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PUBLIC VERSION Response to Ofcom consultation

Proposed changes to the linear EPG Code and future of the prominence regime

5 October 2018

About Digital UK

Digital UK leads the development of Freeview, the nation's most widely used television platform. Our goal is to create the best free TV service, both live and on-demand.

We work with world-leading companies to deliver television which informs, educates and entertains, ensuring every home in the UK can access high-quality television without the need for a monthly subscription.

Our latest innovation is Freeview Play which brings terrestrial TV, catch-up and on-demand together in a new generation of televisions and set-top boxes, making it easier than ever for viewers to watch what they want, when they want.

Partnerships are crucial to what we do. We collaborate with a broad range of organisations in pursuit of our goals and are owned by Arqiva, the BBC, Channel 4 and ITV.

Digital UK holds an EPG provider licence, and allocates channel numbers which are used by Freeview, BT TV, TalkTalk TV, YouView, EE TV and Now TV.

Response summary

Digital UK supports Ofcom's proposals to improve and reinforce PSB prominence.

We agree with Ofcom's proposals for the positioning of PSB channels in linear EPG listings. However, we believe that where Ofcom refers to a 'page' on the EPG, that should be mean 'seven slots' for the purposes of the DTT platform, and that our listing should not be considered in breach of the new EPG Code if a manufacturer chooses to display fewer slots on a page.

Digital UK also supports Ofcom's view that the prominence regime should be updated to deliver PSB prominence in digital environments. Our work on Freeview Play (FVP) is an example of how industry has got together to secure this policy outcome on the connected TV interfaces of retail DTT TV and STB devices.

To date, and to some extent against the odds, we have made very meaningful progress in delivering requirements for PSB prominence across multiple discovery paradigms (TV channels, on-demand players and individual content assets found through search and recommendations) across the interfaces of our manufacturer partners. Our experience demonstrates that PSB prominence requirements do not stand in the way of our partners' success and their ability to innovate and differentiate. Policy makers can draw from our approach to FVP on how to balance these principles.

But in the absence of a PSB prominence policy regime for connected interfaces, our ability to deliver good outcomes depends on commercial negotiations, and there are growing limitations to what we are able to secure. Global dynamics are creating divergence between, on one side, UK broadcasters and, on the other, the manufacturers and operating systems providers of connected TV interfaces. This means that – if left only to commercial dynamics – PSB prominence on connected devices (including FVP devices) will deteriorate over time.

Responses to consultation questions

Question 1: Do you agree with our proposals that the main five PSB channels hold the top five slots on EPGs provided UK wide or in the UK outside of Wales?

Yes.

This proposal is in line with current practice across all UK linear TV platforms and will therefore not have any immediate impact on viewers, platforms or channels.

Nonetheless we agree with Ofcom that providing regulatory certainty is worthwhile, and will help to preserve a strong public service broadcasting regime as the five main PSBs can plan for the future and continue their significant investment in content.

Question 2: Do you agree that on EPGs provided for viewers specifically in Wales BBC One, BBC Two and the relevant Channel 3 service should take the top three slots, with S4C in slot four, Channel 5 in slot five and Channel 4 guaranteed a position on the first page?

We agree with the proposal that the first five slots in Wales should be taken by BBC One, BBC Two, the relevant Channel 3 service, S4C and Channel 5, in that order.

We also agree that Channel 4 should be guaranteed a position within the first seven slots in Wales. For the purposes of the DTT platform, we believe 'first page' should mean 'first seven slots', because a regulatory obligation based on pages is unworkable.

Whereas other platforms are vertically integrated, with the platform controlling the entire viewer experience, we operate in a horizontal market. Manufacturers of televisions and set-top boxes design their own EPG user interfaces (UIs), and therefore it is manufacturers, not Digital UK, who determine the number of slots per page.

For our platform, we measure prominence in terms of distance from the first slot in a particular genre. This aligns with how viewers tend to navigate our EPG. According to research conducted on our behalf by Ipsos Connect in 2016¹, the most common method our viewers used to select what to watch was flicking through the channels, with 84% of DTT viewers reporting that they ever do this. This was closely followed by scrolling through the guide (83%), typing in the channel number (79%) and scrolling through the mini-guide (69%).

We note that many of Ofcom's impact assumptions in the consultation were based on Freeview devices having seven slots per 'page'. Our assessment of Freeview receivers suggests that this is a reasonable assumption for current and future devices, but we know there are older devices with six or fewer slots per page, and we cannot be certain that all manufacturers will provide seven or more slots per page in the future.

We therefore believe that where Ofcom refers to a 'page' on the EPG, that should mean 'seven slots' for the purposes of the DTT platform, and that our listing should not be

¹ See Appendix 2 to our October 2016 LCN consultation:
http://www.digitaluk.co.uk/_data/assets/pdf_file/0017/89000/LCN_consultation_October_2016.pdf

considered in breach of the new EPG Code if a manufacturer chooses to display fewer slots on a page.

Question 3: Do you agree that BBC Four should be guaranteed a slot within the top three pages of all EPGs?

Yes.

For the purposes of the DTT platform, we believe 'top three pages' should mean 'first 21 slots', for reasons explained in our answer to Question 2.

BBC Four is currently at slot 9 in the DTT listing, and will continue to hold that position in England, Wales and Northern Ireland. The BBC has informed us that, when BBC Scotland launches in early 2019, the BBC will request that the new service be allocated slot 9 in Scotland, and that BBC Four in Scotland be moved to the next most prominent available slot. This request will be formally considered when the BBC formally applies to us for a channel number for BBC Scotland. If we agree to the request, it is likely to mean that, for a period of time, BBC Four in Scotland only will not be within the first 21 slots. However, we would ensure that it returns to the top 21 slots within a reasonable time period (see our answer to Question 12).

Question 4: Do you agree that the designated public service News channels (currently BBC News and BBC Parliament) should be guaranteed slots on the first page of the news genre section or an equivalent position within the grouping of news channels on the EPG, as applicable?

Yes.

For the purposes of the DTT platform, we believe 'first page' should mean 'first 7 slots', for reasons explained in our answer to Question 2.

BBC News and BBC Parliament are in the first two slots in the News section of the DTT listing.

Question 5: Do you agree that CBeebies and CBBC should have guaranteed slots on the first page of the Children's genre or area of the EPG, as applicable?

Yes.

For the purposes of the DTT platform, we believe 'first page' should mean 'first 7 slots', for reasons explained in our answer to Question 2.

CBBC and CBeebies are in the first two slots in the Children's section of the DTT listing.

Question 6: Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of UK wide EPGs?

Yes.

Digital UK operates a regionalised listing, so this question is not directly relevant to our platform, but we agree that it is an appropriate approach for those platforms that do not provide regionalised listings.

Question 7: Do you agree that Local TV should be guaranteed prominence within the first three pages of UK wide EPGs?

Yes.

Digital UK operates a regionalised listing, so this question is not directly relevant to our platform, but we agree that it is an appropriate approach for those platforms that do not provide regionalised listings.

Question 8: Do you agree that S4C, BBC Alba, and BBC Scotland should be guaranteed prominence within the first three pages of relevant Nation specific EPGs e.g. S4C in Wales, BBC Alba and BBC Scotland in Scotland?

Yes.

For the purposes of the DTT platform, we believe 'top three pages' should mean 'first 21 slots', for reasons explained in our answer to Question 2.

On the DTT listing, S4C is in slot 4 in Wales; BBC Alba is in slot 7 in Scotland; and while we have not yet received a formal application for a slot for BBC Scotland, the BBC has informed us that it will request that the new service be allocated slot 9 in Scotland (see our answer to Question 3).

Question 9: Do you agree that Local TV should be guaranteed prominence within the first three pages of relevant regionalised EPGs?

Yes.

For the purposes of the DTT platform, we believe 'top three pages' should mean 'first 21 slots', for reasons explained in our answer to Question 2.

Local TV has been allocated slot 8 on the DTT listing. In some areas, where slot 7 was not being used by other PSBs, the relevant local TV service has chosen to take slot 7 instead of 8.

Question 10: Do you agree with our proposals to ensure prominence for either the SD or HD version of BBC channels rather than both?

The DTT listing provides a separate HD genre, where all HD channels (with the exception of Children's HD channels) are placed.

The nature of the DTT platform means there are a large number of devices in use in people's homes which would not be technically able to support 'swapping' the HD version of a channel into the slot occupied by its SD equivalent. Meanwhile, there remains a significant

base of equipment that does not support HD channels at all², and viewers using this equipment only have access to the SD versions.

We therefore grant prominence to the SD version of a PSB channel within the relevant SD genre; and prominence to the HD version of the PSB channel within the HD genre. We consider that this should continue to be our approach, since it ensures that PSB content is easily discoverable regardless of image resolution.

To help ensure that children are protected from viewing unsuitable material, we allocate slots for all children's channels in our Children's section, whether SD or HD. The SD versions of CBBC and CBeebies take the first two slots, and the HD versions of those channels take the fourth and fifth slots. Again, we believe it is reasonable to grant prominence to both versions since it is not technically feasible for us to swap the HD versions into the SD slots.

Question 11: Do you agree with our proposals to allow broadcasters to swap HD simulcast variants of their SD designated channels, such that those HD variants could occupy the slots which the SD channels would be entitled to?

We believe that the new EPG Code should permit PSBs to swap their slots in this way where technically possible.

However, such swapping is not technically supported on the Freeview platform.

If, say, Channel 4 HD were moved to slot 4 on the Freeview EPG, then viewers without HD equipment would see nothing in that slot. There does not exist a reliable mechanism to ensure that SD viewers would see Channel 4 SD in the slot, while HD viewers would see Channel 4 HD in the slot.

Question 12: Do you agree with our proposal to provide a 12 month transition period once the Code is finalised?

We strongly support Ofcom's proposals, and we believe that platforms should enact the proposals as soon as possible once the Code is finalised.

The DTT listing today complies with all of Ofcom's proposals for channels that currently broadcast on our platform.

Digital UK will need to carefully consider any changes that need to be made to the DTT listings as a result of Ofcom's consultation. For example, it is possible that the launch of BBC Scotland in early 2019 will require some changes to our listings, as there is not currently a vacancy in the first 21 slots.

Our existing policy for allocating channel numbers contains a mechanism which moves PSBs into more prominent slots as they open up. For example, when we first reserved a slot for local PSBs (before the first such services launched), the most prominent available slot was in the 50s. However, after that, slot number 23 became available and we reserved it for

² We estimate c.35% of DTT primary sets fall in this category

local TV. Subsequently, BBC Three left the linear listing and that enabled slot 8 to be used for local TV.

However, we cannot guarantee that a slot for the BBC Scotland scenario will become available. We would therefore need to carefully consider how we would create the slot while being fair to other channels on the platform, minimising technical and operational risk, and ensuring that viewers are supported and know where to find their favourite channels. To do this, we would undertake an industry consultation, and then lead a carefully-planned implementation phase.

Our experience suggests that this process typically takes at least 18 months, largely due to the particular circumstances of the DTT platform, which operates in a horizontal market. For example, we last undertook a major consultation on changes to our listing in 2016, with changes taking effect in August 2017³. The process took circa 18 months from kick-off to implementation.

The technical capabilities and limitations of different kinds of DTT receivers can vary significantly, especially considering that the average replacement cycle of DTT receivers currently stands at 8.5 years. Whilst vertically-integrated platforms are likely to be able to better predict the effects of platform changes and minimise disruption to viewers, our horizontal market approach presents specific challenges.

Many devices will require viewers to perform a 'retune' to put the channels into their new order; although many viewers find this process easy, some will require assistance and we need to consider how best to support them. Other devices will retune themselves seamlessly, meaning there is no technical challenge for viewers, but there will need to be a communications campaign to ensure viewers know why their channels have moved and where they have moved to. Certain other devices might react unpredictably to a very large number of channel changes occurring at one time (which is one possible option for creating the required slot).

We would therefore need to:

- Write and publish a consultation laying out the options for how we might become compliant with any change required by Ofcom. We would fully research the possible options and their likely impact on viewers, channels and the platform
- Undertake testing on a range of TVs and set top boxes sufficiently representative of the broad estate of horizontal market receivers in use in DTT homes, given that one possible option would be to move 90+ channels back by one slot each – we have never made changes on such a scale before
- Allow channel providers sufficient time to respond to our consultation
- Consider consultation responses, make decisions and publish a statement
- Allow channel providers time to appeal against the decision
- Give channels at least two months' notice of changes to their slot numbers
- Work closely with channels to publicise their new slot numbers in advance of the changes

³ This involved changing slot numbers for channels in the Children's, News and Adult sections of our listing, together with a broader revisions of other policy rules

- Make careful plans for how we will support viewers who have trouble retuning or who cannot find their favourite channels following the changes

If we experienced a legal challenge following the publication of our consultation, then more time would be required.

We strongly support Ofcom's proposals in Questions 1-11, and we would therefore endeavour to complete this process as quickly as possible, while minimising risk of adverse effect on viewers.

Question 13 to Question 17:

- **Do you think that the prominence regime should be extended to ensure EPGs themselves can be easily found?**
- **Do you agree with the broad range of factors for consideration we have identified? Are there other factors that policy makers should consider?**
- **Do you agree with the principles we have set out? Are there other principles that should be considered?**
- **Do you think that the prominence regime should be extended to ensure PSB Players can be easily found?**
- **Do you think that the prominence regime should be extended to ensure PSB content can be easily found via recommendations and / or search? If so, what key parameters would you set for this aspect of the regime?**

Our answer to all of these questions is yes, for the reasons outlined below.

We think there is a strong case for extending the prominence regime to connected TV environments. As our answer to Q12 demonstrates, implementing changes to the prominence regime can be challenging once platforms are long-established. We therefore believe that Ofcom should extend the regime now as it will be increasingly challenging to do so as more years pass.

We also believe that our experience with Freeview Play provides a useful blueprint for how this could be done in a way that balances the principles Ofcom sets out in its consultation document.

In developing and delivering Freeview Play, Digital UK (in consultation with its partners) defines and annually updates product rules and technical specifications for compatible TV and set-top-boxes. Consumer electronics manufacturers build and sell products complying with those changing requirements and broadcasters make available their content and services in a way that allows the ongoing evolution of the platform.

Our long term ambition is for Freeview Play to make connected viewing the new normal for all UK audiences. As we work towards that, we have to deliver and balance multiple objectives, including achieving wide reach of distribution, innovating in a way that keeps pace with changing viewer expectations and securing easy and prominent access to the content of the PSBs across multiple discovery mechanisms.

Balancing these objectives is not easy, especially in a context in which global dynamics have an increasingly strong bearing on our ability to secure UK-specific prominence outcomes. In practice, outcomes on different FVP devices are not always entirely consistent with the spirit

and the letter of our product rules. This is usually because Netflix and, increasingly, Amazon as well as other global CPs strike commercial deals to secure prominence on Smart TV interfaces on a global basis – for example, by locking in requirements for the most prominent UI tiles for their apps, and presence on remote controls with large branded buttons.

These practices are not always consistent with our product rules on PSB prominence. But ---
-X----- we have chosen to engage pragmatically with these issues. FVP implementations can face significant constraints and our day-to-day work with manufacturers is often about finding solutions which we can deem as acceptable, even if not ideal, through commercial and technical negotiations.

Our starting point in these discussions is always that securing PSB prominence beyond the ordering of channels in the EPG is very much built into our strategic rationale for FVP.

Specifically, through our work with manufacturer partners we aim to secure:

- Prominence for the linear EPG in connected TV interfaces. We see this as a core principle not only to meet users' expectations with regards to easy discovery of linear channels (which as Ofcom notes still represent a significant majority of all TV viewing consumption), but also to maintain a direct and effective route to surfacing free TV content, both by PSBs and other commercial broadcasters
- Prominence for PSB and FTV players. Navigation through app tiles is a now well-established discovery paradigm with mass market relevance. Our core principles seek to deliver players' prominence without constraining innovation in UI designs. To achieve this, we rely on a series of key reference principles (e.g. FVP players should be presented in all screens offering links to any OD player, and they should be placed contiguously with BBC iPlayer in the landing point). But, as discussed above, this is an area where typically – because of pressures from global content providers – we often have to work pragmatically to achieve a commercial compromise⁴
- Prominence for PSB programmes in search and recommendations results. Manufacturers often seek to innovate in this space to differentiate their UIs. Our requirements secure prominence for the PSBs' content assets in recommendation screens and in search wherever relevant and however surfaced (including through voice navigation), without ever inhibiting active viewer choice
- Securing broadcaster attribution by supplying high quality metadata from our servers directly to FVP devices. This not only ensures clear attribution to and editorial control for broadcasters, but also facilitates effortless updating of service and content information for manufacturers. Our metadata is distributed openly to partners and acts an enabler of UI innovation⁵, as manufacturers have discretion in how this information is laid out on screens
- Ensuring prominence on remote control units. Remote control buttons remain key to delivering a good experience and meeting deep-rooted viewer expectations, albeit another very challenging area for us to secure good outcomes. This is why we seek to ensure, for example, ongoing presence of a button to directly access the TV guide – even though connected UIs can provide multiple visual entry points and manufacturers weigh the need to provide familiar experiences with ambitions to

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streamline and simplify remote controls⁶. We strongly suggest that Ofcom should stress the importance of remote control buttons when advising Government about future changes to the regime.

Our PSB prominence requirements are balanced by our commitment to implement a spirit of partnership with our manufacturers, one that pragmatically takes into account their interests and seeks to align those with ours as far as possible. This is why core principles of our projects include maintaining an open approach that makes our service available to all manufacturers and CPs on a FRND basis, and supporting manufacturers' ability to innovate and differentiate their products. ----><-----

Question 18: Do you think that the prominence regime should be extended to platforms and devices not currently captured by the EPG prominence regime? If so, how do you think the regime could be extended and who should be captured?

Yes. As our answer to Q12 demonstrates, implementing changes to the prominence regime can be challenging once platforms are long-established. We therefore believe that Ofcom should extend the regime now as it will be increasingly challenging to do so as more years pass.

Our experience of working with Smart TV manufacturers clarifies that delivering prominence on connected interfaces is possible and compatible with commercial success and ongoing innovation.

Since launch in late 2015, over 4.5m FVP devices have already been sold, with FVP TV sales representing over half of all Smart TVs sold in the UK since June 2017⁷. While the platform launched with initial support from only two manufacturer brands, today 19 of the top 20 TV and STB brands offer Freeview Play compatible products. The majority of Freeview Play products have been connected and actively used for both live and on-demand consumption of FVP CP content (including the BBC's own), with engagement ratios remaining stable in the past year, despite a fast increasing installed base. This is highly significant in a market context of exploding choice and competition, with Freeview Play devices likely to represent one of many connected viewing options for the vast majority of users. With ongoing support from almost all major manufacturers, a growing number of participating CPs, and assuming stable connection and usage ratios, we expect the active FVP user base to surpass 10m devices within the next 5 years.

Consistent with the spirit of the broader project, our product requirements leave space for manufacturers to differentiate and innovate. So, user interface outcomes vary across different Freeview Play devices, even if they all deliver our key requirements, including those around PSB prominence and attribution. Examples include:

- Panasonic's 'quick look' guide, bringing together live discovery and OD recommendations in a single, image driven UI;
- Sony's backwards EPG, integrating access to recommended OD content, discoverable by recency, genre and brand;

⁶ This requirement is consistent with viewer behaviour. ----><-----

⁷ GfK Point of Sales Tracking, Panelmarket

- LG's universal search, bringing together prominent results from Freeview Play Content Providers with those from third parties making their content available through LG's Smart TV UIs (e.g. YouTube and Netflix).

In some ways it is remarkable that Freeview Play has achieved such positive outcomes. Our manufacturer partners play in a globalised market, and our UK-specific requirements are not insignificant, in that implementing Freeview Play requires on their part specific software development to ensure devices can link to the Digital UK metadata system for the data that powers FVP discovery features including the backwards EPG and on-demand players.

As we mention above, growing pressures from global dynamics require us to be pragmatic.

Looking across our manufacturers partners implementations, it is clear that Freeview Play today delivers better PSB prominence than equivalent non-FVP user interfaces.⁸ But in the absence of a strong regulatory regime for prominence in connected TV environments, PSB prominence outcomes on Freeview Play devices depend on our leverage and ability to negotiate. This explains the variability in the exact type and level of PSB prominence we are able to secure on different UIs – and we should stress that this variance does go beyond the levels of UI differentiation that our principles seek to allow for.

Freeview Play clearly is not a full solution to guarantee PSB prominence in all connected TV environments. Also, even within our domain, manufacturers' commitments are linked to annual contracts, so must be renewed every year. We work hard to secure alignment in so far as possible, but pressures from global dynamics make our job extremely difficult.

Four key dynamics help illustrate our challenges:

1. **Netflix requirements show there is no level playing field between Smart TV apps.** Netflix has been one of the first global content providers to achieve near-ubiquity on Smart TVs, with strong prominence on UIs and remote controls. Significantly, Netflix's requirements have been increasing together with its leverage. Today, Netflix sets out 7 different technical criteria to award Smart TV manufacturers the right to display a "Netflix recommended" logo on their promotional materials. These requirements include "TV resume" – so that users can go straight to Netflix when turning on their TVs, if the last thing they did before switching it off previously was watch content on Netflix. This type of functionality requires a level of integration into the TV's OS that goes beyond what is enabled to other third party apps and to any FVP app. So manufacturers have to conduct specific integration work, meaning that they grant Netflix preferential treatment. There are significant risks that other global content providers will follow the Netflix approach and tighten technical requirements as their leverage vs manufacturers increases
2. **The number of global content providers seeking UI prominence is increasing.** Companies such as Amazon (Amazon Prime Video), Google (through YouTube), Facebook (Facebook Video) are already increasing their presence on connected UIs. Disney and Comcast/NBCU also have stated ambitions in the global OTT content provider space. All of these companies have a level of financial power, and an ability

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to buy prominence, that UK broadcasters simply cannot match. ----- Absent changes in the prominence regime, the UK PSBs will get gradually pushed down in the order of assigning app tiles, as well as in other means of achieving prominence, and could eventually get pushed out of main UI screens

3. **Some TV manufacturers have growing ambitions in re-aggregating TV content in ways that clearly challenge broadcasters editorial control and contravene PSB prominence principles.** Samsung is pushing its global differentiation strategy towards greater control over content aggregation and the delivery of platform-like viewer experiences. Samsung has decided to drop the Freeview brand from its devices in the UK, and is instead implementing “TV Plus” (a global brand) in its UIs. In UK products, the TV Plus offering is currently limited to transactional VoD. But in the US, Samsung’s TV Plus enables the delivery of channels not available on other devices, and the re-aggregation of live broadcaster content outside linear channels (with all past and upcoming content assets from different channel brands presented in Netflix-style visual tiles in genre-specific pages). ----- these trends signal a clear direction of travel away from outcomes consistent with the PSB prominence regime
4. **A growing pool of other manufacturers is going to hand over control over their UIs to global players.** Various manufacturers could decide to outsource UIs to global players through their operating systems. This is highly likely especially for manufacturers that see UI development as a burdensome overhead⁹. This would effectively place connected TV UIs under the control of global player with strategic and commercial interests that are at odds with UK policy objectives. ----- These factors are making it increasingly challenging for us to continue to secure positive PSB prominence outcomes through commercial negotiation. This is why we support the principle that the PSB prominence regime should be extended to all connected TV interfaces.

When assessing mechanisms to extend the prominence regime, policy makers should consider giving newly captured players options to demonstrate compliance with reference to industry initiatives such as Freeview Play. This could be preferable to, for example, requiring each of a potentially very large number of new providers to demonstrate compliance individually, be this through licensing mechanisms or other means. Mechanisms like Freeview Play could help minimise new regulatory burdens for our manufacturer partners, while also removing the enforcement risks associated with assessing compliance on a case-by-case basis.

Question 19: Do you think that the prominence regime should be extended to online services? If so, who should be captured?

We believe that any new prominence regime should be relevant to any service that delivers TV-like content, regardless of the means of distribution, or of whether the business model of newly captured providers centres on TV, or simply includes TV-related activities as part of a wider portfolio.

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