



## Syndication of BBC on-demand content: Draft policy statement

### BT's comments

#### Introduction

BT welcomes the decision of the BBC Trust, in their conclusions in respect of the BBC Executive's on-demand proposals, to make provision for the syndication of BBC content to aggregators and services other than those proposed in the Executive's application (i.e. NTL/Telewest and Homechoice who are piloting the proposed service) and to develop and publish criteria for syndication, such that syndication arrangements with other third parties that met these specific criteria would not require a full PVT.

BT supports this initiative, which we believe can serve to increase the reach of BBC programming over other platforms and hence increase public value. We set out below our comments in response to the Trust's draft policy statement.

#### *Key principles*

BT believes there are a number of key principles that should underpin the syndication policy. Our comments on the specifics of the draft policy statement reflect these.

**1. Non-discrimination.** The terms and conditions for the provision of on-demand content should be non-discriminatory in that they should neither favour any commercial part of the BBC as opposed to third parties, nor should they discriminate between third parties.

BT welcomes the fact that non-discrimination is listed as the first of the Trust's key principles. However, it would be helpful if the Trust's policy would clearly set out that this relates to non-discrimination between the provision of services to parts of the BBC and third parties, as well as between third parties.

The Trust needs to ensure that non-discrimination is applied to achieve the goal of increased reach (through arrangements with a range of third parties) and does not create competitive distortions through the way it is exercised. The key is for the BBC to recognise and accommodate variations between third parties in how they make their service offerings available and the ways they wish to include BBC content in them. The Trust therefore needs to ensure that the BBC's approach does not lead to the BBC effectively offering an invariable set of standard conditions as the only terms on which it will deal with any third party.

An inflexible “single standard terms” approach would result in the imposition of terms which, while suitable for some platforms and business models (e.g. those with a mandatory subscription basis), would make it burdensome and/or uneconomic for other third parties to carry BBC content. In overall terms, then, such an approach would in practice build in discrimination, ultimately stifling take-up of BBC content across the broadest range of innovative platform and service models and have a negative effect on the developing on-demand sector.

We look to the Trust to ensure, through the terms of the syndication policy and clear signals to the BBC Executive, that the BBC approaches syndication in a way that achieves negotiated and mutually acceptable outcomes for both the BBC and third parties.

**2. Reasonable cost.** On-demand content should be provided at a reasonable cost and on a basis that allows commercial providers to recover those costs. Commercial providers therefore need the freedom to charge their customers for viewing BBC catch-up content and the Executive should reimburse platform owners for reasonably-incurred carriage costs.

BT is disappointed that despite the reference to the possibility of cost recovery in the Trust’s final conclusions on the PVT (section 3.8), there is no reference to this in the Trust’s draft syndication policy. Although we can understand the Trust’s view that they should not be directive on an issue to be dealt with through commercial negotiation, we believe that the syndication guidelines should explicitly permit this.

We are also disappointed that the syndication policy explicitly states that content must be available free of charge at point of use (which, in the case of subscription services, means being available at entry-tier level). For the reasons indicated above, this is unduly restrictive: the BBC and third parties need clarity that non-subscription based models are able to acquire BBC content through syndication. Again the possibility of charging (on a basis designed to cover reasonably-incurred costs of distribution) should be explicitly permitted within the syndication guidelines.

**3. No packaging restrictions.** There should be no unreasonable restrictions on the way third parties can offer the BBC on-line content to their customers over their platforms. This could relate to the ability to charge, either on a pay-per-view or via a subscription package, but also requirements to package content in a certain way, including the use of the BBC brand and user interfaces such as the EPG.

In this respect, BT is particularly concerned about paragraph 16 of the draft policy statement, which states that the BBC Executive ‘*is expected to implement Guidelines to elaborate on the key principles.....and to specify additional requirements to protect the BBC brand, ensure technical integrity, maximise delivery of the Public Purposes and to ensure a quality experience for users*’. We believe this gives too much scope to the Executive to create a

syndication policy which could, in practical application, be at variance with the intent of the Trust's syndication policy. More specifically, these 'additional requirements' are likely to be unduly prescriptive on third party platforms and the ability of third parties to offer innovative commercial services incorporating BBC content.

Commercial platform providers need the autonomy to decide what BBC content to make available through their platforms. Syndication needs to be implemented such that such third parties can exercise their own discretion to take only a part of or all of the BBC content made available for catch-up with no obligation to take the entire BBC offering. This would help to ensure that commercial distributors have control over their distribution networks and prevent them from becoming merely a distribution platform for the BBC.

#### **4. No requirement on taking the iPlayer or other technical restrictions.**

There will undoubtedly be technical and operational differences in the platforms and services of those seeking to enter into syndication arrangements. Platform owners therefore must be allowed discretion in how their customers can access the BBC on-demand content. This includes there being no requirement for third party platforms to host the BBC iPlayer as a means of access. These points equally apply to content distributed after the catch-up period by BBC Worldwide.

We welcome the recognition that the Executive's Guidelines '*may make separate provision for different technological approaches*' but remain concerned about the Executive's ability to '*specify additional requirements to... ensure technical integrity.*' The position of the iPlayer in the BBC Executive's plans remains unclear.

**5. Timely release of content.** The BBC on-demand content should be made available to third parties at the same time as it is available on the BBC website. Once content is no longer within the catch-up period and is available for commercial exploitation by BBC Worldwide, it should be made available to third parties as soon as practically possible; there is no reason for further hold-back periods.

BT is concerned that there is no discussion of this important issue in the draft policy statement.

#### **Scope**

It is important that the syndication policy should give clarity as to which services are covered and also to which parts of the BBC it applies.

Firstly, as we noted in our response to the PVT provisional conclusions, we are somewhat unsure of the position of the iPlayer itself. Although the PVT was limited to the proposed on-demand services, we do not know whether the BBC Executive plan to offer the iPlayer to third parties and on what terms. If the iPlayer is to be made available to third parties, we would expect the principles set out above to apply but, as indicated above, it is important that

the supply of content is not made conditional on using the iPlayer. Given the concern that commercial operators have over the BBC's plans for the iPlayer (partly due to the confusing signals given to the market by the BBC Executive), we believe this needs to be explicitly covered in this document.

We also believe that it is important that the syndication policy covers all the parts of the BBC organisation who currently, or will or may in the future, make BBC content available to third parties. For example, the syndication policy should cover BBC Worldwide who, although not responsible for the free on-demand services, are responsible for the commercial exploitation of content once it is no longer within the catch-up window (i.e. after Day 8) . It is important that BBC Worldwide gives commercial providers speedy and fair access to the archive content it has at its disposal. We are therefore concerned that the scope of the syndication policy explicitly covers only syndication which is or will form part of the BBC's UK Public Services activities.

### ***Governance and Process***

We seek further clarity on the role and relationship of the Trust in relation to the syndication policy. We would like to understand whether the Trust will exercise a continuing oversight role and if so how actively (i.e. degree of intervention and at what intervals). All stakeholders must have a clear understanding of the Trust's role in development and interpretation of the syndication policy and the criteria on which its effectiveness will be judged.

A key issue is to understand what role the Trust will play in terms of mediation, dispute resolution and mediation if negotiations between the BBC Executive and third parties reach, or appear likely to reach, impasse. Timely provision of BBC content through third parties will be prejudiced if agreed mechanisms are not provided for appropriate escalation and resolution of difficult issues and disputes.

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