

Syndication of BBC on-
demand content:
Draft policy statement

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Syndication of BBC on-demand content

Purpose

1. Following the conclusion of the BBC Trust's Public Value Test (PVT) on the BBC's proposed On-demand services in April 2007¹, the Trust agreed to adopt and publish a policy on the future syndication of BBC on-demand content (i.e. the provision of BBC on-demand content to third parties).
2. The approval given in the PVT decision related to the provision of on-demand content through bbc.co.uk or limited operators only². However, the Trust supports the BBC Executive's desire in principle to extend provision of on-demand content more widely.
3. This Policy is therefore intended to provide licence fee payers, the BBC Executive and third parties with clarity as to:
 - The terms on which BBC on-demand content should be syndicated; and
 - The process that the Trust will adopt in relation to new syndication arrangements.
4. The principles and procedures outlined in this Policy are designed to ensure that relevant considerations are taken into account in relation to all new syndication arrangements and that agreements which may have potentially significant impacts are appropriately considered.

Scope

5. Syndication of BBC on-demand content, as referred to in this Policy, refers only to syndication which is or will form part of the BBC's UK Public Services activities. This Policy does not apply to any provision of BBC on-demand content on a commercial basis.
6. In the context of this Policy, syndication of BBC on-demand content refers to the syndication of programme content previously or simultaneously broadcast on one of the BBC's UK Public Services and is limited to that which was the subject of approval in the On-Demand PVT (this is referred to as "Content" throughout this Policy). This may include short edited clips of such Content. In the case of programme content simultaneously broadcast on one of the BBC's UK Public Services, this Policy only extends to syndication over fixed and mobile internet protocol networks. This policy is

¹ [A link will appear here to the final PVT decision]

² The PVT decision provided approval for the BBC to provide on-demand content through bbc.co.uk, ntl:Telewest (as then was) and Homechoice, and simulcast content over Internet Protocol TV.

not intended to affect any syndication of content that was permitted before the On-Demand PVT.

7. This Policy sets out key principles which the Trust considers should be respected when Content is syndicated. BBC management is also expected to publish more detailed Guidelines about Content syndication, following approval by the Trust.
8. This Policy is made without prejudice to the requirements of the Charter and Framework Agreement and requirements of other policies, protocols, rules or codes of the Trust.

Relevant Considerations

9. The Trust's aim in developing this Policy is to represent the best interests of licence fee payers. Content should only be syndicated where this is the case.
10. It is the Trust's view that there will generally be public value in the syndication of Content and it is in licence fee payers' interests that Content be made available as widely as possible.
11. However, the Trust recognises that in some circumstances syndication would not be in the wider interest of licence-fee payers. In determining whether syndication of Content in any particular circumstances is in the licence-fee payers' best interests, the following considerations should be taken into account:
 - a) Impact on the wider market – When syndicating content, the BBC should endeavour to minimise negative competitive impacts that may have a detrimental affect on consumers³.
 - b) Ability of the BBC to fulfil its Public Purposes – Syndication of Content should not adversely affect the BBC's ability to fulfil its Public Purposes, for instance through syndication to a third party liable to bring the BBC into disrepute.
 - c) Value for money - The Trust recognises that there may be occasions on which the costs that would be incurred by the BBC would be disproportionate to the public value that would be created.
12. In any particular case, other considerations might also be relevant. The principles outlined in the section below are designed to ensure that these considerations are taken into account.
13. The Trust is also required to consider application of the PVT in respect of significant changes to the BBC's UK Public Services and in particular if new syndication arrangements represent a significant change to existing Service Licences.

³ As noted by Ofcom in its Market Impact Assessment syndication could raise market impact concerns. As a result the BBC should endeavour to minimise its negative competitive impacts on the wider market.

Key Principles

14. The key principles outlined in this Policy are designed to ensure that the syndication of Content is conducted in the best interests of licence fee payers by maximising public value through syndicating Content widely while also taking into account other relevant considerations such as those referred to above.
15. As stated above, the Trust generally considers that there will be public value in syndication and encourages the BBC Executive to make Content available as widely as possible. However, the Trust also requires the BBC Executive to comply with the following principles when syndicating Content:
 - a. Content must be distributed on a non-discriminatory basis⁴;
 - b. Access to Content must be provided on a non-exclusive basis;
 - c. Subject to value for money and as technology allows, Content must be provided on a platform neutral basis;
 - d. Content may only be distributed for consumption within the United Kingdom⁵;
 - e. Content must be available free of charge at the point of use (which, in the case of subscription services, means being available at entry-tier level);
 - f. Syndication arrangements must not have an adverse affect on the BBC's ability to fulfil its Public Purposes; and
 - g. Syndication of Content must comply with all relevant legal and regulatory requirements, including the BBC's Editorial Guidelines and Fair Trading framework.
16. The Executive is expected to implement Guidelines to elaborate on the key principles above and to specify additional requirements designed to protect the BBC brand, ensure technical integrity, maximise delivery of the Public Purposes and ensure a quality experience for users. The Guidelines may make separate provision for different technological approaches, such as linking (where Content is played from bbc.co.uk) and hosting (where Content is played on third party platforms), provided that the differences are objectively justifiable and consistent with the principles set out in paragraphs 11 and 15 above.

⁴ This means that the Trust expects terms to be materially the same for different syndication arrangements except to the extent that differences are required because of the different circumstances facing the parties or are otherwise objectively justifiable. To the extent there may be doubt, the Trust will need to be satisfied that differences in terms will not unduly restrict or distort competition

⁵ This condition does not apply with respect to non-DRM audio downloads approved in the On-Demand PVT.

Process for New Syndication Arrangements

17. The Trust is required to apply the PVT process for all significant changes to the UK Public Services. The Trust is therefore responsible for determining if new syndication arrangements would represent a significant change.
18. The Trust considers that, in general, new syndication agreements which meet the principles above are likely to be within the terms of existing service licences and are unlikely to represent a significant change to the UK Public Services⁶. The Trust also considers that it is important not to put in place bureaucratic procedures that are disproportionate and which will unduly hamper and obstruct the BBC Executive and its commercial partners from concluding new syndication arrangements which may be of considerable public value, particularly in this fast-developing market where delay may detract substantially from the value of the proposed arrangements. The Trust would not therefore expect the BBC Executive to seek prior approval from the Trust in relation to such agreements, except in the circumstances outlined below.
19. It is still possible that some deals could be of such scale that they could potentially be significant, or that a number of syndication arrangements considered together (whether related transactions or not) could have a cumulative effect so that syndication of Content could reach a critical mass point such that the next new syndication arrangement would represent a significant change.
20. In order to monitor activity the Trust therefore requires the BBC Executive to:
 - Notify any new syndication agreement which could potentially be significant either in itself or through its cumulative effect to the Trust for consideration before conclusion.
 - Notify any new syndication agreements which do not comply with the key principles outlined above to the Trust for consideration before conclusion.
 - Provide the Trust with six-monthly updates of all syndication arrangements considered (meaning deals concluded or which BBC Executive have rejected).
21. In deciding whether new Content syndication arrangements are potentially significant, the relevant considerations are impact, financial implications, novelty and duration together with the presumption that any change which requires a new service licence or a change to the key characteristics of an existing licence is significant⁷.
22. Where there is any element of doubt as to whether new Content syndication arrangements are potentially significant the BBC Executive should notify those arrangements to the Trust for consideration before concluding them.

⁶ The BBC's service licences can be found at www.bbc.co.uk/bbctrust/framework/bbc_service_licences/index.html

⁷ Further details are presented in Clause 25 of the BBC Framework Agreement

23. The Trust may require the BBC Executive to suspend or cancel any Content syndication arrangements, or a collection of Content syndication arrangements, which it considers could constitute a significant change to the BBC's UK Public Services and for which prior Trust approval has not been obtained. Where prior approval to proceed with Content syndication arrangements are not sought before conclusion of those arrangements, the BBC Executive must ensure that it can suspend the provision of Content in the event that a PVT is applied and that it can terminate entirely the provision of Content in the event that the Trust decides not to grant approval under any PVT that is applied, each without material adverse financial consequences for the BBC.
24. Proposed syndication arrangements will be considered by the Trust who will review the arrangements in order to determine whether the PVT should be applied. If a PVT is judged not to be necessary then it is anticipated that no approval for those arrangements will be required from the Trust, unless approval is required under other Trust rules, protocols, policies or codes, potentially from other sub-committees of the Trust.

Policy Review Process

25. This Policy and reporting requirements from the Executive will be reviewed by the Trust alongside its review of the BBC's On-demand services. The Guidelines implementing the key principles set out in this Policy are to be kept under review by the BBC Executive. Any significant changes should be made with the approval of the Trust.

Complaints

26. In the first instance complaints with regards to an alleged failure by the BBC to meet the terms of this Policy or its Syndication Guidelines should be addressed to BBC management. BBC management should outline how it intends to deal with complaints in its Syndication Guidelines. Complainants who are not satisfied with the response from BBC management may appeal to the Trust. The Trust will apply a similar approach to appeals as per the process outlined under the Fair Trading complaints and appeals framework. Details of the complaints and appeals process can be found at: www.bbc.co.uk/bbctrust/appeals/fair_trading_complaints.html.