This is the responsibility of Parliament.

28. Last year's Media White Paper celebrated the huge growth in media choice over the past decade<sup>6</sup>. While VLV acknowledges there is greater choice for citizens, it has grown unevenly. There is now far more choice in popular, commercial genres such as drama and entertainment and less choice in the less commercially viable 'at risk' genres, which are those considered by many to be the most societally valuable<sup>7</sup>.

29. By removing the PSB responsibility to provide societally valuable content from legislation, it is not clear whether Ofcom will even continue to monitor the volume of such output. Citizens are dependent on Parliamentarians to ensure that our interests are protected in this Bill. Without wanting Parliament to take an overly paternalistic approach, Parliamentarians need to make an active decision on what PSB should deliver for the benefit of society, not just for the benefit of industry. We hope that they are able to ensure that citizen interests are protected.

## **Question: Should the Media Bill provide a clear definition of what prominence in online services looks like?**

30. VLV understands that the new prominence framework applies to "designated internet programme services" (DIPS), which are the PSB internet programme services, such as iPlayer and ITVX, being made available on "regulated television selection services" (RTSS), which are internet connected hardware and platforms as designated by the Secretary of State, such as smart TVs and pay TV operators as well as streaming sticks and set top boxes<sup>8</sup>.

31. VLV understands that the proposed model follows that of the existing framework that applies to PSB linear services under the 'must carry/must offer' rules and we largely support the proposed model.

<sup>6</sup> *Up Next: The Government's vision for the broadcasting sector*, April 2022, pg. 12, para 1.2

<sup>7</sup> *Communications Act 2003*, Clause 264.6

<sup>8</sup> The explanatory notes say that the Government "expects this to include popular Smart TVs and pay TV operators, as well as connected TV devices such as streaming sticks and set top boxes".

32. However, VLV is concerned by the definition of an ‘appropriate’ degree of prominence which the RTSS should provide to the PSBs<sup>9</sup>. The draft Media Bill does not specify where such apps should be placed (e.g. which rows apps will be placed in or the order of such apps). We understand that Ofcom will draw up a Code for app prominence which will determine how the legislation is implemented in practice. Without having seen the Code, it is easy to see how the PSBs and RTSS providers may disagree on how this will actually work. VLV considers that the definition of prominence should be clarified to avoid dispute.

33. VLV is also concerned that the draft legislation mandates that any commercial arrangements between the PSBs and RTSS must be “consistent with” the PSB being able to meet the costs of its public service remit<sup>10</sup>. It is not clear whether this means that RTSS are expected to pay the PSBs for their content or whether the RTSS may not impose disproportionate charges.

34. **VLV recommends the following:**

- **The suggestion made by Clare Sumner, Director of Policy at the BBC, should be adopted – so that that the wording is revised from ‘appropriate prominence’ to ‘significant prominence’<sup>11</sup> which would make the intention of the legislation far clearer.**
- **The criteria employed when considering whether a service should be designated a ‘regulated television selection service’ should be specified.**
- **Since the prominence framework applies not only to services but, in some instances, to content where such content on DIPS is considered “public service remit content”, the exact scope of this obligation needs to be clarified.**

## **Question: Are proposals allowing a Public Service Broadcaster to meet its remit by online programming as well as linear appropriate?**

35. One of the features of the new public service remit for television being introduced by Clause 1 is that public service content, however it is provided, should be universally available<sup>12</sup>. This will allow the PSBs greater flexibility in delivering their remits by allowing the delivery of PSB content online as well as on their linear broadcast channels.

36. VLV’s concerns are two-fold. Firstly, measuring the discoverability and prominence of online PSB content will be a significant challenge; and secondly, the new PSB remit is far less specific than the existing remit in the 2003 Communications Act.

### **Measuring online delivery**

37. VLV is concerned that while the Bill allows Ofcom to ‘set expectations’ on the PSBs<sup>13</sup> regarding the prominence of PSB content, there is a significant risk that online it will be less discoverable and have less societal impact than it currently has on linear broadcast channels.

38. VLV is concerned that as yet there is no developed methodology to assess whether online content is readily discoverable and promoted, although we understand Ofcom is currently working on a model to assess BBC online delivery following the revision of the BBC Operating Licence.

<sup>9</sup> *Draft Media Bill*, March 2023, Clause 362AI para 5(a)

<sup>10</sup> *Draft Media Bill*, March 2023, Clause 362AI, para 5(b)

<sup>11</sup> Clare Sumner speaking at the Westminster Media Forum event on April 27 2023

<sup>12</sup> *Memorandum from the Department for Culture, Media and Sport to the Delegated Powers and Regulatory Reform Committee*, para 13

<sup>13</sup> *Draft Media Bill*, March 2023, Clause 362AI, para 5(b)

VLV questions how ‘an appropriate degree of prominence’ on online VOD platforms will be defined. What does it mean that ‘public service remit content...should be readily discoverable’ and ‘promoted’<sup>14</sup>? How will delivery be assessed and measured by Ofcom? We also question what powers Ofcom will have to improve delivery of PSB content online if its prominence is considered inadequate.

**39. VLV recommends that the definition of ‘an appropriate degree of prominence’ is more clearly defined and that it is made clearer what powers Ofcom will have to improve online promotion of PSB if it is considered inadequate.**

### **The definition of the PSB Remit**

40. VLV’s greatest concern about the PSBs delivery of their remit is that the new version of the PSB remit in the draft Media Bill removes the requirement for the PSBs to jointly deliver certain types of PSB content - education, sport, ‘science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist Interest’<sup>15</sup>. Until now broadcasting legislation has aimed to ensure provision of a range of specific high quality, informative, societally valuable content about a range of issues relevant to life in the UK. With this new Bill, there will no longer be an articulation in legislation of what Parliament considers to be societally valuable content.

41. The PSB Remit in the draft Bill only sets out provisions to ensure that audiences have access to News and current affairs, new/original content made by a combination of broadcasters and independent producers, which are not only situated within the M25, and content for children and young people.

42. A table below sets out the existing provisions which are being dropped.

<b>Communications Act 2003 – PSB Remit provisions</b>
<ul style="list-style-type: none"><li>• Wide range of subject matters – Clause 264.4.a</li><li>• Balance of subject matters Clause 264.4.c.</li><li>• Quality/standards – Clause 264.4.d.ii</li><li>• Editorial integrity – Clause 264.4.d.iii</li><li>• Cultural activity is <b>supported</b> and <b>stimulated</b> [by PSTV] Clause 264.6.b</li><li>• Sporting and leisure - Clause 264.6.d.</li><li>• Educational matters - Clause 264.6.e</li><li>• Science – Clause 264.6.f</li><li>• Social issues – Clause 264.6.f</li><li>• Matters of international significance – Clause 264.6.f</li><li>• Religion – Clause 264.6.g</li></ul>

43. When considering what the PSB remit in the Media Bill should encompass, it needs to be acknowledged that despite the 2003 Communications Act specifying the PSB content which should be provided jointly by the PSBs, most of these PSB genres have declined significantly since 2003. In VLV’s view this decline in PSB content needs to be reversed by measures instituted in the new legislation.

<sup>14</sup> *Draft Media Bill*, March 2023, Clause 362AA, para 3(b)

<sup>15</sup> *Communications Act 2003*, Clause 264.4

44. The reduction of PSB income since 2008 has led to the market becoming increasingly consumer-oriented and a decline in PSB investment<sup>16</sup> (by an estimated £500m in real terms between 2008 and 2018<sup>17</sup>). Research by Mediatique shows that this trend is likely to continue unless regulatory changes are instituted<sup>18</sup>.

45. It is clear that existing legislation has been ineffective in providing Ofcom with the necessary powers to prevent the decline of PSB provision. VLV notes remarks made by Tim Suter at the recent VLV Spring Conference: 'It seems to me that the genre-based model... was a pretty toothless piece of legislation.... It is just a definition of what was there but there are very few teeth underlying it'<sup>19</sup>.

46. VLV notes and agrees with comments made by Anna McNamee, Executive Director of the Sandford St Martin Trust, at the same conference: 'If you ask what is the point of PSB and it is to inform, educate, give the audience a perspective on how the world works, then there is an important place for a good quantity and quality of broadcasting which deals with religion. That is why the complete omission of any mention of religion in the draft Bill is very alarming... In 2003 ITV successfully lobbied Ofcom for its PSB quotas for arts and religious content to be removed... In 2015 Ofcom noticed that ITV's provision of religion and ethics had all but ceased. No quota: no obligation to do so. To be clear, it's not that audiences don't want this content; they do. When religious programming is on TV and radio it gets very decent figures... As Mediatique research says 'as revenues decline... and broadcasters seek to shave costs ... they will continue to be incentivised to spend disproportionately on popular genres, reducing to a bare minimum their expenditure on specialist genres. There will be no incentive to make more than the regulated imposed hours in pure PSB genres...' <sup>20</sup>.

47. In light of the decline of societally valuable PSB content, VLV is disappointed by the revision of the PSB remit to remove any mention of these genres in legislation or regulation of PSB and VLV considers that the new Media Bill will only accelerate its decline further. While some might argue that the publicly funded BBC can be left to provide such content, this will result in the BBC following a 'market failure model' which will reduce its reach and impact and lead to its demise.

48. While we understand that the Secretary of State will be given a new power to introduce new quotas if there is evidence that certain types of programming are not being provided by the market<sup>21</sup>, VLV is not clear what the 'certain types of programming' referred to are because they are not defined in the draft Bill. How will the Secretary of State know that this content is not being provided if the Bill does not mandate Ofcom to monitor the volume of and spend on such output? Will the 'certain types of programming' include those genres specified in the Communications Act which until now have been considered societally valuable?

**49. VLV recommends and urges the Committee to examine the new proposed PSB Remit carefully to consider whether it will undermine delivery of societally valuable content which**

<sup>16</sup> As examples, original arts and classical music declined significantly between 2014 and 2018 (by 21% and 6% respectively). Formal education remains the least well-served genre in terms of original programming on the PSB channels (65 hours in 2018) *Small Screen: Big Debate – a five-year review of Public Service Broadcasting (2014-18)*, Ofcom, 27 February 2020, page 21

<sup>17</sup> *Future models for the delivery of public service broadcasting*, Mediatique, December 2020, pg. 21

<sup>18</sup> Mediatique predicts a decline in spend on PSB content from £2586m in 2018 to £1970m in 2024 *Future models for the delivery of public service broadcasting*, Mediatique, December 2020, Figure 4.22 and Figure 29: Forecast PSB expenditure, by genre (real terms) (2018 – 2024)

<sup>19</sup> Tim Suter speaking at the VLV Conference, 11 May 2023 - <https://www.youtube.com/watch?v=8WgDofknqjg&t=3s>

<sup>20</sup> Anna McNamee speaking at the VLV conference, 11 May 2023 - <https://www.youtube.com/watch?v=8WgDofknqjg&t=3s>

<sup>21</sup> *Draft Media Bill*, March 2023, Clause 10



is currently available. It should also consider whether additional powers should be afforded to Ofcom to ensure the delivery of societally valuable content in the future.

## **Question: Are the proposals in the draft Bill adequate for securing the future of Channel 4 and supporting independent content producers?**

50. VLV supports the Bill's proposals to require C4C to 'carry on their activities in the way that they have reasonable grounds to consider would be most likely to enable the Corporation ... to sustain the level of their activities...'<sup>22</sup>. This approach seems self-evidently sensible if the corporation is to be sustainable, however, we do have concerns about the impact this provision will have on Channel 4 output. Unless it is balanced by the requirement that C4C delivers its remit, there is a risk Channel 4 will become less innovative. As Tim Suter remarked at the VLV Conference, the government 'decided not to privatise [Channel 4] but is asking the Channel 4 board to behave as if they had been privatised. That is a political fix'<sup>23</sup>.

51. VLV is also concerned about the potential impact of the removal of section 295 in the Communications Act, which prohibits C4C from making in-house programmes. We are concerned this could undermine the success of the UK's independent production sector, especially smaller independent producers. We note the suggestion by former PACT Chair, Sarah Geater, that any "in-house supply" from Channel 4 should be capped at 15% in both hours and value, potentially with different quotas for genres and for the nations and regions<sup>24</sup>. We also note her recommendation at the same event that returning formats should be excluded from quotas because they are "essential" to the long-term success of both broadcasters and indies and "distort" the calculations. VLV believes that any changes to Channel 4's commissioning model should be introduced gradually, with appropriate checks and balances, and following consultation with the independent production sector. VLV would welcome the introduction of specific protections for smaller independent producers, which has been suggested by the government<sup>25</sup>.

**52. VLV recommends that the C4C board should be required to achieve a balance between delivering the Channel 4 remit, which necessarily involves risk-taking in innovative programmes, while ensuring the corporation's financial sustainability.**

**53. VLV recommends that any decisions taken by the government regarding the in house supply from Channel 4 should fully take into account the views of both Channel 4 and representatives from the independent production sector.**

**54. We also recommend that any in house production at C4 should function on an arm's length basis, similar to the model followed by the BBC with BBC Studios, with full transparency to prevent anti-competitive behaviour.**

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<sup>22</sup> *Draft Media Bill*, March 2023, Clause 24, para 2

<sup>23</sup> Tim Suter speaking at the VLV conference, 11 May 2023 - <https://www.youtube.com/watch?v=8WgDofknqjg&t=3s>

<sup>24</sup> Sarah Geater speaking at the Westminster Media Forum event on April 27 2023

<sup>25</sup> <https://www.gov.uk/government/news/channel-4-to-remain-publicly-owned-with-reforms-to-boost-its-sustainability-and-commercial-freedom>

## **Question: Do the proposals for S4C meet the legislative changes required by the independent S4C review in 2018, and are these changes still relevant and appropriate today?**

55. VLV understands that the primary changes required by the independent S4C review in 2018 were that:

- S4C's remit should be changed so that it can deliver its remit through digital services as well as through its linear broadcast channel
- S4C's public funding should be entirely through the licence fee and the government should review S4C funding as part of government's regular licence fee funding settlement negotiations with the BBC.
- the S4C Authority would be replaced by a unitary board that includes executive management as well as non-executive members

56. The Government accepted the recommendations made in the Review<sup>26</sup> and we consider that the draft Media Bill does meet the legislative changes required by the Review by updating S4C's remit to include digital and online services and removing the existing geographical broadcasting restrictions.

57. Additionally we note that S4C's VOD app, Clic, will be a PSB app and covered by the prominence provisions in the Bill.

58. VLV understands that Clause 29 in the draft Media Bill provides a new delegated power to S4C and the BBC, allowing them to agree on how the BBC should best support S4C, in place of Section 59 of the Broadcasting Act 1990 which required the BBC to provide S4C with a specific volume of programmes each week free of charge. If the parties are unable to reach an agreement on alternative arrangements, the current requirement for the BBC to provide S4C with 10 hours of television programming in Welsh will remain as a backstop. VLV considers this new approach to be sensible and allow greater flexibility.

## **Question: Is the draft bill sufficiently flexible to legislate for any future extension of the Listed Events regime to include digital content?**

59. VLV welcomes the provisions in the draft Media Bill which specify that a qualifying service must be provided by a PSB, meaning that access to Listed Events will become a PSB benefit.

60. VLV understands that the question of whether digital rights are included in the legislation for Listed Events is still subject to an ongoing review by the Government. VLV supports the inclusion of digital rights in the Listed Events Regime so that time-shifted viewing can be guaranteed, which is especially important for events such as the Olympic Games which are often held in a different time zone. VLV's full response to the DCMS consultation on listed events in December 2022 is available online<sup>27</sup>.

**61. VLV recommends that digital rights are included in the legislation for Listed Events.**

<sup>26</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/695760/Government\\_response\\_to\\_the\\_S4C\\_indep\\_English\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695760/Government_response_to_the_S4C_indep_English_Accessible.pdf)

<sup>27</sup> <https://www.vlv.org.uk/wp-content/uploads/VLV-response-to-DCMS-Review-of-Listed-Events-Regime-December-2022.pdf>

## **Question: Are the requirements for the Tier 1 standards code proportionate?**

62. VLV understands that Ofcom will be tasked with developing and enforcing a new Code for the regulation of Tier 1 services which will largely be the same as the provisions in the Broadcasting Code, except that it will not include advertising and product placement provisions which will be considered through the government's Online Advertising Programme. The new code must achieve a number of objectives which are set out in the draft Media Bill and should "*level the playing field*" with the rules that currently apply to traditional linear broadcasters (i.e. the Ofcom Broadcasting Code).

63. Ofcom will be required to ensure audience protection measures are adequate to protect audiences from 'harm', such as age rating or other classification systems, content warnings, parental controls and age assurances measures<sup>28</sup>.

64. VLV understands that due impartiality must be addressed in the Code so that Tier 1 services will not be able to reflect the service provider's views or opinions on any matters of political or industrial controversy, or current public policy. However, the proposed rules omit the requirement for due impartiality in relation to matters of "*major political or industrial controversy and major matters relating to current public policy*". We understand that this omission reflects the fact that VOD services are less likely to include programmes that are reactive to live and rapidly developing events.

65. VLV largely considers that the requirements for the Tier 1 standards code are proportionate; however, we note that there are no explicit references in the draft Media Bill as to the consequences if Ofcom determines "audience protection measures" are not adequate.

**66. VLV recommends that the Bill specifies the consequences if Ofcom determines that audience protection measures are not adequate.**

## **Question: Are accessibility requirements for Video on Demand set at an appropriate level?**

67. VLV welcomes the requirement in the draft Media Bill to improve access to on-demand services. VLV understands that Ofcom will draft a Code which requires Tier 1 services to ensure that their services are "accessible".

68. VLV welcomes that these accessibility targets will apply only to Tier 1 services and that Ofcom will have the power to make exceptions in certain cases. We consider that this will not discourage new entrants to the market.

**69. VLV recommends that those with expertise in this matter advise whether provisions in the Bill are appropriate to ensure an adequate volume and range of content is subject to the new accessibility Code to ensure adequate access for those who will benefit from it.**

## **Question: Do the proposals in the draft Media Bill create any risks to UK's desirability as a market for VoD content?**

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<sup>28</sup> Draft Media Bill, March 2023, Clause 368OB, para (4)

70. VLV notes comments made by Benjamin King, Director of Public Policy of UK and Ireland at Netflix, at the Westminster Media Forum in April 2023 suggesting that imposing impartiality regulations on non-news content could deter Netflix from broadcasting such content. Mr King said, 'we are concerned that government's plans ... could .... prove unworkable, or risk a chilling effect on Netflix's appetite to make available many documentaries which are so beloved by UK members'<sup>29</sup>.

71. VLV considers it is imperative that VOD content is regulated to protect audiences and democracy in the UK. VLV believes that on demand platforms which provide TV-like content should be regulated in the same way as TV channels. This will be beneficial for the UK population because it will reduce the spread of misinformation and disinformation and ensure that content is of a consistently high standard, regardless of which platform it is being consumed on. VLV's recommendations can be found in its submission to the DCMS on this subject<sup>30</sup>.

**72. VLV recommends that the government goes ahead with its planned regulation of content on VOD platforms despite warnings from global streamers that they may reconsider their distribution of content to UK audiences.**

### **Question: What should be the specific criteria for designating an on-demand programme service as Tier 1?**

73. The criteria for designating an on-demand programme service as Tier 1 should ensure that those services with a significant reach among the UK population are in scope, so that the majority of citizens are protected.

74. VLV understands that prior to the designation of a service as Tier 1, the Secretary of State will require Ofcom to prepare an analysis of the VOD market including details of audience figures and catalogue sizes. This analysis should define 'significant reach' based on audience consumption and subscription data and specify whether a service has such a reach among UK citizens.

75. VLV considers that the following criteria should apply when designating an on-demand programme service as Tier 1:

- all VOD services operated by the public service broadcasters
- all VOD services operated by other broadcasters licensed by Ofcom with a significant reach in the UK
- any other VOD services with a significant reach in the UK
- it should be irrelevant where a service is headquartered, whether in the UK or abroad.

76. VLV notes that although no VOD services are referenced explicitly in the draft Media Bill, the Government's Press Release<sup>31</sup> references "*Netflix, Amazon Prime Video, Disney+*" as coming within the scope of new regulation. VLV therefore assumes that these services will fall within the Secretary of State's first designations.

<sup>29</sup> Benjamin King speaking at the Westminster Media Forum event on April 27 2023

<sup>30</sup> <https://www.vlv.org.uk/wp-content/uploads/VLV-DCMS-Consultation-on-VOD-regulation-201021-final-draft.pdf>.

<sup>31</sup> <https://www.gov.uk/government/news/new-laws-to-help-bring-more-great-shows-to-british-screens-and-airwaves>

77. VLV supports this model because it will allow the Secretary of State, following advice from Ofcom, the power to designate which services are in scope of the legislation; this will afford the government the ability to react quickly if there are changes in the media environment without the need to enact new legislation.

## **Radio**

78. VLV is unable to answer the detailed questions on radio in the consultation due to time constraints; however, our general comments on the draft Bill's provisions relating to radio and audio content are set out below.

### **Online audio**

79. VLV welcomes provisions in the Bill to ensure audiences can listen to UK licensed radio stations on smart speakers without stations having to pay fees to hardware companies. VLV considers this is especially important for democracy because content on licensed radio stations is regulated for accuracy and impartiality by Ofcom. Such safeguards do not exist for audio content accessed online which is of great concern to VLV. We believe that audiences are unlikely to be aware of the different standards of regulation which apply to output on radio stations and online services; this means they are vulnerable to the influence of misinformation and disinformation.

80. We also note with concern that provisions in the Bill only cover linear (live) radio on smart speakers, rather than on-demand and online-only content provided by UK radio stations.

**81. VLV recommends that online audio content should be regulated in the same way as online TV-like content in order to protect audiences. Therefore the new provisions to regulate VOD content in the Media Bill should also apply to online audio content.**

**82. VLV recommends that on demand and online-only content should be included in the new regulation so that it is guaranteed prominence and is easily accessible to audiences. We would also recommend that the Bill ensures that broadcasters are provided with access to data by online services.**

### **Diversity of Analogue Stations**

83. VLV understands that as a result of the Bill Ofcom will no longer be required to ensure there is a diversity of national analogue stations or a range and diversity of local analogue services. We understand that this change in approach is due to the shift towards national and local services being available via digital platforms. VLV is concerned that for those citizens who live in regions with poor DAB reception or those who cannot afford to invest in new DAB equipment, the provision of analogue services should be maintained.

**84. VLV recommends that the changes in the Bill meaning Ofcom will no longer be required to ensure a diversity of national analogue stations or a range and diversity of local analogue services should be reconsidered in order to maintain a range and diversity of analogue radio services.**

### **Localness of commercial radio**

85. Currently commercial local radio stations must ensure audiences are provided with certain genres of content, such as spoken material or specific genres of music, as well as ensuring stations target a range of age groups. The draft Media Bill relaxes content and format requirements on commercial radio, allowing stations more flexibility to adapt their services without requiring Ofcom consent. It replaces the requirements based on commitments given in licence

applications with new requirements for commercial stations to provide national and local news and relevant local information (traffic and travel etc.). The Bill also removes the requirement to provide a certain amount of programmes from a studio within a station's coverage area and does not require stations to employ journalists directly, but allows them to enter into partnerships with other media organisations to provide news and local information. This reflects the trend whereby many local radio stations have been merged into national brands, with a limited presence in many local radio station service areas beyond news-gathering.

86. VLV notes and agrees with Lord McNally's comments at the recent VLV conference which express some disappointment at the reduction in 'localness' of commercial radio. He said, 'I've rather lost confidence in commercial radio delivering localism ...[it] has been in a long retreat from anything other than trying to amalgamate itself into successful commercial operations with any sense of localism gone'<sup>32</sup>.

**87. VLV recommends the Committee should examine the further relaxation of regulation of commercial radio. While this is likely to reduce the costs of operators which could be beneficial for their sustainability, VLV is concerned that it could result in a reduction in the range and quality of local content for audiences.**

## **Question: Are there any issues missing from the draft Bill within the scope of public service broadcasting, video-on-demand or radio?**

### **Terms of Trade for audio producers**

88. VLV notes and agrees with a suggestion from Tim Wilson of Audio UK<sup>33</sup> at the VLV Conference that Terms of Trade for audio producers should be included in the Bill, similar to those introduced in 2003 in the Communications Act for TV producers. VLV agrees that as the independent audio production sector grows, this would future-proof intellectual property rights in the independent audio sector.

**89. VLV recommends that Terms of Trade for audio producers should be included in the Media Bill.**

### **The Definition of News**

90. There has been much debate about whether the regulation of due impartiality on UK broadcast platforms is effective. Concern has increased during 2023 in response to the increasing number of news channel programmes presented by sitting MPs who are able to interview members of their own party. This issue was raised with Dame Melanie Dawes in a recent oral evidence session of the CMS Committee<sup>34</sup> and VLV held a session on it at their recent Conference<sup>35</sup>, where there was a significant consensus that impartiality regulation is currently being severely challenged.

91. VLV considers that one of the underlying challenges of impartiality regulation is the lack of statutory definition of the content which should be covered by it in the Communications Act 2003. VLV considers the Media Bill provides a useful opportunity to reconsider the legislation which underpins impartiality regulation in the UK and to improve it for the benefit of UK democracy.

92. VLV notes and agrees with Lord McNally's remark at the VLV conference that in the context of the Media Bill 'it is going to be a very important battle... there is an attempt to broaden the concept

<sup>32</sup> Lord McNally speaking at the VLV Conference on May 11<sup>th</sup> 2023 - <https://www.youtube.com/watch?v=8WgDofknqjg&t=3s>

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<sup>34</sup> <https://committees.parliament.uk/event/17700/formal-meeting-oral-evidence-session/>

<sup>35</sup> VLV Spring Conference May 11<sup>th</sup> 2023 - [https://www.youtube.com/watch?v=OKh1nPWC3\\_A&t=90s](https://www.youtube.com/watch?v=OKh1nPWC3_A&t=90s)

of truth and accuracy ... Deregulation in the United States has cheapened their broadcasting and democracy in a dangerous way. The way we get this bill through is going to be a real test in how we strengthen our democracy in the years ahead. I think impartiality requirements should be strengthened<sup>36</sup>.

93. Stewart Purvis, former Chief Executive and Editor in Chief of ITN and former Partner for Content and Standards at Ofcom, suggested at the same event<sup>37</sup> that 'there has been a re-interpretation of the rules [by Ofcom] about alternative views' partly because of a 'wish in government to broaden the range of broadcasters in the country'.

94. And VLV notes and agrees with Sue English's pithy conclusion at the end of the session that 'the idea for me that two politicians can interview a senior cabinet minister of the same party and you can call that anything like impartial is just for the birds'<sup>38</sup>.

95. Section 319(8) in the Communications Act 2003 defines "news" as *news in whatever form it is included in a service*<sup>39</sup>. VLV expects this to mean that all content provided by a 'news' channel, such as GB News or Sky News, should be governed by impartiality rules. However, Ofcom, which has responsibility to decide when to apply the due impartiality rules, says that they only apply to '*news bulletins, news flashes and daily news magazine programmes*'<sup>40</sup>. Their guidance goes on to say '*Just because material is broadcast on a 'rolling news' channel does not necessarily mean that the material would be characterised as 'news' content*'.

96. VLV notes that the Ofcom guidance also says that the *likely expectation of the audience*<sup>41</sup> should be taken into account when assessing whether a programme is duly impartial. VLV would suggest that the audience expectation of a 'news' channel might be that it is regulated as news output.

97. In the context of the recent disquiet about the impartiality implications of sitting MPs presenting programmes on news channels, VLV recommends that news discussion programmes should be covered by the impartiality rules. We question why Ofcom makes a distinction between daily news magazine programmes and weekly news discussion programmes. In fact, VLV does not believe that Ofcom should be allowed to define which content should be in scope for impartiality regulation without there being public debate and parliamentary scrutiny. This is too important an aspect of regulation to left for a regulator to decide alone.

### **Impartiality regulation across all programmes in a service**

98. Additionally VLV has long been concerned by the provision in the Communications Act 2003 which rules that due impartiality should be assessed across *all the programmes included in the service in question*<sup>42</sup> so that impartiality can be delivered across *a series of programmes taken as a whole* and *all the programmes included in the service in question, taken as a whole*.

99. VLV considers this provision is problematic because viewers and listeners often don't consume a whole series of programmes, even if they are linked, and, more often than not, they do

<sup>36</sup> Lord McNally speaking at the VLV Conference on May 11<sup>th</sup> 2023 - <https://www.youtube.com/watch?v=8WgDofknqjg&t=3s>

<sup>37</sup> Stewart Purvis speaking at the VLV Spring Conference May 11<sup>th</sup> 2023 - [https://www.youtube.com/watch?v=OKh1nPWC3\\_A&t=90s](https://www.youtube.com/watch?v=OKh1nPWC3_A&t=90s)

<sup>38</sup> Sue English speaking at the VLV Conference on 11 May 2023 - [https://www.youtube.com/watch?v=OKh1nPWC3\\_A&t=90s](https://www.youtube.com/watch?v=OKh1nPWC3_A&t=90s)

<sup>39</sup> *The Communications Act 2003*, Section 319(8)

<sup>40</sup> *Ofcom Broadcasting Code Guidance Notes*, Section 5, para 1.8 - [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf)

<sup>41</sup> *Ibid.*, para 1.4

<sup>42</sup> *The Communications Act 2003*, Section 320(4)

not watch *all the programmes included in the service in question*. This means they may well be exposed to highly partial content without being exposed to other content which balances it.

100. **VLV recommends that the Media Bill should more clearly define exactly which output should be subject to due impartiality rules and not leave this task to Ofcom's discretion.**

101. **We also recommend that the Media Bill should amend the 2003 Communications Act so that impartiality is assessed within individual programmes and not allowed *across all the programmes in the service in question*.**

## **Question: Do you have any recommendations for additional or amended drafting to the draft Bill?**

### **Making the Draft Media Bill more accessible**

102. While the Media Bill Explanatory Notes published with the draft Bill are extremely helpful<sup>43</sup>, VLV recommends that the DCMS provides a Keeling schedule or similar document which brings together all the provisions referred to in the draft Media Bill, rather than relying on readers to refer to a number of other Acts which are lengthy. This would make the task of scrutinising the draft legislation far easier and more transparent for citizens. This recommendation was echoed by the speakers at the recent VLV conference.

### **Definition of prominence**

103. VLV recommends that the suggestion made by Clare Sumner, Director of Policy at the BBC, should be adopted – so that that the wording is revised from 'appropriate prominence' to 'significant prominence' which would make the intention of the legislation far clearer.

104. VLV recommends the criteria employed when considering whether a service should be designated a 'regulated television selection service' should be specified.

105. Since the prominence framework applies not only to services but, in some instances, to content where such content on DIPS is considered "public service remit content", VLV recommends that the exact scope of this obligation needs to be clarified.

### **Delivery of the PSB Remit**

106. VLV recommends that the definition of 'an appropriate degree of prominence' for online content on PSB platforms is more clearly defined and that it is made clearer what powers Ofcom will have to improve online promotion of PSB if it is considered inadequate.

107. VLV recommends and urges the Committee to examine the new proposed PSB Remit carefully to consider whether it will undermine delivery of societally valuable content which is currently available. It should also consider whether additional powers should be afforded to Ofcom to ensure delivery of societally valuable content in the future.

### **Channel 4**

108. VLV recommends that the C4C board should be required to achieve a balance between delivering the Channel 4 remit, which necessarily involves risk-taking in innovative programmes, while ensuring the corporation's financial sustainability.

<sup>43</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1146694/1285-HH-Media\\_Bill\\_Explanatory\\_Notes\\_29.03.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146694/1285-HH-Media_Bill_Explanatory_Notes_29.03.pdf)



109. VLV recommends that any decisions taken by the government regarding the in house supply from Channel 4 should fully take into account the views of both Channel 4 and representatives from the independent production sector.

110. We also recommend that any in house production at C4 should function on an arm's length basis, similar to the model followed by the BBC and BBC Studios, with full transparency to prevent anti-competitive behaviour.

### **Listed Events**

111. VLV recommends that digital rights are included in the legislation for Listed Events.

### **Tier 1 Standards**

112. VLV recommends that the Bill is more specific about the consequences if Ofcom determines that audience protection measures on a Tier 1 platform are not adequate.

### **Accessibility requirements for VOD platforms**

113. VLV recommends that those with expertise in this matter advise whether provisions in the Bill are appropriate to ensure an adequate volume and range of content is subject to the new accessibility Code to ensure adequate access for those who will benefit from it.

### **Regulation of Content on VOD platforms**

114. VLV recommends that the government goes ahead with its planned regulation of content on VOD platforms despite warnings from global streamers that they may reconsider their distribution of content to UK audiences.

### **Online Audio Content**

115. VLV recommends that online audio content should be regulated in the same way as online TV-like content in order to protect audiences. Therefore the new provisions to regulate VOD content in the Media Bill should also apply to online audio content.

116. VLV recommends that on demand and online-only content should be included in the new regulation so that it is guaranteed prominence and is easily accessible to audiences. We would also recommend that the Bill ensures that broadcasters are provided with access to data by online services.

### **The diversity of analogue radio**

117. VLV recommends that the changes in the Bill meaning Ofcom will no longer be required to ensure a diversity of national analogue stations or a range and diversity of local analogue services should be reconsidered in order to maintain a range and diversity of analogue radio services.

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