

BBC'S RELEASE POLICY
FOR SECONDARY TELEVISION AND COMMERCIAL VIDEO-ON-DEMAND
PROGRAMMING IN THE UK

CONTEXT

Under the BBC's Code of Practice for the BBC's dealings with Independent Producers for Television Programmes Commissioned by the BBC and the associated BBC Terms of Trade, when commissioning a programme from an independent producer, the BBC acquires an exclusive licence in the UK television market for the period of its primary rights licence. In addition, to enable the BBC to protect its investment and rights in the programme an independent producer must secure the BBC's consent to the exploitation of any commercial video-on-demand rights (excluding Commercial Download Rights as defined in the General Terms, which are "download to own" rights) in the UK during the BBC's licence period.

The BBC will consent to the release of a programme into the secondary television and commercial video-on-demand market (both pay-video-on-demand and subscription video-on-demand) during that period where it considers that further exploitation of the programme in the UK by the exercise of such rights would not conflict with the rights it has acquired and the investment it has made.

This release policy explains the circumstances where the BBC would be prepared to consent to the exercise of these rights in a programme in the UK during its licence period, in order to enable independent producers to exploit rights in the secondary television market and commercial video-on-demand market in the UK during the BBC's licence period.

The aims of the BBC's release policy are to:

- Ensure that the BBC maximises full public service use from its programming
- Support the whole BBC portfolio of channels
- Ensure Value for Money
- Protect Programme Brands, in particular those brands that have a cross channel life and brands which are core to the channels' and schedules at the time
- Where possible, to enable independent production companies to exercise their exploitation rights in the UK secondary market prior to the expiry of the BBC's primary licence
- Ensure the same principles relating to release apply consistently irrespective of which company is distributing the rights in the BBC commissioned content.

The policy is organic and it may therefore evolve and change over time in response to changes to the channel environment and market conditions. As such, it will be reviewed and updated regularly and published on the BBC commissioning website (www.bbc.co.uk/commissioning/structure/terms_trade.shtml). The BBC will also keep the operational workings of the policy under review.

BBC's Release Policy in the UK Secondary Television and Commercial Video-on-Demand Market (pay VOD and subscription VOD)

1. Windowing Policy - Introduction

Where the rights holder in a programme made for the BBC (whether by an independent producer or an in house production department) is interested in exploiting the secondary UK television or commercial video-on-demand rights in their programme, in order to protect the BBC's rights and investment in the programme, the following standard policy will apply to the majority of such programmes which will be implemented in the manner outlined in section 3 below.

The standard policy may vary in certain circumstances such as:

- (a) For a very small number of channel defining non-returning programmes (which will be identified as such ahead of first BBC transmission) where the BBC wants to retain its exclusivity for a period longer the standard windows as set out below.
- (b) Where a programme features an artiste or presenter with whom the BBC has an exclusive arrangement or is part of an exclusive rights deal between the BBC and a third party, particular considerations may apply to the release of any programming in the UK to safeguard the BBC's investment. Please contact the relevant business head to discuss any particular conditions of release in these circumstances.
- (c) Where a programme cannot be rebroadcast, for example due to complaints or the sensitivity of the subject matter.
- (d) Where the BBC does not own the rights to the underlying rights in the programming in the UK secondary market (eg sports programming).
- (e) Where the BBC is the rights holder in the programme and does not wish to exploit the programme commercially.

2. The BBC's Exclusive Windows

The Code of Practice gives the BBC the right to an exclusive 5 year licence in the UK television market, with an option to renew for a further 2 years.

The length of the BBC's initial window of exclusive UK broadcasting is set out below by channel and genre:

- (a) For those non-returning programmes that do not fall within paragraph 1(a) above:

Programming Type	EXCLUSIVE WINDOWING PERIOD	
	BBC ONE & TWO	BBC THREE & FOUR inc Co-Commissioned Programmes
Comedy	6 months	2 yrs
Drama	6 months	18 months
Entertainment	6 months	1 yr
Leisure/lifestyle	6 months	1 yr
Specialist/Arts	6 months	2 yrs
General Factual	6 months	18 months
Children's	5 years	5 yrs

For the avoidance of doubt, where the programme is a series, these windows are calculated from first BBC transmission of the last episode of the series.

After the exclusive windowing period set out above, the programme may be released in accordance with this Policy.

- (b) For returning series:

- (1) The standard release policy for a returning series will be to allow release of a first series after transmission of the last episode of the third series of that programme on BBC channels and continuing alike for further series i.e. series 1 will not be sold into the UK secondary television or commercial VOD market until after series 3 has finished transmitting on the relevant BBC channel; series 2 will not be sold before series 4 has finished transmitting, and so on. Upon eventual decommission of a returning series, all series may be released into the UK market after expiry of the relevant standard window of the last series (as set out in the table above).
- (2) In the case of the first series of a possible returning series the independent production company may apply for consent to release the holdback to the secondary market upon the earlier of (i) decommission of the programme or (ii) the end of the relevant standard holdback window. Where the programme has been re-commissioned within these time frames the principles in (1) above will apply and the first series may be released into the market when series 3 has finished transmitting on the relevant BBC channel etc. NB If the re-commissioning decision has not been made within this standard relevant holdback window, the BBC's right to re-commission the programme in accordance with the terms of the production agreement nevertheless continues to apply.

3. Operation of the Release

Upon first transmission of the programme by the BBC, the relevant rights holder in the programme may request the BBC's consent to the release of holdback, and such request will be considered by the BBC in accordance with the above principles.

Any request must be made to the BBC* in writing and must set out the following information:

- The proposed licensee
- The proposed start date of the licence; proposed licence period; and proposed number transmission days
- The date of the first BBC transmission of the final episode of the programme
- The relevant Holdback window
- The proposed scheduling by the secondary channel (if known)

Consent will be given in accordance with the terms in 2 above unless the programme falls within the circumstances described in any of 1(a) to (e) above.

N.B. The consent which is granted by the BBC must be obtained in writing (and to this end the BBC commits to give that consent in writing) and, if given, will be subject to compliance by the independent producer with:

- (a) the warranties given to the BBC under the terms of its production agreement in relation to the exercise of such rights (copy attached hereto at Appendix 1 for ease of reference),
- (b) due and proper accounting to the BBC of the enhanced net revenue share as provided for under the terms of the relevant production agreement in relation to such exploitation; and
- (c) the BBC's requirements set out in its written consent in respect of:
 1. Its right to approve any scheduling of the programme on the secondary television channel; and
 2. Its rights to approve any promotion and/or marketing of the programme.

(as referred to in the relevant warranties contained in the programme production agreement and annexed hereto as Appendix 1).

* The relevant BBC contact for these purposes is as follows:

- For programmes distributed by BBC Worldwide: The BBC Planning and Portfolio Manager
- For all other programmes, to the BBC Business Affairs Manager who dealt with the commission of the programme

Acceptable licence terms to be granted to a licensee upon written confirmation of BBC consent are as follows:

1. UK secondary television market:

- Licence period:

The BBC would expect the licence period to be tailored according to the number of episodes of a programme being licensed, to be typically as follows:

1 episode:	12-18 months
2-14 episodes:	2 years
15-50 episodes:	3 years
>50 episodes:	4 years

- Number of Transmissions Days:

Factual programmes:	Maximum of 9 Transmission Days
Entertainment and Drama programmes:	Maximum of 6 Transmission Days

where a Transmission Day is 4 transmissions per 24 hours, including genuine time shift channels (where the programme is transmitted less than 6 hrs after first TX). So for example, a transmission on Channel and Channel+1 would use 1 Transmission Day and 2 transmissions. Transmission on a multiplex channel (i.e. different channel owned by the same broadcaster) would be 2 Transmission Days.

2. Commercial VOD market:

In granting commercial video-on-demand rights to licensees, the BBC would expect any individual licence to be between 6-12 months. Licences should not be granted for over 12 months. It is accepted that licences can be granted to more than one VOD operator at a time, however, the BBC expects in any period of 18 (eighteen) months there will be at least a period of 6 (six) months when the content will not be available via these commercial VOD platforms and independent producers are expected to manage their licensing arrangements accordingly. The BBC recognises that this is a new market and we will have to keep these arrangements under review.

The BBC will treat all requests under this policy fairly and will work in a timely fashion to assist the rights holder in the programme in maximising potential commercial opportunities.

4. Release Before the Expiry of the Standard Windows:

- 4.1 The BBC may be prepared to release a returning series earlier than the period identified in paragraph 2(b) above in certain circumstances. Returning series which are eligible for early release (and the exclusive window which will apply to the programme in that instance) will be identified ahead of first transmission at a quarterly scheduling meeting, chaired by the Director of BBC Vision, and notified to the relevant rights holder. Early release is at the absolute discretion of the BBC but will be considered where the BBC determines that release would not undermine the longevity of the programme brand or inhibit the BBC from maximising its public service value in the programme. There are certain programme types where returning series are more likely to be considered for earlier release than others, such as topical programmes; chat shows; daytime factual series; and long-running series. Where a returning series has already had a different precedent of release applied to 2 or more preceding series, the BBC will continue to apply the same release approach save in exceptional circumstances.
- 4.2 Exceptionally, the BBC may be prepared to release one-off programmes or series before the standard windows have expired – at the BBC's absolute discretion. Earlier release to any broadcaster/channel which satisfies necessary conditions of release may be permitted in the following circumstances:
- (a) where the BBC considers that full public service use has been made of the programme in question;
 - (b) where the channel to which it is proposed the programme is licensed has charitable objects;
 - (c) where the channel to which it is proposed the programme is licensed has objects commensurate with BBC's educational public service remit.
- 4.3 In the event that the BBC is prepared to consider releasing programming earlier than is set out in the standard windowing policy as referred to in paragraphs 4.1 and 4.2 above, the BBC and the relevant rights holder shall conduct a commercial negotiation in relation to the share of net revenue payable to the BBC in return for an earlier release of such rights. Such share of net revenue would only apply to any sales where the licence period relating to the sale(s) commences during the period of the early release, thereafter the standard share in respect of the release of programming in accordance with this policy would apply.

5. Review of the policy

The BBC will regularly review and update this policy over time in response to changes to the channel environment and market conditions.

APPENDIX 1

Warranties given to the BBC under the terms of the programme production agreement:

In the event that the BBC in its absolute discretion grants its prior written consent pursuant to General Term 12.8.2 and/or General Term 16.2.3, the Producer agrees that such consent is given on the basis that the Producer hereby warrants and undertakes to the BBC that:

- (i) it shall comply with any scheduling and/or marketing approvals required by the BBC as a condition of granting its consent and set out in the written consent;
- (ii) it shall not grant any rights in relation to the number of Transmission Days (for linear broadcast) and/or applicable licence period (for both linear broadcast and commercial on-demand offerings) in excess of the standard levels set out in the BBC's Release Policy as published at the date that the request for the relevant consent is made;
- (iii) it shall not grant any rights to any other Public Service Broadcaster (whether in relation to their main or subsidiary services) where a Public Service Broadcaster is ITV, Channel 4, Channel FIVE and/or S4C;
- (iv) any proposed licensee or its services shall be either regulated by Ofcom or warrants to fully adhere to the Ofcom Broadcast Code and associated guidelines (including any watershed policies) in respect of, for the avoidance of doubt, both linear broadcast and commercial video-on-demand offerings;
- (v) the association of the Programme with the proposed licensee shall not infringe any BBC Guidelines as published at the date of the request for consent, or otherwise damage the reputation of the Programme or Programme brand or the BBC;
- (vi) the proposed licensee has not in the past breached the conditions attached to any similar licence of rights from the Producer;
- (vii) in exercising any television rights in the Programme in the UK during the Licence Period the Producer shall procure (i.e. include an appropriate provision in its contract with the Secondary Channel/licensee, hereinafter "Procure") that any proposed transmissions of the Programme by the proposed licensee shall be approved in advance in writing by the BBC, i.e. the Producer will Procure an obligation on the licensee to obtain approval of the transmission pattern it is proposing from a named BBC scheduling contact, giving them *at least* 5 (five) working days' notice;
- (viii) it shall Procure that no off-air marketing or publicity materials used by the Producer or licensee shall refer to any on-air programme sponsor;
- (ix) either it or the licensee shall be fully responsible for clearing all associated underlying rights (including music) to enable the licensee to freely exercise the rights granted to it by the Producer;
- (x) if the Programme is a consumer or business programme, there shall be no sponsorship of the Programme itself in the exercise of such rights;

- (xi) it shall Procure that any licensee of the Programme undertakes to remove the Programme from its services at any time upon written requirement from the BBC or the Producer that (a) there has been a complaint regarding the Programme either upheld or partially upheld by the BBC's Editorial Complaints Unit; and/or the Governor's Programme Complaint Committee; and/or OFCOM (b) legal reasons exist to prevent re-use of the Programme; and/or (c) exceptional reasons exist to require such action;
- (xii) it shall Procure that the licensee will collaborate with the Producer to enable the Producer to fulfil its obligations to the BBC as appropriate in accordance with General Term 13.2;
- (xiii) it shall Procure that the BBC branding on the Programme as required in accordance with General Term 16 (which includes by reference relevant BBC Guidelines) shall be retained by any licensee in the exercise of such rights;
- (xiv) the Programme will not be promoted, edited, transmitted or used (e.g. urls/additional credits) in any way which could bring the BBC or the Programme into disrepute and/or impair the Programme's quality, meaning or integrity and/or reduce the running time by more than 10% except where necessary to fit the standard slot lengths of the Licensee's transmission schedule; and
- (xv) it shall give due consideration to potentially sensitive contributors (including without limitation and by way of example only, victims of crime, children, old footage that may cause embarrassment or concern to the contributor when shown later in time, those discussing trauma or intimate personal revelations etc) when re-using/reversioning Programme material and acknowledges that any Programme material featuring such contributors needs to be treated with appropriate sensitivity and will pay due regard to the effect of any re-broadcast on the contributor over time, to the extent that it may be necessary to go back to such contributors prior to selling the Programme into the secondary market **and** it shall ensure that where the Programme contains sensitive or controversial subject matter including intimate personal information and/or features member(s) of the general public in any key narrative contained in the Programme, the Producer shall (a) have ensured that its contributor release forms make it clear that the Programme is owned by the Producer and may be sold in due course to other broadcasters as well as the BBC and (b) prior to any sale of the Programme the Producer shall ensure that all appropriate permissions have been obtained prior to such uses being made, and on request by the BBC to produce to the BBC evidence of such permission(s).

Further information is available:

<http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/accuracy/useoflibrarymat.shtml#>

<http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/privacy/revisitingpaste.shtml>

<http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/privacy/useoflibrarymat.shtml>