

Syndication of BBC on- demand content: Statement of policy

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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 2007,¹ 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 only.² 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 arrangements which may have potentially significant impacts are appropriately considered.

Scope

5. Syndication of BBC on-demand content, as referred to in this Policy, refers to all syndication of BBC "Content" to third parties for subsequent distribution to end users on an on-demand basis. The term "Content" includes all on-demand programme content, including short edited clips of such content.
6. The Policy applies only to "Syndication Arrangements" which are or will form part of the BBC's UK Public Services activities and does not extend to any provision of Content on a commercial basis. A "Syndication Arrangement" in the context of this Policy refers to any arrangement which involves the provision of Content to a third party. Syndication of Content is limited to the provision of Content as approved in the On-Demand PVT or which is otherwise permitted under existing service licences. This includes the simulcasting of Content over fixed and mobile internet protocol networks.

¹ Available at www.bbc.co.uk/bbctrust/assets/files/pdf/consult/decisions/on_demand/decision.pdf

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.

7. This Policy sets out key principles which the Trust considers should be respected when Content is syndicated. The BBC Executive is also expected to publish more detailed 'On-demand Syndication 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 interests 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:
 - Impact on the wider market – When syndicating content, the BBC should endeavour to minimise negative competitive impacts on the wider market.³
 - 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.
 - 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 apply the PVT where there are significant changes to the BBC's UK Public Services and it will be for the Trust to decide whether the particular circumstances of a Syndication Arrangement represent such a change.

³ As noted by Ofcom in its Market Impact Assessment syndication could raise market impact concerns. See www.ofcom.org.uk/research/tv/bbcmias/ondemand/bbc_ondemand/

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 to third parties to ensure that it is provided on a fair, reasonable and non-discriminatory basis:
- a. The obligation to distribute Content on a non-discriminatory basis means that terms should be materially the same for all Syndication Arrangements except to the extent that differences are required because of the different circumstances facing each party or are otherwise justifiable;⁴
 - 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;⁵
 - d. Content may only be distributed for consumption within the United Kingdom;⁶
 - 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 effect 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 BBC Executive is required to implement On-demand Syndication Guidelines to elaborate on the principles above. In particular these should 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 On-

⁴ To the extent that there may be doubt, the Trust will need to be satisfied that the differences in terms would be consistent with the Competitive Impact Principle and be compliant with competition law

⁵ This means that Content must be provided to third parties regardless of what platform they propose to use to distribute the Content

⁶ In relation to Content provided online this is defined as Content distribution primarily targeted at audiences within the UK

demand Syndication Guidelines may make separate provision for different technological approaches, such as rich-linking (where short-form Content is made available to third parties which link the user to 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.

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 Arrangements 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 Services.⁷ 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 arrangements, 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 Arrangement which could potentially be significant either in itself or through its cumulative effect to the Trust for consideration before conclusion.
 - Provide the Trust with six-monthly updates of all Syndication Arrangements considered (meaning deals concluded or which the BBC Executive has 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 significant.⁸

⁷ The BBC's service licences can be found at www.bbc.co.uk/bbctrust/framework/bbc_service_licences/index.html

⁸ Further details are presented in Clause 25 of the BBC Agreement

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.
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 is 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 (including the reporting requirements placed on the Executive) and the On-demand Syndication Guidelines will be reviewed by the Trust alongside its review of the BBC's On-demand services. In addition, the On-demand Syndication Guidelines implementing the key principles set out in this Policy must be kept under review by the BBC Executive and any significant changes may only 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 On-demand Syndication Guidelines should be addressed to the BBC Executive. The On-demand Syndication Guidelines should outline how the BBC Executive intends to deal with complaints.
27. Complainants who are not satisfied with the response from the BBC Executive may appeal to the Trust. The Trust will handle appeals through the process outlined under the Fair Trading complaints and appeals framework, details of which can be found at: www.bbc.co.uk/bbctrust/appeals/fair_trading_complaints.html. Appeals will be considered by the Trust's Fair Trading Policy and Appeals Committee, which represents the final stage in the complaints process.