

*Championing
excellence and diversity
in broadcasting*

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RESPONSE BY THE VOICE OF THE LISTENER & VIEWER

TO THE BBC iPLAYER II:

PUBLIC INTEREST TEST CONSULTATION

July 2022

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INFORMATION ABOUT THE VLV

The Voice of the Listener & Viewer Limited (VLV) promotes citizen and consumer interests in broadcasting and speaks for listeners and viewers on the full range of broadcasting issues. It uses its independent expertise to champion quality and diversity in public service broadcasting, to respond to consultations, to produce policy briefings and to conduct research. VLV has no political, commercial or sectarian affiliations and is concerned with the issues, structures, institutions and regulations that underpin the British broadcasting system. VLV supports the principles of public service in broadcasting. It is a charitable company limited by guarantee (registered in England and Wales No 4407712 - Charity No 1152136).

INTRODUCTION

1. VLV welcomes the opportunity to respond to this public interest test consultation on new BBC iPlayer proposals.
2. VLV's primary concern is the value of public service broadcasting to citizens and wider society, therefore we will focus our response on the public value of these proposals, rather than focus on market impact concerns.
3. VLV believes that serious consideration should be given to the fact that current BBC regulation means the BBC is constrained with regards to the amount of content it can put on iPlayer and the duration it can be made available to audiences, unlike other streaming services, including those of the commercial PSBs. This means that the BBC's ability to deliver its services is limited and there is a risk that audience expectations are not met.
4. VLV considers that Licence Fee payers have already funded the content in the BBC Archive and therefore they should, when possible, have access to it on the iPlayer, allowing that there are additional costs for distribution and rights payments.
5. We understand the proposal under consideration is that the BBC should be allowed to further increase the availability of programmes on BBC iPlayer by being allowed to publish – subject to financial and operational constraints – any title on BBC iPlayer in line with BBC agreements with producers and underlying rights holders, including the availability of any returning series as full series boxsets.
6. None of this response is confidential.

Context

7. The BBC's proposals come at a time when it is clear that time spent by audiences watching content on video on demand platforms (VoD) is increasing while live TV viewing is continuing to decrease.
8. For many viewers VoD is now the primary means by which they view content and since the last iPlayer Public Interest Test the VoD market has become even more competitive.
9. The ability of audiences to consume a wide range of content over a longer period of time on the SVoD platforms and the commercial PSB VoD platforms has led to an expectation among audiences that this should be the case across all providers, including the BBC.
10. BBC research shows that since 2019 when the iPlayer window was extended and more hours of content were allowed to be made available, viewing on iPlayer has increased considerably.¹

The BBC Mission and Public Purposes

11. The BBC Charter and Agreement make it clear that the BBC should do all it can to promote the Public Purposes of the BBC while avoiding unnecessary adverse effects on competition and promoting positive market impact.
12. The BBC Agreement (2016) states that the BBC should make its public services widely available:

The BBC must do all that is reasonably practicable to ensure that viewers, listeners and other users (as the case may be) are able to access the UK Public Services that are intended for them, or elements of their content, in a range of convenient and cost effective ways which are available or might become available in the future. These could include (for example) broadcasting, streaming or making content available on-demand, whether by terrestrial, satellite, cable or broadband networks (fixed or wireless) or via the internet.²

13. VLV considers the iPlayer to be a 'convenient' way to make content available for audiences.³

14. The BBC Charter also requires that

The BBC must promote technological innovation, and maintain a leading role in research and development, that supports the effective fulfilment of its Mission and the promotion of the Public Purposes.⁴

¹ 2.5 BBC consultation page 11

² *BBC Agreement*, December 2016, clause 61

³ *TV set viewing trends: Linear remains vital*, Enders Analysis

⁴ *BBC Charter*, December 2016, Clause 15

15. VLV supports these proposals on the condition that the BBC commits to ensuring that public service content is promoted on iPlayer and is easily discoverable. Ofcom will need to ensure that it meets this commitment. VLV is concerned that personalisation algorithms will increasingly narrow audiences' horizons, providing them primarily with recommendations of content based on their previous usage. The BBC should ensure that the iPlayer is driven by public service principles, providing audiences with a wide range of content which fulfils its Public Purposes.

Level Playing Field

16. VLV believes that current regulation which limits the amount of content and the duration it can be provided on BBC VoD platforms should be relaxed so that the BBC has similar freedom as the other PSBs to provide access to content for a longer period, subject to rights negotiations with content producers.
17. We believe this would be fairer and will increase the public value of BBC content because licence fee payers would have better access to the content which they fund through the TV licence.

Question 1: What do you think about the potential public value of our proposals for BBC iPlayer content availability, including the extent to which our proposals contribute to the BBC's mission to serve all audiences through the provision of high quality and distinctive output and services which informs, educates and entertains?

18. Overall, VLV supports the proposals which the BBC has put forward to allow it to publish whatever BBC content it wishes to publish on iPlayer.
19. VLV believes greater public value can be derived from the high quality, distinctive content the BBC provides if the opportunity to view such content is extended. Its reach will be extended as will its impact.
20. If the BBC is to 'serve all audiences' it needs to be able to take into account trends in viewing behaviour and ensure it provides content in the ways in which audiences want to view it.
21. As stated above, the Agreement directs the BBC to deliver content to audiences in 'a range of convenient and cost effective ways' which include 'on demand' platforms.
22. There is now an audience expectation that content will be readily available on VoD platforms and the BBC needs to keep up with audience expectations if it is to remain relevant to all audiences, regardless of their age. If audiences increasingly move away from the BBC and instead consume content on other VoD and SVoD platforms, loyalty to the BBC brand will be undermined.

23. VLV agrees with the BBC that in order to ensure it delivers its mission, the BBC needs to be able to develop the iPlayer as a viewing destination in itself, rather than purely as a catch-up service. This will be essential if the BBC is to be able to compete with the global SVoDs by appealing to audiences among whom those services are particularly popular.
24. While VLV welcomes the proposals for enhanced availability of BBC content, we note that these proposals will result in higher distribution costs which will reduce the budget for originations. Recompensing rights holders for longer viewing windows on the iPlayer will cost a significant amount. While balancing the need to provide enhanced availability on the iPlayer, VLV would want the BBC to ensure that it retains its focus on providing new, original UK content for audiences which is broadcast initially or simultaneously on its linear services.

Question 2: What do you think about the benefit to audiences who watch BBC iPlayer, as well as wider potential social and cultural impacts?

25. If availability of high quality, UK produced BBC content is enhanced by more of it being made available on the iPlayer, VLV considers that this would be beneficial for audiences. It will increase the impact and reach of the BBC. It is crucial that the BBC maintains its provision of distinctive UK-produced, culturally relevant content so that UK audiences have access to high quality content which reflects their lives.
26. As stated in the consultation document⁵, the iPlayer is particularly well placed to increase the impact of the BBC's public value when delivering the BBC's public purposes, such as provision which 'reflects the voices and communities from across the UK'. A benefit of extending the amount of content on iPlayer would be to ensure that more Gaelic programming is made available, for example.
27. As stated above, VLV's sole caveat is that these proposals should only be allowed to go ahead if the BBC commits to ensuring that public service content is prioritised on iPlayer and Ofcom assesses its performance in this regard.
28. UK produced content informs citizens about UK and regional issues and provides UK-relevant drama, current affairs and reliable news. In contrast, global platforms such as Netflix and Amazon, tend to commission content which appeals to audiences globally, rather than locally, and it therefore delivers less public value. Additionally, most SVoDs are driven by purely commercial motivations rather than by public value considerations. Increasingly subscription services are being adopted by the public but this inevitably favours the better off.

⁵ *BBC iPlayer II: Public Interest Test consultation*, 23 June 2022, Para 4.3.3.

29. If the BBC is unable to adapt to meet the needs of audiences who enjoy watching content on VoD platforms, then it will become increasingly irrelevant and in the longer term it will become unsustainable. If its popularity declines it will be impossible to ask the public to pay a universal Licence Fee. If the BBC becomes unsustainable and its scope and scale are reduced, there is a risk that the whole PSB ecology in the UK will be undermined. VLV believes this will have significant negative impacts on UK society as a whole.
30. The scale of PSB in the UK is unusual by international standards. In most countries where TV is important, the commercial TV sector is substantially larger than it is in the UK. The presence of the BBC, with its public mission, scale and scope, is significant because while commercial broadcasters can provide an excellent service for consumers, their motivations as commercial companies are necessarily different from those of the BBC which is a publicly funded corporation.
31. Viewing to PSB channels and public service programming brings a range of public benefits. These include direct benefits to individuals such as providing them with greater individual knowledge of specific issues e.g. via documentaries, as well as bringing wider social value through greater social cohesion or greater knowledge of current affairs which may facilitate democratic debate. Locally produced content also aims to increase civic engagement at a local level and to put people in touch with what is happening in their local area. These factors are unlikely to be fully accounted for by individuals when making viewing choices and, as such, an unregulated market may under-provide these services to the detriment of audiences.
32. The wider social, economic and cultural benefits of PSB are as follows:
- The broadcasting sector is integral to a thriving creative economy in UK
 - It provides a wide choice of high quality programmes
 - It provides trustworthy news and current affairs
 - The BBC supports certain types of programming such as arts, religion, original children's programming which otherwise might not be broadcast
 - PSB reflects the UK back to itself
 - PSB brings the nation together at key moments
 - PSB informs and educates society
 - PSB promotes social cohesion
 - It provides innovative content which might not otherwise be broadcast
33. PSB is crucial for the health of our democracy. At a time when the world seems to be increasingly characterised by social division and the erosion of democratic systems, disinformation and echo chambers are proliferating and thriving. The UK's PSBs provide a counter balance to these issues. They hold powerful companies and institutions to account and provide information to engage citizens in the democratic process.
34. VLV's only concerns about the BBC's digital-first strategy which is referenced in the consultation document, are proposals to commission content solely for

the iPlayer which might not be made available to broadcast audiences. This would disadvantage audiences who choose not to access content using online platforms or are unable to do so because their broadband is not good enough. VLV notes research from Enders Analysis that shows that 8m households do not currently access digital content.⁶ We cannot disregard the needs of 30% of the population, many of whom are the most vulnerable in society.

Question 3: What impact (positive or negative) do you think our proposals on enhanced availability might have on fair and effective competition?

35. VLV takes into account that as a publicly funded corporation, the BBC benefits from public funding which commercial broadcasters do not enjoy. While making these changes to the amount of content the BBC can put on iPlayer represents public value by improving the ability of audiences to consume content when and how they want to watch it, VLV understands the concerns that they may impact negatively on the income of commercial competitors which could ultimately reduce choice for audiences.
36. VLV notes that the BBC says that there is no evidence that the changes made to iPlayer in 2019 have crowded out commercial activity⁷, however VLV would recommend that the impact of this change to the availability of content on iPlayer should be tracked by Ofcom to assess the impact it is having on the rest of the market. VLV's concern is that an increase of share for the iPlayer might lead to a decline in viewing of content on the other PSB VoD services (ITV Hub, All 4 and My5). The commercial PSBs, like the BBC, are increasingly financially dependent on viewers consuming content on their VoD platforms.
37. If the BBC is not allowed to evolve the iPlayer in line with market norms, then there is a risk that the iPlayer will become increasingly irrelevant in potential detriment to audiences and British society.
38. On balance, taking into account available evidence, the VLV believes that these proposals should be adopted on the basis that they are in the public interest and therefore will have a positive impact.

Question 4: Are there any steps you think we could take to minimise any potential negative effects on fair and effective competition or to promote potential positive impacts?

39. VLV believes that if the proposed changes to the iPlayer are permitted, Ofcom should closely monitor developments in the BVoD market, to ensure that the potential negative effects of these changes are monitored.

⁶ Enders Analysis evidence to House of Lords Communication and Digital committee 5 April 2022
<https://committees.parliament.uk/writtenevidence/108052/pdf/>

⁷ *BBC iPlayer II: Public Interest Test consultation*, 23 June 2022, Para 1.1, pg 2

40. VLV does not believe this will be the case, but if, in due course, it is considered that the BBC is over- dominant in the UK VoD market, then Ofcom should be able to amend regulation governing iPlayer windows.

41. VLV also suggests that, in line with requirements in the Charter, the BBC should seek to work in partnership with other organisations and share, as far as is reasonable, its research and development knowledge and technologies.⁸

⁸ *BBC Charter*, December 2016, Clause 15 (2b) and (2c)