

*Championing
excellence and diversity
in broadcasting*

Founded in 1983 by Jocelyn Hay CBE



The Old Rectory Business Centre
Springhead Road, Northfleet
Kent, DA11 8HN
Tel: 01474 338716
email: info@vlv.org.uk
VLV: www.vlv.org.uk

**RESPONSE BY THE VOICE OF THE LISTENER & VIEWER
TO THE BBC PUBLIC INTEREST TEST CONSULTATION
ON BBC IPLAYER PROPOSALS**

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INFORMATION ABOUT THE VLV

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

INTRODUCTION

1. VLV welcomes the opportunity to respond to this public interest test consultation on BBC iPlayer proposals.
2. VLV's focus is on audience benefits from public service broadcasting (PSB) therefore VLV would not want the implementation of these proposals to undermine existing UK PSB provision. However, VLV believes that serious consideration should be given to the fact that current BBC regulation means the BBC is unable to offer content on its VOD platforms for as long as the other PSBs and SVoD services. This means that the BBC's ability to deliver its services is limited and audience expectations are not met.
3. We understand the proposals under consideration in this consultation are as follows:
 - To extend the period of initial availability of content on the iPlayer for at least 12 months
 - To provide complete series box sets for selected titles made up of new returning series and their previous series
 - To provide more content from the BBC archive
 - To provide acquired programmes on the iPlayer which have already been broadcast on the linear BBC channels.

Context

4. The BBC's proposals come at a time when it is clear that time spent by audiences watching content on video on demand platforms (VoD) is increasing while live TV viewing is decreasing. VLV understands that this trend is likely to continue. It is especially apparent among 16-34 year olds.
5. For many viewers VoD is now the primary means by which they view content. This is primarily due to the success of the iPlayer which was first launched in 2007, the development of VoDs by the other UK PSBs and the arrival into the market of streaming VoDs (SVoDs) such as Netflix and Amazon. The last major update to iPlayer windowing came in 2014, when the BBC transformed it from a seven-day to a 30-day catch-up service. This was two years after Netflix became available as a streaming service for the first time in the UK.

6. The ability for audiences to consume a wide range of content over a longer period of time on the SVoD platforms and the commercial PSB VoD platforms has led to an expectation among audiences that this should be the case across all providers, including the BBC.
7. BBC research shows that audience satisfaction has increased since it experimented by extending the viewing window for certain content on the iPlayer in 2017 and 2018. VLV notes that in October 2018 70% of 16-34 year olds agreed that the BBC iPlayer 'has full series available for people like me' compared with 52% in July 2017.¹
8. If public service media VoD platforms are not allowed to respond to market developments swiftly and effectively then, provided the shift to online viewing continues, the only way that audiences will be able to access UK content will be through SVoD platforms, the most successful of which are operated by global players like Netflix and Amazon Prime. The growing power of such super-aggregators and their commercial business model which relies on non-transparent algorithms raises serious questions about the prominence, findability and cost of access whilst their gatekeeping role risks adversely affecting industry revenue and by extension domestic content creation.

The BBC Mission and Public Purposes

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

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

11. VLV considers the iPlayer to be a 'convenient' way to make content available for audiences, and it is especially popular among younger audiences who now consume more content on VoD platforms than they do content in linear broadcast schedules.³
12. The BBC Charter also requires that

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

13. Therefore VLV believes that in order to fulfil its Mission as set out in the charter and promote its Public Purposes it is essential that the BBC is able to do provide content for longer than the 30 day window currently allowed on its VoD platforms.

¹ *BBC iPlayer Proposals: Public Interest Test consultation, BBC Consultation Document, 7 January 2019, page 13*

² *BBC Agreement, December 2016, clause 61*

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

⁴ *BBC Charter, December 2016, Clause 15*

Level Playing Field

14. VLV believes that current regulation which limits the time content can be provided on BBC VoD platforms should be relaxed so that the BBC has similar freedom as the other PSBs to provide access to content for a longer period, subject to rights negotiations with content producers.
15. According to the BBC consultation paper ITV has recently concluded a terms of trade deal with PACT which allows the ITV Hub to provide single programmes and one-off series for an extra 6 months after linear broadcast as well as box-sets for returning series; the All4 platform provides boxsets of many original commissions and acquired content, some of which remain on the site for a number of years; and My5 provides 12 months VOD for returning and one off series.⁵
16. VLV considers that the BBC should be allowed to provide access to content on its on demand platforms for periods which more closely align with those of the commercial PSBs. We believe this would be fairer and will increase the public value of BBC content because licence fee payers would have better access to the content which they fund through the TV licence.

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

17. Overall, VLV supports the proposals which the BBC has put forward to extend the time most content is available on the iPlayer from 30 days to 12 months and provide access to more of the BBC's archive on the iPlayer.
18. VLV believes greater public value can be derived from the high quality, distinctive content the BBC provides if the opportunity to view such content is extended. Its reach will be extended as will its impact.
19. If the BBC is to 'serve all audiences' it needs to be able to take into account trends in viewing behaviour and ensure it provides content in the ways in which audiences want to view it.
20. As stated above, the Agreement directs the BBC to deliver content to audiences in 'a range of convenient and cost effective ways' which include 'on demand' platforms.
21. There is now an audience expectation that content will be readily available on VoD platforms and the BBC needs to keep up with audience expectations if it is to remain relevant to all audiences, regardless of their age. If younger audiences increasingly move away from the BBC and instead consume content on other VoD and SVoD platforms, loyalty to the BBC brand will be undermined.
22. In light of these considerations VLV welcomes Ofcom's support for the BBC's 'ambition to evolve and renew its content and services to ensure it continues to have broad appeal and relevance for UK audiences, particularly younger viewers and listeners'⁶.

⁵ *BBC iPlayer Proposals: Public Interest Test consultation, BBC Consultation Document, 7 January 2019, page 9*

⁶ *Review of the BBC's Materiality Assessment of proposed changes to the BBC iPlayer, Ofcom, 2 November 2018, clause 1.4*

23. In its Annual Report of the BBC in 2018 Ofcom stated:

Audiences are shifting away from live, scheduled programmes towards on-demand and online content. The trend is being led by younger audiences – more than half of 16-34 year-olds' viewing in the UK is of non-broadcast content. Similar shifts are seen in the audio market.

In light of these trends, the BBC and other UK broadcasters need to adapt to ensure that their content continues to appeal, and that it is available where and when audiences want it.⁷

24. The report went on to say that the BBC needs to take action to address Ofcom concerns which included:

'Taking significant further steps to engage young people. As the BBC recognises, it is not currently doing enough, quickly enough, to reach young people, who are critical to its future success. It needs to take significant steps to address this issue, to ensure it delivers content that appeals in ways that suit and reflect young people's viewing and listening habits.'⁸

25. In its report earlier in 2018, *Public service broadcasting in a digital age*, Ofcom also said that UK broadcasters should find new ways to distribute programmes; capture younger audiences; and to make world class content that tells UK stories.⁹

26. Ofcom is clearly urging the BBC to engage with younger audiences, by producing content which will appeal to them and to also to find more effective ways of delivering content to them on the platforms they prefer to use.

27. VLV agrees with Ofcom that the BBC needs to take 'significant further steps' to engage younger audiences. It is clear that younger audiences prefer on-demand platforms because of the convenience they offer – to watch content at a time which suits them and the ability to watch box-sets of series.

28. In its Annual Plan 2018/19 the BBC set out its ambition to address the problem of declining reach among younger audiences. It said:

Our new competitors have established the 'new normal' for online video. Audiences expect extended availability for TV programmes beyond just catch-up. They are attracted to engaging, fresh titles that drive their social conversation. They want familiar, wind-down content that is easy to find and binge on. And they expect state-of-the-art personalisation, user experiences and recommendations.¹⁰

29. VLV agrees with the BBC that in order to ensure it delivers its mission, the BBC needs to be able to develop the iPlayer as a viewing destination in itself, rather than purely as a catch-up

⁷ Ofcom's Annual Report on the BBC 2018, page 3

⁸ Ofcom's Annual Report on the BBC 2018, page 4

⁹ Ofcom, *Public service broadcasting in a digital age: Supporting PSB for the next decade and beyond*.

https://www.ofcom.org.uk/__data/assets/pdf_file/0026/111896/Public-service-broadcasting-in-the-digital-age.pdf

¹⁰ BBC Annual Report 2018/19, page 5

service. This will be essential if the BBC is to be able to compete with the global SVoDs by appealing to younger audiences among whom those services are particularly popular.

30. While VLV welcomes the proposals for enhanced availability of BBC content, we note that these proposals will result in higher distribution costs which will reduce the budget for originations. Recompensing rights holders for longer viewing windows on the iPlayer will cost a significant amount. We note that Tony Hall committed to set aside an extra £100m for the iPlayer in 2018. While balancing the need to provide enhanced availability on the iPlayer, VLV would want the BBC to ensure that it retains its focus on providing new, original UK content for audiences which is broadcast initially or simultaneously on its linear services.

Question 2: What do you think about the benefit to consumers who will use the service, as well as wider potential social and cultural impacts?

31. If availability of high quality, UK produced BBC content is enhanced by it being made available for a longer period on the iPlayer than it is currently, VLV considers that this would be beneficial for audiences. This will increase the impact and reach of the BBC. It is crucial that the BBC maintains its provision of distinctive UK-produced, culturally relevant content so that UK audiences have access to high quality content which reflects their lives. UK produced content informs citizens about UK and regional issues and provides UK-relevant drama, current affairs and reliable news. In contrast, global platforms such as Netflix and Amazon, tend to commission content which appeals to audiences globally, rather than locally, and it therefore delivers less public value. Additionally, most SVoDs are driven by purely commercial motivations rather than by public value considerations. Increasingly subscription services are being adopted by the public but this inevitably favours the better off.
32. If the BBC is unable to adapt to meet the needs of consumers who enjoy watching content on VoD platforms, then it will become increasingly irrelevant and in the longer term it will become unsustainable. If its popularity declines it will be impossible to ask the public to pay the TV licence which funds the BBC. If the BBC becomes unsustainable and its scope and scale are reduced, there is a risk that the whole PSB ecology in the UK will be undermined. VLV believes this will have significant negative impacts on UK society as a whole.
33. The scale of PSB in the UK is unusual by international standards. In most countries where TV is important, the commercial TV sector is substantially bigger than it is in the UK. The presence of the BBC, with its public mission, scale and scope, is significant because while commercial broadcasters can provide an excellent service for consumers, their motivations as commercial companies are necessarily different from those of the BBC which is a publicly funded corporation.
34. Viewing to PSB channels and public service programming brings a range of public benefits. These include direct benefits to individuals such as providing them with greater individual knowledge of specific issues e.g. via documentaries, as well as bringing wider social value through greater social cohesion or greater knowledge of current affairs which may facilitate democratic debate. Locally produced content also aims to increase civic engagement at a local level and to put people in touch with what is happening in their local area. These factors are unlikely to be fully accounted for by individuals when making viewing choices and, as such, an unregulated market may under-provide these services to the detriment of audiences.
35. The wider social, economic and cultural benefits of PSB are as follows:

- The broadcasting sector is integral to a thriving creative economy in UK
- It provides a wide choice of high quality programmes
- It provides trustworthy news and current affairs
- The BBC supports certain types of programming such as arts, religion, original children's programming which otherwise might not be broadcast
- PSB reflects the UK back to itself
- PSB brings the nation together at key moments
- PSB informs and educates society
- PSB promotes social cohesion
- It provides innovative content which might not otherwise be broadcast

36. PSB is crucial for the health of our democracy. At a time when the world seems to be increasingly characterised by social division and the erosion of democratic systems, disinformation and echo chambers are proliferating and thriving. The UK's PSBs provide a counter balance to these issues. They hold powerful companies and institutions to account and provide information to engage citizens in the democratic process.

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

37. VLV takes into account that as a publicly funded corporation, the BBC benefits from public funding which commercial broadcasters do not enjoy. While making these changes to the iPlayer window represents public value by improving the ability of audiences to consume content when and how they want to watch it, VLV acknowledges that they may impact negatively on the income of commercial competitors which could ultimately reduce choice for audiences.

38. The impact which most concerns VLV is that an increase of share for the iPlayer may lead to a decline in viewing of content on the other PSB VoD services (ITV Hub, All 4 and My5). The commercial PSBs, like the BBC, are increasingly financially dependent on viewers consuming content on their VoD platforms.

39. Ofcom notes that if viewing increases on the iPlayer, reducing the share of other VoDs, 'This may affect the incentives of rival VoD providers to invest in improving the content and functionality of their services relative to the counterfactual, and therefore may result in potential detriment to consumers.'¹¹

40. Conversely, if the BBC is not allowed to innovate the iPlayer and keep up with market trends, then there is a real risk that the iPlayer will become increasingly irrelevant in potential detriment to consumers and British society and we note that there is 'uncertainty about how the BBC's proposals will affect iPlayer viewing'¹².

41. While VLV is concerned about the potential negative impact of these proposals on the income of its PSB competitors, there is also the possibility that these proposals will lead to greater innovation in the market. When the iPlayer was introduced in 2007 it set a high standard for future VoD development by other broadcasters. If the BBC is allowed greater flexibility with its online offering, then this could impact positively by driving innovation and in this way, it

¹¹ *Review of the BBC's Materiality Assessment of Proposed Changes to the BBC iPlayer*, Ofcom, Clause 4.12

¹² *Review of the BBC's Materiality Assessment of Proposed Changes to the BBC iPlayer*, Ofcom, Clause 4.12

would enable the BBC to deliver the purpose in its Charter to promote technological innovation and maintain a leading role in research and development.¹³

42. On balance, taking into account available evidence, the VLV believes that these proposals should be adopted on the basis that they are in the public interest.

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

43. VLV believes that if the proposed changes to availability of content on the iPlayer are permitted, Ofcom should closely monitor developments in the VoD market, to ensure that the potential negative effects of these changes are monitored.

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

45. VLV also suggests that, in line with requirements in the Charter, the BBC should seek to work in partnership with other organisations and share, as far as is reasonable, its research and development knowledge and technologies.¹⁴

Note

None of this response needs to be treated confidentially.

¹³ *BBC Charter*, December 2016, clause 15 (1)

¹⁴ *BBC Charter*, December 2016, Clause 15 (2b) and (2c)