



Response to consultation:

Department for Culture, Media and Sport

The balance of payments between television platforms and public
service broadcasters

26 June 2015

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1. Introduction

About Digital UK

Digital UK supports the UK's terrestrial TV service and its viewers.

We are responsible for day-to-day operational management, including the Freeview electronic programme guide (EPG), and lead on developing platform strategy, working with our broadcast partners and industry. We also provide viewers with information and advice about terrestrial TV channels, services and reception.

Digital UK is owned by the BBC, ITV, Channel 4 and Arqiva.

About Digital Terrestrial Television (DTT)

DTT is the UK's most popular TV platform. In the UK, DTT provides a universally available service offering a range of more than a hundred free-to-air TV, radio and text-based services. At the heart of DTT is Freeview, which is used on at least one TV set in around three quarters of all UK homes.

Prior to digital switchover (DSO), more than four million UK households could not access DTT services and in other parts of the country signal strength was variable. Thanks to industry investment in excess of a £1bn, switchover made public service channels and many other services provided by the PSBs available via DTT to 98.5 per cent of homes, matching the reach of key PSB channels on analogue TV. DSO also increased the availability of other commercial free to air channels to circa 90% of UK homes.

2. Background

Digital UK holds an Ofcom EPG Provider Licence and allocates Logical Channel Numbers (LCNs) to a range of linear services on the Digital Terrestrial Television (DTT) platform. The platform carries public service channels (including national and regional variants), local TV channels and more than 70 commercial channels from a combination of PSB institutions and pure commercial broadcasters. The Digital UK LCN Listing and LCN Policy conform to the requirements of the Communications Act (2003) and Ofcom's Code of Practice on Electronic Programme Guides (the 'Ofcom EPG Code') published in July 2004.

Within this regulatory framework Digital UK's objective is to develop its listing and apply the LCN Policy in such a way as it considers to be for the long-term benefit of the DTT platform and in the interests of viewers. This includes securing appropriate prominence for any channel listed at s310 of the Communications Act, and allocating LCNs to any other channel in accordance with the fair, reasonable and non-discriminatory ('FRND') requirements of the Ofcom EPG Code, so to give commercial providers appropriate certainty of their investments in the platform.

The Digital UK LCN Listing is followed by Freeview-branded TV devices and it has also been adopted by other hybrid DTT/IP services such as YouView (including BT TV and TalkTalk TV) and EE TV.

3. Response

As the EPG provider licence holder for the free-to-view DTT platform (Freeview) our response is focused only on the proposals to amend the regulatory framework for EPGs, which we welcome.

We have not responded to other topics raised in the consultation, as the document makes clear that any changes to the *must offer / must carry* rules would not affect free-to-view platforms and proposals to remove Section 73 (s73) Copyright, Designs and Patents Act 1988 only affect cable TV platforms.

Freeview plays a critical role in UK television. It is the main delivery platform for free-to-view TV and sustains the near universal availability of PSB and other high quality UK content, supporting benefit for viewers and enabling a virtuous cycle through which mass market audience reach supports broadcasters' investments in UK content.

Freeview's role in delivering these public policy goals is supported by the regulatory framework within which we operate.

The rationale for regulating EPGs remains valid

The framework for regulating EPGs was first developed to respond to the shift from analogue to digital multichannel TV. The EPG had become the most important method for viewers navigating through the growing levels of choice at their disposal, and a principal means of providing content discoverability.

The Communications Act 2003 established principles to secure positive competition (FRND conditions for access to EPGs), public policy (prominence for PSB channels) and accessibility outcomes. These principles were then implemented in the regulatory framework through the Ofcom EPG Code of Practice, which licensed EPG providers (including Digital UK) have to comply with.

Evidence collected on viewer behaviour supports the ongoing importance of the principles underpinning EPG regulation. The majority of viewing of long-form audio-visual content is still taking place on a TV, through the linear schedule.¹ Industry studies² demonstrate that the linear EPG remains central to the vast majority of viewer journeys to content discovery. Browsing through the EPG to decide what to watch appears to be a deeply ingrained behaviour that persists, even while options for content discovery (both on the TV set and on other devices) are proliferating.

As the EPG remains important in facilitating content discoverability, securing linear PSB prominence through the EPG framework continues to be an important tool to support the delivery of PSB objectives as defined by Parliament. We do not consider that prospects of deregulation raised in the consultation document would benefit viewers or the UK content industries. On the contrary, removing regulatory certainty may affect incentives to invest in UK content.

Should EPG providers have an incentive, following de-regulation, to re-allocate the slots at the top of the linear EPG to those willing to pay the highest commercial rates, this could benefit international media companies with deep pockets and little incentive to fund and broadcast original UK content. Market-based allocations of top EPG slots could also have the negative consequence of incentivising UK channel operators to divert funds from UK production budgets in order to compete for prominent EPG positions. If deregulation triggered significant changes to EPG ordering this could also cause significant confusion for viewers, making it more difficult to access the most popular UK channels.

In the remainder of our response we focus on three proposals for change to the EPG framework outlined in the consultation document: 1) future proofing the framework to ensure outcomes are not dependent on specific technology; 2) extending PSB prominence to Video on Demand and 3) ensuring that the highest-quality variants of public service channels are easily discoverable.

¹ Using BARB as well as proprietary data, Thinkbox estimates that in 2014 86% of all TV-like viewing took place on the linear schedule, 12% was time-shifted on a TV set (PVR and TV VoD), and less than 2% was VoD on other devices.

² Relevant ethnographic studies include: ACB for Ofcom (2013), Craft for Channel 4 (2014).

The EPG framework needs to be future-proofed to reflect market and technology changes

So far, viewing patterns have only changed gradually in response to the explosion of choice available to UK viewers on what and how to watch TV content. However, the pace of change could in future accelerate and significant market and technology changes are increasingly exposing the limitations of the current framework for EPG prominence. These are highlighted by:

- (i) Growing convergence between broadcast services and video delivered over IP networks;
- (ii) Increasing prevalence of video viewing on connected devices, including 'Smart' TVs; and
- (iii) Increasing influence of global players on the availability and discoverability of TV content to UK audiences.

In this context, Digital UK and Freeview are launching 'Freeview Play', a new hybrid DTT/IP TV service which will seamlessly integrate the most popular catch-up services – including BBC iPlayer, ITV Player, All 4 and Demand 5 – with the core linear service and a backwards EPG, allowing users to easily access on-demand content from the familiar TV channels grid. Freeview Play will be built into compatible TVs and set-top boxes, free from subscription.

Evidence on viewer expectations supports the principle of extending PSB prominence rules to VoD content. Consumer research conducted in 2012 for the BBC suggests a majority of viewers (64% of respondents) expect a default catch-up or VoD menu to reflect the ordering of the linear EPG. In the same survey, 63% said that in a menu including catch-up VoD, other VoD and other apps (YouTube, iTunes) they would still expect catch-up VoD to be listed first³. These findings are consistent with qualitative consumer research Freeview conducted in 2014.

The launch of Freeview Play demonstrates our commitment to facilitating easy and convenient free-to-view access to the most popular linear and on-demand UK TV services, in line with viewers' expectations.

But as markets for connected TV products mature, the absence of a supportive regulatory framework for VoD PSB prominence may expose that while broadcasters are focused on securing the availability of their content to UK audiences, CE manufacturers are seeking to develop a common approach to content presentation that can work across markets globally.

Providers managing the user interface of connected TV products (including manufacturers or third party software and OS providers) may have an incentive to positively discriminate in favour of on-demand and interactive content provided by commercial partners to enhance commercial returns. We also note how deals between consumer electronics manufacturers and content providers are increasingly taking place at a global level. The recent deal announced by Netflix securing a dedicated Netflix button on all remote control devices from Panasonic, Philips, Sony, Toshiba and Vestel in Europe in 2015 is a case in point – as illustrated in Figure 1 below.

³ 'PSB prominence in a converged media world', 21 December 2012, Communications Chambers

Figure 1 - Remote controls from Sony and Panasonic's 2015 EU TV range, featuring a prominent Netflix button



The launch of Freeview Play will contribute to the continuing delivery of positive public policy objectives by the market. At the same time, we believe there is a strong rationale for updating the framework to reflect the increasing complementarity between traditional TV viewing, catch-up TV and other video-on-demand services provided over IP – so that the market and regulation can continue to work in unison alongside one another to the benefit of viewers.

Relying solely on market forces for the future delivery of positive PSB and viewer outcomes may not be sufficient because of the potential tensions between UK and global market incentives noted above. A pure market-based approach would also mark a significant departure from how Parliament has determined that the PSB system should be supported in the linear TV environment. On balance, we do not consider that such a change in regulatory trajectory would be justified nor consistent with the spirit of supporting PSB objectives.

We firmly agree that the extension of PSB prominence regulation to VoD should allow continued experimentation and innovation in connected TV services, as well as any future changes in how audio-visual content, linear and non-linear, is delivered. Rather than prescribing specific outcomes, it should provide backstop mechanisms to protect against the risks that UK viewers may, in future, find it harder to access high-quality UK content through connected TV services.

We agree with the principle of making the best possible quality versions of PSB content easily discoverable

Recent years have seen an increase in the popularity of larger television screens, and this sustains the relevance of better picture resolution and demand for channels broadcast in high definition. The subscription free Freeview HD services have helped stimulate growth of TV set sales based on DVB-T2, which accounted for more than 60% of UK total sales during 2014.

In line with viewer expectations and to ensure the long term competitiveness of the platform Freeview and its stakeholders are continuing to grow the portfolio of HD services. There are currently fourteen HD channels and with the launch of Arqiva's second DTT multiplex using DVB-T2/MPEG4 technology in April 2015 we can expect more high-quality content on the platform.

At present the DTT platform makes HD channels discoverable through LCNs in a dedicated HD genre which starts at LCN 101. While Freeview already hosts BBC One HD (at LCN 101), BBC Two HD (102) ITV HD (103) and Channel 4 HD (104), we are aware that other HD channels warranting appropriate prominence may launch in the future.

In 2013 Digital UK carried out a consultation on whether to maintain the HD genre or to enable substitution of HD channels at SD channel numbers (such that BBC One HD appears automatically at LCN 1 for viewers with HD devices). While the arguments for and against this were finely balanced, our consultation concluded that we would maintain a separate HD EPG genre. This was primarily due to the

- (i) benefits of having a destination genre for viewers to discover HD content - particularly at a time when Freeview is enabling the growth of the portfolio of HD services; and
- (ii) technical complexity and cost of creating HD versions of regional variants of BBC One, ITV and Channel 4 – which means at present the most watched PSB services cannot be substituted into their SD positions, a challenge that this Government consultation rightly recognises.

While we remain committed to ensuring viewers can easily access the best quality PSB content this must be balanced with viewer expectations to access regionalised and national PSB content that is currently distributed in SD. Our LCN policy is primarily aimed at meeting the interests of viewers. We believe these are best met by ensuring a simple user experience, and HD/SD substitution without HD versions of regional variants of PSB channels might lead to viewer confusion.

We underline that DTT stakeholders continue to investigate the feasibility of deploying regionalised HD services. Notably, the BBC recently confirmed its intention to introduce BBC One English variants and BBC Two national versions in HD in the next charter period⁴

⁴ <http://www.bbc.co.uk/blogs/aboutthebbc/entries/aa333a07-d7a5-495c-8243-7963e8ec1225>

In addition, we continue to explore options to increase DTT viewers' awareness and use of the growing line-up of HD services, including on-screen messages and prompts in programme information menus. Digital UK will keep under active consideration the issue of HD prominence as the platform evolves.

Conclusions

We support the three proposals raised in the appendix to the consultation document to amend the EPG regulatory framework in law:

1. To create a technology neutral framework enabling prominence of PSB services regardless of how viewers access content;
2. To extend the principle of PSB prominence to VoD services. We would expect that any legislative change to reflect this; and
3. To facilitate the discoverability of higher quality versions of PSB content (eg. HD versions).

A new framework designed to deliver these proposals should be sufficiently flexible to allow continued market experimentation and innovation in connected TV services. It should focus on establishing backstop mechanisms to ensure that any platform enabling access to TV content for a material proportion of viewers does so in a way that preserves the prominence of PSB services (linear and on-demand) and makes it easy for viewers to access high quality versions of PSB channels. In terms of simplicity and consistency we believe that having one regulatory system for EPGs covering linear and VoD services is preferable.

We note that the proposals set out in this consultation to extend prominence legislation for PSB services, if implemented, would need to be reflected in changes to the Ofcom EPG Code of Practice setting out the conditions with which EPG providers would need to comply. We look forward to contributing to this process, with a view to ensuring an appropriate balance between regulatory certainty and flexibility in a rapidly changing market for audio-visual services.