

# **Policy on the syndication of BBC on-demand content: Explanatory Note**

# Introduction

Following the conclusion of the BBC Trust's Public Value Test ("PVT") on the BBC's proposed on-demand services in April 2007,<sup>1</sup> the Trust agreed to adopt and publish a policy on the future syndication of BBC on-demand content. The approval given in the PVT decision related to the provision of on-demand content through [bbc.co.uk](http://bbc.co.uk) or limited operators only.<sup>2</sup> However, the Trust supported, in principle, the BBC Executive's desire to provide on-demand content more widely.

Although not a specific requirement, we felt that it was important to undertake a short consultation on the syndication policy, principally with those industry parties who had already expressed interest in syndication. The Trust launched a consultation on its draft syndication policy (draft "Policy") on 30 April 2007. The period for consultation responses closed on 14 May 2007.

We received six responses to our consultation. With the exception of those respondents who requested confidentiality, we are publishing all of these in full. We consider that these responses have enabled us to take account of the views of stakeholders in finalising and approving the Policy. In doing so, we have borne in mind our duties under the Charter and Agreement.

Together with this Explanatory Note, the Trust is publishing the final version of its Policy. This document can be accessed at:

[www.bbc.co.uk/bbctrust/framework/ondemand\\_syndication.html](http://www.bbc.co.uk/bbctrust/framework/ondemand_syndication.html)

The BBC Executive's detailed On-demand syndication Guidelines (the "Guidelines") which have been approved by the Trust will also be published by the BBC Executive.

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<sup>1</sup> The Trust's conclusions on the PVT are available at [www.bbc.co.uk/bbctrust/assets/files/pdf/consult/decisions/on\\_demand/decision.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/consult/decisions/on_demand/decision.pdf)

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

# Certain key points arising during the public consultation

Overall the majority of respondents to the consultation welcomed the decision to syndicate the BBC's on-demand content more widely and agreed with the terms of the draft Policy. In finalising the Policy we have taken account of relevant points raised in the consultation as set out in the Policy published today. In this Note we provide further details of how we have considered certain key points from the responses. However, this Note is not intended to address every point raised in the consultation. Unless expressed otherwise, we have used the definitions set out in the Policy.

## 1. Scope of the Policy

The BBC Executive suggested that the Policy should cover the syndication of all on-demand content permitted under current Service Licences. This includes news/current affairs, short-form content and specially commissioned content/clips for [bbc.co.uk](http://bbc.co.uk). Our view is that it is appropriate for the Policy to cover all such content provided as part of the BBC's Public Services.

BT suggested that the Policy should go further and cover the syndication of all on-demand content provided by the BBC, including on a commercial basis. We consider that the Policy should cover the BBC's UK Public Services activities only. This is because the Policy stems from the Trust's review of the BBC's UK Public Services on-demand proposition. Any syndication outside of UK Public Services activity will be governed by the existing fair trading framework, which covers all trading activities of the BBC, including commercial activities.

## 2. Development and review of the Policy

The Trust was asked by a number of respondents to clarify its role in relation to the Policy. We have done this in the Policy where appropriate. In particular BT asked about the Trust's role in resolving disputes. We have clarified that complaints will be handled through the Fair Trading complaints and appeals process, which provides for the Trust to hear appeals following complaints to the BBC Executive.

In response to BSkyB's question regarding the role of Ofcom in developing the Policy, we can confirm that Ofcom were consulted throughout the process of preparing the draft Policy.

## 3. Application of the PVT to syndication arrangements

One respondent questioned the rationale for further syndication arrangements and noted that such arrangements should always merit a PVT. We have considered these points, but note that both the PVT final conclusions on the BBC's proposed on-demand services and various consultation responses highlighted the likely public value from further syndication.

The Trust must apply the PVT in the case of a significant change to Service Licences (including introducing a new service). We would not expect the majority of syndication arrangements to require a significant change to existing Service Licences. The Policy also contains the safeguard whereby any syndication arrangement that could be potentially significant, either in itself or through its cumulative effect, must be notified to the Trust for consideration. The Trust will then decide on the appropriate approval in each specific case.

#### 4. The key principles

We recognise that the BBC Executive may need to adopt a flexible approach to Syndication Arrangements in the presence of differing business models. However, we also consider that the BBC Executive must comply with the key principles in paragraph 15 of the Policy and it is confirmed that compliance with the key principles is mandatory.

In response to comments regarding the availability and promotion of BBC on-demand content, we have clarified in the Policy what is required for a non-discriminatory and platform neutral approach to the provision of such content.

We believe that it is reasonable for the BBC to require third parties who are making BBC on-demand content available to provide a certain quality of service, and to require clear BBC branding of such content. Such requirements are addressed in the Guidelines.

In relation to the principle that on-demand content may only be distributed for consumption within the United Kingdom, the BBC Executive asked for the clarification that this was content distribution 'primarily targeted at audiences within the UK' with respect to content distributed online. Having taken into account the BBC Executive's concerns, we have appropriately defined content distribution in the Policy. The application of this principle to the distribution of online content is expanded on in the BBC Executive's Guidelines.

BT commented that content should be provided at a reasonable cost and on a basis that allows commercial providers to recover those costs. As noted in the PVT final conclusions, we expect the BBC Executive to enter negotiations with third parties where this may be in the best interests of licence fee payers and in line with the Policy and Guidelines. However, we do not believe that it would be appropriate to amend or waive any of the key principles, including the provision that licence fee payers should be able to access BBC content free at the point of use.<sup>3</sup>

#### 5. The Trust's oversight of syndication arrangements

We have clarified the process for notification and consideration of syndication arrangements by the Trust. The BBC Executive will be required to notify the Trust of any potentially significant arrangements before they are concluded and the Trust will consider whether the PVT, or any other approval process, should be applied. The Trust also has the ability to suspend any syndication arrangement which it considers to be potentially significant (either on its own or as part of other arrangements).

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<sup>3</sup> Agreement, clause 13(1)

## 6. Packaging of content

A number of respondents suggested that third parties should be able to select the BBC on-demand content that they distribute through their platforms. One respondent also commented that if third parties are able to exercise discretion to take only part of BBC on-demand content, then there may need to be restrictions on whether they can be branded as an iPlayer service.

These matters are addressed in the Guidelines. Overall we believe that appropriate packaging of BBC content will be in licence fee payers' interests, as long as it is provided on a fair and non-discriminatory basis. This is intended to ensure that licence fee payers are able to access a range of BBC on-demand content that reflect the BBC's Public Purposes.

## 7. The Guidelines

BT wished to ensure that the Guidelines accurately reflect the intentions of the Policy. BSkyB considered that if the Policy did not deal with all the details concerning syndication, and further detail is to be in the Guidelines, then there should be consultation on the Guidelines.

We consider that the "key principles" contained in the Policy constitute "criteria for syndication" as envisaged by the provisional conclusions to the PVT and there has been proper and adequate consultation on these matters. The Trust has approved the Guidelines taking into account the relevant views expressed in the consultation.

The Guidelines will be reviewed alongside the review of the BBC's On-demand services which is intended to take place in 24 months and any representations on the Guidelines can be appropriately considered at that time. Any relevant developments in the meantime can be taken into account during that review.

# Conclusion

Having regard to the Trust's duties under the Charter and Agreement, and having consulted publicly on the draft Policy, our conclusion is that we should adopt and publish the Policy in the form attached.

**BBC Trust, 3 August 2007**