

# Canvas proposals

# **Provisional conclusions and public consultation**

22 December 2009

|           |  |           |
|-----------|--|-----------|
| <b>1.</b> | <b>Introduction and key findings</b>                                       | <b>1</b>  |
| <b>2.</b> | <b>Background</b>  | <b>2</b>  |
| <b>3.</b> | <b>Summary of procedure to date</b>  | <b>9</b>  |
| <b>4.</b> | <b>Summary of the Public Value Assessment</b>                              | <b>15</b> |
| <b>5.</b> | <b>Summary of the Market Impact Assessment</b>                             | <b>18</b> |
| <b>6.</b> | <b>Provisional Conclusions</b>   | <b>20</b> |
| <b>7.</b> | <b>Conditions</b>  | <b>22</b> |
| <b>8.</b> | <b>Next steps</b>  | <b>27</b> |
|           | <b>Annex 1: Public consultation on the Trust's provisional conclusions</b> | <b>28</b> |

# 1. Introduction and key findings

- 1.1. Canvas involves the creation and/or development and promotion of a set of core technical specifications to enable delivery of on-demand, interactive and web-based content to a television via a broadband connected digital device. It will include standards for consumer device equipment, content delivery, measurement, presentation and security technologies. Canvas also involves the creation and/or development of specifications that support the development of a user experience (UX) ("Canvas"). This document sets out the provisional conclusions of the BBC Trust regarding the proposals that the BBC participate in Canvas on the basis proposed by the BBC Executive.
- 1.2. Having considered the key features of the BBC Executive's proposals submitted in November 2008 in the context of the regulatory obligations provided by the Charter and Agreement, the Trust determined that Canvas is a non-service activity. The Trust considered that the Canvas proposals are potentially significant and, in view of the particular characteristics of the proposals, determined that it would be appropriate as part of its assessment of Canvas to weigh the potential market impact of the BBC's participation in Canvas against the potential public value attaching to it. The Trust also determined that it would be appropriate to consider the value for money presented by the proposals, the interests and perspective of the licence fee payer, the risks (financial, operational, reputational) attaching to the proposals and its compliance with the law and with BBC and Trust policies.
- 1.3. The Trust has reached provisional conclusions having conducted two concurrent reviews of the proposals: a Public Value Assessment ("PVA") and a Market Impact Assessment ("MIA"). The Trust has drawn on a wide range of evidence and information in preparing both the PVA and MIA. Background on the process adopted in respect of this assessment is set out below. The Trust has also sought legally privileged advice on some aspects of the process and substance of this analysis.
- 1.4. The PVA and MIA are published alongside these provisional conclusions. The PVA and MIA, together with the BBC Executive's application and further information published, are available on the BBC Trust's website ([bbc.co.uk/bbctrust](http://bbc.co.uk/bbctrust)). Non-privileged third party materials upon which the Trust has relied in producing the PVA and MIA are also published and available at the BBC Trust's website.
- 1.5. Although the Trust is not undertaking a Public Value Test process in respect of the Canvas proposals, the Trust considers it appropriate, before determining whether that the Canvas proposals should be approved, either with or without conditions, to satisfy itself that any likely adverse impact on the market is justified by the likely public value of the proposal. The Trust must also be satisfied that an approval would be consistent with the BBC Trust's duties under Article 23 of the Charter and its other legal duties.
- 1.6. Having considered the PVA and MIA in full, and evidence and information underlying both, the Trust considers that the likely public value of Canvas justifies any potential adverse impact on the market, subject to the scope of Trust approval and some requirements as to the way in which the BBC may be permitted to participate in the joint venture. The Trust also considers that these requirements are sufficient to ensure that the BBC's participation in the joint venture complies with the competitive impact principle. The Trust's provisional conclusions are set out in detail in section 6 of this document.
- 1.7. Our provisional conclusions are open to public consultation for a period ending 2 February 2010. Details of the consultation are contained in Annex 1 of this document.

## 2. Background

### Introduction

- 2.1. We set out below our understanding of Project Canvas which is based on:
  - 2.1.1. The BBC Executive's Application (and accompanying annexes) to the BBC Trust of February 2009;
  - 2.1.2. The BBC Executive's response to the BBC Trust's request for clarification provided in July 2009;
  - 2.1.3. The further information on governance and costs published by the BBC Trust in November 2009; and
  - 2.1.4. Further clarifications provided by the BBC Executive.

### Project Canvas: overview

- 2.2. Canvas involves the creation and/or development and promotion of a set of core technical specifications to enable the delivery of on-demand, interactive and web based content on the television via a broadband connected digital device. The core technical specifications will include standards for consumer device equipment, content delivery, measurement, presentation and security technologies. Canvas also involves the creation and/or development of specifications that support the development of a Canvas user experience ("UX") (see 2.3 and 2.4 below). Viewers wishing to access on-demand content on their television set using a Canvas enabled device will be required to have a subscription for a broadband service.
- 2.3. Canvas will not create, aggregate, license or retail any content. Neither will Canvas act as an internet service provider ("ISP"). Rather, our understanding is that Canvas will facilitate access to content.
- 2.4. In addition to the core technical specifications, Canvas will develop and manage a UX which will allow users to search and browse for content and services (provided via Canvas) and provide backend services including metadata aggregation, platform diagnostics and customer support.
- 2.5. The core user interface ("UI"), a sub-set of the UX, will be developed, maintained and controlled by the Canvas joint venture. It will consist of:
  - 2.5.1. A main menu or top level experience;
  - 2.5.2. A simple linear guide for television and radio;
  - 2.5.3. An ordered list of on-demand services;
  - 2.5.4. A basic search and browse functionality for web and interactive content and applications;
  - 2.5.5. Settings (for example, options for parental controls).
- 2.6. Use of the Canvas brand will require the adoption of the Canvas core technical specifications and the Canvas UX. Parties who adopt both the Canvas core technical

- specifications and Canvas UX will thereby gain access to content made available on the Canvas platform.
- 2.7. Canvas will not manufacture or sell Canvas enabled digital devices, nor will Canvas (or the BBC) subsidise the purchase of such devices.
  - 2.8. Canvas will operate on a cost-recovery basis and this principle is enshrined in the objectives of the joint venture as agreed by all parties and published by the BBC Trust in November 2009. The BBC's investment in Canvas will be funded by the licence fee.
  - 2.9. The Canvas joint venture will be established to develop, support and promote the Canvas core technical specifications and UI. The joint venture will market Canvas under its own Canvas brand, as a separate proposition to Freeview. As the core technical specifications will be based on the core specification for the existing D Book, device manufacturers will be able to adopt the relevant Freeview trademark(s) for their Canvas enabled devices. There will be no formal relationship between the Canvas and Freeview joint ventures, although any DTT or DSat device would offer the same range of linear services as offered by these platforms. The BBC Executive outlined how the wider strategy for Freeview and Freesat may evolve in the light of Canvas in the documents published in July 2009.
  - 2.10. The ability to gain access to the Canvas platform and to market a Canvas enabled device is not contingent on membership of the Canvas joint venture. All joint venture partners will contribute towards its costs on an equal basis.
  - 2.11. The BBC Executive has stated that development of the Canvas core technical specifications will involve consultation with a range of industry bodies, and that the Canvas joint venture will work closely with the Digital Television Group ("DTG") for the development of the DTT based specification, whose membership has been expanded to include participants from the ISP and internet technology and development communities.
  - 2.12. The Canvas core technical specifications are intended to be adapted to other platforms and devices. This means that Canvas will in principle be able to be implemented on all TV distribution platforms (i.e. digital terrestrial, satellite and cable), by all ISP providers and by all device manufacturers, subject to minimum quality thresholds - see below.
  - 2.13. The Canvas core technical specifications set out requirements for the delivery of on-demand and web based content. It is anticipated that manufacturers will be free to incorporate additional functionalities (such as conditional access ("CA") functionalities and push VOD - see below) into Canvas enabled devices to support a range of additional services, including paid for interactive and/or transactional services. Pay services (including billing) will be managed and provided by individual content and service providers, however the core technical specifications will provide the underpinning hardware and software requirements to enable a range of transactional functionality.
  - 2.14. More specifically, in connection with the development of the Canvas core technical specifications, we understand that:
    - 2.14.1. Canvas would seek to support CA technology widely used for pay-TV services, implemented initially by device manufacturers in conjunction with a pay-TV operator. However, the BBC Executive has stated that a common standard for CA enabled devices is highly desirable and the DTG have included this work within their plans for a Connected TV specification;
    - 2.14.2. the Canvas core technical specifications will support digital rights management ("DRM") technology;
    - 2.14.3. the Canvas devices will meet minimum storage requirements (32GB) that will enable Canvas devices to offset load on IP networks. Manufacturers

are expected but not required to include a larger storage capacity to allow customers to benefit from a PVR, but this will not be mandated in the Canvas specification, in part to enable a range of Canvas TV devices;

- 2.14.4. to the extent possible, the Canvas core technical specifications will build on existing standards such as D-Book 6.1 for digital terrestrial television and future iterations of the D-Book;
  - 2.14.5. Canvas devices are likely to all be HD-ready but this is not mandated in the core technical specifications.<sup>1</sup>
- 2.15. The BBC is already working with three innovation partners (Thomson, Humax and Cisco) from the consumer device manufacturing sector on the development of the Canvas core technical specifications. The BBC has signed non-disclosure agreements (to allow information sharing), non-binding collaboration agreements / letters of intent (to express the intention to work together on a research and development basis) and framework intellectual property rights agreements (specifically designed to ensure that any material developed by the innovation partners in relation to Canvas can be made available by the BBC to the wider industry, via the DTG process, for example) with these innovation partners. The BBC has confirmed that there is no agreement with the innovation partners which would prevent the BBC from allowing the DTG to be involved in future development of the Canvas specification.
- 2.16. The BBC expects the DTG to make the core technical specifications available to third parties who do not wish to develop or promote a Canvas enabled device. However, use of the Canvas brand will require the adoption of the Canvas core technical specifications and the Canvas UI, which thereby gives access to content made available via Canvas. Platform operators will be able to adopt the Canvas core technical specifications alongside their own UI (that could be based on the metadata/source code for the Canvas UI or specification set out in D-Book 7, when it will become available). However, such platform operators will not be permitted to adopt the Canvas brand (and benefit from the associated marketing) and will not gain access to the content made available on Canvas by joint venture partners and other content providers. Accordingly they will be required to liaise directly with content providers to syndicate content to be provided on their platform and any other commercial terms (similar to other TV platforms).

## The Canvas UI (including the EPG) and access for content providers

- 2.17. The Canvas UI consists of a main menu, a simple linear guide for TV and radio, an ordered list of on-demand content, a basic search and browse function and basic canvas level settings (e.g. parental controls). The Canvas UI will be developed and held by the Canvas joint venture.
- 2.18. More specifically, insofar as the UI is concerned, we understand that:
- 2.18.1. third party content providers/aggregators will have the flexibility to develop and/or personalise their respective sub-areas of the electronic programme guide ("EPG");
  - 2.18.2. viewers will have the ability to personalise the Canvas UI;
  - 2.18.3. shortcuts may be provided on the Canvas UI to content and services; and

<sup>1</sup> Canvas devices will be built on the basis of D-Book 6.1 but are not required to include the HD sub-set.

- 2.18.4. co-branding on the Canvas UI may be permitted for ISPs and other third parties on terms to be agreed.
- 2.19. Canvas is intended to be open at every level of the supply chain. In particular, as regards third party content providers:
  - 2.19.1. subject to minimum technical standards and limited content standards (based on illegality), third party content providers will be able to make their content available via Canvas enabled devices and will have the possibility to have their content listed on Canvas;
  - 2.19.2. the BBC will not have the ability to enforce its own editorial standards in respect of third party content; and
  - 2.19.3. there will be a listing fee for inclusion in the Canvas EPG calculated on a cost recovery basis.
- 2.20. The BBC Executive has stated that Canvas will be open to free, advertising funded and paid for content and would not preclude any payment models.
- 2.21. The BBC Executive has stated that linear and on-demand content on the EPG will be listed in accordance with Ofcom's EPG Code, which requires fair, reasonable and non-discriminatory treatment of channels. Linear channels offered on Canvas will mirror the DMOL numbering. Linear channels delivered via broadband and on-demand content will be reflected within this framework insofar as it extends to include them or will be treated on a fair, reasonable and non-discriminatory basis to be set out in Canvas EPG Policy.
- 2.22. ISPs and content providers will be required to meet a minimum quality standard defined in terms of consumer experience rather than by reference to any one technology solution (the "Minimum Quality Standard"). This will be defined in output terms as being that which delivers a similar consumer experience to that of watching a standard definition channel on Freeview.
- 2.23. Aside from satisfying the Minimum Quality Standard, it is envisaged that there will be flexibility for the technology involved in content delivery. Canvas will not dictate the form of delivery. Hence ISPs will be able to support Canvas with both 'managed delivery' (where ISPs allocate bandwidth to the delivery of content via Canvas so to ensure a certain quality of delivery standard) and 'over the top delivery' (delivery of data over an ISP's broadband network undistinguished from other data (e.g. emails, voice)). Canvas will not require managed delivery services to use BT's CDN technology.

## The Canvas joint venture

- 2.24. Membership of the Canvas joint venture is intended to be open to all, subject to the satisfaction of a number of objective admission criteria. Entrants must be of benefit/make a positive contribution to the Canvas joint venture and, in making such an assessment, the Canvas board will consider whether the applicant:
  - 2.24.1. demonstrates an ability to fulfil the commercial objects of the Canvas joint venture - see below;
  - 2.24.2. will commit to spending a reasonable proportion of their marketing budget to promoting Canvas and to affording Canvas effective prominence within such marketing (both assessed by reference to comparable existing marketing commitments of the other shareholders to the joint venture at the time of the applicant's entry to the joint venture);

- 2.24.3. has sufficient financial resources to meet their obligations as a shareholder; and
  - 2.24.4. is willing to make a commitment to fund the joint venture according to basis of its agreed contribution from time to time.
- 2.25. Although there is no express limit to the number of Canvas joint venture members, the Canvas board will also consider whether the addition of any new members to the Canvas joint venture would undermine the operational efficiency or viability of the joint venture or its operations. The final decision on new entrants to the Canvas joint venture will be taken by a majority vote of the board of directors. Each shareholder has the right to appoint a single board member and all board members will have voting rights which reflect the proportion of shares held by their appointing shareholder in the joint venture.
- 2.26. Members of the Canvas joint venture will have equal shareholdings and board representation and equal funding contributions (at least for the first four years). Any new entrants will dilute the existing participants' shareholdings equally.
- 2.27. Decisions of the Canvas board are taken by simple majority, except for decisions to approve subsequent budgets, spending in excess of the business plan or budget, changes to the business plan or budget, changes to the share structure or borrowing, which will all be taken by super majority (i.e. the approval of all but one of the shareholders). Changes to fundamental constitutional matters are reserved matters that require the unanimous approval of the shareholders.
- 2.28. Members of the Canvas joint venture must also sign up to the commercial object of supporting and promoting the Canvas core technical specifications and UI (whilst acknowledging the role of the DTG in developing and maintaining the core technical specifications), which includes:
- 2.28.1. developing and promoting the core technical specifications in conjunction with the relevant bodies, including the DTG;
  - 2.28.2. to offer UK audiences a wide choice of catch-up, VOD and linear television along with interactive and web content as part of new hybrid platform that enables both free and pay services;
  - 2.28.3. to promote, develop and enhance the take-up of broadband services and the availability of Public Service and other broadcast content;
  - 2.28.4. to maintain a standardised and horizontal approach to the application of the core technical specifications in the device market (e.g. through the DTG);
  - 2.28.5. to ensure the appropriate quality of audience experience. This includes the Minimum Quality Standard;
  - 2.28.6. to ensure a common UI (including EPG) for inclusion in devices in accordance with a UI and EPG policy;
  - 2.28.7. to market and promote the core technical specifications and UI and the availability of services;
  - 2.28.8. to develop and promote the Canvas brand;
  - 2.28.9. the management of EPG listings;
  - 2.28.10. the collection and use of data; and

- 2.28.11. to develop ways in which the Canvas joint venture can recover certain operational costs.
- 2.29. There will be no prohibition in the Canvas joint venture governance documents on the promotion or delivery of alternative devices or platforms by joint venture members (subject to compliance with the membership and admission criteria above).
- 2.30. The Canvas joint venture will collect usage data and content providers will be able to access detailed reports for data generated by their service. It is also intended that aggregated data will be made available to all Canvas content providers.

## Costs associated with Canvas

- 2.31. Partners to the Canvas joint venture will contribute (in cash) equally to the operating and marketing costs of the Canvas joint venture by each making an equal contribution (in cash) invoiced in the form of a service charge to the partners by the joint venture on a monthly basis. Where partners are able to offer in-kind contributions in lieu of cash contributions, the Board of the joint venture may consider accepting such in-kind contributions but only in circumstances where (i) the asset being offered by way of in-kind contribution has been identified as an asset required by the joint venture as contemplated by the current business plan and (ii) the value of such in-kind contribution can be objectively determined. This funding model, which is also used in Freeview, allows the commercial Canvas joint venture partners to deduct the service charge from their gross revenues for tax purposes and will also permit the Canvas joint venture to reclaim VAT. This would not be the case if all partners funded the joint venture's operations by way of subordinated loans (with very low prospects of recovery), as originally contemplated. Every new partner to the Canvas joint venture will need to pay a proportionate share of the costs already incurred by the joint venture and share future costs on an equal basis with the original partners.
- 2.32. However, the intention is that the BBC will frontload investment in the Canvas joint venture on behalf of the commercial PSBs only (i.e. not on behalf of non-PSB Canvas members such as BT) during year one of the joint venture by contributing towards the service charges invoiced to commercial PSBs. The BBC is thereby effectively granting a loan on a commercial basis next to the funding mechanism described above. This initial front-loading will be levelled out to ensure that over four years all PSB contributions are of equal value. The BBC will only consider frontloading another PSB's contribution towards the total costs of the joint venture in circumstances where it is confident it has taken every precaution reasonably necessary to ensure that frontloaded contribution will be recouped, and that the commercial terms applied to any such "loan" have been benchmarked against, and are in line with, similar loans available in the market.
- 2.33. Up until the end of September 2009, the BBC has invested approximately £0.7 million to support the application of Canvas<sup>2</sup> in addition to ongoing R&D investment in investigating the viability and potential of internet connected television. Costs incurred by the BBC in undertaking this work will not be subject to later reimbursement by the Canvas joint venture partners on the basis that such costs represent expenditure that the BBC would be incurring in any event pursuant to business as usual activity.
- 2.34. The BBC will also be investing approximately £5 million between October 2009 and January 2010. Should the BBC Trust's preliminary conclusions in December 2009 indicate that the Trust is minded to approve Canvas, the Canvas joint venture partners will contribute equally towards the total of £5 million under a cost sharing agreement prior to full market launch. The BBC is assuming the financial risk of Canvas up until the Trust's preliminary conclusions because, in the event the preliminary conclusions are not

<sup>2</sup> This investment will not be reimbursed by the Canvas joint venture partners.

favourable, all the assets created between October 2009 and the date of such preliminary conclusions will remain with the BBC.

## 3. Summary of procedure to date

- 3.1. In November 2008, the BBC Executive formally submitted the Canvas proposals to the Trust for its consideration and determination as to the appropriate assessment process. The Trust considered the Executive's view that the proposals represented a 'non-service activity'; that is, the proposals did not have the nature of a service and therefore fell outside the scope of many of the formal requirements set out in the Agreement.
- 3.2. Non-service activities are a key component of the BBC's activities, the nature and potential significance of which (as envisaged by the Agreement) will vary significantly. The need and extent to which the Trust should undertake an assessment process for non-service activity proposals from the Executive is not specifically set out in the Agreement and therefore falls within the discretion of the Trust. In some instances, non-service activities may be significant and may raise issues of public value and market impact. It is accordingly the responsibility of the Trust to determine the appropriate assessment process and to ensure that principles which underlie the treatment of services are, where relevant and appropriate, applied to non-service activities in a way that it considers appropriate in the circumstances.
- 3.3. Having reviewed the initial proposals from the Executive, the Trust formed the view that the potential significance of the proposals warranted a detailed, evidence-based assessment process by the Trust. Essentially, the Trust considered that a detailed Trust assessment of the public value and market impact of the proposals, public consultation and pro-active engagement with key stakeholders was desirable in this case. Specifically, the Trust committed to ensuring that its assessment process considered the following:
  - 3.3.1. the public value created by the proposals;
  - 3.3.2. value for money;
  - 3.3.3. the interests and perspectives of the licence fee payers;
  - 3.3.4. market impact;
  - 3.3.5. risk (financial, operational, reputational);
  - 3.3.6. compliance with the law and with BBC and Trust policies.
- 3.4. In considering the proposals' compliance with BBC and Trust policies, the Trust has conducted an assessment of whether the Canvas proposals comply with the competitive impact principle in accordance with the Trust's Policy on Competitive Impact and the Fair Trading Guidelines. In undertaking this assessment, the Trust has identified the delivery of Public Purposes set out in the PVA and the potential negative market impacts identified in the MIA and considered whether the negative market impacts identified could be further reduced without significantly compromising the Public Purposes or the BBC's other regulatory obligations.

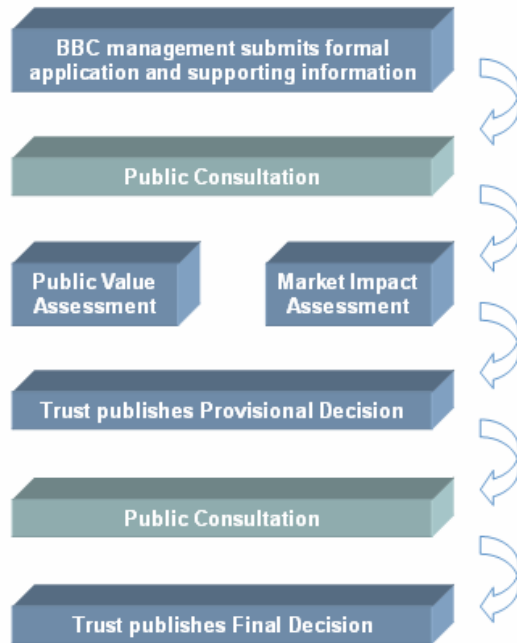
### The Canvas assessment process

- 3.5. The Trust initiated the non-service assessment process on 26 February 2009, by way of publication of a consultation document containing a description of the proposals. That description was agreed with the Executive prior to publication. The proposals were subject to public consultation, for 51 days, until 17 April 2009.

- 3.6. The Trust received over 800 submissions from individuals and stakeholders during the initial consultation. 743 responses were received from members of the public.
- 3.7. In order to ensure that the perspectives of licence fee payers were heard, the Trust Unit also met with all four Audience Councils to inform the Councils of the proposals. Both Audience Council for Wales and Audience Council for Northern Ireland subsequently provided the Trust Unit with their written response to the proposals.
- 3.8. In addition to consulting with the general public, the Trust Unit actively engaged with stakeholders by way of consideration of written stakeholder responses and also through undertaking meetings with over 60 stakeholders from a range of sectors in order to gain further insight into their views on the proposals. The Trust Unit personnel met with a wide range of stakeholders, including broadcasters, platform operators, ISPs, content providers, and industry bodies.
- 3.9. On 4 June 2009, the Trust published a summary of the individual consultation responses and all of the non-confidential stakeholder responses. Taking into account responses received during the initial consultation, the Trust considered it appropriate to seek further information from the Executive on the following areas:
  - 3.9.1. operation of the EPG;
  - 3.9.2. joint venture structure, governance and costs;
  - 3.9.3. access to Canvas by content providers;
  - 3.9.4. editorial and quality controls;
  - 3.9.5. industry engagement in developing the Canvas standard;
  - 3.9.6. technical matters including technical and monetisation solutions that the Canvas standard will support and data security;
  - 3.9.7. customer support; and
  - 3.9.8. marketing and promotion.
- 3.10. The Trust published the further information received from the Executive on 26 July 2009, providing interested stakeholders with the opportunity (until 1 September 2009) to submit to the Trust any additional submissions or comments that they wished to make (and noting that there would be further opportunities to comment as the assessment process progressed). The Trust received 17 responses from stakeholders.
- 3.11. In November 2009, the Executive provided further information to the Trust, namely revised governance proposals and updated cost information. This additional material was published by the Trust and made available for stakeholder comment (again noting that there would be further opportunities to comment as the assessment process progressed). The Trust received a further 6 consultation responses from stakeholders.

3.12. A broad outline of the assessment process is set out in Figure 1 below:

Figure 1: structure of the Canvas assessment process



## Approach to the Public Value Assessment

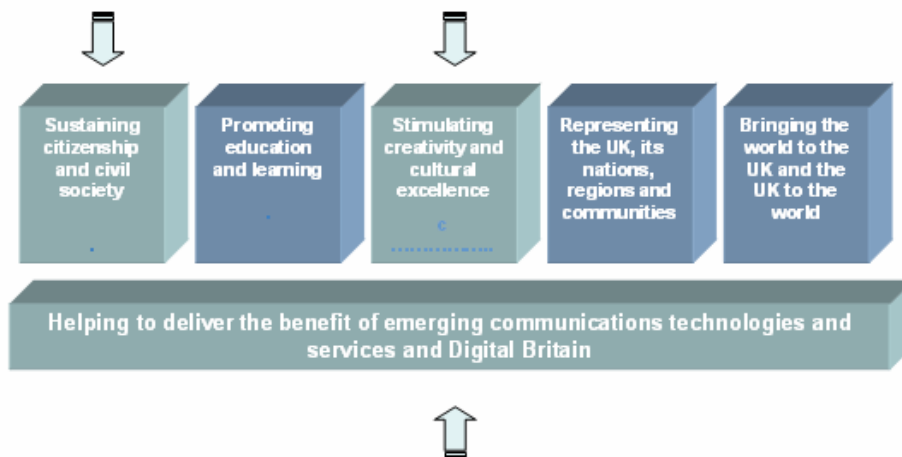
- 3.13. As set out above, the Trust committed to assessing the public value of the Canvas proposals including the value for money of the proposition.
- 3.14. The PVA aims to establish the likely public value of the proposals. As a general approach, public value is primarily assessed over a five-year period; it is invidious to forecast beyond that time given the increasing uncertainty, in scale and scope, of factors that could potentially affect the public value of any proposal. However, in order to recognise the full value of a proposal, factors beyond this period have, to some extent, been taken into account.
- 3.15. Although the PVA is not a 'PVA' that forms part of a Public Value Test ("PVT") process under the Agreement, the Trust was mindful of factors ordinarily taken into account in undertaking a PVA as part of PVT process and has thereby applied similar principles in assessing the potential public value of the Canvas proposals. Essentially, the PVA considers the public value of the proposals from two dimensions: the value of better access to a wider range of BBC and other content on DTT; and the wider strategic value and benefits of evolving the DTT platform through a partnership initiative.
- 3.16. As a starting point for its assessment, the Trust considered the strategic context underpinning the Canvas proposals and their fit with BBC strategy. It then considered whether the proposals advance the BBC's Public Purposes and deliver potential public value. The assessment of whether proposals deliver potential public value was structured around the following four key questions:
- 3.16.1. Is there consumer demand for IPTV?
  - 3.16.2. Is there a role for the BBC and what form should this take?

3.16.3. In which ways will BBC involvement deliver value to audiences – taking account of the impact, reach, quality and value for money drivers?

3.16.4. What will happen in the absence of the Canvas proposals?

3.17. The BBC exists to serve the public interest and its main object is the promotion of the Public Purposes, as set out in the Royal Charter. There are six purposes, illustrated below. Those highlighted were found to have particular relevance for Canvas, with the sixth public purpose having the most relevance. The Trust considers that the sixth public purpose is most relevant to our assessment given that Canvas is specifically aimed at delivering the benefit of DTT and Digital Britain. The extent to which proposals contribute to sustaining citizenship and civil society and stimulating creativity and cultural excellence is less evident, albeit we accept the Executive's position and note that stakeholder made similar points as to the contribution of Canvas to these public purposes.

Figure 2: BBC public purposes



3.18. In assessing public value, the Trust has also had regard to other requirements under the Agreement, as well as what might happen in the absence of Canvas.

## Approach to the Market Impact Assessment

3.19. The MIA is an assessment of the material ways in which relevant products and services might be affected by the BBC's proposals.

3.20. To understand the range of likely static and dynamic impacts of Canvas on the demand for and supply of competing products and services and form conclusions on that assessment, the Trust considered it necessary to assess:

3.20.1. the likely take-up of Canvas;

3.20.2. the potential impact of Canvas on demand for affected products and services; and

3.20.3. the current and future prospects of the affected products and services in the absence of the proposals (the "counterfactual").

3.21. Hence, the MIA considers the extent to which Canvas is likely to induce substitution away from competing services and the ways in which that substitution could reduce innovation and investment by alternative providers. In assessing impacts, one needs to be mindful of the overall impact of Canvas. In general, entry into a market is likely to enhance competition and therefore be welfare enhancing. The consumer welfare enhancing aspect of Canvas is analysed in the PVA.

- 3.22. The MIA is not, however, a competition law market definition exercise.<sup>3</sup> The focus is on assessing the impact of the Canvas proposals on a number of products and services, but without the need to define the markets for the purpose of competition law assessment.<sup>4</sup>
- 3.23. The Trust acknowledges the difficulty in identifying affected products and services (and in forecasting potential effects) given the emerging nature of the provision of VOD and IPTV products and services. The Trust has accordingly borne in mind the uncertainty that might attach to some of the underlying research and evidence considered and notes where appropriate if a range or estimate is relied upon.
- 3.24. The Trust also recognises that there are a number of layers to the Canvas proposals - as a technical standard, a facilitator of access to content and, as is likely to be the case, a new platform<sup>5</sup> delivering the same linear TV content as Freeview as well as providing another method of delivering non-linear (VOD) TV content via broadband. The Trust has also considered the range of potential additional device features (HD enabled and PVR function) set out in the application for Canvas enabled devices.

## Sources of evidence for the PVA and MIA

- 3.25. In undertaking the assessment of the Canvas proposals, the Trust has drawn on evidence from a variety of sources. A summary of this evidence base is set out below.

### The Executive

- 3.26. As set out above, the Executive submitted to the Trust a non-service application in November 2008. Briefly, this comprised:
- 3.26.1. evidence on the public value created by the proposition; and
  - 3.26.2. a preliminary market impact assessment.
- 3.27. Our assessment also draws on research conducted or commissioned by the Executive, including:
- 3.27.1. TW study on the concept development of IPTV;
  - 3.27.2. BBC Marketing Communications & Audiences (MC&A) research on Virgin Media subscribers VOD usage;
  - 3.27.3. VOD usage and awareness;
  - 3.27.4. Conjoint research for the BBC.

### General Public and Industry Stakeholders

- 3.28. The Trust has sought oral and written representations from the general public and industry stakeholders through open consultation and by separately inviting the views of

<sup>3</sup> The use of the word "market" throughout the MIA should not be taken as a reference to a defined relevant market in the competition law sense

<sup>4</sup> It is important to note in this context that the BBC is also subject to:

- a. the Fair Trading regime administered by the BBC Trust; and
- b. European and UK laws on competition and state aid and other regulation.

The Trust will receive separate independent and legally privileged advice on both Fair Trading and legal compliance for consideration in forming its Provisional Conclusions on this application.

<sup>5</sup> Although there is no legal definition of a platform we consider Canvas to be a distribution platform in the same manner as Freeview or Freesat are platforms. The fact that these propositions are platforms does not mean that they aggregate and retail content (which they do not) given that broadcasters / content providers retain full control over content delivered/retailed through Canvas.

stakeholders on Canvas and on specific aspects of the proposals throughout the Canvas assessment process.

## Trust Unit analysis and commissioned research

- 3.29. Following a preliminary assessment of material submitted by the Executive, we examined the evidence base and historical and strategic context, tested underlying assumptions and requested further detail and clarifications from the Executive as appropriate.
- 3.30. We commissioned Opinion Leader to conduct quantitative and qualitative research into the potential demand for Canvas and the value it would create for licence fee payers and the desirability and benefit of BBC involvement in the joint venture. This consisted of a quantitative phase involving 2,171 interviews with a representative sample of the UK population and a qualitative phase involving 18 in depth interviews with households spanning a range of socio-demographics as well as different TV platforms.
- 3.31. To support our static analysis the Trust also commissioned Value Partners to report on the following:
  - 3.31.1. the impact of Canvas on the TV and related markets where relevant;
  - 3.31.2. the impact of Canvas on the cost base of ISPs; and
  - 3.31.3. the impact of Canvas on the delivery of pay-VOD services and the consequent impact on the rental and retail DVD markets.
- 3.32. To undertake this task Value Partners built three interconnected models. These were:
  - 3.32.1. a TV model;
  - 3.32.2. a viewing model; and
  - 3.32.3. an ISP cost model.
- 3.33. The TV model forecasts a range of potential demand for Canvas against an assumed counterfactual, and the impact of that demand on other platforms.<sup>6</sup> The viewing model forecasts the impact of Canvas on viewing trends (such as linear versus non-linear viewing) based on the outputs of the TV model and against the same counterfactual. Finally, the ISP cost model uses the outputs of the TV model to estimate the impact of different Canvas take up scenarios on the network costs of ISPs.
- 3.34. Value Partners built a second model to estimate the potential impact of Canvas on the demand for pay-VOD services.
- 3.35. The Value Partners reports represent their own independent view on the likely impact of Canvas. To undertake this analysis Value Partners relied on a wide range of publically available information, the views and submission of stakeholders, a range of market research, including the Opinion Leader research commissioned by the Trust, as well as their own expertise and knowledge of these markets.
- 3.36. The Trust also relied on a range of industry forecasts which include forecasts by Screen Digest, Enders Analysis, as well as Ofcom's latest annual reports on the communications market.

---

<sup>6</sup> Where relevant the model also estimates sales of related products and services such as broadband penetration and consumer device sales.

## 4. Summary of the Public Value Assessment

- 4.1. This section provides a summary of the PVA to aid the reader and is not a substitute for reference to the PVA report which deals with these matters in full. The Trust has carefully considered the full PVA report and all its conclusions in reaching its provisional conclusions.
- 4.2. The overall conclusion of the PVA is one of potentially high public value in Canvas for particular audience groups and medium public value overall. In the longer term, the PVA identifies the potential for high overall value.
- 4.3. The PVA identifies clear value accruing from BBC involvement, both to individual licence fee payers and society more broadly. Canvas responds to consumer demand for greater choice and brings with it the benefits of industry collaboration. The proposals fit with the further delivery of the public purposes and wider BBC strategy. They represent a logical and necessary step in the evolution of DTT, underpinned by a commitment to preserve the principles of universal, free to air access to BBC content.

### Strategic rationale and Public Purposes

- 4.4. The PVA considered the strategic rationale for the proposals, the broader context and whether the proposals fit with the BBC's Public Purposes. It concludes that Canvas fits the BBC's Public Purposes, in particular the sixth Public Purpose of helping to deliver to the public the benefits of emerging communications technologies and services and taking a leading role in the switchover to digital Britain. By improving access to the full range of BBC services and increasing the scope of the offer on DTT, Canvas makes a significant contribution to the sixth purpose. Proposals also make a lesser – but important – contribution to the first and third purposes of sustaining citizenship and civil society and stimulating creativity and cultural excellence, furthering the media literacy agenda (and supporting specific commitments to building digital Britain), broadening access to the DTT platform and enabling the delivery of a range of content and services.
- 4.5. The BBC has historically played a central role in the development of broadcasting standards and technologies, accelerating the acceptance of new services and platforms, from colour television and Nicam<sup>7</sup> to DAB, high definition and catch up, delivering their benefits to audiences and industry. In the same way, we recognise that the BBC could help both coordinate and accelerate the adoption of IPTV.
- 4.6. Access to BBC services in a technologically changing environment is a key strategic driver, related directly to clause 12 of the Framework Agreement, which places an obligation on the BBC to do all that is reasonably practicable to ensure that viewers, listeners and other users are able to access the UK public Service in a range of convenient and cost effective ways which are available or might become available in the future. In order to satisfy the interests of licence fee payers and secure the continued relevance of DTT, therefore, the BBC needs to evolve the free offer of its content on emerging technologies. The BBC also has a specific obligation under clause 35 of the Framework Agreement to broadcast terrestrially. Canvas helps to sustain the DTT platform by enriching the range of content and services available on the platform without recourse to a pay television package.
- 4.7. More generally, the manner in which Canvas is delivered, via a joint venture partnership, will help to advance other important strategic objects. Allowing broader participation in Canvas via the creation of a joint venture and engagement with industry will assist in

---

<sup>7</sup> Near Instantaneous Commanded Audio Multiplex.

achieving an open and flexible standard - which the Trust agrees is important in the context of this proposal.

- 4.8. The impact on DTT of the BBC's participation in Canvas should not be overstated in the short-term<sup>8</sup>, but the Trust accepts that the inclusion of on-demand services on DTT will be integral to securing the platform's reach and viability over time. By evolving the capabilities of DTT, Canvas will enhance the free-to-air offer, helping to ensure parity with alternative platforms and delivering the benefits of greater choice.

## Assessment against the four drivers of public value

- 4.9. The PVA also assessed the proposals against the four drivers of public value: quality, reach, impact and value for money.
- 4.10. Quality and distinctiveness was identified as a key area for the delivery of potential public value of the Canvas proposals. Although further clarification would be helpful in respect of quality assurance, the accessibility and usability of the interface, coupled with non-subscription access to a broad range of content and services and progressive technical standards, demonstrate clear potential value. A core principle underpinning the Canvas proposals is a desire by its members to establish a common user interface. A central benefit of the proposals, therefore, is the opportunity to implement best practice for accessibility and usability overall, as well as providing safeguards for vulnerable groups.
- 4.11. The extent to which Canvas will contribute to BBC reach was however less clear, albeit that evidence suggests strong audience demand for a wide range of content, a certain willingness to pay, and an interest in the functions that Canvas devices are expected to offer. There is also evidence that Canvas has some potential reach to harder to reach groups (including younger audiences, though that should not be overstated).
- 4.12. Whilst the PVA projections demonstrate clear demand for Canvas – the projections estimate sales of between 1.2 and 8.3 million Canvas devices, with an expected total sales volume of 4.1 million in our base case – the PVA recognises that, for many households, it is not yet seen as a 'must have'. For some low income households, the combined cost of broadband connection and new receiving equipment may put Canvas beyond their means. Canvas's ability to drive broadband uptake is uncertain, albeit that a marginal uplift is possible.
- 4.13. The PVA accepts that initial interest in Canvas, and therefore uptake, is likely to be higher among younger consumers from higher socio-economic groups, and somewhat less so among older people, lower socio-economic groups and analogue only households. Whilst reach is limited initially by the cost of access, we expect this to climb as the cost of devices falls.
- 4.14. The PVA also recognise that initial take-up is likely to be gradual but over time, expect the benefits to consumers and citizens to be more significant; helping the BBC to maintain a direct relationship with licence-fee payers; delivering the benefits of new technology to all audience groups and acting as a potential stimulus for broadband adoption.

---

<sup>8</sup> Some stakeholders have argued that the need to safeguard the future of DTT is important but should not be overstated in short-term. With a different value proposition from cable and satellite, they maintain that DTT does not have to offer a comparable range of services.

- 4.15. In the short-term, therefore, the effect of Canvas on BBC reach is largely neutral. Over time, however, as audiences are exposed to on-demand services and increasingly come to expect their delivery to a television set, the PVA considers that Canvas may increase consumption and overall reach of the UK public services.
- 4.16. On the basis of the cost figures provided, the PVA considers that the proposals will deliver a cost-efficient way of providing all the benefits delivered by the Canvas proposals to licence fee payers. The value for money of the proposals is evident in the context of the proposals, in terms of the overall cost, and the cost per user and household in comparison to other BBC offerings.
- 4.17. The costs represent a comparatively low proportion of BBC spending on UK Public Services. The Canvas proposals amount to 0.15 per cent per year of the licence fee (based on four equal share partners) or 19p per licence fee household per year, and so should not significantly affect the provision of other existing service activities undertaken by the BBC. Given the relatively low costs of the Canvas proposals and BBC participation, we consider that there would need to be a sizeable increase in the total costs of the Canvas proposals for the proposals to no longer constitute value for money.
- 4.18. In respect of what will happen in the absence of Canvas, whilst the PVA recognises a broad range of initiatives on the DTT platform; it is by no means certain that they will replicate the potential public value envisaged by Canvas.
- 4.19. In summary, the PVA concludes that there is a strong logic and public value to proposals; by fulfilling broader policy objectives for DTT, Canvas will deliver specific benefits to audiences, enriching the range of available content and services without recourse to a pay-television package, whilst securing greater scale and lower costs through coordination with joint venture partners. Taking into account the relatively low overall cost and cost per user of the Canvas proposals, the PVA concludes that the Canvas proposals are an appropriate use of licence fee funds.

## 5. Summary of the Market Impact Assessment

- 5.1. This section provides a summary of the MIA to aid the reader and is not a substitute for reference to the MIA report which deals with these matters in full. The Trust has considered the full MIA report and all its conclusions in reaching provisional conclusions.
- 5.2. The Trust identified a number of key products and services or markets within the affected value chain which may potentially be impacted by the BBC's proposals:<sup>9</sup>
- 5.2.1. supply of content by rights owners (whether VOD or otherwise);
  - 5.2.2. existing and potential platform operators (including free to air, pay-TV and hybrid DTT/IPVOD platforms);
  - 5.2.3. access to residential broadband and the retail supply of residential broadband access by ISPs;
  - 5.2.4. DVD retail and rental;
  - 5.2.5. TV advertising; and
  - 5.2.6. manufacturers and suppliers of televisions and set top boxes.

### MIA findings

- 5.3. The MIA concludes that the Canvas proposals are likely to have a number of positive impacts on a range of interrelated products and services, enhancing revenues and competition.
- 5.4. In particular, the MIA finds that Canvas is likely to have a positive market impact in that it will offer the opportunity to ISPs and device manufacturers willing to adopt the Canvas UI a ready-made easy access way to develop a platform offering content to TV viewers. Canvas is also likely to grow the market for TV on-demand content and residential broadband access. In addition, it will also have a positive market impact on consumer electronics manufacturers.
- 5.5. The ability to offer a bundle of products and services is an increasingly important feature of the communications market in general. Canvas has a positive market impact in that it will enable ISPs who do not currently offer packaged telephony, broadband and television services, to develop a stronger "triple play" consumer proposition anchored in the DTT platform. More DTT platform operators will strengthen the DTT delivery mechanism which is beneficial for consumer choice. The long term impact of Canvas will be greater as the potential for IPTV delivery of a broader range of content is realised.
- 5.6. Canvas is also likely to have a positive impact on the supply of on-demand content, both TV on-demand content and other on-demand long form content by growing the addressable market for VOD. If Canvas is rolled out as an open platform and remains as such, it will allow content holders access to a large addressable base of households. It

---

<sup>9</sup> The MIA also assesses the impact of Canvas on other products and services, where relevant, in the body of its analysis.

may also help accelerate the trend towards less prescriptive rights windows which will deliver a positive long term impact.

- 5.7. Canvas will also have a positive impact on the suppliers of set-top boxes and idTVs through increased sales of devices.
- 5.8. The MIA finds that Canvas will have an impact on the cost base of ISPs which support it. However, the impact of this increase in cost will vary according to the type of wholesale product used to support a subscriber. Value Partners' modelling suggests the cost increases are modest relative to the counterfactual (which we discuss in chapter 9). In addition, Canvas will represent an opportunity for ISPs to migrate subscribers to higher value packages with faster access speeds.
- 5.9. According to the MIA, Canvas will have a neutral impact on the TV advertising market if business models evolve to take account of the shift from linear to non-linear viewing.
- 5.10. In the MIA, the Trust also identifies a number of aspects of the proposals which could potentially negatively impact other products and services or reduce the potential for the positive impacts anticipated for the proposals.
- 5.11. Canvas-led growth in the supply of on-demand content will have a small negative impact on the DVD rental market. Longer term, it might also adversely impact the DVD retail market.
- 5.12. Canvas will have a modest negative impact on the future growth of non DTT based subscription platforms, such as those operated by Virgin and Sky. However, this does not take account of the potential response to Canvas of Sky and Virgin which may engage in more aggressive marketing of their products. In addition the net impact on Sky is unclear: Sky should be able to profitably distribute its content over the DTT platform via Canvas if it wishes to do so.
- 5.13. Canvas may also have a negative impact on Freeview and a modest impact on Freesat.
- 5.14. Canvas is likely to have a negative impact on existing hybrid DTT/IPTV platforms, such as that operated by IP Vision, and deter investment in other hybrid DTT/IPVOD platforms.
- 5.15. The decision of the Canvas joint venture to mandate a common UI and link its technical specification to the Canvas brand will have an adverse impact on the incentive of platforms to invest in and innovate alternative UIs.
- 5.16. If the Canvas technical standards are not developed with industry engagement and consensus (which might be achieved through working with industry bodies such as the DTG), there is a risk that Canvas may not be as flexible as it could be. As a result, Canvas may not accommodate a wide range of stakeholder needs with the potential for the loss of positive market impacts or further adverse market impacts (for example, if the fullest range of business models possible is not supported).
- 5.17. The operation of Canvas may adversely impact the provision of push VOD services on the DTT platform.
- 5.18. Finally, during our consultation, several stakeholders raised concerns that Canvas will create a disincentive for joint venture members to syndicate their content to platforms other than Canvas. The Trust has considered this question from a market impact perspective in its MIA and concludes that it is not presently clear that Canvas will create a disincentive to syndicate content although suggests that this is a matter which should be kept under review. Separately, the Trust has received privileged legal advice on the incentives for Canvas members to syndicate to competing platforms from a competition law perspective. For the purposes of obtaining this advice, the Trust commissioned a report by Frontier Economics on this point.

## 6. Provisional Conclusions

- 6.1. Subject to the findings below, the Trust provisionally concludes that, given the potential public value in Canvas, it may approve the Canvas proposals notwithstanding that there may be some negative market impacts in particular areas.
- 6.2. The Trust has received and considered privileged legal advice on the proposals' compliance with competition law (including state aid law). It concludes on the basis of this advice that the proposals are compliant.
- 6.3. The Trust has provisionally concluded that there are a number of elements to the Canvas proposals that are key to any approval of the BBC's participation in the joint venture. These are set out below. The Trust has provisionally concluded that those elements ought to be mandated in the objects and shareholders' agreement of the Canvas joint venture if the BBC is to participate in it in order to ensure that the public value envisaged by the proposals, or the minimisation of particular negative impacts achieved by the structuring of the proposals, are effected on implementation. In other areas, the Trust has provisionally determined that certain actions should be required of the BBC as a condition of approval.
- 6.4. The PVA identified a number of areas that require particular consideration by the Trust in order to ensure that the public value in the Canvas proposals is safeguarded and optimised. In summary:
  - 6.4.1. access to free-to-air content on the DTT platform by way of a high quality user experience without contract or subscription;
  - 6.4.2. approach to development of technical specification through industry engagement so as to encourage openness and flexibility and encourage widespread adoption of the Canvas standard;
  - 6.4.3. accessibility and usability of the Canvas UI for consumers, including appropriate provision of technical support;
  - 6.4.4. low entry barriers for content providers to ensure a wide range of content and therefore choice for licence fee payers;
  - 6.4.5. appropriate content safeguards (in addition to parental controls) through the use of guidance or signposting; and
  - 6.4.6. sufficient control or Trust oversight as to BBC spend.
- 6.5. The Trust found in the MIA that Canvas is likely to have a positive impact on a number of interrelated products and services but has specific negative impact in some areas. In the MIA, the Trust identified the following further areas requiring particular consideration by the Trust:
  - 6.5.1. DVD rental and retail markets;
  - 6.5.2. non-DTT based subscription platforms;
  - 6.5.3. Freeview and Freesat;
  - 6.5.4. hybrid DTT / IPTV platforms;

- 6.5.5. mandating a single UI and flexibility around the UI;
  - 6.5.6. industry engagement to ensure support for the fullest range of business models possible;
  - 6.5.7. push VOD services; and
  - 6.5.8. syndication of content to third parties.
- 6.6. The Trust must determine whether and how any negative impacts of Canvas identified in the MIA could be minimised, always having regard to the assessment in the PVA of how Canvas fulfils the BBC's Public Purposes. The Trust has given consideration to this in reaching the proposed conditions set out in section 7 below. Not all risks to market distortion/potentially negative market impacts need to be addressed by way of proposed conditions. The negative impacts identified in the MIA are not required to be minimised if to do so would significantly compromise delivery of the Public Purposes identified (or any of the BBC's other regulatory obligations).
- 6.7. We welcome stakeholder views on the nature and scope of the proposed conditions before forming any final view as to whether each of these might appropriately be imposed in this case. Next steps are explained at section 8 below.

## 7. Conditions

- 7.1. The Trust has provisionally concluded that the public value of Canvas should be protected, and potential negative market impacts minimised in so far as is possible and appropriate, by making its approval of the BBC's participation in Canvas conditional upon the following matters:

### Cost

- 7.2. The PVA notes the Trust's uncertainty as to whether the anticipated costs to the BBC of participating in Canvas are a realistic estimate. Where there is uncertainty over the costs of a BBC activity, the Trust would normally require the Executive to seek the approval of the Trust for any anticipated increase in the costs of the activity exceeding 10% of the initial budget for the activity. In this particular case, the Trust is mindful of the inherent uncertainty involved in predicting the cost of developing a new technology, and will take this into account when setting the spending threshold above which Trust approval must be sought. The Trust therefore plans to make it a condition of approval of the BBC's participation that, if the annual cost of the BBC's involvement in Canvas exceeds (or is expected to exceed) the current stated costs by more than 20% in any one year, the Executive needs to obtain Trust approval for the expenditure beyond 20%.

### Industry engagement

- 7.3. The Executive's Additional Statement indicates that, as well as continuing to work with its existing partners, the Executive will take steps to work with the broader industry in developing the Canvas core technical specification (as opposed to the UI). The Executive adds that it will work with DTG to understand how its proposals might facilitate the development of the Canvas core technical specification, subject to agreeing a work plan that allows delivery by Autumn 2010. The Trust welcomes the efforts made by the Executive to engage with industry and the stated commitment of the joint venture partners to work through with industry to strive to achieve consensus around the Canvas core technical specification.
- 7.4. We consider that the BBC should only participate in the joint venture provided that Canvas works to achieve industry consensus, whether through the DTG or otherwise, and gives all manufacturers an opportunity to develop Canvas-enabled devices. We therefore propose to make the BBC's participation in the Canvas joint venture conditional upon:
- 7.4.1. Canvas publishing the core technical specification well in advance of the planned Canvas launch date in order to provide sufficient opportunities for the widest range of manufacturers to adapt to the Canvas core technical standards should they wish. We would expect that it would be sufficient for manufacturers to receive this information eight months ahead of launch;
  - 7.4.2. Canvas using its best endeavours to develop the Canvas core technical specification with wide industry engagement and to achieve industry consensus for it; and
  - 7.4.3. the Executive returning to the Trust within 12 months of the date of final approval or within 3 months of launch - whichever is the sooner - and at regular intervals thereafter in order to report in detail on the results of

Canvas' engagement with industry about the Canvas core technical standards.

- 7.5. We expect the Executive to further consider how Canvas can accommodate relevant business models - for example, the development of a commercial push VOD service alongside its own provision of VOD services, solutions to support Digital Rights Management technology and conditional access. We invite the Executive to respond on this point as part of our consultation on these provisional conclusions.

## Free to air always

- 7.6. Given the public value ascribed to preserving a free to air point of access for content on DTT the Trust considers that there should always be an ability to access the Canvas platform on a subscription-free basis (although Canvas should support pay services and not discriminate between content providers' business models). The Trust therefore proposes to make it a condition of the BBC's participation in the Canvas joint venture that the free to air always point of access to Canvas principle is enshrined in the objects and shareholders agreement of the Canvas joint venture.

## Accessibility and usability

- 7.7. The Executive has set out a number of accessibility and usability features to be developed by the Canvas joint venture in delivering a quality proposition with a distinctive UX. However, not all of the features relating to accessibility and usability will be available at the date of the planned Canvas launch.
- 7.8. The Trust considers that, in order to fulfil the public value potential of the Canvas proposals, it is crucial that these UX features become a reality.
- 7.9. We therefore expect the joint venture to incorporate the Canvas accessibility and usability features within 12 months of the launch of Canvas. The BBC's participation in the Canvas JV is conditional upon the Executive reporting to the Trust within 12 months of launch to explain whether these ambitions are in fact being fulfilled. We invite comments now as to whether the current list of proposed features (set out in section 5 of the PVA) is sufficient.
- 7.10. We note that Canvas will not seek to impose editorial controls. Although the Trust agrees that it is not appropriate for Canvas to impose editorial controls on the content, the Trust also considers that it is important to provide information to enable users to understand context and to make informed choices about the suitability of content. We note, for example, the signposting of certain content on Freeview and consider such an approach would add value to the Canvas proposition. We therefore propose to make the BBC's participation in the Canvas joint venture conditional upon Canvas using its best endeavours to provide such signposting wherever possible. We will review the effectiveness of signposting 12 months after launch, when we have the Executive's report on accessibility and usability.

## Platform access for content providers

- 7.11. The Draft Objects of the Canvas joint venture state that the joint venture may develop ways in which to recover operational costs. The scope of any approval to this application will not extend to a business model predicated on anything other than a cost recovery basis.
- 7.12. Furthermore, the Trust considers that the fact that Canvas is open to all content providers subject only to minimal technical requirements and content standards based only on illegality should be guaranteed.

- 7.13. The Trust understands that access to the platform and listing on both the linear and non-linear EPG/UI supported by Canvas will be fair, reasonable and non-discriminatory and determined in accordance with a published policy adopted by the joint venture. We note that the Draft Objects of the Canvas joint venture state that the UI will be operated in accordance with "such EPG and UI Policy as the Company may be required to adopt pursuant to existing or future applicable regulation" but we do not consider that this guarantees the stated ambition of fair, reasonable and non discriminatory access. The Trust considers listing on a fair, reasonable and non-discriminatory basis to be important both in delivering the potential public value in breadth of content choice and in minimising potential market distortion in respect of content providers. The Trust notes that Ofcom and DEMOL<sup>10</sup> have jurisdiction in this area but proposes to action in any event to ensure fair, reasonable and non-discriminatory access to the Canvas platform.
- 7.14. Given all of the above, the Trust intends to make it a condition of the BBC's participation in the Canvas joint venture that open third-party content provider access charged on a cost recovery basis is enshrined in the objects and shareholders' agreement of the Canvas joint venture. More specifically, the Canvas objects and shareholders' agreement will reflect the principle that content providers will be charged on a cost recovery basis, entry controls in terms of technical and content standards will be minimal, access will not be bundled with other products or services and listing on the EPG and UI will be awarded in a fair, reasonable and non-discriminatory manner.

## Platform operators access to Canvas

- 7.15. The Trust understands that the core technical specification will be made openly available after launch - so allowing manufacturers use them to build a bespoke UI if they wish to do so. The Trust considers that this is important in bringing the benefits of BBC research and development to a wider range of organisations which might have no interest in the Canvas UI itself, minimising the potential negative effect on UI innovation of alternatives to Canvas. The Trust proposes that, as a condition of BBC participation in the Canvas joint venture, the Objects and shareholders' agreement of the joint venture should stipulate that Canvas will make the Canvas core technical specification available on a fair, reasonable and non-discriminatory basis, and the Canvas trade mark on a cost recovery basis.
- 7.16. The Trust notes the joint venture's objective of an anodyne front page which, the Executive contends, increases the public value in the Canvas proposals. The Trust recognises the public value in a consistent UI but notes that stakeholders have indicated that they want more flexibility in the UI. The Trust considers that the public value in the UI would not diminish if the front page of the UI were to be more flexible (by allowing some form of co branding, some limited degree of promotion or direct access to third party services on some form of objective criteria) but that an inflexible UI potentially has negative market impacts. The Trust encourages the joint venture to consider whether any greater flexibility might be afforded to members and non-members of the joint venture alike, consistent with maintaining the public value which the PVA recognises in the UI. For example, it might be possible to have some limited flexibility by permitting co-branding and a small button on the front page which links to the content of those subsidising the Canvas boxes.

## Syndication

- 7.17. In response to stakeholder concerns that Canvas could create a disincentive for joint venture members to syndicate their content to platforms other than Canvas, the Trust considered the issue of syndication and concluded that it is not presently clear that Canvas will create a disincentive to syndicate content. However, the Trust also suggested that this matter should be kept under review.

---

<sup>10</sup> As well as the body which will be responsible for non-linear content in the future.

- 7.18. In the event of the Trust giving final approval for the Canvas proposals, the Trust will therefore carry out and publish a review, 12 months after the launch of Canvas, of what, if any, effects Canvas has had on the incentives of the joint venture members to syndicate their content.
- 7.19 The Trust has also provisionally concluded that, in accordance with requirements of competition law, the BBC's participation in Canvas should be conditional upon there being safeguards in place to prevent any sharing of strategy on syndication between the competing members of the Canvas joint venture.

## Access to Canvas for ISPs

- 7.18. The Executive's application for approval states that the quality standards for ISPs delivering the Canvas platform will be set at a minimum level so as to ensure low barriers to entry. We consider that such controls should be kept to a minimum and should be fair, reasonable and non-discriminatory so as to maximise the potential public value in breadth of content choice and so as to minimise potential market distortion in respect of ISPs. In particular, we do not consider that any such control can or should properly be linked to a particular network feature or service. As a condition of BBC involvement in the joint venture, the Trust intends to require that the Objects of the Canvas joint venture and its shareholders' agreement must enshrine the principle of any minimum quality standards for ISPs being set and applied in a fair, reasonable and non-discriminatory manner.

## Legal compliance

- 7.19. The Trust notes that Canvas will operate in an evolving market and that non-linear activity in particular is likely to be subject to more stringent regulation in future. The Trust considers that the BBC shall only be permitted to participate in the Canvas joint venture on the condition that the joint venture continues to comply post-launch with all applicable laws including, but not limited to, competition and state aid law (and in particular its participation in the Canvas joint venture under conditions acceptable to market economy investor).
- 7.20. The Executive should accordingly take all appropriate steps to ensure that such compliance is achieved on an ongoing basis. In particular, the Trust envisages conditions around the following areas in order to ensure that the BBC's participation in the Canvas joint venture is legal:
- 7.20.1. No subsidising by the BBC of joint venture partners. We consider that the BBC should be required to ensure that the funding arrangements for the participation of other partners (especially public service broadcasters) in Canvas are such that it can be demonstrated that the Canvas partners are not being subsidised by the licence fee.
  - 7.20.2. Audit of the funds already spent by the BBC on IPTV related research and development. The Executive's application states that such expenditure is not a pre-investment in Canvas because it represents the cost of general BBC research and development in relation to IPTV. The Trust considers that, prior to formation of the Canvas joint venture, the Executive should appoint independent auditors to review these costs and confirm whether any of that sum ought properly to be allocated specifically to the development of Canvas and therefore shared among joint venture partners.
  - 7.20.3. Frontloading of BBC's contributions on behalf of the joint venture can only be carried out by the BBC in line with conditions acceptable to a market economy investor. The BBC Executive has stated that, in frontloading its

investment on behalf of public service broadcasters that are members of the Canvas joint venture, it will act as a market economy lender. In order to comply with the requirements of acting as such lender, the BBC should make the same loan (offered on commercial terms) available to all Canvas joint venture partners of the same creditworthiness, regardless of their status as PSBs or not.

- 7.20.4. Freeview, Freesat and Canvas will be competing platforms and it is important to ensure that the BBC does not facilitate any inappropriate exchange of commercially sensitive information between them (for example, relating to marketing and promotional strategy). The Trust proposes that any approval of Canvas would be made conditional upon a requirement that the BBC should keep its interaction with Canvas operationally separate from its involvement with Freesat and Freeview.

## 8. Next steps

- 8.1. Our provisional conclusions are open to consultation until 17:00 on 2 February 2010. Annex 1 contains further information concerning the approach to consultation.
- 8.2. Following the end of the consultation, we will consider representations received and publish a timetable for the provision of its final conclusions.

# Annex 1: Public consultation on our provisional conclusions

The Trust's provisional conclusions on the Project Canvas proposals are now open to public consultation.

The Trust has provisionally concluded that the service proposal should be approved, but subject to some conditions.

The Trust welcomes the public's views on whether it has made the right decision. You may submit your response in the following ways:

At the BBC Trust's website, [www.bbc.co.uk/bbctrust](http://www.bbc.co.uk/bbctrust)

By email to [canvasconsultation@bbc.co.uk](mailto:canvasconsultation@bbc.co.uk)

By post to:

Project Canvas Consultation  
BBC Trust  
180 Great Portland Street  
London W1W 5QZ

Please complete the confidentiality statement, below, when you make your response. Audio and Braille versions of this document are available upon request by calling BBC Information on 0800 068 0116.

The consultation will close on 2 February 2010.

**How the BBC Trust will use your response**

A summary of responses to this consultation will be published on the BBC Trust website ([bbc.co.uk/bbctrust/](http://bbc.co.uk/bbctrust/)) after the consultation has closed. Feedback to this consultation will be used by the Trust to consider its final decision in the non-service assessment of Project Canvas.

Names and/or addresses of individual respondents will not be published on the BBC Trust website. The Trust will publish details of organisational responses. Please copy or sign the declaration below to signal that you are prepared for some or all of your response to be made public. Otherwise the assumption is that some or all of your response may be made public. If you would prefer that all or part of your response be treated as confidential, please make this clear in your submission.

# Confidentiality statement

PLEASE PRINT AND SIGN THIS DECLARATION IF YOU ARE SENDING A HARD COPY OF YOUR RESPONSE. IF YOU ARE SENDING AN ELECTRONIC RESPONSE, PLEASE COPY THIS STATEMENT INTO THE RESPONSE AND COMPLETE IT.

If you would prefer that all or part of your response be treated as confidential, please complete the confidentiality section below.

What do you want the BBC Trust to keep confidential?

|                               |  |
|-------------------------------|--|
| Nothing                       |  |
| Whole response                |  |
| Part of it                    |  |
| Which part? (Please indicate) |  |

|                                    |
|------------------------------------|
| Name                               |
| Position/job title (if applicable) |
| Organisation (if applicable)       |
| Address                            |
| Telephone                          |
| Email address                      |

The BBC Trust will retain and use your name, address, email address and the organisation you work for (if applicable) for the purposes of administering the online public consultations held on this website. You will have the option of deciding whether you want your response and, if responding on behalf of an organisation, its name displayed on this website (all other personal information will be withheld from display). Your personal details will not be passed to any third parties for marketing purposes.

The BBC complies with the Data Protection Act 1998. For more information on BBC's Privacy Policy please refer to <http://www.bbc.co.uk/privacy/>.

The BBC is listed as a public body in Part VI of Schedule 1 to the Freedom of Information Act 2000; this means that, subject to certain restrictions, the BBC may be required to disclose information it holds to individuals and organisations making a valid request to be supplied with that information under the Act.

If you have requested that all or part of your response should be kept confidential, the BBC will take reasonable steps to maintain confidentiality of that information if a request for its disclosure is received under the Act. Please note, however, that in the event the BBC is able to withhold information under the Act, this decision may be overturned by the Information Commissioner, the Information Tribunal or the courts.

Please note that we may still refer to the contents of responses in general terms, without disclosing specific information that is confidential. We will exercise due regard to the confidentiality of information supplied.

#### DECLARATION

*I confirm that the information I have submitted is a formal consultation response. It can be published in full on the BBC Trust's website, unless otherwise specified, and I authorise the BBC Trust to make use of the information in this response to meet its legal requirements. If I have sent my response by email, the BBC can disregard any standard e-mail text about not disclosing email contents and attachments.*

Name

Signed (if hard copy)