

On-Demand syndication **Provisional conclusions**

12 January 2011

Introduction	2	
The BBC Trust	2	
Background to this policy review	2	
The consultation	3	
Scope	3	
This document and next steps	3	
Stand alone points raised by stakeholders	4	
Public Value Test		4
Broadband availability		4
Precedent		5
Main areas for examination	7	
Viewer experience – full length TV content	7	
Platform policy – full length TV content	7	
Content other than full length TV	7	
Viewer experience – full length TV content	9	
Approach taken to date	9	
Executive proposals	9	
Stakeholder response	9	
Responses in favour of aggregation		10
Responses against aggregation		11
Trustee considerations	13	
The public value of syndication and ‘packaging’		13
Maximise reach and impact of the full range of BBC output		15
Ensure the public service context around BBC content – public space		16
Direct relationship with licence fee payers		17
Provide better value for money through exploitation of secondary rights		17
Allow the BBC flexibility as the on-demand sector matures		18
Arguments against BBC offering only aggregated content		18
Reduced reach		19
Higher costs		21
Inconvenience to users		22
Provisional conclusions on viewer experience	23	
Competitive Impact Principle	24	
Platform policy – full length TV content	27	
Approach taken to date	27	
Executive proposals	28	
Stakeholder response	28	
Trust consideration	30	
Introduction		31
Trustee considerations		32
Wide availability		32
Value for money		32
Competitive impact		32

Ability of the BBC to evolve / innovate	32
Clarity	32
Public value of aggregation	33
Operational viability	33
Principles in the existing Policy	33
Trustee decision	33
Wide availability	35
Value for money	35
Ability of the BBC to evolve / innovate	36
Clarity	36
Negative market impact	36
Operational viability	36
Provisional conclusions on platform policy	36
Competitive Impact Principle	37
Syndication policy – all areas except full length TV content	40
Approach taken to date	40
Executive proposals	40
Separation of types of syndication	40
Separation of linking and metadata from syndication policy and guidelines	41
Accountability	41
Stakeholder responses	41
Provisional conclusions	41
Provisional Conclusions	43
Viewer experience (full length PSB TV content)	43
Platform policy (full length PSB TV content)	44
Syndication policy – all areas other than full length TV content	45

Introduction

The BBC Trust

The BBC Trust is the governing body of the BBC. Its role is to get the best out of the BBC for licence fee payers and in the general public interest by securing the effective promotion of the Public Purposes. We are committed to taking decisions in the best interests of the public.

Background to this policy review

For a number of years, BBC TV channels (BBC1 for example) have been available on a range of platforms such as Freeview, Freesat, Sky and Virgin, allowing viewers to choose where they access BBC programmes. Increasingly, as technology advances, people expect to be able to watch BBC programmes on demand as well.

The BBC iPlayer has become the main way that audiences choose to watch BBC programmes on demand. You can watch the BBC iPlayer on various platforms, such as on your computer (via bbc.co.uk/iplayer), on your TV (via digital services and through games consoles), and on your mobile. Making BBC content available to third parties for distribution on such platforms is known as syndication. Other BBC content has been made available in a different way, for example the BBC has allowed newspaper websites to embed a limited number of its news stories on their pages.

When the Trust concluded its Public Value Test on the BBC's on-demand service plans in 2007, it decided to publish some principles on the way in which the BBC should syndicate on-demand content. Following a period of public consultation the Trust published its BBC Syndication Policy in August 2007. The Policy is intended to provide clarity for industry, licence fee payers, the BBC Executive and other interested parties as to the broad terms on which BBC on-demand content should be syndicated to make programmes available to licence fee payers in other ways that help to meet the BBC's Public Purposes. It also explains the Trust's arrangements for assessing any new syndication proposals.

The Trust's policy sets out high level principles. The Trust also required the BBC Executive to put in place more detailed guidelines which, amongst other things, specify how the BBC brand will be protected and how technical integrity and the quality of experience for users will be maintained.

Technology and audience expectations have moved considerably since the BBC iPlayer was launched in December 2007. The range of devices capable of showing video on demand has grown rapidly and on-demand offerings, such as the BBC iPlayer and Channel 4's 4OD, have moved from being virtually unknown (adopted solely by a technologically adept minority) to mainstream (enjoyed by many).

As with any policy, it is necessary to ensure it remains up to date and relevant to the current environment. When the BBC Trust set the current Syndication Policy, and approved the Executive Guidelines, it built in a requirement to review them. We therefore commenced this on-demand policy review in 2010.

The consultation

As part of the on-demand policy review, we asked the Executive to put forward proposals on what changes to the BBC's on-demand syndication approach they thought were required. These proposals were submitted to the Trust in April 2010.

We held a full public consultation on these proposals from 25 May 2010 until 21 July 2010, to ask both individuals and organisations what they thought of the proposals.

We received a significant number of responses from individuals – in total, 2085 individuals let us know their views on BBC on-demand policy and on the Executive's proposals.

We had good input from stakeholder organisations – in total 13 submitted detailed responses to the consultation¹.

We have carefully considered all inputs in reaching our provisional conclusions. We publish alongside this document a summary of the individual responses, as well as those stakeholder organisation responses that we have been given permission by respondents to publish.

Scope

This review (and the resulting policy) applies to the on-demand syndication of BBC Public Service Broadcasting (PSB) content only. A small number of stakeholder organisations considered that it was not totally clear from our consultation whether material sold commercially by BBC Worldwide forms part of this review and will be subject to the policy.

The BBC continues to secure value for licence fee payers from its programmes beyond the initial (usually 7 day) window of time in which the programmes can be viewed as PSB content by making them available on a commercial basis to the BBC's commercial arm (BBC Worldwide). BBC Worldwide can purchase rights to the material from the BBC and then supplies the programmes to others on commercial terms (this is why BBC programmes shown on commercial channels can include advertising).

This review (and resulting policy) does not cover BBC content made available via commercial routes (i.e. via BBC Worldwide).

The content covered by this review is therefore all BBC content broadcast in the UK excluding that made commercially available by BBC Worldwide. To help illustrate what we mean, this includes the 'catch-up' material that can be accessed via the BBC iPlayer today.

This document and next steps

This document represents the Trust's provisional conclusions, and is accompanied by a draft policy. The Trust considers that it is appropriate to consult on these provisional conclusions and accompanying draft syndication policy in order that stakeholders have the opportunity to comment on the detail of the approach that the Trust is minded to approve.

¹ These included platform operators, manufacturers and consumer groups

The consultation will last for four weeks, opening on 12 January 2011 and closing on 9 February 2011. Responses should be sent via email to the Trust at Syndication.Review@bbc.co.uk. We ask that all responses indicate whether the response should be treated as confidential to the Trust (whether in whole or in part), or can be published.

Once the provisional conclusions consultation has closed, the Trust will review the responses and consider if it is appropriate to make any changes to the provisional conclusions and draft policy. The exact timing of the next step in the assessment will depend on the responses, but is likely to be early in 2011.

The final policy will come into force immediately on its publication (likely to be early to mid 2011). It will supersede the current policy and guidelines (subject to any necessary transitional period, such as to allow existing arrangements to make the transition to terms consistent with the new policy, where appropriate), and the Trust will ask the Executive to submit a new set of guidelines for Trust approval. These guidelines must follow the approach, logic and principles set out in the Trust's final conclusions and final policy. The Trust has intentionally put a considerable amount of detail into its conclusions so that the Executive and stakeholders shall understand its expectations. Providing the guidelines proposed are in line with this, the Trust does not propose to consult on the guidelines. This is because the Trust considers that stakeholders will have had a good opportunity to submit their views on the proposed approach to syndication during the Trust's two consultations.

Stand alone points raised by stakeholders

Public Value Test

One stakeholder, IP Vision, has raised a procedural concern. They suggest that this proposal conflicts 'fundamentally' with the Trust's 2007 Public Value Test ("PVT") on on-demand services (which led to the creation of the Policy and Guidelines) and therefore that a new PVT is required.

The Trust recognises that the 2007 syndication policy indicates that the Trust will consider if a PVT is required in respect of new syndication arrangements (whether as a result of the proposed change or the cumulative effect of this change in addition to previous changes). However, given that adopting a policy on the syndication of PSB on-demand content is a non service activity, the Trust has a wide discretion as to the process to be adopted in reviewing the policy. In addition, the Trust considers that it has put in place a rigorous approvals process for this policy review (including two consultations). As explained in the draft policy, the Trust remains responsible for determining if any new syndication arrangements made under the new policy represent a significant change to the UK Public Services requiring a PVT.

Broadband availability

Another stakeholder, Voice of the Listener & Viewer (VLV), made a more general point about BBC services delivered by broadband, stating that two disadvantages for licence fee payers are that they have to pay for access to a broadband network (whereas broadcast channels are received free), and that the UK has no universal broadband network with capacity to deliver radio and television programmes into the home. Thus

"... a significant minority of licence payers are perforce paying for the BBC's on-line services, which, in fact, they themselves are unable to access."

They go on to argue that state aid law requires the BBC to adapt its syndication policy "to ensure universal access to its online services for all UK licence payers". The conclusion they draw is that, if the under spend on the Digital Switchover Help Scheme is returned to the Government;

"it will now be essential for the BBC to seek to ensure that [Government investment in rural networks] must guarantee sufficient broadband speed to all licence payers for them to be able to access the BBC's online service free at the point of use. To this end, VLV encourages the BBC Trust to take active steps to liaise with the government and all providers of electronic communications services in order to achieve this".

While we acknowledge that some licence fee payers are unable to access the BBC's on-demand services via broadband because of the limitations of the present network, we believe that there is substantial public value in the BBC's online and on-demand services, even taking account of those restrictions.

The issue of broadband coverage is in any event beyond the scope of this review. On the basis of privileged legal advice, we do not consider that the BBC's regulatory obligations require the BBC to ensure universal free access to online services.

Precedent

The BBC currently syndicates a weekly 50-hour package of PSB content to Talk Talk TV and BT Vision. These agreements arose originally in 200 and subsequently in 2008, when the BBC was still developing its syndication approach. This content is made available outside a BBC aggregation product, and therefore is contrary to the Executive's proposed approach as presented in the consultation.

We understand from the Executive that, at the time of the agreements, it was not technically possible to make a BBC aggregation product available to these two platform operators. We do not consider that prior arrangements should prohibit the BBC amending its policy over time. Specifically (if appropriate), providing the effect of the current 'previous strategy' is phased out fairly and expeditiously, this should not unduly restrict the implementation of the revised policy in future.

The Executive has informed us that Talk Talk TV intend to migrate to YouView when it becomes available. This means that the current 50-hour agreement will naturally phase out when all Talk Talk TV subscribers move onto Talk Talk's YouView package.

The Executive has informed us they are rolling out an iPlayer application which BT Vision can use, having assessed the request against various criteria including value for money and public value. This allows all BT Vision customers to access the BBC iPlayer, superseding the 50-hour agreement which will be terminated, and bringing BT Vision in line with the Executive's favoured aggregation approach. BT Vision have already outlined plans to roll out the BBC iPlayer product to existing BT Vision subscribers which should be complete in 2011.

We therefore consider that syndication agreements outside a BBC aggregation product should not restrict the options available to the Trust and BBC in developing the new on-demand syndication strategy, providing that (if appropriate) appropriate transition

arrangements can be put in place for these two agreements. Discussions with the Executive have suggested that a deadline of 31 December 2012 for the termination of the Talk Talk TV and BT Vision 'content-only' agreements would be achievable.

The BBC also developed a limited version of BBC iPlayer for Virgin Media, launched in May 2008, which the Executive tell us they intended to replace a 'content-only' agreement under which the BBC provided BBC content for Virgin Media to make available via their menu system. This BBC iPlayer implementation is not "standard", i.e. it is not useable by other TV providers or manufacturers. Thus currently Virgin Media subscribers can access BBC content through their menu system or through the 'bespoke' BBC iPlayer. The Trust acknowledges this arrangement, but considers that this arrangement should not prohibit the BBC amending its policy over time. The Trust understands that discussions are currently underway between Virgin and the BBC, concerning Virgin's new TiVo boxes using an "off the shelf" BBC iPlayer (a Flash application).

Main areas for examination

The BBC Executive's proposals covered several different areas of Public Service Broadcasting (PSB) on-demand syndication. The Trust has found it helpful to consider the subject in terms of three main areas – how viewers should access full-length BBC PSB content (viewer experience), how the delivery of this full-length BBC PSB content is achieved (platform policy), and the policy with regard to other BBC PSB content.

The Trust has drawn a distinction between full-length and other types of BBC PSB content as it considers that these two broad categories of content fulfil the Public Purposes in different ways, are consumed in different ways and may therefore be syndicated in different ways.

Individual and stakeholder responses have been considered at every stage. One point that has become clear from all responses is that it is full-length TV programmes that are of most interest and importance to individuals and stakeholders. This provisional conclusions document therefore focuses predominantly on the on-demand syndication of full-length BBC programmes.

However, other types of content are addressed in the draft policy, and we welcome stakeholder views on these types of content as well. Our review has included consideration of editorially selected bundles, short-form content and radio, although the responses to the consultation have not significantly focused on these. The Executive proposals do not advocate significant changes to their approach in these areas and the Trust is provisionally satisfied that it is appropriate to continue as previously. Consequently, these provisional conclusions do not include significant detail on these issues, but they are addressed in the draft policy.

Viewer experience – full length TV content

In this section, we consider how viewers should be able to access the BBC's content. This section is largely concerned with whether, and in what form, viewers should be able to access BBC content on-demand. We have been mindful of the Trust's duties in relation to the wider market as well as to licence fee payers. In particular, we have considered whether the BBC Executive's proposals are consistent with the Fair Trading Regime imposed by the Trust².

Platform policy – full length TV content

In this section, we consider how to deliver the viewer experience considered above. Once again we have been mindful of the Trust's duties in relation to the wider market as well as to licence fee payers. In particular we have considered whether the BBC Executive's proposals are consistent with the Fair Trading Regime imposed by the Trust.

Content other than full length TV

² Available at http://www.bbc.co.uk/bbctrust/our_work/protocols_policy/competitive_impact.shtml

In this section, we consider content other than full length TV content; the three main elements relevant to this policy are:

- Radio content;
- Editorially selected packages (including news clips);
- Short form content (e.g. trailers).

Viewer experience – full length TV content

Approach taken to date

The current syndication approach is governed by the 2007 on-demand syndication policy and guidelines. The policy states that *“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”*.

The syndication of BBC content on-demand began in full in 2007, with two main avenues taken:

- The BBC launched the BBC built, controlled and maintained on-demand access product called the BBC iPlayer in December 2007 for Windows computers. This allowed any device (largely desktop and laptop PCs) running Windows to access the BBC iPlayer and view BBC PSB content on-demand. The BBC controlled all aspects of the viewer experience;
- The BBC reached ‘content-only agreements’ with platforms on a trial basis prior to 2007 and formally in 2007 and 2008, whereby a limited ‘package’ of content was made available – to (the companies that are now called) Talk Talk TV, BT Vision and Virgin Media for them to make available on-demand via their own menu systems.

In response to the uptake of the BBC iPlayer, and in light of the emerging technological landscape, the BBC currently promotes the BBC iPlayer as the most appropriate method by which full-length BBC PSB TV content is made available on-demand. As such, Virgin Media was migrated to a limited BBC iPlayer implementation, BT Vision is currently being migrated to an BBC iPlayer implementation and plans have been drawn up to migrate Talk Talk TV onto an BBC iPlayer implementation.

The BBC iPlayer itself has been refined and developed to become widely accessible on many different platforms, including phones, games consoles and internet-connected TVs.

The BBC has chosen not to take up requests by platform operators and manufacturers to make content available in a disaggregated way (with the exception of the existing Talk Talk TV and BT Vision arrangements and the original legacy solution for Virgin Media).

Executive proposals

The Executive has proposed that the on-demand syndication policy be refined; specifically, to set out that on-demand full length PSB content should only be made available within a BBC product (currently BBC iPlayer). The Executive considers that the existing ‘legacy’ arrangements for content outside of a standard BBC iPlayer should be migrated to a BBC iPlayer implementation.

Stakeholder response

The Trust received a good level of individual stakeholder responses. With regard to the question of aggregation vs. disaggregation, 1972 individuals expressed views on this issue. These individuals gave a wide range of views, which the Trust has considered. A report summarising these individual responses has been published alongside these provisional conclusions. While the individual responses are most helpful when assessed to provide qualitative opinions (rather than quantitative data), with regard to the 2656 distinct points made by the 1972 individuals who answered this question;

- 53 % of the points supported the hypothesis that this was a good approach and/or the best way forward;
- 17 % of the points disagreed with the hypothesis that this was a good approach and/or the best way forward;
- The remaining 30% of the points addressed other issues / concerns.

The Trust also received a good level of stakeholder organisation responses. In total, thirteen organisations submitted responses, and all focused primarily on the question of aggregation vs. disaggregation.

In general, the majority of the individuals (the users of the service) who expressed a clear opinion were in favour of a BBC aggregation strategy, while the majority of the platform operators and manufacturers were in favour of a disaggregation strategy³. The Trust has published responses where the organisations have given permission to do so.

Responses in favour of aggregation

There were a number of arguments made in favour of the proposed aggregation strategy. These included that the BBC iPlayer reinforces the BBC brand and identity;

"I agree [with the aggregation proposal]. This reinforces the absolutely unique BBC identity which makes it probably the best-known global broadcaster and is a vital component to distinguish it from others." – Male 35 to 44

"For newer content this seems to make sense to protect the integrity of the BBC Brand. For older BBC productions (which have already gone into syndication on other networks i.e. freeview ITV 3 etc..) it would seem that as long as it is clearly marked as a BBC product, then why not have it available on multiple platforms to showcase the quality that comes through the BBC system." ⁴– Male 16 to 24

Another argument was that the aggregation approach ensured greater consistency of user experience across platforms;

"Completely agree 100% I want to go to BBC iPlayer or whatever BBC portal and be able to get everything. Currently accessing the iPlayer from my laptop and iPad and PS3 throws up different results. This is frustrating and unnecessary I should be able to get to the same content regardless of device or aggregator" - Male 25 to 34

Some individuals felt that there was a risk that BBC content on third party websites could damage the BBC brand;

³ The stakeholder responses contained considerable detail and are consequently difficult to quantify into those "for" and "against" aggregation; however (with that caveat), the Trust considers they can be summarised as 2 organisations supporting aggregation, 8 against and 3 not expressing a clear position.

⁴ This is currently the approach taken; i.e. older content is made commercially available via BBC Worldwide

"I think it needs to stay within the BBC to retain integrity and because the BBC itself is trusted. BBC programmes elsewhere may give integrity to other websites, manufacturers, etc., that don't deserve it." – Female 35 to 44, ID10

PACT⁵ outlined the point that, with regard to independent production, the BBC often only acquires the primary (first showing) rights, and that this provides good value, but means the BBC is not free to disaggregate content freely;

"the growth of digital services means it is time to consider the BBC's provision of free syndication as a matter of first principle. The BBC – and by extension the licence fee payer – no longer pays 100% of programme production costs, with the production sector raising increasingly significant levels of programme investment as deficit funding through the exploitation of secondary and ancillary rights to that content. Last year, the independent sector invested up to £190m in the development and production of UK content, with secondary and ancillary rights exploitation a key part of this.

Therefore, the argument that the licence fee payer should receive content for free on all services is in Pact's view out of date in the digital world. Of course the licence fee payer must be able to access BBC content for free on universally available services, but this should not necessarily mean all services, particularly if mounting formatting costs for such services displace investment in the creation of content." – PACT

Responses against aggregation

There were a number of arguments put forward against the proposed aggregation approach. These broke down into four main points, with varying degrees of support amongst the individuals and organisations. They are considered and analysed in more detail in a later section, but are that the proposed aggregation policy would:

- reduce reach of BBC content – the BBC does not have the resources to put its aggregation product on every platform and so this proposal would mean some platforms not carrying BBC content. For example, Sky does not carry BBC on-demand content, denying access to BBC on-demand content via its platform to many millions of individuals. In contrast, if content were disaggregated, every platform could easily carry at least some BBC content.
 - As Sky responded: *"a less restrictive approach would lead to much wider availability of BBC public service content", specifically that the "proposed policy of limiting 'syndication' of BBC public service content to those third party platforms and services willing and able to accept a bundled offering of content and user experience is not in licence fee payers' interests since it necessarily restricts the availability of the underlying content that they have already paid for, contrary to the BBC's duties to serve the public interest and to "do all that is reasonably practicable to ensure that viewers, listeners and other users (as the case may be) are able to access the UK Public Services that are intended for them, or elements of their content, in a range of convenient and cost effective ways which are available or might become available in the future "" - Sky*

• ⁵ Pact is the trade association that represents the commercial interests of the independent production sector (which has a turnover of £2.2 billion per year and employs 20,950 people)

- result in higher costs to the BBC (and hence represent poor value for money) - the BBC has to design and develop many versions of the product. In contrast, disaggregating content and placing it into a 'neutral space' would have a negligible cost.
 - As Sky responded: "*such a policy [of only syndicating via BBC products] would not represent good value for money, as the BBC would bear the costs of developing different iPlayer variants, re-versioning content, and network distribution costs*" - Sky
- distort competition – not supplying disaggregated content is likely to stifle innovation and distort competition at the media player / EPG and platform level and, given the BBC is only proposing to develop a limited number of aggregation product versions, those that are selected (no matter how objective the criteria) will enjoy an advantage over those that are not.
 - As Sky responded: "*as between services that can take the BBC's bundled product, competition will be distorted by the BBC's direct involvement in the development of access to its content. Not only would the BBC act as a gateway for the development of new services, but also, the BBC would necessarily have to prioritise as between platforms and services, thereby having a direct negative impact on the competitive dynamic in the wider market at a key time in the development of new services*" - Sky
- inconvenience users / give a sub-optimal experience – individuals find it more convenient to be able to access all content from all broadcasters via a single interface. For example, on Virgin's platform, individuals find it more convenient to search for content (whether C4, BBC or other) on Virgin's menu. It is much less convenient to have to go to BBC products for BBC content, the 4OD player for C4 content etc.
 - The response from Rovi outlines with a good analogy their concern that the BBC Executive's proposed approach could provide a less convenient experience for users: "*Let's make an analogy to a book store. It does make sense to sort the store by categories, such as "travel books". The consumer can see all travel books from different publishers on one shelf. If the same store would be sorted by publisher, the consumer would have to go through each publisher's shelf to look to see if that publisher offered travel books. The result would be a more confused consumer and more complex search experience. Consumers do not typically seek out just a brand or network, they seek out specific programmes or genres of programmes (e.g., sport, news, and comedy) therefore driving the need for search and discovery across content providers.*" - Rovi

The counter-proposal made by several platform operators who responded to the consultation was that the BBC should disaggregate content to properly licensed platforms, for the platforms to make available. One possible way to implement this would be to make the programmes available on a BBC server. The platform would copy these onto the platform's system, and then the programmes would be available via the platform's menu systems.

Trustee considerations

The BBC Executive's proposals are some distance from the approach that many industry stakeholders would like to see.

The public value of syndication and 'packaging'

The Trust, in its 2007 policy, set out that "*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*".

The Charter defines the main objective of the BBC as the promotion of six Public Purposes. These are:

- Sustaining citizenship and civil society
- Promoting education and learning
- Stimulating creativity and cultural excellence
- Representing the UK, its nations, regions and communities
- Bringing the UK to the world and the world to the UK
- In promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television

The Trust considers that on-demand syndication helps the BBC to fulfil all of the Public Purposes; by making available content that fulfils five of the Public Purposes and by encouraging the public to use developing technologies and delivering "*to the public the benefit of emerging communications technologies and services*" (the sixth Public Purpose). This is therefore the starting point for these provisional conclusions; that there is public value in on-demand syndication; the issue therefore moves to considering the best way to carry this out.

Historically, the BBC has always been an 'end-to-end' public service broadcaster which commissions, produces, schedules and broadcasts PSB content. The ability to schedule and signpost BBC content (achieved through the operation of BBC TV channels) is essential to fulfil the BBC's Public Purposes. The packaging of content into linear channels delivers a number of benefits:

- establishing a clear editorial voice to deliver the Public Purposes;
- guaranteeing that BBC PSB output is free-at-point of use (or in basic tier) without ads;
- driving reach to a range of content through scheduling / 'hammocking';
- establishing BBC brand identity and consistency of user experience;
- ensuring easy, accessible routes to BBC output.

To illustrate, an example of the third point above might be a viewer who has developed a routine of watching Eastenders every evening on BBC1, and who sometimes remains on the channel (for example, watching Panorama on Mondays). The BBC can choose what to

show after Eastenders and hence show a challenging or innovative programme the viewer enjoys but might otherwise not have watched.

The BBC Executive believes that its long established practice of packaging content into a linear channel makes an important contribution to the fulfilment the BBC's Public Purposes and that the same benefits need to be secured in an on-demand environment (for example, taking the Eastenders example above, the same viewer might look at the BBC iPlayer to watch Eastenders – but then also look through the "recommended" or "new" sections and select another programme). In this way, the BBC is still able to maintain its role of promoting a broad range of BBC PSB content.

This contrasts with a fully disaggregated world, as proposed by some stakeholders, where the viewer may watch Eastenders via an alternative portal but would be much less likely to make the transition to further BBC PSB content because the next program selected would be likely to be whatever was proposed by the alternative portal.

The BBC is not alone in this approach. The other PSB broadcasters have historically followed similar models and continue to see value in making their content available in an aggregated form in the on demand world. For example, Digital Spy in August 2010 reported that *"[ITV] wants to unlock the revenue opportunities held in bringing the standalone ITV Player to multiple platforms, instead of simply syndicating its content to other service providers, such as SeeSaw or YouTube. "Our viewers want the option to watch their favourite content when and where they choose so distributing the ITV Player, with our rich content, to platforms beyond ITV.com will allow us to meet that demand, said Fru Hazlitt, ITV's managing director of commercial and online.""*⁶

We have identified five main reasons why an aggregated strategy might drive public value. They are that it would allow the BBC to:

- Maximise reach and impact of the **full** range of BBC PSB output by maintaining prominence for BBC output (including niche content) to fulfil the Public Purposes (unlike in the linear TV channel world, this is not regulated and hence the BBC is not 'guaranteed' prominence). The prominence helps to fulfil the Public Purposes by bringing high public value content (that might not otherwise be considered by them) to licence fee payers.;
- Ensure public service context around the content, by offering a public space that is consistent, familiar, trusted, distinctive and free to air. The licence fee enables the BBC to invest in a much wider range of PSB content – it is essential to make sure that it is discoverable, without having to pay a gatekeeper (for example, without having to pay an IPTV manufacturer to put BBC content at the top of the 'what's new' page);
- Maintain a direct relationship with the audience. This allows the BBC to respond to viewers and best serve them;

⁶ The Trust is aware, however, that ITV might have different motivations from the BBC – the Trust has not placed significant weight on it in drawing our provisional conclusions

- Permit independent producers to retain secondary and ancillary content right, reducing significantly the price the BBC pays for the primary rights of independently-produced content;⁷
- Have the flexibility to pursue different strategies as the on-demand sector matures. Specifically, if an aggregation strategy doesn't work, the BBC can review and possibly modify its approach. If a disaggregation strategy doesn't work (erodes public value), it might be extremely difficult to revert to an aggregation strategy.

We consider these areas in more detail in the following sections.

Maximise reach and impact of the full range of BBC output

The BBC's portfolio includes a broad mix of content, and it is through this mix that the BBC fulfils the Public Purposes. The Trust considers that a change of policy towards disaggregation is likely to decrease the reach of niche content because stakeholders will tend to syndicate more popular content; and viewers who have already accessed this content elsewhere will not seek to view it via BBC iPlayer and so not happen upon more niche content.

The BBC's existing aggregation currently achieved through the BBC iPlayer

- facilitates access to the full range of BBC output (e.g. niche and nations/local output) that contributes to the delivery of the BBC's public service remit
- maximises citizen value by enhancing the reach of niche programming which often makes a strong contribution to the BBC's Public Purposes and has high appreciation levels
- allows BBC selected highlights and recommendations to be made to users (e.g. BBC iPlayer 'carousel'), which is an effective way for licence fee payers to discover the 'long-tail' of BBC programmes. For example;
 - BBC iPlayer accounts for a higher proportion of views of BBC4 & BBC3 content than of BBC1 content; and programmes from BBC4 & BBC3 attract proportionately more views on BBC iPlayer than they do on linear⁸;
 - BBC iPlayer tends to account for a higher proportion of views of niche programmes than mainstream ones - e.g. MI High (17%); Electric Proms (10%);
 - A survey of BBC iPlayer users run by BBC management showed that 84% claimed to have viewed a programme on BBC iPlayer that they had not heard of before⁹.

⁷ In our analysis of this point (later in this document), we conclude that this point is weak and have not placed significant weight on it in drawing our provisional conclusions

⁸ However, the Trust notes that this could be as a result of different demographics. Younger people, likely to make up a significant proportion of the viewing figures for certain niche programming, may be more likely to access content online via iPlayer.

⁹ Pulse, Q3 2009 (respondents answering 'often', 'occasionally' or 'once')

Prominence refers to the visibility of content as well as the extent to which BBC content is easily found by potential viewers. The Trust considers that prominence can play an important role in relation to reach and impact. In order for the BBC to fulfil the Public Purposes, viewers must be able to find the BBC content they need. An example of this working effectively is the BBC iPlayer; viewers can search BBC content by several means, as well as seeing BBC content recommendations.

It is important to note the difference between BBC PSB content and BBC Worldwide content. BBC Worldwide content is already available via third party aggregators. One possible question is why BBC Worldwide brand guidelines are considered sufficient to provide brand attribution on BBC Worldwide content, but this approach is not sufficient on BBC PSB content. The Trust considers that this is because delivery via BBC Worldwide lies outside the delivery of the Public Purposes, and therefore the requirements are less onerous.

In essence, the Trust considers that there are three main reasons why prominence may be important, to;

- ensure findability of BBC on-demand content to drive reach and delivery of the Public Purposes;
- ensure brand attribution – ensure licence fee payers are clear about content provenance being from the BBC;
- deliver consistent user experience across many alternative access points (e.g. akin to 'press 1 on remote control for BBC1' in linear environment).

These are made particularly important given that prominence for public service content is not regulated for in VOD environments; access to content will generally be driven by commercial incentives. It is quite conceivable that, in future, a content aggregator or platform would request a fee from content providers such as the BBC in order to put their content in the 'recommended' section of their home page.

Ensure the public service context around BBC content – public space

The use of a BBC product (currently the BBC iPlayer) for on-demand access of PSB content allows the BBC to control the context in which its programmes are presented. Specifically, it allows the BBC to:

- Control presentation of BBC content including prompt revocation;
- Constantly innovate with new ways to show BBC content;
- Manage editorial compliance over advertising and commercial messaging (the Trust recognises that this could be achieved through strict terms and conditions of agreements and monitoring; however information from the BBC Executive suggests that it would be very costly to assess and monitor compliance across myriad platforms and enforce appropriate sanctions);
- Ensure compliance with the BBC's strict on-demand time periods of public service content (i.e. content only available on catch-up for 7 days) and terms of rights deals with producers¹⁰;

¹⁰ It may be possible to use DRM to address this issue

- Ensure accessibility (e.g. to ensure features for blind or partially sighted people). Information provided by the RNIB indicates that there are 1.8 million people living with sight loss in the UK, and that around 87 per cent of blind and partially sighted people regularly watch TV, videos or DVDs. Key features of the BBC iPlayer include:
 - Sympathetic design features for users with disabilities;
 - Subtitles, sign language versions, audio commentary;
- Ensure national language programmes are available (Welsh & Gaelic);
- Provide a robust, compliant and well-understood set of parental guidance/controls;
- Provide a non-commercial 'public space' in which to present the BBC's content.

Direct relationship with licence fee payers

The Trust presented its view on the importance of a direct relationship in its Public Value Assessment regarding Project Canvas¹¹:

"the delivery of the public purposes and the creation of public value are contingent on direct engagement with licence fee payers, to ensure that BBC output continues to meet their changing needs and expectations"¹²

This is equally relevant when examining the area of syndication. We believe that an aggregation strategy would:

- help the BBC to constantly refresh BBC services to respond to audience needs;
- guarantee the BBC access to meaningful, real-time data and attention data;
- The Trust is aware that in a fully disaggregated strategy, viewing data could be mandated via terms and conditions. However, the BBC Executive have found in practice that it can be difficult to access meaningful data;
- allow the BBC to customise services to provide, for example, good pan-BBC recommendations;
- give the BBC better audience understanding and allow the BBC to be more agile in response to audience feedback;
- allow the BBC to provide responsive help, Q&A and media literacy services.

Provide better value for money through exploitation of secondary rights

The way in which the BBC acquires content from independent producers has evolved, to maximise value for money. The BBC often only acquires the primary (first showing) rights, allowing the independent producers to exploit the secondary and ancillary rights. The BBC

¹¹ Project Canvas refers to the BBC's participation in a joint venture now known as YouView entered into by the BBC with its partners in order to develop and promote a common standard that would allow (initially) digital terrestrial TV viewers with a broadband connection to watch on-demand services and other internet services without paying a subscription (other than for broadband costs)

¹² See Canvas Provisional Conclusions – Public Value Assessment (22 December 2009), page 14

therefore does not pay for 100% of the programme costs, as the producer can also seek remuneration through secondary and ancillary rights.

Aggregation products allow the BBC to keep tight control on this material, and hence not damage the secondary and ancillary rights. However, a disaggregated strategy could threaten this approach. While disaggregated material could in principle be syndicated on contractual terms that mirror its own 7-day catch-up period and so protect secondary and ancillary rights, it may be difficult for the BBC to police and enforce such terms.

The Trust recognises that this represents a strong argument in favour of tight BBC control and aggregation. However, the Trust considers there is the potential to use Digital Rights Management (for example, imposing 'self-destruct within 7 days' DRM protection on BBC content) and strict licensing to strongly mitigate this concern. As such, the Trust has not attached significant weight to this consideration.

Allow the BBC flexibility as the on-demand sector matures

An aggregation strategy can easily be amended ("loosened") in the future if a more disaggregated strategy is found to be justified. The on-demand sector is still in its infancy and changing rapidly – the Trust is mindful that it is important to retain as much flexibility as possible. In contrast, if the BBC starts to syndicate disaggregated content widely, it may be difficult to stop and return to an aggregation product strategy. This would be due to raising audience expectations (e.g. that BBC PSB programmes are available from third party aggregators), as well as transition period concerns (the BBC may find it difficult to decline some requests for disaggregated content on the basis that the policy has changed, if many other aggregators have been provided with content).

Arguments against BBC offering only aggregated content

The individual and organisation stakeholders¹³ put forward a variety of reasons as to why they believe the BBC Executive's proposal to make BBC content available only via a BBC product (currently BBC iPlayer) is not the right approach. Broadly, these can be grouped into four main points; they are that the proposal would:

- reduce reach of BBC content – the BBC does not have the resources to put aggregation product versions on every platform and so this proposal would mean some platforms not carrying BBC content. For example, Sky does not carry BBC on-demand content, denying BBC on-demand content to many millions of individuals. In contrast, if content were disaggregated, every platform could easily carry at least some BBC content;
- result in higher costs to the BBC (and hence represent poor value for money) - the BBC has to design and develop many aggregation product versions. In contrast, disaggregating content and placing it into a 'neutral space' would have a negligible cost;
- inconvenience users / give a sub-optimal experience – individuals find it more convenient to be able to access all content from all broadcasters via a single interface. For example, on Virgin's platform, individuals find it more convenient to

¹³ The stakeholder organisations include platform operators, manufacturers and consumer groups

search for content (whether C4, BBC or other) on Virgin's menu. It is much less convenient to have to go to the BBC aggregation product for BBC content, the 4OD player for C4 content etc;

- distort competition – not supplying disaggregated content is likely to stifle innovation and distort competition at the media player / EPG and platform level and, given the BBC is only able to develop a limited number of aggregation product versions, those that can use these versions (no matter how objective the criteria) will enjoy an advantage over those that can not.

We have considered these four points and set out our emerging thinking below (the fourth point is also considered in the CIP section).

Reduced reach

Some stakeholders consider that, by restricting BBC content to BBC products, the BBC is limiting the reach of its on-demand content and denying access to that on-demand content to some licence fee payers.

Sky is a good example; as of September 2010 they had 9.96 million subscribers. The Trust understands that Sky and the BBC have previously discussed the possibility of Sky carrying BBC on-demand content to be featured in Sky's on demand service. The Trust understands that these discussions did not progress due to Sky's position that they do not offer third party branded aggregation products such as the BBC iPlayer within their Sky system.

If the BBC disaggregated content, it is possible that Sky would take BBC on-demand content and make it available to their viewers, but offer only a limited package, not the full range. This would result in many million subscribers being able to access a limited subset of BBC on-demand content. In one sense this would represent increased reach for the BBC's on demand content.

In addition, it is possible that BBC PSB content on third party aggregator sites could increase viewing of a range of BBC content. This is due to the potential to capture viewers; i.e. those browsing a third party aggregator site may see BBC PSB content featured on the site and choose to watch it.

The BBC Executive has suggested that the diminution of reach due to the decision not to disaggregate would likely be low. This is due to the proposed dissemination of BBC aggregation product versions that are widely useable by TV users with a TV or a set-top box that incorporates an HTML browser or utilises MHEG or Flash applications. Any PC-user should be able to access BBC aggregation products via the BBC website. Any 'connected-TV' or smart-box user is in a position to select a TV or a set-top box that has the capability to use BBC aggregation products.

The Trust would go further; the Trust considers that reach of the **full range** of BBC products is likely to be maximised under the outlined proposals. Aggregation product versions would give manufacturers of TVs and set-top boxes that incorporate an HTML browser and/or adopt MHEG or Flash the opportunity and clarity to make a consistent BBC aggregation product, offering all BBC content, ubiquitous on all on-demand platforms. The Trust has, however, noted the risk of losing viewers who view content exclusively on third party aggregator platforms.

The Trust has considered the major proprietary platforms; BT Vision, Sky, Talk Talk TV and Virgin Media. BT Vision is currently rolling out a BBC iPlayer implementation and Talk Talk TV has expressed a desire to move to the 'YouView' standard, which the Trust understands is intended to include access to BBC iPlayer, meaning that both of these platforms will offer access to BBC on-demand content via a BBC aggregation product.

In order to fully assess the extent to which reach might be reduced by aggregation, the Trust commissioned an external technical consultancy¹⁴ to examine the extent to which possible standard versions (HTML, Flash and MHEG) would be useable by the majority of platform operators and manufacturers at the present time and as the market evolves.

The Trust considered that this external report¹⁵ supported the Executive's suggestion that the versions would be widely useable by different types of platforms operators and manufacturers. The findings included that by 2014 99% of the connectable devices installed base will be capable of using one of the standard versions (either "out of the box" or with modification).

The external advice included consideration of Sky and Virgin:

- With regard to Sky, the report stated that "*...to date, BSkyB has demonstrated little interest in opening up its walled garden. This is principally a commercial decision as Sky's connectable STBs don't currently support a browser, but are technically capable of doing so with a certain amount of modification. Sky's key software partner NDS has already implemented a browser on its InfiniteTV platform. But, given the nature of Sky's custom operating system, Darwin, implementing a browser on the DTH operator's connectable STBs would be more difficult for Sky than it would be for Apple or Microsoft – who actively develop browsers for other products*".
- With regard to Virgin Media, the report stated that: "*The first Virgin Media STBs to support an internet-delivered version of [BBC] iPlayer will be the Tivo-based DVRs set to launch before the end of 2010. The user interface for the Tivo boxes will be Flash-based and they will also be able to support [BBC] iPlayer and a variety of other online content services via Flash. Virgin Media has also stated that its non-DVR, V HD STBs, which launched in May 2010, could also support the Tivo platform with a software update.*"

The Trust considers that the decision as to whether to include (or continue to include) a BBC aggregation product on either Sky or Virgin's platforms is a commercial decision for the platforms to make. The Trust is keen to maximise availability of BBC aggregation products, but recognises that either or both platforms may choose not to offer it to their subscribers. This would have a significant negative impact on reach.

The Trust also recognises the potential for negative impact on the BBC's reach caused by some smaller operators not being able to launch their own on-demand offerings incorporating BBC content should they wish to do so. It is clearly beneficial from a reach perspective that BBC content be made available to smaller/niche platform operators.

There is an adverse effect on reach in the event that the BBC's syndication policy has the effect of stifling the development of small existing platforms and/or new platforms or

¹⁴ Screen Digest, who are "widely regarded as the world's leading media-focused research, publishing and consulting company".

¹⁵ Published alongside this document

innovative delivery methods within platforms. As noted below, the Trust takes the view that this negative market impact is outweighed by the public value identified in aggregating.

Higher costs

Some stakeholders consider that, by only distributing on-demand content via a BBC aggregation product, the BBC has to bear the resulting costs (re-versioning content, developing products etc) and this does not represent value for money.

We think that this is partially correct; a policy of full disaggregation of content (with the BBC making the content available on its servers for platforms to copy) would be likely to have a lower cost. BBC aggregation product development costs would either be eliminated or (if the BBC continued with BBC aggregation products alongside disaggregation of content) reduced. On the other hand, a disaggregated policy would involve monitoring to ensure that aggregators are in compliance with the BBC's licensing policy and this involves associated monitoring and compliance costs.

We have examined the relevant current costs. To give some context, in 2009/10 the BBC spent £4.1 million on running the BBC iPlayer / on-demand services, and a further £1.8 million on developing the next generation of BBC iPlayer, giving a total of £5.9 million. This is equal to 0.12% of the BBC's income. These are large amounts of money, and licence fee payers should rightly be concerned that it is well spent.

The Executive provided forecast cost information to the Trust. As it is commercially sensitive we have decided that we cannot publish actual numbers. Instead, we have (in the table below) provided comparative information in diagrammatic form, which suffices to illustrate our conclusion here.

Aggregation

In an aggregation scenario, BBC audio visual content is only available within a specific context, developed in-house, i.e. BBC iPlayer. Given the BBC has full control over the technological software surrounding the content, it is responsible for bearing the cost attributed to designing, developing and maintaining the audience-facing proposition.

In order to maximise reach to audiences and value for money, the BBC makes its product available in widely adopted industry-standard formats, thus accessible by the vast majority of other platforms. In a fully-aggregated scenario, the BBC will also be responsible for the delivery of the proposition directly to the audience thus incurring the majority of IP distribution costs.

Disaggregation

In a disaggregation scenario, BBC content is available on a programme by programme basis with no supporting context surrounding the offering – thus no audience-facing proposition would exist.

The BBC would host a server, where content would be uploaded in a single, open mezzanine format¹⁶. Third party content distributors, which could range from platform providers to online services, would be able to access the content through this secure

¹⁶ A mezzanine format is a high quality (bandwidth heavy) format

access point. The onus would be on the 3rd party to encode the content to meet their individual platform or service requirements.

In a disaggregated scenario, there would be very limited, if any, data distributed directly from the BBC to the audience over internet protocols as the distribution cost would be borne instead by the third party distributor. However, there would be an additional burden on the BBC to conduct negotiations with fragmented third party providers and enforce regulatory compliance to ensure editorial guidelines and minimum quality standards are upheld and reputational risks are mitigated.

Comparison of costs – aggregated vs. disaggregated model

Syndication case ¹	Aggregation ²	Disaggregation
Core activity costs		
Audience facing development costs	●	○
Encoding development costs	●	◐
IP distribution costs	●	○
Other costs (inc. bus development, legal, compliance, etc)	◐	●

Note:

¹ Assume all metadata infrastructure and requirements are the same in both scenarios as it is highly integrated into the whole of BBC Online and needed in each case

² Does not include back-end underlying technology, nor infrastructure developed to date

The Executive’s information suggests that an aggregation approach would cost more than a disaggregated approach. The Trust must consider the expense against the value that licence fee payers gain through syndication in a BBC aggregation product. The Trust has considered the benefits of aggregation and the reasons why disaggregation compromises the delivery of the Public Purposes. The Trust would caution that it is not appropriate to equate lower costs with better value for money.

Inconvenience to users

Some stakeholders consider that, by requiring users to use the BBC aggregation product to access content, users are offered a sub-optimal experience. One platform operator argued that it would be more convenient for users to be able to access all on-demand content in the same way. So, BBC content would sit alongside Channel 4 content, without the need to go to either the BBC iPlayer or the 4-OD player.

We have considered this concern, and believe that it can be largely mitigated by an appropriate design of the BBC aggregation product linking approach. The Executive has proposed that searching for BBC content in central ‘non-BBC’ menus should be allowed and the Trust agrees that this is appropriate. To take an example, a website or platform could allow searching of BBC content on its website / home screen alongside content from

other providers. A viewer could search for "Eastenders" and select the appropriate episode. At that point, they would be taken to the BBC aggregation product for the content to be played. The relevant programme would be selected, but not automatically launched.

To continue Rovi's analogy of the bookstore, the proposition is that there is a master index of all travel books, telling you which shelf each is on. You could choose to use the master index or (if you like a particular publisher) you can go straight to their shelf. The loss of amenity, relative to the alternative of having all books arranged by genre (disaggregation), is low.

The Trust notes that the BBC Executive is willing to offer metadata to other aggregators to ensure content is represented in search. The BBC could offer its metadata so aggregators can represent BBC content in search or generic lists or other more innovative ways of discovery enabling the aggregators to link to the BBC iPlayer website (much like search engines direct audiences to a whole variety of websites).

Provisional conclusions on viewer experience

We have considered and discussed the consultation responses of individuals, stakeholder organisations and the BBC Executive. These gave a wide range of views, which the Trust has fully considered. A report summarising these individual responses has been published alongside these provisional conclusions. While the individual responses are most helpful when assessed to provide qualitative information (rather than quantitative data), the responses can be broken down as follows:

- With regard to the 2656 distinct points made by the 1972 individuals who answered this question;
 - 53 % of the points supported the hypothesis that this was a good approach and/or the best way forward;
 - 17 % of the points disagreed with the hypothesis that this was a good approach and/or the best way forward;
 - The remaining 30% of the points did not have a clear position either way.

We have considered the arguments made by individuals and stakeholders against an aggregation strategy; including that it would:

- reduce reach of BBC content;
- result in higher costs to the BBC (and hence represent poor value for money);
- distort competition (this assessment is contained in the Competitive Impact Principle section after this summary);
- inconvenience users / give a sub-optimal experience.

We have also considered the arguments made by individuals and stakeholders in favour of an aggregation strategy; including that it would allow the BBC to:

- maintain prominence for BBC output to fulfil the Public Purposes;
- maximise reach and impact of the full range of BBC output;
- control public service context around the content – public space;
- maintain direct relationship with audience;
- provide better value for money by maximising the ability to exploit secondary rights;
- have the flexibility to pursue different strategies as the on-demand sector matures.

The BBC is a public service broadcaster committed to delivering the Public Purposes. The Trust has weighed up the various points made, and believes that the best way to fulfil these Public Purposes is by maintaining the BBC's role, not just as a creator of content, but also as a broadcaster. The Trust considers it is important to the delivery of the Public Purposes that the BBC maintains a direct relationship with audiences and maintains the prominence of its output, in order to maximise both its reach and its impact. If the BBC's full-length PSB TV content were made available fully disaggregated outside a BBC context and throughout the internet, its ability to fulfil the Public Purposes would in the Trust's view be heavily diminished. The trend is that on-demand will only become stronger as time goes on, so to pass the broadcaster role onto a commercial third party would not be laying the foundations for a strong BBC which is able to fulfil the public purposes in the on-demand world.

The Trust therefore concludes that the on-demand syndication policy should be updated to reflect that on-demand syndication of full-length PSB TV programmes should exclusively be within a BBC aggregation product (currently iPlayer).

Two existing agreements for syndication outside of BBC iPlayer, with Talk Talk TV and BT Vision, should become 'legacy' agreements; in order to be fair and consistent to other platforms, the Trust requires, if Talk Talk TV and BT Vision wish to continue syndicating BBC content on-demand, both platforms be migrated to BBC iPlayer as soon as practicable, and that these two agreements for syndication outside of BBC iPlayer with Talk Talk TV and BT Vision be terminated by 31 December 2012.

Competitive Impact Principle

The Trust has provisionally concluded in the previous section that the likely adverse impact on the market is justified by the likely public value gained through aggregation. In addition, the Trust must examine whether the aggregation approach is compliant with the Competitive Impact Principle (CIP), which requires the BBC "whilst always ensuring the fulfilment of its Public Purposes and taking into account its other obligations in the Charter and Agreement to endeavour to minimise its negative competitive impacts on the wider market".

The Trust notes a concern from stakeholders (especially IP Vision), that the aggregation of content (i.e. refusing to supply content without the BBC iPlayer wrapper) has additional market distorting effects that could potentially raise adverse market impact concerns, including:

- stifling innovation at a media player and platform level;

- foreclosing smaller competitors;
- reducing PSBs' incentives to syndicate.

Recognising the potential for negative competitive impact caused by some platform operators not being able to launch their own on-demand offerings incorporating BBC content, the Trust considered as an alternative approach in which BBC on-demand content was disaggregated, but at the same time the BBC would continue in parallel to develop and make available aggregation products for platform operators to adopt. We looked at whether any loss of public value through this approach could be minimised through elements including:

- ensuring quality of service, brand prominence and so on through service level agreements and licensing arrangements (in a similar manner to BBC Worldwide)
- protecting content through hosting on a BBC server (but allowing platforms and manufacturers to access it how they wish)

The Trust notes that such an approach could limit any negative market impacts by allowing platform operators greater freedom to adopt their preferred distribution strategy. However, the CIP requires the Trust to ensure that its syndication policy does not prejudice the fulfilment by the BBC of its Public Purposes. In our view, this alternative approach would adversely impact delivery of the Public Purposes. Above (see pages 13 and 14) we set out the BBC's six Public Purposes and explained why we consider that syndication helps to fulfil all of those Purposes. We then explained how the BBC, by applying (by analogy) scheduling techniques that have long been employed in the provision of linear channels, could use an aggregation-only policy in an on-demand environment to help continue the benefits of BBC control of the context of its content (e.g. to promote surprising and niche content, and retaining the direct relationship between the BBC and viewers).

The Charter tells us that our main activities should be the promotion of our Public Purposes through the provision of output that informs, educates and entertains our audiences.¹⁷ To do that effectively the BBC needs to maintain the prominence of its output, such as through a recognised user interface with ease of use and accessibility features. Such an approach also promotes our sixth Purpose: "helping to deliver to the public the benefit of emerging communications technologies and services" cannot be achieved simply by making BBC on-demand content available if the public cannot find it, and are not led to BBC content that they might not otherwise find or watch.

The Trust considers that, on balance, a disaggregation approach – whether alone or in parallel with the continued development of aggregation products – would jeopardise the fulfilment of the Public Purposes to too great an extent. As we concluded in the previous section, the potential negative market impact of the aggregation-only approach is justified by the potential public value generated by that approach, and those negative impacts cannot be further reduced without compromising the delivery of the Public Purposes. However, the Trust takes the competitive concerns around aggregation into account again in the next section, when deciding how to make the BBC aggregation product available to platforms in a way which is fair to all and minimises any negative market effects.

¹⁷ Article 5(1).

Platform policy – full length TV content

Approach taken to date

The BBC iPlayer was launched in December 2007, and has been refined and developed by the BBC to become widely accessible on many different platforms, including phones, games consoles and internet-connected TVs. The BBC developed a limited BBC iPlayer for Virgin Media, launched in May 2008.

The BBC has made its current HTML BBC iPlayer available to manufacturers to build into / make available on their products, and has promoted this highly scalable approach for device manufacturers and TV platforms. An example is the Cello iViewer range of TVs, which use the HTML product to allow access to the BBC iPlayer direct from their 'connected' TVs, launched at Christmas 2009.¹⁸

Since the BBC iPlayer has become widely implemented by platform operators and manufacturers, the BBC has not complied with requests by manufacturers to be allowed to build their own BBC iPlayer, or to make limited content packages available in a disaggregated way for manufacturers and online services to present within their VoD products. It has justified this with regard to the Public Purposes, product and editorial consistency and value for money.

At November 2010, the list of platforms / devices where the BBC iPlayer is available (taken from http://www.bbc.co.uk/iplayer/where_to_get_iplayer) was¹⁹:

TV / set top boxes	Mobile Phones	Portable Media Players
Virgin Media	Apple iPhone/iPod touch	Archos (various)
Freesat HD	Blackberry (various)	Creative (various)
Bush (1 model)	HTC (various)	Philips (various)
Cello TV (iViewer)	Nokia (various)	Samsung (various)
Goodmans (various)	Samsung (various)	Sony Walkman (various)
Grundig (various)	Sony Ericsson (various)	Games consoles
Humax (various)	Home Media Hubs	Nintendo Wii
Panasonic (various)	Linksys DMA2200	Sony Playstation 3

¹⁸ The Cello iViewer range of TVs is available from M&S, and consists of a TV, integrated Freeview receiver and integrated on-demand platform."

¹⁹ Each of these platforms accesses iPlayer via a browser or adapts the MHEG Freesat standard or, in the case of Virgin, has a bespoke version built so that iPlayer can be accessed via its EPG

Sagem Freesat+ PVRs	Netgear EVA8000	Computers
Samsung TVs (various)	Tablets	Linux
Sony (various)	Apple iPad	Mac
Technisat (1 model)		PC

Executive proposals

In order to achieve wide availability of BBC full length PSB TV content via BBC products (such as BBC iPlayer) across a range of platforms and devices, the BBC Executive proposes three elements;

- The BBC would increase its range of "standard" / "off-the-shelf" BBC iPlayer versions, from the current HTML version. The Executive have advised the Trust that the practical effect of this proposition would at present mean HTML, Flash application²⁰ and MHEG versions which could be adopted by many platform operators and manufacturers with little or no customisation
- Where a service provider could not use one of the "standard" product versions, it could apply to the BBC for the BBC to build it a bespoke version. The request would either meet a set of objective criteria (perhaps including forecast future subscriber numbers) and be funded by the BBC, or not meet them, in which case the BBC would expect to be reimbursed for the cost of development and ongoing maintenance.
- So-called 'self-build' of BBC products, i.e. development by a manufacturer of a product to access BBC content, designed in such a way as to meet BBC design guidelines, would not be allowed.

Stakeholder response

The stakeholder response on this issue has not been as extensive as it was on the question of aggregation, but there was nevertheless some useful input.

Some stakeholders felt there was insufficient detail laid out in the Executive proposals to allow them to make a full response. The Trust has considered this, and detailed the proposed approach that it is minded to approve in these provisional conclusions, and has decided to consult on these provisional conclusions so as to allow stakeholders a further opportunity to comment.

Many stakeholder organisations (leaving aside those who advocated solely a disaggregated approach), particularly consumer groups, favoured the approach whereby the BBC makes available a number of standard versions for service providers to incorporate into their products. They felt that this was the easiest way for the BBC to make its aggregation product(s) available to consumers. However, there was no consistent view on how the BBC should treat requests from service providers unable to

²⁰ In contrast to the current HTML browser version which uses a Flash plug-in, this Flash version represents a stand alone application which is a key component in the software for STBs (generally in its "Stagecraft" guise).

use these versions. It is possible that some service providers may not be able to use these versions, and in these cases the BBC needs a clear approach. This was not a point addressed by many of the stakeholder organisations who responded to our consultation.

A fairly representative example of the stakeholder organisation responses was Rovi's response;

"We are in favour of an approach that is providing a standard based (e.g. HTML) version of the "package" (e.g. [BBC] iPlayer), as long as it is available to every 3rd party. This is common in other industries, where standards allow for the reduction of support costs, while optimizing participation and innovation. For example, the mobile Internet access market didn't take off until carriers abandoned their proprietary web access systems (WAPs) for standards based platforms. It was just too expensive for Internet companies to create and maintain custom versions of their sites for each carrier. For customized versions of the [BBC] iPlayer the BBC Executive can define "rules". Audience reach seems to be an appropriate criterion."

Another stakeholder organisation expressed concern about the extent of, and the way in which bespoke aggregation product versions would be charged back to the service provider;

"... there is scope for partners to share costs with the BBC. Many partners are willing and able to resource some development costs, and such arrangements save BBC time and resources. Sharing costs as part of a normal commercial negotiation is one thing. But is it quite another for the BBC to charge back its costs in full to a third party in exchange for waiving their prioritisation criteria. It raises a number of obvious concerns about fairness and the scope for abuse."

The individual responses expressed a wide range of opinions. 1636 individuals responded to a question regarding the Executive's proposed approach involving developing "standard" products. A report summarising these individual responses has been published alongside these provisional conclusions.

A representative response from one who supported the proposal was;

"As a software developer, I think this is an excellent idea. If the job was given to me, then I'd probably look at developing a HTML5 version of [BBC] iPlayer, as by the time it has been completed there should be an enormous range of devices on the market that would support it." – Male 16 to 24

Several responses took the view that whilst this was not a perfect solution, it was perhaps the best one given the BBC's value for money remit.

"Ok, I guess. I can understand you can't make everyone happy and this option is the best for this case." – Female 16 to 24

However, other respondents felt strongly that the BBC should not be involved in building aggregation products, but instead should allow third party developers to "self-build" their own according to BBC design criteria;

"let other providers into the stream. let them worry about it. just maintain control with an approval process." – Male 25 to 34

1741 individuals responded to a question asking whether the BBC should be prepared to invest in developing special non-standard technology for other devices (i.e. those unable

to use the standard products) at the BBC's expense. A report summarising these individual responses has been published alongside these provisional conclusions.

Value for money was highlighted by a number of individuals;

"Most people have access to more than one platform, so developing for all platforms is a waste of money." – Male 35 to 44

"I think the manufacturers of other devices should bear the brunt of the cost, as it likely to benefit them rather than the BBC. However, the BBC should be prepared to be as helpful and useful as it can." – Female 16 to 24

However, concerns to make the aggregation products available as widely as possible were also highlighted;

"The public pay the licence fee (tax) and if a people are paying for the service they should be able to access the service on their preferred choice." - Male 25 to 34

Some individuals were concerned at how to define the "standard products" outlined in the proposals;

"You need a third option here as 'it depends'. How do you define standard? e.g. is Flash deemed 'standard'? Is HTML deemed 'standard'? If enough people use the system to make it worthwhile for the BBC to consider it, does it not de facto become 'the standard' or at least one of them? So generally I would say the BBC shouldn't waste money chasing every technology but on the other hand you need to define clearly what are the criteria for ruling them in/out." – Male 35 to 44

Trust consideration

In the previous section, we concluded that the BBC should syndicate only via a BBC controlled aggregation product because there is public value in syndicating in an aggregated packaged form and that this public value is likely to justify the potential adverse market impact of the proposed policy to syndicate in aggregated form (the exact market impact will depend on the platform policy). Given this, it is now necessary to determine how best for the BBC to develop a platform policy.

A few years ago, one technological model for on-demand platforms was based on push-VoD, whereby content had to be stored locally. This meant there would be a demand for BBC products which carried limited content. However, as technology has evolved, platform operators and manufacturers have migrated towards a "pull-VoD" model, with content only being downloaded / streamed at the time of viewing. For example, delivery of on-demand content to Sky's latest set-top boxes is based on progressive download using the IP connection to the box, in contrast to their previous pull-VoD boxes which relied on local storage.

While some parties might request limited content packages, this would run contrary to the provisional conclusion reached in the previous section. The Trust has therefore focused on "wide BBC PSB content" BBC aggregator products, as this offers the greatest public value (i.e. offering wide BBC PSB content has higher public value than offering limited BBC PSB content, all other things being equal).

Introduction

The BBC strategy review²¹ sets out that the BBC should prioritise content. This, implicitly, limits the amount that the BBC should invest in distribution. The BBC's approach to syndication needs to be positioned in the 'sweet spot' where it is able to invest in high quality content and to make that content widely and easily accessible in a range of ways to suit a broad range of audiences.

However, the market is complex and must be considered as a whole. The Trust is aware that there are a series of connected value chains within the market;

TV distribution technologies

- Digital Terrestrial Television
- Satellite
- Cable
- IPTV
- Others

TV platforms

- Freeview
- Freesat
- Sky
- Virgin
- Others

IPTV platforms

- Google TV
- Yahoo TV
- YouView (Canvas)
- Seesaw
- Others

Hardware manufacturers

- Humax
- Sony
- Samsung
- JVC
- Sharp
- Others

²¹ The Executive BBC Strategy review of February 2010, and the Trust initial conclusions of July 2010 are both available at the Trust's website http://www.bbc.co.uk/bbctrust/our_work/strategy_review/index.shtml

Mobile platforms

- Symbian
- Android
- Apple iPhone
- Windows Mobile
- Others

The Trust has therefore set out some principles / considerations to guide it in deciding the optimal BBC aggregation product distribution / development approach.

Trustee considerations

Wide availability

The aggregation approach outlined in the previous section means that the BBC aggregation product(s) become the only way to view full-length BBC TV content on-demand. It is therefore critical to design the policy such that the products are widely available on platforms and devices that are convenient to licence fee payers.

Value for money

The Trust is under a duty to ensure value for money for licence fee payers. While value for money does not equate to selecting the cheapest option without considering any other factors, the Trust should avoid making any commitments that would result in little incremental benefit.

Competitive impact

The BBC is under various legal and policy obligations with regard to the competitive impact of its actions. While it is obviously necessary to ensure that any policy is compliant with these, the Trust should also be careful that, more widely, the policy does not have a materially adverse effect on the development of the immature on-demand / IPTV market.

Ability of the BBC to evolve / innovate

It is important that the policy allows the BBC to innovate in the rapidly changing on-demand world. The number of versions of BBC aggregation products is clearly relevant to this. For example, it would be easier for the BBC to build the next generation of BBC iPlayer if it has the standard versions proposed rather than upgrading many more individualised versions: the Executive have estimated that as many as thirty such versions might be requested.

Clarity

The Trust is aware that some stakeholders have had concerns in the past about the transparency of the BBC's approach to on-demand content and aggregation product

versions. Some stakeholders have suggested that the BBC has initially supported certain approaches, only later to “arbitrarily” change approach. The Trust considers that it is critical that the new policy provide clarity, reassurance and consistency to all stakeholders. This may mean that the policy or guidelines need to be more detailed than in 2007.

Public value of aggregation

The Trust should ensure that the public value assessed in the previous section should not be compromised by the aggregation product policy (except where justified with regard to the competitive impact principle). For example, as explained in the previous section, a key characteristic that generates public value and delivers the Public Purposes is allowing the BBC to have a direct relationship with licence fee payers. An aggregation product policy which compromised this would reduce the public value and compromise delivery of the Public Purposes.

Operational viability

It is important that any policy decided by the Trust is operationally viable, without compromising other projects. In particular, it is important that the policy can be implemented consistently in practice; for example, any policy which risks commitments beyond the ability of the BBC to fulfil them should be avoided.

Principles in the existing Policy

With one exception, the Trust considers that the general principles set out in paragraph 15 of the existing Syndication Policy in substance remain valid, and we have concluded provisionally that (with some changes in wording to reflect current circumstances, including our provisional conclusion that an aggregation-only policy should be adopted) they should be retained. No stakeholder has suggested that they require major amendment. The exception is principle (c) in the existing policy, that “Subject to value for money and as technology allows, Content must be provided on a platform neutral basis”. In our view, the discussion in this current section deals with the subject of which platforms (and how) they should have access to BBC aggregator products.

Trustee decision

The Trust commissioned an external technical consultancy, Screen Digest, to examine how the Executive’s proposed approach might work in practice. Specifically, the Trust asked for an assessment of the extent to which the initial proposed versions (HTML, Flash and MHEG) would be useable by the majority of platform operators and manufacturers at the present time and as the market evolves.

The Trust considered that this external analysis²² supported the Executive’s suggestion that the versions would be widely useable by different types of platforms operators and manufacturers. The findings included that *“By 2014 the majority (99%) of connectable devices in UK homes will be technically capable, either out of the box or with modification, of receiving the big screen [BBC] iPlayer in one or more of its HTML*

²² Published alongside this document

(browser based), Flash or MHEG guises. Of these, 67% of the installed base will be capable of receiving the [BBC] iPlayer 'out of the box', while 32% will be devices that could receive the [BBC] iPlayer if the hardware platform was to be suitably modified."

With regard to platform operators, Screen Digest opined that both Virgin and Sky's latest set-top boxes are technologically capable of using a standard [BBC] iPlayer version, although some modification by the platform operators may be required.

The Trust considered that the first part of the proposal, of supplementing the current HTML BBC iPlayer with a number of further versions that could be used "off-the-shelf" by platform operators and manufacturers was strong in light of the criteria in the previous section. However, the Trust was concerned that the second part of the Executive's proposal, outlining the route for bespoke versions did not meet some of the criteria. In particular, the Trust was concerned that such an approach might not provide sufficient clarity or certainty for those in the market and might be viewed as unfair in the sense that the BBC would meet the development costs in some but not in all cases and, thus, difficult to administer in practice. The Trust was also concerned that the approach might not secure best value for money for licence fee payers.

In considering these provisional conclusions, the Trust also assessed an alternative to the Executive's approach with a view to overcoming these potential difficulties:

- i) The standard versions (i.e. supplementing the current HTML BBC iPlayer with a number of further versions that could be used by platform operators and manufacturers) would enable access to the BBC's on-demand content across a broad range of platforms and devices and would to a great extent fulfil Trust's expectation that BBC iPlayer should be widely available;
- ii) Requests for "bespoke" versions would generally be declined, but could be considered on an "exceptional" basis with a high public value requirement which must be met. The BBC would be reimbursed in full for the cost of development and ongoing maintenance.

The Trust considered that this alternative approach provided greater clarity to the market, and was less likely to be perceived as discriminating between some bespoke solutions which the BBC would fund and others which it would not. The approach would also make it easier for the BBC Executive to operate within a pre-determined budget and so would protect value for money for licence fee payers.

The Trust therefore considered the whole of this revised approach, which could be summarised in the following principles;

1. There is generally public value in the on-demand syndication of BBC PSB content;
2. To further the Public Purposes, full-length PSB TV content should generally only be made available on-demand within a BBC aggregation product (such as BBC iPlayer);
3. The BBC should develop a number of standard BBC aggregation product versions for platform operators and manufacturers to incorporate into their products:
 - a. This would initially consist of HTML, Flash Application and MHEG versions;
 - b. These versions could be supplemented by further versions, as appropriate to continue to maintain a range of non-bespoke versions that could be used by the majority of platform operators and manufacturers;

- c. Requests for “bespoke” versions, i.e. those not using the “standard” versions at a) or b) but tailored specifically to meet the specific requirements of a particular platform or device manufacturer, would generally be declined, but could be considered on an exceptional basis, with a high public value requirement which must be met. The BBC would be reimbursed in full for the cost of development and ongoing maintenance.

The Trust considered the approach against the principles / considerations outlined above.

Wide availability

As explained above, the Trust commissioned Screen Digest to examine how the Executive’s proposed approach might work in practice. Specifically, the Trust asked for an assessment of the extent to which the initial proposed versions (HTML, Flash and MHEG) would be useable by the majority of platform operators and manufacturers at the present time and as the market evolves.

The Trust considered that this external analysis supported the Executive’s suggestion that the versions would be widely useable by different types of platforms operators and manufacturers, and result in wide availability.

Value for money

The Executive have told the Trust that the cost of this approach, while greater than the current budget (largely due to increased take-up increasing bandwidth/distribution costs), would be achieved within existing service licence budgets.

The Executive also provided the Trust with cost-related information relating to bespoke versions, for the purposes of comparison. As noted above, this information cannot be published in full, because it is commercially sensitive.

If, hypothetically, the BBC moved to bespoke versions on selected platform partners, there would be both the potential for the introduction of a number of bespoke formats (e.g. Virgin Liberate) and the necessity for integration with third party content management systems. Depending on the technical complexity and scalability of the products, the BBC could decide to seek to fully charge-back an incremental bespoke version from the third party, or not – and that decision would determine the amount of the encoding costs falling to be met by the BBC. Each bespoke format could cost up to £0.5m p.a. to develop and maintain. The BBC would also ensure need to ensure fair treatment of allocation of its resources in particular markets.

Further, the BBC would likely reduce its internal spend on audience-facing technology development as it would no longer be the primary access point through which the majority of the audience accesses BBC content.

The BBC would increasingly over time cease to incur the internet protocol distribution costs for delivery as other platform providers would bear a greater proportion of the expense. An increasing number of bespoke formats would introduce a greater degree of variation between the user experience and functionality of the product, likely to curtail product consistency and move towards a disaggregated model over time.

Finally, as the number of third party providers increased, there will be corresponding governance, legal, negotiation and compliance related costs incurred by the BBC.

The Trust considered this information, and concluded that the revised approach (no bespoke versions) proposed represents good value for money. The Trust also considered three alternative approaches which would have a lower cost: to make available fewer versions; or to disaggregate content to third parties; or to allow manufacturers to self-build. The Trust considers that all three of these would compromise the public value created by aggregation²³ and accordingly would not represent better value for money than the revised approach proposed.

Ability of the BBC to evolve / innovate

This is similar to the previous point; the limited number of versions means that the BBC can innovate and roll-out new versions of aggregation products to meet the needs of licence fee payers. For illustration, it is much easier for the BBC to develop new features to meet the needs of licence fee payers if they need to be rolled out across three versions than if there were (say) ten versions.

Clarity

The Trust considers that this approach is extremely clear. Platform operators and manufacturers will be reassured that the versions proposed will be developed and maintained. They will also be clear that they should incorporate these versions, rather than requesting the BBC to build bespoke versions.

Negative market impact

The Trust acknowledges that this approach could have an impact on the market (see below under CIP for more details), but is satisfied that the public value outweighs the negative market impact.

Operational viability

The Trust has discussed the proposed approach with the Executive in order to determine whether it is operationally feasible. The Executive has advised the Trust that the approach proposed would be operationally strong. In particular, it avoids committing the BBC to developing many versions that would require high resource allocation.

Provisional conclusions on platform policy

The Trust recognises that the provisional conclusions drawn in the previous section, i.e. that full-length PSB TV content should only be available via BBC aggregation products, mean that it is essential to adopt a platform policy that serves licence fee payers while minimising the potential adverse market impact. The approach to date has been criticised

²³ We consider "self-build" in more detail in the competitive impact section

by some industry stakeholders for being opaque and arbitrary, with some platforms / service providers citing rapid changes in the BBC's approach to them.

The Trust assessed a number of possible approaches, but decided that the following approach best met the Trust's criteria and that the public value it represents outweighs the potential negative market impact.

The BBC should develop a number of BBC aggregation product versions for platform operators and manufacturers to incorporate into their products

- a. This would initially consist of HTML, Flash and MHEG versions
- b. These versions could be supplemented by further versions, as appropriate to continue to maintain a range of non-bespoke versions that could be used by the majority of platform operators and manufacturers
- c. Requests for "bespoke" versions, i.e. those not using the "standard" versions at a) or b) but tailored specifically to meet the specific requirements of a particular platform or device manufacturer, would generally be declined, but could be considered on an exceptional basis, with a high public value requirement which must be met. The BBC would be reimbursed in full for the cost of development and ongoing maintenance.

Competitive Impact Principle

The Trust has been mindful throughout its considerations that the BBC must endeavour to minimise its negative competitive impacts on the wider market, whilst always ensuring the fulfilment of the Public Purposes and taking into account its other obligations in the Charter and Framework Agreement.

In the previous section (on viewer experience), the Trust examined whether the aggregation approach is compliant with the Competitive Impact Principle (CIP). In this section, the Trust has provisionally concluded that the likely adverse impact on the market of its proposed platform policy is justified by the likely public value gained through it.

The Trust accepts its proposed platform policy could potentially have an adverse impact on the wider market in certain areas.

In particular, the Trust acknowledges that a limited number of platforms or manufacturers whose offering is already in the marketplace could potentially be disadvantaged relative to their competitors if they are unable to use a standard version. For example, platforms or manufacturers incorporating a browser (capable of using the HTML version) could have a potential advantage (by offering access to BBC content) over those who cannot use one of the "standard" versions. However, the Trust believes (based on the technical report) that both now and in 2014 there will be very few devices / platforms in the market which fall into this category.

The Trust considered a range of alternative possibilities which could potentially reduce this potential adverse market impact.

1. Disaggregate content to third parties. The BBC's impact on the competitive market could potentially be reduced if the BBC made all content available to third parties, thus eliminating the requirement for platforms or manufacturers to use a BBC

aggregation product (with the resultant risk of the BBC becoming a bottleneck). However, as discussed in detail in the first section, the Trust believes that this approach would significantly compromise the delivery of the BBC's Public Purposes.

2. Instead of offering standard versions, create bespoke aggregation product versions to all platforms or manufacturers who request at the BBC's expense. This proposal would ensure a 'level playing field' by providing all platforms and manufacturers with bespoke versions. However, it would be extremely costly and inefficient. The high cost would fail to secure value for money and would compromise the BBC's fulfilment of the Public Purposes.
3. Instead of offering standard versions, create bespoke aggregation product versions for all platforms or manufacturers who request and at the platforms or manufacturers expense. This proposal would ensure a 'level playing field' by providing all platforms and manufacturers with bespoke versions. However, it would be extremely costly and inefficient. The high cost would fail to secure value for money and could compromise the BBC's fulfilment of the Public Purposes, by diminishing the advantages to viewers of a recognisable and usable user interface with accessibility features.
4. Allow third parties to "self-build" their own versions (subject to BBC design criteria). Some stakeholders have suggested that self-build would allow:
 - a. Lower cost to the BBC (the BBC would not have to develop versions for each platform);
 - b. Greater availability of versions (each platform could build their aggregation product at the same time, rather than having to wait for BBC resources);
 - c. Focus on the core competencies of the BBC (i.e. the BBC could focus on making content and not distributing it).

The Trust has considered these points alongside those made by the Executive. These are that allowing self-build would:

- compromise the ability of the BBC to ensure quality. While in theory the BBC could revoke the licence, this would involve withdrawing the content from licence fee payers who would feel entitled to expect support for BBC iPlayer for the lifetime of the device (around 5-7 years);
- have a significant cost to the BBC to comply self-build activity and subsequent upgrade. It would also carry a risk to the BBC that third parties might spend material sums on development, be classed as non-compliant and either take legal action against the BBC or take an unauthorised product to market (incurring legal costs to the BBC and potentially requiring the BBC to 'turn-off' the BBC iPlayer to licence fee payers who bought the product in good faith);
- have limited demand (the Executive have told the Trust that the majority of platforms and manufacturers would prefer to use a "free" standard product) than have to develop one themselves. This is neither contradicted nor endorsed by the stakeholder responses the Trust has received; the organisational stakeholder responses focused on aggregation / disaggregation;

- not be practical; the BBC iPlayer is technologically more complex than a simple user interface and a flash player. The Executive have outlined that the BBC iPlayer is a complex product comprising an array of disparate functions including video ingest, transcoding of multiple formats, metadata management, rights management, media playout and bitrate optimisation. It requires broadcast quality robustness and expertise that does not routinely exist with set top box manufacturers for example.

Overall, the Trust considers that self-build would make it more difficult to ensure that users get a standard and consistent experience across platforms. This concern was mentioned by several individual respondents. It would also require a tightly controlled "type approval" system to be put in place.

Therefore, the Trust believes that allowing all platforms, proprietary and open, to self-build their own versions would significantly compromise the delivery of the BBC's Public Purposes. The Trust concurs with the Executive's proposals that self-build should not be permitted, but recognises that the standard versions need to be widely useable

Having considered the range of alternative platform policy possibilities, the Trust's view is that they could not be implemented without adversely affecting the delivery of the Public Purposes. The Trust does not therefore consider that any potential adverse market impacts of the proposed approach could be minimised further, without significantly compromising the fulfilment of the Public Purposes.

Syndication policy – all areas except full length TV content

Approach taken to date

The key areas not covered in the previous two sections include:

- Radio content;
- Editorially selected packages (including news clips);
- Short form content.

Radio content is currently available on-demand via downloadable unrestricted mp3 files (podcasts) and the BBC iPlayer.

A BBC news widget - news clips made available to newspapers to embed in their online sites - is an example of one of the BBC's editorially selected packages. The content is not made available in raw format to be aggregated by a third party, but rather embedded within a widget or player to ensure BBC branding and context. Specifically:

- The news widget is provided by the BBC;
- It is kept separate from other content on the platform or the website (e.g. advertising separation);
- The BBC seeks consistency in presentation through the widget;
- Content is served by the BBC in most cases, save where not possible;
- It is not possible to disaggregate the content within the product.

News content is also available outside of BBC sites via news feeds. News feeds allow users to see when websites (including BBC News) have added new content. Users can get the latest headlines and video in one place, as soon as it's published, without having to visit the websites the feed is taken from.

Short-form content (other than news) is very widely syndicated across many online locations. These are generally trailers or "teasers", intended to give a short "taste" of a programme, with the objective of encouraging a viewer to consume more full BBC content at a BBC location; for example, encouraging users to BBC.co.uk or BBC iPlayer or a BBC linear programme.

Executive proposals

The BBC Executive has proposed three amendments to the on-demand syndication policy and guidelines other than those relating to full length TV content syndication. They are copied below. In addition, they propose a continuation of the current news, short form content and radio content approaches carried out at present.

Separation of types of syndication

“The complexity of syndication issues, and in particular the variety of types of syndication, mean that a ‘one size fits all’ model is unlikely to be appropriate in future. In particular, there should be separate (though linked) approaches for aggregator products, linear channels, editorially selected content and promotional content.

New guidelines should adopt the framework contained in this paper for syndication activity and explicitly separate the various types of syndication in the guidelines” (BBC Executive submission).

Separation of linking and metadata from syndication policy and guidelines

“Currently, the guidelines are wide ranging, including similar governance for links and metadata as for more substantive content. We believe this is inappropriate, overly restrictive and combines different issues in one regulatory framework. Linking and metadata should be decoupled from the syndication guidelines and governed separately.

Adopt separate guidelines for linking and metadata, outside content syndication guidelines” (BBC Executive submission).

Accountability

“Make clear the process and accountability for syndication within the BBC – setting up a single address for external enquiries.

The existing structure of six monthly updates to the Trust allow the Executive to report effectively and frequently to the Trust on the progress of plans in each area. We propose this remains the case and all other decisions that do not affect service licences are dealt with by management on a regular basis. The Trust will have ample time to engage with the issues at each six monthly update. Of course, the Executive will still be bound by standard requirements around competitive impact and the principles of syndication, but would be able to launch compliant syndication activity without lengthy delay.

Retain the six monthly update as the primary vehicle for Trust supervision” (BBC Executive submission).

Stakeholder responses

The majority of stakeholders focused on the other elements of the proposals regarding full length TV content. Consequently, this area did not receive strong stakeholder responses. Some stakeholders have interpreted references to editorially selected packages as referring to full length content. However, the Trust is content that full length content has been considered in the previous sections. The Trust does not consider full length content to fall within “editorially selected packages”.

Some stakeholders queried as to why linking and metadata need to be treated separately. We consider this point in the next section.

Provisional conclusions

The Trust is concerned to make sure that the current policy maximises the delivery of the Public Purposes and value for money, and is consistent with the provisional conclusions in the previous two sections.

The Trust has considered the nature of the radio medium, and the less restrictive approach taken by the Executive to on-demand radio content. The Trust considers the differences in the Executive's approach reflect the different usage pattern of radio. Radio is commonly used in a mobile environment, such as on an MP3 player, and so the maximisation of public value leads to a less restrictive approach than full length TV content. The reach lost through restricting radio to aggregation products would be likely to be much greater than any public value gained. The Trust is therefore content for the Executive to continue its on-demand approach to radio content, without setting any new restrictions. The Trust notes, however, that usage patterns are constantly evolving and that TV and radio usage patterns may evolve in the future; that is why the Trust has explicitly recommending revisiting the policy if, in the view of the Trust, the environment materially changes.

The Trust has considered the Executive's current approach with regard to editorially selected bundles and short-form content. The Trust considers that these have the potential to offer public value, and it is an operational matter for the Executive to decide these on a case by case basis.

With regard to the first two of the Executive's proposals, the Trust considers that these are designed to simplify, clarify and streamline the policy and guidelines. The Trust considers that linking and metadata are not "syndication of content" within the normal usage of the phrase. This on-demand syndication policy is not intended to cover all BBC online activity, but is limited to the syndication of BBC PSB on-demand content. The removal of these two elements will simplify and clarify the policy and guidelines, and reduce the need to use a generic / one-size-fits-all approach.

We consider that an elaboration of the first point is also appropriate – the on-demand syndication policy should be in two parts; full length TV on-demand content syndication and other on-demand syndication. This will eliminate the confusion that can arise when attempting to create a single policy which covers many disparate areas.

The third Executive proposal suggests no change to the six monthly reporting mechanism. This delegates day-to-day syndication activity to the Executive, providing that it is compliant with the on-demand syndication policy & guidelines, other BBC policies and guidelines and external law. We believe that this is appropriate; in addition to the six monthly reporting, the Executive is required by the policy 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.

With one exception, explained in the previous section, the Trust considers that the general principles set out in paragraph 15 of the existing Syndication Policy in substance remain valid, and we have concluded provisionally that (with some changes in wording to reflect current circumstances, including our provisional conclusion that an aggregation-only policy should be adopted) they should be retained. No stakeholder has suggested that they require major amendment.

Provisional Conclusions

We were pleased by the strong level of responses to the on-demand consultation. Thirteen organisations and approximately two thousand individuals gave their views, and we are grateful for the help this gave us in reaching these provisional conclusions

One key point arising from the stakeholder responses was that some of the 'catch-all' terminology used by the Executive was too vague. As an example, whether by 'editorially selected packages' the Executive was referring to clips or full length PSB TV content. The responses made clear that it is full length PSB TV content that is of high interest to stakeholders. We have therefore concentrated our consideration on this, and presented our emerging conclusions in three main elements:

- Viewer experience with regard to full length PSB TV content (predominantly aggregation versus disaggregation);
- Platform policy with regard to full length PSB TV content (predominantly how to make BBC aggregator products available);
- Areas other than full length PSB TV content.

Viewer experience (full length PSB TV content)

We have considered and discussed the consultation responses of individuals, stakeholder organisations and the BBC Executive. These gave a wide range of views, which the Trust has fully considered. A report summarising these individual responses has been published alongside these provisional conclusions. While the individual responses are most helpful when assessed to provide qualitative information (rather than quantitative data), the responses can be broken down as follows:

- With regard to the 2656 distinct points made by the 1972 individuals who answered this question;
 - 53 % of the points supported the hypothesis that this was a good approach and/or the best way forward;
 - 17 % of the points disagreed with the hypothesis that this was a good approach and/or the best way forward;
 - The remaining 30% of the points did not have a clear position either way.

We have considered the points made by stakeholders against an aggregation strategy; including that it would:

- reduce reach of BBC content;
- result in higher costs to the BBC (and hence represent poor value for money);
- distort competition;
- inconvenience users / give a sub-optimal experience.

We have also considered relevant factors in favour of an aggregation strategy, including that it would allow the BBC to:

- maintain prominence for BBC output to fulfil the Public Purposes;
- maximise reach and impact of the full range of BBC output;
- control public service context around the content – public space;
- maintain direct relationship with audience;
- provide better value for money through exploitation of secondary rights;
- have the flexibility to pursue different strategies as the on-demand sector matures.

The BBC is a public service broadcaster committed to delivering the Public Purposes. The Trust has weighed up the various considerations, and believes that the best way to fulfil these Public Purposes is by maintaining the BBC's role, not just as a creator of content, but also as a broadcaster. The Trust considers it is important to the delivery of the Public Purposes that the BBC maintains a direct relationship with audiences and maintains the prominence of its output, in order to maximise both its reach and its impact. A BBC whose full-length PSB TV content is available fully disaggregated outside of BBC context and throughout the internet, is a BBC whose ability to fulfil the Public Purposes is heavily diminished. The trend is that on-demand will only become stronger as time goes on, so to pass the broadcaster role onto a commercial third party would not be laying the foundations for a strong BBC which is able to fulfil the Public Purposes in the on-demand world.

The Trust has considered the public value gained through an aggregation approach, and decided that there is significant public value generated. The Trust assessed the potential adverse market impact, and how this should be minimised (in particular by developing a policy that provides BBC iPlayer versions in a fair and equitable way). The Trust has also assessed alternative approaches designed to further reduce adverse market impact, but concluded that these would compromise the fulfilment of the Public Purposes.

We therefore conclude that we should update the on-demand syndication policy to reflect our conclusion that on-demand syndication of full-length PSB TV programmes should be within a BBC aggregation product (currently BBC iPlayer).

Two existing agreements for syndication outside of BBC iPlayer, with Talk Talk TV and BT Vision, should become 'legacy' agreements; in order to be fair and consistent to other platforms, the Trust requires, if Talk Talk TV and BT Vision wish to continue syndicating BBC content on-demand, both platforms be migrated to BBC iPlayer as soon as practicable, and that these two agreements for syndication outside of BBC iPlayer with Talk Talk TV and BT Vision be terminated by 31 December 2012.

Platform policy (full length PSB TV content)

The Trust recognises that the provisional conclusions drawn in the previous section, i.e. that full-length PSB TV content should only be available via BBC aggregation products, mean that it is critical to adopt a platform policy that serves licence fee payers while minimising the potential adverse market impact. The approach to date has been criticised by some industry stakeholders for being opaque and arbitrary, with some platforms / service providers citing rapid changes in the BBC's approach to them.

The Trust assessed a number of possible approaches, but decided that the following approach best met the Trust's criteria.

The BBC should develop a number of BBC aggregation product versions for platform operators and manufacturers to incorporate into their products:

- a. This would initially consist of HTML, Flash and MHEG versions;
- b. The versions could be supplemented by further versions as appropriate to continue to maintain a range of non-bespoke versions that could be used by the majority of platform operators and manufacturers and subject to any assessment required by the Trust. Should the BBC evolve and develop further aggregation product versions in future, these must be made available to platform operators, manufacturers and other stakeholders on the same basis as existing products.
- c. Requests for “bespoke” versions, i.e. those not using the “standard” versions at a) or b) but tailored specifically to meet the specific requirements of a particular platform or device manufacturer, would generally be declined, but could be considered on an exceptional basis where the stakeholder is unable to adopt a standard aggregation product. When determining whether this is appropriate, the BBC might take into account factors including: public value; the impact on the wider market; the ability of the BBC To fulfil its Public Purposes; and value for money. The BBC should be reimbursed in full for the cost of development and ongoing maintenance where it agrees to build a bespoke version.

Syndication policy – all areas other than full length TV content

The Trust recognises that content other than full length TV content has a different public value proposition. The Trust considered the three main types of this content:

- Radio content;
- Editorially selected packages (including news clips);
- Short form content (primarily trailers / promotional material).

The Executive have proposed, in essence, a continuation of the current approach. Radio content is made available via podcasts; news is currently available as an editorially selected package; and short form content is widely available in a disaggregated form.

The Trust has considered these forms of content, and does not consider that there is a public value argument for the Trust to set principles or limitations on the syndication of this content other than to require that syndication arrangements are made in accordance with the principles set out in the draft policy in respect of these forms of content.

The Executive also proposed three changes to the current policy and guidelines. This included removing “linking and metadata” from the consideration of this policy and guidelines; explicitly separating aggregator products, linear channels, editorially selected content and short form content; and retaining the six monthly review as the primary Trust reporting mechanism. The Trust considers that these changes are appropriate, and endorses them.

Next steps

This document represents the Trust's provisional conclusions, and is accompanied by a draft policy. Some stakeholders have raised concerns that the Executive proposals (and hence original consultation) were 'vague', 'arbitrary', 'confusing' and 'insufficiently detailed'. The Trust has listened to these concerns, and in direct response to this has decided to consult on these provisional conclusions in order that stakeholders have the opportunity to comment on the detail of the approach that the Trust is minded to approve.

The consultation will last for four weeks, opening on 12 January 2011 and closing on 9 February 2011. Responses should be sent via email to the Trust at Syndication.Review@bbc.co.uk. We ask that all responses indicate whether the response should be treated as confidential by the Trust (whether in whole or in part), or can be published.

Once the provisional conclusions consultation has closed, the Trust will review the responses and consider if it is appropriate to make any changes to the provisional conclusions and draft policy. The Trust will be particularly interested to see the views of the platform operators with regard to the Screen Digest report. The exact timing of the next step in the assessment will depend on the responses, but is likely to be early in 2011.

The final policy will come into force immediately on its publication (likely to be early to mid 2011). It will supersede the current policy and guidelines, (subject to any necessary transitional period, such as to allow existing arrangements to make the transition to terms consistent with the new policy, where appropriate) and the Trust will ask the Executive to submit a new set of guidelines for Trust approval. These guidelines must follow the approach, logic and principles set out in the Trust's final conclusions and final policy. The Trust has intentionally put a considerable amount of detail into its provisional conclusions so that the Executive and stakeholders shall understand its expectations. Providing the guidelines proposed are in line with this, the Trust does not propose to consult on the guidelines. This is because the Trust considers that stakeholders will have had a good opportunity to submit their views on the proposed approach to syndication during the Trust's two consultations.