

*Championing  
excellence and diversity  
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



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**RESPONSE BY THE VOICE OF THE LISTENER & VIEWER (VLV)**

**TO THE DEPARTMENT FOR CULTURE, MEDIA AND SPORT**

**REVIEW OF THE BALANCE OF PAYMENTS BETWEEN TELEVISION**

**PLATFORMS AND PUBLIC SERVICE BROADCASTERS**

**June 2015**

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**INFORMATION ABOUT THE VLV**

Voice of the Listener & Viewer Limited (VLV) represents the 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 No 4407712 - Charity No 1152136).

**EXECUTIVE SUMMARY**

1. VLV agrees with the policy goal in the consultation document that any regulatory framework governing payments between television platforms and public service broadcasters should be *to ensure world class content produced by the UK's public service broadcasters [is] both prominent and easily accessible to viewers.*<sup>1</sup>
2. VLV believes that the Government should reconsider its position on the balance of payments as stated in its *Connectivity, content and consumers* paper in 2013 where it suggests that its preferred option would be *zero net charges, where the fees for access to the main platforms and for PSB channels cancel each other out*<sup>2</sup>.
3. PSB content forms a significant proportion of pay TV channel viewing. It is VLV's view that pay TV platforms benefit financially from being able to provide subscribers with content from the PSBs. According to BARB 48% of viewing on pay TV platforms is to the main PSB channels, including their +1 channels.
4. VLV believes the current PSB compact regulatory framework delivers well for the consumer but could be improved if pay TV platforms paid for rebroadcasting PSB content which would bolster funding for investment by the PSBs in UK public service content which has been on decline in recent years.
5. If the balance of payments was changed in this way VLV believes the PSBs should be compelled to reinvest this funding into UK produced PSB content.
6. While VLV supports the benefits which competition brings to the market in maintaining standards and encouraging investment, we do not believe that the current regulatory regime should be deregulated to encourage competition if this risks the availability of PSB channels on all TV platforms, including pay TV platforms, and their easy discoverability.

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<sup>1</sup> Consultation document, p 3

<sup>2</sup> **Connectivity, Content and Consumers**, Britain's digital platform for growth, DCMS, July 2013, page 26

7. The PSB system safeguards the production of certain types of programming that is in the public interest. PSB content delivers cultural and social benefits that might otherwise be undersupplied.
8. VLV believes the current regulatory framework supports public service broadcasting in the UK by providing the PSBs with certainty that the content of their main channels will be prominent on EPGs and that therefore their reach, impact and the income of the commercial PSBs is maintained. We believe that if there were any change to current regulation it would need to be carefully managed to maintain market security to ensure continued investment in public service content.
9. VLV would not therefore want the *must offer/must carry* obligations on broadcasters and platforms to be removed because this is the surest way to guarantee that the PSBs' content is broadcast on all TV platforms in the UK thus providing it with universal reach.
10. VLV believes the Government should continue to regulate to ensure *the prominence of the Public Service Broadcasters at the top of the Electronic Programme Guides*.<sup>3</sup> In recognition that increasingly viewers are consuming content on platforms without linear EPGs, we would welcome the development of proposals to achieve prominence for PSB content on smart TVs and VoD platforms.
11. VLV welcomes the Government's ambition to prevent online services from exploiting PSB content without permission or the payment of copyright fees.

## **Introduction**

12. VLV believes that universal access to original UK produced content is a crucial aspect of public service broadcasting (PSB) because the social, cultural and economic benefits of content produced in the UK for British citizens are undeniable.
13. UK produced content is essential for the UK as an informed, democratic society because it is produced from a UK perspective, reflecting the world we live in from a British point of view. VLV welcomes the Government's ambition to encourage growth in this market by developing legislation which removes barriers to growth, but VLV believes that there should not be de-regulation which might impact negatively on the survival of the public service broadcasting system.
14. We welcome the government's asserted goal in this consultation "*to deliver the best possible outcome for audiences*" and agree that "*The UK has succeeded in maintaining a public service broadcasting sector that is the envy of the world.*"<sup>4</sup>
15. There is a balance of commercial and public policy goals the Government must consider throughout this debate. A fully deregulatory regime may appear to have some advantages but is unlikely to continue to support the well-established public policy goals that exist in this area already – such as the wide availability of PSB content on a plurality of platforms (reach) and appropriate prominence on these platforms (discoverability).

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<sup>3</sup> *Connectivity, Content and Consumers*, DCMS, 2013, pg 9

<sup>4</sup> Consultation document, p 3

16. It is therefore important to ensure that the regulatory framework is delivering for viewers and the creative sector alike, both of which benefit from investment in content, innovation in new TV services and viewers' ability to access content and services easily, as well as contributing to the success of the UK economy.
17. There is clear evidence that the public expects to have easy access to the five public service broadcasters and VLV strongly opposes any move which would reduce their prominence on EPGs.
18. VLV acknowledges that any legislation which implements changes to the rules for the EPG need to ensure certainty for broadcasters without which they will not be able to operate effectively.

## **Q1. What are your views on the overall balance of the regulatory framework**

19. Currently we have a regulatory framework which requires that core PSB channels are available for viewers to watch on all TV platforms and that they feature prominently on electronic programme guides (EPGs).
20. The different platforms provide the means for PSB content to reach viewers, ensuring the commercial viability of investment by delivering content to audiences and generating advertising revenue. Without content, however, platforms have no service to offer their customers. VLV believes this is a mutually beneficial, relationship and it supports a strong, diverse and thriving creative sector in the UK.
21. Public support received directly by the BBC through the licence fee and indirectly by the commercial PSBs through access to spectrum and EPG prominence has always been predicated on this content being widely available and accessible for the public on a free-to-view basis. If it were not available on all TV platforms this would undermine the current public service broadcasting model in the UK.
22. VLV believes that the Government should reconsider its position on the balance of payments as stated in its *Connectivity, content and consumers* paper in 2013 where it suggests that *zero net charges, where the fees for access to the main platforms and for PSB channels cancel each other out*<sup>5</sup> would be the preferable option.
23. VLV believes that this is an opportunity for the Government to ensure that carriage fees for the PSBs on pay TV platforms are abolished and that, in addition, the PSBs should be paid for the retransmission of their content by pay TV platforms as happens in the United States.
24. We believe that this extra income to the PSBs should be reinvested in UK originated public service content.
25. VLV bases its argument for abolishing carriage fees for PSBs and payment for PSB content by pay TV platforms on the clear evidence of the benefits to pay TV platforms of transmitting the PSB channels. Viewing to these channels in cab-sat homes comprises a significant proportion of all viewing and makes them more attractive to consumers.

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<sup>5</sup> **Connectivity, Content and Consumers**, Britain's digital platform for growth, DCMS, July 2013, page 26

According to Barb figures, 48% of viewing on pay TV platforms is to the main PSB channels, including their +1 channels.

26. While welcoming recent increases in UK commissioning by BSkyB and other cabsats, we note that currently 85% of UK originated programmes are funded by the PSBs. This underlines the importance for the foreseeable future of ensuring that their position is not undermined.
27. While VLV supports the benefits which competition brings to the market in maintaining standards and encouraging investment, VLV believes the current regulatory framework effectively supports public service broadcasting in the UK and should not be deregulated. It provides the PSBs with certainty that the content of their main channels will be prominent on EPGs and that therefore their reach, impact and the income of the commercial PSBs is maintained. We believe that if there were any change to current regulation it would need to be carefully managed to maintain market security to ensure continued investment in content.
28. VLV welcomes the Government's ambition to prevent online services from exploiting PSB content, with no benefit flowing to the PSBs.
29. We agree that all the PSBs should also continue to provide their PSB channels free of charge to the free to view networks, for example Freeview or Freesat.<sup>6</sup>

### **How do you think the balance changes under the different options we have discussed?**

30. VLV agrees that this a complex area of regulation and the commercial nature of the broadcasting sector makes the outcome of deregulation inherently uncertain. We believe that uncertainty in the market is likely to have a negative impact on public service broadcasters' investment in content and should be avoided.
31. As stated above, VLV believes that because PSB content forms a significant proportion of pay TV channel viewing pay TV platforms benefit financially from being able to provide subscribers with content from the PSBs and that this means they should have to pay for broadcasting such content. If the balance of payments was changed in this way VLV believes PSBs should be compelled to reinvest this funding into UK produced PSB content.
32. Additionally, VLV would not want the *must offer* and *must carry* obligations on broadcasters and platforms to be removed because we believe it is essential that the PSBs' content is broadcast on all TV platforms in the UK if they are to maintain universal reach.
33. VLV believes the Government should continue to regulate to ensure *the prominence of the Public Service Broadcasters at the top of the Electronic Programme Guides*.<sup>7</sup> In recognition that increasingly viewers are consuming content on platforms without linear EPGs, we would welcome the development of proposals of how to achieve prominence for PSB content on smart TVs and VoD platforms.

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<sup>6</sup> Consultation document, pg 8

<sup>7</sup> *Connectivity, Content and Consumers*, DCMS, 2013, pg 9

## Should pay TV platforms have to pay the PSBs for their content?

34. VLV believes that pay TV platforms should have to pay to broadcast the PSB channels, which is the way the US market operates. This funding should be complementary and additional to any other income generated either through public funding or commercial activities so that it can be used to bolster the production of public service content which has been in decline during the past decade. We believe this would be beneficial to consumers and citizens as well as bringing extra investment to the creative industries.

## Q2. How far does the current PSB compact regulatory framework deliver for the consumer?

35. VLV agrees that the policy goal of any regulatory framework governing payments between television platforms and public service broadcasters should be *to ensure world class content produced by the UK's public service broadcasters [is] both prominent and easily accessible to viewers.*<sup>8</sup>

36. It is VLV's view that the current PSB compact regulatory framework delivers well for the consumer but could be improved if more funding were made available for investment in UK produced public service content.

37. The PSB system safeguards the production of certain types of programming that is in the public interest. PSB content delivers cultural and social benefits that might otherwise be undersupplied.

38. One of the key benefits of the current system for both the public service broadcasters and consumers is prominence of the PSB channels on EPGs. Platform operators and broadcasters agree that a channel's prominence on an EPG affects the number of viewers who find and watch its content. It is generally agreed that the more prominent the channel is with a low EPG channel number, the more likely that a given viewer will settle on that channel because it is easier to find and access.<sup>9</sup>

39. PSBs clearly benefit from this prominence across all platforms as this enables them to achieve reach. This enables them to fulfil their public service purposes with greater impact and for the commercial PSBs to attract advertising income. This, in turn, translates into further investment in public service content.

40. If deregulation occurred so that the PSBs were not guaranteed carriage on pay TV platforms with a prominent position on the EPG, their reach and, in the case of the commercial PSBs, their income would be reduced. This would make the obligations under their current licences potentially unsustainable.

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<sup>8</sup> Consultation document pg 3

<sup>9</sup> Consultation document pg 17

## **How would the policy options discussed in this Consultation impact the balance of benefits and obligations that accompany the PSB licences?**

41. The current system of regulation provides benefits to PSBs in exchange for meeting their PSB obligations.
42. VLV is concerned that if the current system is deregulated this could reduce the reach of the PSBs and thus reduce the benefits which accompany the commercial PSB licences. If this were the case, it is likely the commercial PSBs' obligations would have to be reduced and this would be to the detriment of consumers.

## **Q3. Do you think that the changing technical landscape and changes in the market for TV services since the Communications Act 2003 mean elements of regulation may no longer be fit for purpose and should be reviewed (including the EPG regulation)?**

43. VLV agrees with the view expressed in the consultation document that it is too early to predict the long term implications of the trends apparent in existing television viewing habits, therefore we believe that current regulation is still largely fit for purpose.
44. We note in the consultation document that *Demand for linear viewing remains strong - live linear viewing still represents the significant majority of viewing, at 84% of all viewing among individuals with a DVR - and it is possible that it will remain so, for a variety of reasons such as the popularity of event shows which are predominantly viewed live.*<sup>10</sup> While the trend of the public to view content is moving towards platforms other than the traditional television, it is clear that live viewing is still hugely popular and that the delivery of content live to audiences should remain a policy priority.
45. However, we believe that policy making for the future needs to take into account the fact that more content will be viewed outside traditional, linear delivery. This should include consideration of tools to ensure prominence on all viewing platforms for PSB content, including VoD, which we discuss at more length in answer to questions 11 – 21.

## **Q4. What are your views on recent trends in UK original content investment and how regulation is impacting, or could impact, these?**

46. It is clear that the UK creative industries are strong and thriving – worth £71.4bn in 2012. However, we are concerned by the decline in investment by the PSBs during the past five years of 17.3%. We acknowledge and welcome the growth in investment from the non-PSB channels accounting for 15% of all non-sport investment in first run programmes in 2013.<sup>11</sup>
47. In light of the decline in investment by the PSBs it is increasingly important that the regulatory framework is one that supports future investment. VLV believes that if carriage for PSB channels was provided free of charge and they could derive further income through charging pay TV platforms for their content, this would provide significant extra funding for content investment. Additionally, we recommend that EPG prominence should be

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<sup>10</sup> Consultation Document, p 18

<sup>11</sup> *Public Service Content in an a Connected society*, Ofcom, December 2014

guaranteed and current *must carry/must offer* regulations remain in place. We cover these issues more extensively in answers to questions 8-21.

## **Section 73 of the Copyright, Patents and Designs Act (1988)**

### **Q5. What do you think the impacts of removing section 73 (CDPA 1988) will be?**

48. VLV understands that Section 73 (s73) Copyright, Designs and Patents Act 1988 was introduced to ensure that cable operators could re-transmit PSB programmes without infringing copyright.
49. We agree that having different arrangements for specific platforms is not practicable and no longer relevant.
50. We support the Government in its ambition to bring this legislation into line with the current market landscape.
51. We also support the move to repeal Section 73 because this would prevent online platforms from broadcasting PSB programming without paying copyright fees.

### **Q6. What transitional arrangements, if any, would be needed to accompany removing s73, what form might these take and how long would they be needed for to allow the cable platforms and Commercial PSBs to reorder their commercial relationships?**

52. No comment.

## **Must offer and must carry obligations**

### **Q7. What would the practical implications be for viewers, including vulnerable viewers, if commercial PSB content were only available on free-to-view platforms?**

53. If commercial PSB content were only available on free-to view platforms it is VLV's view that this would be detrimental to citizens and consumers.
54. We agree that *"Removing must offer/must carry would immediately introduce a risk for consumers of commercial PSB channel withdrawal from a pay platform – a risk which does not currently exist. This would be to the detriment of the consumer experience and more generally to the public detriment if PSB programming, as required by the PSB licences, were less easily accessible to a proportion of the population"*.<sup>12</sup>
55. While we acknowledge that subscribers to pay TV platforms could change platform to view PSB content if they wished to, this would be more a far more complex process than the current system and would be likely to lead to a reduction in reach for the PSBs. This, in

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<sup>12</sup> Consultation Document, paragraph 45, p 22



turn, would lead to a drop in advertising income which would lead to a greater decline in investment of UK produced PSB content.

56. Additionally we predict that pay platforms would be likely to lose viewers if all their viewing was not on one platform.

## **Q8. What would be the impact of removing *must offer/must carry* provisions on: The universal availability (reach) of PSB content on pay platforms?**

57. The policy ambition of *must offer/must carry* regulation as set out in the Communications Act 2003 is to ensure that all PSB content is widely available and easy to access without payment or subscription or access charges, or the need to have different equipment to view BBC or commercial PSB content.

58. With reference to paragraph 43 in the Consultation document VLV believes that 'availability' should mean 'availability on all main (linear TV) platforms'. We believe that *must offer/must carry* regulations should continue to play an important role in supporting the PSB compact.

59. We agree that if practicable, this regulation should be extended to cover other forms of content consumption, such as VoD services and portfolio services, in order to ensure universal reach for audiences consuming PSB content in different ways.

### **The PSB compact?**

60. The existing *must offer* and *must carry* rules are designed to ensure universal access to PSB channels on all platforms and VLV believes that if they are abolished there is a significant risk that PSB the compact will be undermined.

61. Without the *must offer* and *must carry* rules PSB content may not be broadcast on all TV platforms which would significantly reduce the reach and impact of the PSBs and ultimately threaten the viability of the UK's public service broadcasting system. Without being subject to any obligation to reach a deal, if negotiations between the PSBs and pay TV platforms break down, this could lead to a collapse in the PSB compact.

### **Overall audience experience?**

62. While we acknowledge it is possible that viewers could switch between platforms to view content if it were not available on their preferred platform, we believe this would lead to significant disruption of viewing by consumers who view their television via pay TV platforms.

63. It is also possible that many viewers who now use pay TV platforms to view content may no longer have a rooftop aerial which would mean they would have to invest in new hardware and installation before they could take up this option.

## **The net flow of funds between PSBs and pay platforms (including negotiations for other portfolio channels and other services)?**

64. As stated above, VLV believes that pay TV platforms should pay for the main PSB channels they broadcast, in addition to the PSB portfolio channels if they broadcast content which is defined as public service according to the 2003 Communications Act.
65. We believe in order for such a system to benefit the interests of citizens and consumers current *must offer* and *must carry* obligations need to remain in place to avoid the situation where PSB channels are removed from pay TV platforms because negotiations between platforms and PSBs fail. This could lead to a risk of the PSB channels not being broadcast on pay TV platforms which would reduce their reach and viability.

### **Investment in PSB content?**

66. VLV would welcome the abolition of carriage fees and the introduction of fees for the retransmission of PSB channels on pay platforms. If pay TV platforms are forced to pay for PSB channels, we would want the Government to ensure through regulation that this extra income to the PSBs is invested in public service content. This would provide significant additional funding for PSB content.
67. We note the research commissioned by the Department for Culture Media and Sport from Mediatique<sup>13</sup> which analyses the potential impact of deregulating *must offer* and *must carry* rules.
68. We note that the report is not conclusive in recommending a course of action because it is difficult to predict outcomes if the *must offer* and *must carry* obligations are abolished.
69. We note that the requirement to offer content is 'subject to the need to agree terms' and that the commercial PSBs have argued that current regulation denies them the ability to threaten to withdraw a channel from a pay TV platform which undermines their ability negotiate effectively with platforms. We do not believe that it would be beneficial for citizens and consumers if the commercial PSBs withdrew a channel from a pay TV platform and believe that therefore the current *must carry/must offer* rules should remain in place.

### **Investment in the creative industries sector more widely?**

70. If pay TV platforms pay for the PSB channels they retransmit and the PSBs are obligated to reinvest this funding in public service content which is produced in the UK, this would benefit the creative industries sector more widely.
71. We acknowledge that there is a possibility that an increase in flow of funds from platforms to PSBs could be at the expense of funds flowing to other content creators if the volume of content commissioned by pay TV platforms is reduced, however the contribution by the

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<sup>13</sup> [http://www.mediatique.co.uk/sitedata/Reports/120709\\_DCMS\\_Carriage\\_Conse.pdf](http://www.mediatique.co.uk/sitedata/Reports/120709_DCMS_Carriage_Conse.pdf)

multi-channel sector to the UK creative industries, while growing, is a fraction of that provided by the PSBs which currently fund 85% of UK originated content.

### **Competition between PSB and non-PSB channels?**

72. While we acknowledge that competition is healthy for the creative sector and should be encouraged, VLV does not believe it should be encouraged if it undermines the PSB compact.
73. If *must offer* and *must carry* obligations were removed and PSB channels are no longer broadcast on pay TV platforms or are in lower EPG positions, we predict this would reduce the popularity of pay TV platforms. This in turn could lead to a reduction in the reach of non-PSB channels which are only broadcast on pay TV platforms which would have a negative impact on their reach.

### **Pay-TV subscription prices for consumers?**

74. There is a risk that Pay TV subscription prices for consumers will rise if the current regulatory system is changed in favour of the PSBs. If extra costs are passed onto subscribers, they will end up paying twice for PSB content which seems iniquitous: once for the licence fee to cover BBC services or advertising which is raised by the commercial PSBs and then a second time when they pay for their subscription package.

### **or can the policy objective of freer market negotiations be achieved in the existing system?**

75. VLV agrees with the consultation document when it says *“it would be in the interests of both parties to find a resolution for the carriage of PSB content on pay TV platforms.”* However, we oppose the removal of the *must offer/must carry* obligations because, as stated in the consultation document *“this option would introduce the potential for permanent non-carriage of core PSB content on certain platforms.”*<sup>14</sup>

### **Q9. What would the impacts be if the regulatory framework was amended to make the requirement to agree terms stronger?**

76. As stated above, VLV does not believe that allowing open negotiations between platforms and broadcasters without any *must offer* and *must carry* obligations is the best course for the TV market because if negotiations fail there is a risk that PSBs may not be broadcast on pay TV platforms which would lead to a significant reduction in their reach and impact.
77. We believe that such negotiations should be subject to regulation as they are under the current regime. Therefore, we disagree with the suggestion by the former Secretary of

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<sup>14</sup> Consultation Document p 29, para 79.

State, Sajid Javid, in his RTS speech in 2014 that negotiations between platforms and broadcasters should be “*a private matter between two private companies?*”<sup>15</sup> .

78. If however the Government decides to abolish the current *must offer* and *must carry* obligations, VLV would accept the proposed alternative approach based on the premise of an offer being ‘reasonable’ because the universal availability of PSB channels on pay TV platforms would be guaranteed:
79. *Current must offer legislation requires that PSBs offer their channels “subject to the need to agree terms”. One option to encourage commercial negotiations without creating a carriage risk for consumers would be to amend this legislation to make clear that must offer and must carry obligations are only applicable where a ‘reasonable’ offer has been made, and the second party refuses to accept this proposal. This would require the specification of a form of arbitration administered or overseen by Ofcom in the case that agreement over what constituted a ‘reasonable’ offer could not be reached.*<sup>16</sup>

**Q10. We welcome evidence on how changes to the existing regulatory framework would impact other parties in the sector, such as independent production companies, free-to-view platforms or other technical service providers. We also welcome views on other options not discussed here. What evidence is there that a change in a flow of funds would be translated into higher levels of investment?**

80. While the outcomes of deregulation remain unpredictable, VLV believes it is likely that if the PSB channels were not broadcast on pay TV platforms that their reach and impact would be reduced. This in turn would lead to a further decline in investment which would impact negatively on the independent production sector.
81. If the PSBs were no longer carried on pay TV platforms it is likely that there would be a drop in the popularity of pay TV platforms and a corresponding reduction in their income. We predict there would be a corresponding rise in viewing of free-to-view platforms.
82. VLV believes a change in flow of funds towards the PSBs, if they were compelled by legislation to reinvest this funding into PSB content, would result in higher investment in UK produced content which would benefit the creative industries in the UK.

## **EPG**

**Q11. Do you think that updating the existing regime to reflect technical innovations and entrenching the PSBs’ prominent position would encourage more long term investment in content and services and if so how might this impact be quantified?**

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<sup>15</sup> Sajid Javid, Speech to the RTS Conference, September 9 2014

<sup>16</sup> Consult Document pg 29, para 80.

83. One of the key benefits for PSBs is being easily discoverable for viewers. Platform operators and broadcasters agree that a channel's prominence on an EPG affects the number of viewers who find and watch its content. It is generally agreed that the more prominent the channel is with a low EPG channel number the more likely that a given viewer will settle on that channel, because it is easier to find and access<sup>17</sup>. PSBs clearly benefit from this prominence across all platforms as this enables them to maintain reach and so maximise exposure for their content, and for the PSBs advertising revenue, which feeds into content investment.
84. We support the current code whereby Ofcom should have regard to the interests of citizens and the expectations of consumers in considering whether a particular approach to listing public service channels constitutes appropriate prominence.<sup>18</sup>
85. VLV believes that if our PSB ecology is to continue to flourish then the PSBs' prominent position in search engines needs to be guaranteed. If it is not, the reach of the PSBs is likely to diminish and investment is likely to diminish accordingly. Therefore we oppose any relaxation of the EPG regulations.
86. We believe that current EPG prominence regulation should be updated to keep pace with technical innovations to ensure that PSB content<sup>19</sup> is easily discoverable for viewers and therefore forms part of the PSB compact which rewards the BBC and commercial PSBs for the delivery of the PSB obligations set out in the BBC Charter and commercial PSBs' licences.
87. We support the Government's ambition to include PSB VoD content in the prominence regime and extend the current licensing system to cover all EPGs, including those on smart TVs.
88. We acknowledge that there are providers of content which can be considered to have public value but are not designated as PSBs and are therefore discriminated against through lower positions on the EPG. We would reason that they do not primarily exist to serve the needs of the public as PSBs do and any decision to broadcast content which may appear to have public value will be ultimately balanced with commercial gain which precludes them from receiving preferential EPG positioning.
89. We note that Ofcom's code in determining the appropriate level of prominence for the public service channels permits a measure of discrimination in their favour, but it is not prescriptive about what *appropriate prominence* means.
90. We note that currently only the core PSB channels are subject to '*must offer*'/'*must carry*' and EPG prominence regulations. We would suggest that the PSB portfolio channels, when they deliver content which is considered to fulfil the public purposes as defined in the Communications Act 2003, should be subject to this regulation.

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<sup>18</sup> Consultation document, pg 17

<sup>19</sup> By this we mean PSB channels and their VOD players

**Q12. What steps would have to occur to translate the removal of appropriate prominence requirements into more effective competition between broadcasters for audience share and content investment benefits for viewers?**

91. VLV believes that the existing regime should be updated to reflect technical innovations to ensure the PSBs' prominence, retaining their unique position in the TV advertising market and supporting investment both now and in the future.
92. Beyond updating the existing regime to reflect technical innovations to ensure PSB prominence, we do not believe that the existing regime should be altered.
93. Prominence is a key PSB benefit, which supports a system in which the PSBs are able to make significant levels of investment in content, digital innovation and skills. If they had to pay for EPG positioning or compete with non-PSBs for EPG slots we believe this would undermine the current PSB compact and therefore the ecology of PSB. This would be detrimental to consumers, citizens and society as a whole.
94. We agree with the view put forward in the consultation document that the instability created by an uncertain EPG market might reduce broadcasters' willingness to make commitments to invest in content.<sup>20</sup>

**Q13. In order to maintain the current policy objective of PSB discoverability in view of technical developments, do you believe that the current EPG framework would require updating in order to remain fit-for-purpose?**

95. VLV believes the current EPG framework is still fit for purpose but in coming years if search engines become less linear in design, it may be necessary to redesign the framework for the benefit of consumers, by ensuring that PSB content remains easily discoverable, whatever technology is used to access programmes, and that this is the highest quality version of that content.

**Q14. If so, do you agree with the three areas we have highlighted for review:**

- **Making the existing framework technology neutral;**
- **Including VoD content, and;**
- **Integrating technologically advanced service (e.g. HD services) into the existing framework? (Detailed options are discussed in the Appendix)**

96. VLV agrees that the framework needs to be technology neutral. It should include VoD content and if possible integrate the automatic delivery of HD where viewers have compatible TV sets.

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<sup>20</sup> Consultation Document pg 25, para 62

**Q15. Alternatively, do you believe that deregulation would provide a productive route to ensure the best quality content is easily discoverable for viewers while also maximising investment?**

97. VLV does not support deregulation of EPG rules. This could lead to PSB funding being spent on bidding for EPG slots rather than on content provision which would be detrimental for viewers.
98. This would represent a shifting of funds along the value chain with no net benefit for creative sector investment (and potentially inducing a net decline in UK content investment).

**Q16. What would be the impact of removing the requirement for EPG providers to offer commercial PSBs appropriate prominence on: Discoverability of PSB content including Local TV ?**

99. If commercial PSBs were not offered appropriate prominence on pay TV platforms VLV believes it would undermine their ability to attract large enough audiences to support their business models. This in turn would lead to a decline in advertising revenue which would lead to a further decline in investment in the creative industries as a whole.

**The PSB compact?**

100. VLV believes the PSB compact would be undermined if the commercial PSBs were not offered prominence on pay TV platforms because without easy discoverability the public service content they produced would have less reach and impact.

**Net investment in the creative industries sector overall, including investment in content?**

101. It is clear that multi-channel investment in original content production still represents a small proportion of overall investment in the creative industries sector. The commercial PSBs spent £1.22 billion on first run UK originations in 2013<sup>21</sup>. Ofcom provides no comparable figure for the non-PSBs, but it is clear that the commercial PSBs account for a large share of investment in the creative industries sector overall and should be promoted accordingly.

**The ability of commercial PSBs and non-PSB channels to make medium/long-term investment commitments?**

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<sup>21</sup> Ofcom PSB Report 2014, pg 20

102.VLV believes that certainty is the most important element for broadcasters planning medium to long-term investment commitments. Without medium to long-term guaranteed prominence on the EPG it is less likely that the commercial PSBs will be able to commit to the PSB compact. As stated above, this will have a significant impact on their potential to invest in the creative industries sector.

### **The ability of non-PSB channels to compete more effectively with commercial PSB channels?**

103.VLV believes that if EPG regulation were removed and the EPG market was freed up for open competition this might lead to the ability of non-PSB channels to attract larger audiences but we question whether this brings with it any social benefit since the motivation of the non-PSBs is necessarily commercial and, as stated above, not primarily for the benefit of citizens and consumers.

104.We believe the current system incentivises the PSBs to produce new, high quality, UK originated content. Without preferential positioning on the EPG, this PSB compact would be undermined and VLV believes this would be detrimental for viewers. Since the PSB's are the dominant investors in the UK's creative industries we would suggest that any reduction in their reach and share would lead to a reduction in their ability to support the wider UK creative industry.

### **Q17. Do you agree with our proposals to amend the EPG definition in law to make it:**

**i) technologically neutral - so that so regardless of how the information on the content is communicated to the EPG service it will be within scope of regulation;**

105.Yes. VLV would support the proposal to amend the EPG definition in law to make it technologically neutral.

**ii) include video-on-demand content?**

106.Yes. VLV would support the proposal to amend the EPG definition in law to include video on demand content which is transmitted via the internet on-demand.

### **Q18. Do you agree that it is preferable to have the same regulatory system for EPGs for broadcast and VoD services or do you think it is better to introduce a separate regulatory system for VoD EPGs? If the latter, what should that look like?**

107.VLV agrees that it would be preferable to have the same regulatory system for EPGs for broadcast and VoD services. We believe that, as suggested in the consultation document<sup>22</sup>, the EPG statutory framework in sections 310 and 311 of the Communications Act should be amended allowing the Secretary of State to set out the definition of an EPG in secondary

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<sup>22</sup> Consultation Document, Appendix A, pg 33, para 4



legislation. This would allow flexibility to ensure that the definition of EPGs could be updated as market trends develop and future demands become apparent.

**Q19. Do you think a change from the current licencing system to a notification system is necessary or preferable? What impact is to be expected from a change from a licencing to a notification system?**

108.VLV agrees with the suggestion in the consultation document<sup>23</sup> that it would be preferable to extend the current licensing system to cover VoD content rather than having two systems running in parallel. However, we note it is possible that new services could develop in future which might not be allowable under this system within EU law.

**Q20. Do you agree that there is a technologically feasible solution to create a system that would enable EPG providers to substitute in the highest quality PSB content that each consumer can access (depending on their TV) from the same slot? Does this solution only cover perfect simulcasts in HD and SD? If not, is it for Ofcom to determine what appropriate prominence is if the channel or programme is not an SD – HD perfect simulcast?**

109.We do not have the technical expertise to answer this question in detail but VLV believes if it were technically possible that it would be preferable if EPG providers are able to substitute the highest quality PSB content that each consumer can access, thus providing them with automatic access to HD content if their television set is compatible.

110.If programmes are not perfect simulcasts, the programme which airs earlier in the schedule should be prioritised in the higher EPG slot.

**Q21. If there is no technologically feasible solution, do you think the EPG prominence regulation should be extended to HD sub-genre menus?**

111.VLV agrees that if there is no technologically feasible solution that EPG prominence regulation should be extended to HD sub-genre menus so that PSB channels are more easily discoverable.

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<sup>23</sup> Consultation Document, Appendix A, pg 34, para 9.