

Briefing Note

Media Bill

May 2023

There are a number of Acts which this new Bill refers to - the 1990, 1996, 2003 Acts, but broadcasting policy is also affected by the Digital Economy Acts in 2010 and 2017.

[The Media Bill Memorandum](#) sets out the 'overall purpose of the Bill' which is 'to reform the legal framework for the regulation of PSB and radio in the UK, to enable UK public service broadcasters ...and UK radio to thrive in the long-term. The Bill will mean audiences can more easily access and enjoy quality, British-originated content and it will help to maintain a strong and diverse British broadcasting ecology.'

The focus is on:

- British content
- Regulating online as well as traditional broadcast content
- Ensuring the future sustainability of UK public service broadcasting and radio

Details VLV supports

- Ensuring PSB content is easily discoverable on smart TVs and streaming sticks
- Bringing services such as Netflix, Prime Video and Disney+ under a new Ofcom code that will allow the regulator to investigate and enforce content standards (against harm, offence etc).
- SVODs will also be required to provide subtitles, audio description and signing to support those with disabilities
- Allowing PSBs to satisfy their remit via online content, not just linear programming– as long as PSB content is not 'buried' and Ofcom monitors to make it is not buried.
- Smart speaker platforms - such as Google and Amazon - will be required by law to ensure access to all licenced UK radio stations, from major national stations to the smallest community stations. Platforms will be banned from charging stations for being hosted on their services or overlaying their own adverts over the top of those stations' programmes.
- The renewal of the commercial PSB Licences.
- Listed events will have to be broadcast on a PSB service and free to air.

VLV Concerns

The Media Bill reduces the burden on the Public Service Broadcasters and commercial radio, with the stated aim to ensure their sustainability in the future. It is clear that the global streaming platforms have put UK broadcasters under significant pressure and while we completely support the goal to ensure the sustainability of UK PSB, we are concerned that the reduction in the PSB responsibilities goes too far.

PSB Remit

- This is a Bill which supports the interests of industry by reducing the burden on broadcasters, but in doing so it inadvertently disregards the interests of citizens. It allows the PSBs as a whole to no longer provide content which is less commercially viable, such as religion and arts, and allows commercial radio to no longer provide non-news local content both of which we consider societally valuable.
- This Bill will increase the decline of what is considered traditionally to be PSB content and largely leave the BBC to provide it.

- VLV sees this Bill is an opportunity to ensure that societally valuable content is provided for the coming decade or more but within a new framework which includes online delivery. This opportunity is being missed.
- Ofcom is excellent at analysing **what** audiences like and value, but they would argue it is not their role to decide what audiences **need**. This is up to Parliament. We need to ensure that Parliament takes on the challenge to ensure that citizens' interests and needs are protected.
- Broadcasting legislation until now has led to policy interventions to ensure delivery and prominence of what is considered societally valuable content. It has done this by defining the remit of PSB, to ensure that audiences have access to a range of high quality, informative content which tells them about a range of issues relevant to their life in the UK – whether that be religion, science, culture, sport etc. This draft Bill does not define PSB in these terms. It only sets out provisions to ensure that audiences have access to:
 - News and current affairs
 - new/original content
 - which is made by a mix of broadcasters and independent producers
 - which are not only situated within the M25
 - content for children and young people
- The new remit specifies PSB as 'a sufficient quantity of audio-visual content that...(i) reflects the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom'.
- The bill removes the responsibility for the PSBs to provide: **education, sport, 'science, religion and other beliefs, social issues, matters of international significance or interest and matters of specialist interest'**. VLV doesn't want to just leave these 'at risk' genres to the BBC to provide because then the BBC will have a 'market failure' role, much like PBS in America which is a shadow of its former self.
- To allay concerns the Secretary of State will be able to introduce new quotas if there is evidence that certain types of programming are not being provided by the market **BUT** the problem is that there is no explicit requirement in the Bill for Ofcom to track this content, so how will anyone know if there is a reduction in delivery of this content?

Delivery of the PSB remit:

- The PSBs will be allowed to fulfil their PSB remit online as well as on linear channels. This may mean that they put less commercially viable content on their online platforms and their main TV channels become more overtly commercial.
- The problem with this approach is that
 - such content online could be less discoverable and have less societal impact; Ofcom has not as yet developed a methodology to ensure that content is readily discoverable and promoted which is the requirement in the Bill. It is also not clear whether Ofcom has any powers to enforce better prominence online for PSB content if it is found to be buried. How will 'an appropriate degree of prominence' on online VOD platforms be defined? What does it mean that 'public service remit content..should be readily discoverable' and 'promoted'? How will it be assessed and measured by Ofcom?
 - Not everyone has access to online content – 6% of the population does not have broadband. This means PSB content will no longer be universally available.

It is clear that the 2003 Comms Act was deficient in providing Ofcom with the 'teeth' to ensure PSB delivery. What new powers do we consider Ofcom should be given to ensure it is delivered?

VOD Content regulation:

- Provisions in the Bill are largely in line with the Broadcasting Code. Ofcom will need to draft a Code for VOD, but it will be very similar. We don't have significant concerns about VOD regulation as the Bill stands, although the SVODs have started kicking back against it.

Prominence:

- 'appropriate' prominence is too vague. VLV recommends 'significant' prominence.

Impartiality:

- There is currently public disquiet about impartiality regulation which has partly been triggered by the number of high profile sitting MPs presenting programmes on 'news' channels, but not in news bulletins on those channels.
- The Media Bill provides an opportunity to tighten up the definition of 'News' in the existing Communications Act (Section 319(8)). Also we believe it is a weakness of the existing impartiality regulation that due impartiality is measured across a series of programmes or across the whole of a service (Section 320 (4)).
- The current definition of news includes 'news in whatever form' in a service but this doesn't define 'news' adequately and therefore Ofcom has been left to define 'news'. VLV does not support Ofcom's definitions.
- The problem with allowing due impartiality to be delivered across the whole of a service's output is that viewers don't always watch a whole series of programmes even if they are linked or watch all the programmes included in the service in question.

Listed Events

- The regime needs to be extended to include digital rights so that audiences can view time shifted content on the PSB VOD platforms.

Radio

- There is a significant relaxation of regulation of Commercial Radio – including requirements on stations to provide specific genres of content, as well as amending OFCOM's duties around localness to focus on a duty to secure the availability to listeners of local news and information but NOT non-news local content.

Channel 4's Role

- There are concerns about C4 producing content in house, but we assume that PACT and the independent production sector will fight hard to ensure the impact of this change is minimised.
- More concerning is the requirement for C4 to be sustainable – will this undermine innovation and risk taking?

VLV Recommendations

Making the Draft Media Bill more accessible

While the Media Bill Explanatory Notes published with the draft Bill are extremely helpful, VLV recommends that the DCMS provides a Keeling schedule or similar document which brings together all the provisions referred to in the draft Media Bill, rather than relying on readers to refer to a number of

other Acts which are lengthy. This would make the task of scrutinising the draft legislation far easier and more transparent for citizens. This recommendation was echoed by the speakers at the recent VLV conference.

Definition of prominence

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

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

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

Delivery of the PSB Remit

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

VLV recommends that the new proposed PSB Remit should be carefully considered to ensure it doesn’t inadvertently undermines delivery of societally valuable content which is currently available. It also needs to be considered whether Ofcom should be afforded additional powers to ensure delivery of what is considered societally valuable content by Parliament in the future.

Channel 4

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

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

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

Listed Events

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

Tier 1 Standards (VOD Platforms)

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

Accessibility requirements for VOD platforms

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

Regulation of Content on VOD platforms

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

Online Audio Content

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

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

The diversity of analogue radio

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

Regulation of commercial radio

VLV recommends that the relaxation of regulation of commercial radio should be reconsidered in light of concerns about diminishing localness of stations.

Terms of Trade for audio producers

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

Impartiality regulation

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

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

What next?

The Culture, Media and Sport Committee are conducting pre-legislative scrutiny of the Bill. VLV has made a submission to the Committee which you can read [here](#). We are not aware of any other pre-legislative scrutiny which is being planned.

The Bill is likely to be in the Queen's Speech and introduced in the next Session – ie probably in November or later when it will be debated in Parliament, as long as there is legislative time available.

We are now completely dependent on Parliamentarians to ensure that our messages are amplified and taken into account.

We are planning to meet with DCMS to discuss our concerns.