Robin Foster and Tom Broughton

PSB prominence in a converged media world

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Foreword

The BBC exists to inform, educate and entertain with great content and services available to everyone. The last part of this mission, remaining universally available, is increasingly challenging given the proliferation of technologies and devices on which licence fee payers expect to be able to receive BBC content. Technologies and devices that, whilst offering fantastic new functionality and creative opportunity, require new and often expensive efforts to distribute to and through. The BBC's universal mission means that it cannot pull up a drawbridge and rule-out new distribution methods, but must instead become even more fleet-of-foot in operating across them. Similarly, Public Service Broadcasting (PSB) as a category must, well beyond the BBC, find new ways to stay prominent. The best way of doing this is to maintain and wherever possible improve the quality of output. Certainly, an emphasis on quality continues to drive the BBC's entire strategy and budget.

Whilst quality may be the best protection of PSB prominence, successive UK governments have supported this with regulation to make sure that it is not eroded by commercial or other pressures (a decision that fully reflects audience preferences). Increasingly this pressure is coming from changing technologies and the related commercial interests behind them. We therefore welcome the findings of this report, which the BBC commissioned from Communications Chambers to independently examine what if any action should be taken in response. In short: how to ensure that due prominence protections keep pace with, or at least do not fall too far behind, new and fully digital media.

John Tate
Director, Policy & Strategy
BBC

PSB prominence in a converged media world

This report

This report has been commissioned by the BBC as a contribution to the debate about the future of prominence regulation in the UK. The opinions expressed are those of the authors alone.

About the authors

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Communications Chambers is an association of leading experts in the fields of communications, media and technology. Its founders have all worked at senior levels in the industry or regulation, in addition to having many years of consulting experience.

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Executive summary

The importance of prominence

The success of public service programming depends not just on producing high quality distinctive content, but also on making sure as many people as possible actually watch it. In turn, this means that programming should be widely available and easy to find.

Public Service Broadcasters (PSBs) need to use all their available tools and techniques to encourage audiences to extend their horizons beyond the programmes they know they like to those which will surprise and enlighten them, and the regulatory framework – where feasible - needs to help them in this challenge.

In the multi-channel linear broadcasting world, "prominence" rules, overseen by Ofcom, have played an important part in that process – ensuring that the main PSB TV channels have appeared at or near the top of all the main electronic programme guides (EPGs). The importance of these rules to commercial PSBs is recognised by Ofcom, which notes that "the principal benefits associated with the (Channel 3 and 5) licences are the right to gifted DTT capacity and the right to appropriate EPG prominence"[1].

Research for the BBC[2] shows that the EPG is the most common way for people to find out what they want to watch on TV. The main PSB channels typically occupy the first slots in a guide, and audiences often turn to them first when choosing their viewing. They still account for over half of all viewing, and are responsible for over 80% of all UK investment in original programming[3].

Challenges posed by a changing world

In a converging media world, however, traditional patterns of content delivery and consumption are changing:

- Content will be consumed through catch-up and on-demand services as well as conventional linear broadcasts

- New content providers are entering the market, further reducing the "shelf-space" assigned to services or programmes from public service broadcasters

- New content gateways[4] – IPTV services, connected TVs and other devices are emerging

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[1] "Licensing of Channel 3 and Channel 5", Ofcom, May 2012
[2] IpsosMORI for the BBC, online survey, November 2012, 1098 nationally representative UK adults
[3] Communications Chambers, based on data in Ofcom Communications Market Review, 2012
[4] In this report, we use the term "content gateway" to describe any entity which acts as an intermediary between audio-visual content providers (e.g. broadcasters) and end users (audiences). Gateways typically bring together, select and organise a range of content providers (and their individual programmes) and provide an interface (such as a guide or menu) through which users can discover and access that content. They could include TV platforms (like satellite, cable and IPTV), devices (like connected TVs and games consoles) or over-the-top services.

- Conventional programme guides and menus are being joined by new ways of presenting and promoting content to users. Consumers can choose to use features which push or suggest content to them, or to use "search" functionality which lends itself to more active programme choices.

In the medium term, these new developments are likely to complement rather than replace the main existing broadcast-based platforms and programme guides, offering new ways for users to find the content they want to view.

With their established brands, customer relationships, and evolving service propositions, existing content gateways like the Sky and Virgin satellite and cable services are likely to remain central to UK delivery and consumption of high quality, long-form audio-visual content, although an increasing share of that consumption will be taken by the catch-up and on-demand services they offer.

In the longer term, non-traditional content gateways, whether based in the UK, EU or further afield, could account for a rising share of the market, especially for viewing outside of the living room.

The risks are threefold:

- The commercial priorities and goals of the new content gateways will often collide with the UK's continuing public interest in achieving a high profile for and high consumption of public service content. Because of its regulatory framework and universality obligations the BBC, for example, is unable to enter into exclusive or commercial deals with gateways to secure prominence for its public service content or services.
- The new types of guide used by each gateway may reduce the visibility and power of public service brands, transferring control of content discovery from the broadcaster to the gateway, and making it harder for users to find public service content which they might value.
- Content "shelf space" may be filled by many more genre-specific or demographically targeted services and brands that can compete commercially for slots, crowding out the limited number of general interest PSB brands.

In this changing environment, securing prominence for public service programming is, if anything, even more important than it has been to date, but none of the new gateways and guides will be covered by existing prominence rules.

Proposals for action

To secure an appropriate level of prominence for PSB in future will require an updating of existing legislation. We suggest a twin-track approach:

- updating of Ofcom's powers in the UK (via an amendment to the Communications Act 2003[5]) so that prominence requirements will in future apply to all significant content gateways and cover on-demand as well as broadcast services,

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[5] Through a new Communications Act or another primary legislative vehicle

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- alongside longer term work with European partners to ensure the importance of PSBs and their prominence is recognised in any future revisions to European media regulation.

Any such updating must be consistent with public needs and expectations, proportionate, flexible and be shown to deliver net benefits to the UK.

How it would work

As a priority, Ofcom should be given backstop powers to secure appropriate prominence for public service providers on a wider range of key UK-based audio-visual content gateways. The criteria which define a content gateway could be incorporated in new legislation, following a similar approach to that used to define media service providers in the EU AVMS Directive (2010/13/EU) and the UK AVMS Regulations 2009. For example, we suggest that content gateways might be defined as those entities which meet the following criteria:

- Their purpose is to make available a selected range of TV-like audio-visual content to the public

- They actively select those third-party content providers they wish to host on their gateway, alongside any individual items of content they may themselves select or commission

- They design and organise the on-screen environment through which users can access such content, and provide various menus, guides and other features which enable content providers to promote their content and help users find the content they are interested in.

If this approach is adopted, the following would qualify now as content gateways:

- Broadcast and IPTV platforms

- connected TVs and other device-based gateways which deliver audio-visual content and services.

As they develop their service propositions over time, over-the-top aggregators of audiovisual content and services and app stores with a substantial catalogue of audio-visual content or services might also meet the above criteria.

The term 'content gateway' would not typically apply to:

- Internet service providers (ISPs) – to the extent that they exercise little or no control over the content they carry

- Media publishers, whose business is focused on their own or commissioned content, rather than distributing a range of content from other suppliers

- Pure search engines and social networking services.

Organisations established in the UK, and serving UK audiences, which satisfy these criteria would be required to notify their activities to Ofcom or to a body charged with overseeing prominence rules.

Although all content gateways would be subject to a notification requirement, prominence rules should only be considered for those content gateways which cross a significance threshold, defined in terms of public needs and expectations,

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some measure of consumption, or a combination of these. Ofcom would be required to conduct an initial review to determine which companies pass this threshold at the outset of the new regime and would be required to conduct periodic reviews thereafter to establish whether the rules needed to be extended to others. Unless a new type of gateway became a significant route to accessing audio-visual content, the backstop prominence provisions would not be triggered.

As now for linear EPGs, Ofcom would be expected to publish a code of practice governing prominence on any relevant content guide provided by content gateways covered by the framework. It is likely that such a code would require prominence for PSB services or content, but leave the detailed application of the rules to each gateway, allowing for innovation and the different designs of the guides which are likely to emerge. Ofcom would, however, be able to take action in the event that prominence requirements were not properly observed.

Scope of the rules

It would not be appropriate to determine precise specifications for "prominence" in any legislation or in Ofcom's published code, given the fast changing marketplace. The practical application of the new prominence regime should be left to Ofcom's discretion, working within broad criteria laid down in the Act.

However, it would be useful for guidance to be given in Ofcom's code on legitimate expectations for some central features of the regime. We suggest:

- Prominence requirements should clearly apply to the core elements of any consumer interface such as a channel grid or on–demand service menu.

- Where content gateways choose to provide editorially driven or curated guides to types of content (for example in "recommended" or "featured" lists), the presumption would be that prominence rules would only apply if such features become primary routes to content on gateways in future.

- User-driven approaches to finding content such as pure search tools or recommendations based on the user's or wider audience 'likes' should be excluded from the framework.

- Prominence guarantees are likely to be best framed in the context of PSB brands (or individual service brands) rather than individual programmes. In a linear EPG world, the existing practices should continue, but with a re-assessment of the approach for key sub-menus such as HD. In an on-demand environment, each PSB should expect to secure at least one icon/button on the first page of an on-demand guide or its equivalent.

- Any prominence requirements should apply only to "default" settings on the relevant guide – users should be free to choose other settings if they so wish.

EU dimension

These proposals would not cover content gateways established elsewhere in the EU but whose services are received in the UK. Over the longer term, UK authorities should therefore also work with EU partners to secure any necessary revisions to European legislation, to ensure that the important role that PSBs play in a

converged world is duly recognised, including an appropriate EU-wide approach to prominence. This might be seen as a natural development of existing AVMS Directive expectations concerning the promotion of European content by on-demand audiovisual media services.

These regulatory initiatives should not preclude on-going work in the UK by government, regulator and PSBs to ensure that new gateways understand public interest concerns about the future availability of and prominence given to public service content, and to seek voluntary solutions to the concerns raised in this report.

Conclusions

We think that these measures would secure public service prominence on the content gateways that matter most to UK audiences, at little or no cost to those gateways or to other content providers. In doing so, they will play an important role in sustaining the relevance of public service content in a more converged world as patterns of media consumption change. This will in turn help all PSBs to fulfil their purposes by making their services easy to access and discover, and help commercial PSBs generate commercial revenues, and – consequently – help sustain high levels of investment in UK-originated content.

Figure 1: Summary of prominence rules by type of gateway

Type of gateway	Scope of prominence rules	Regulatory route	
1. Broadcast-led platforms	Now: Linear EPG New priority: Catch-up and on-demand	On-demand requires updating of Comms Act or similar	• *Prominence rules would apply subject to certain criteria and thresholds.* • *Ofcom would reserve right to apply to curated content lists if later become significant* • *AVMS will cover prominence of EU content in programme catalogues*
2. Next generation televisions	Landing page and front page of relevant on-demand sections	UK based: covered by updating. Others: may require changes to EU rules	
3. Device-related platforms	Front page of relevant on-demand content sections	As above	
4. OTT content aggregators	Front page of relevant on-demand content sections	As above	• *Prominence rules would only apply to some OTT service providers. Prominence rules do not apply to ISPs, media publishers, pure search and social media companies*

1. PSB and prominence: the story so far

Introduction

This report is about making sure that public service content continues to have maximum impact in a world in which there are many more providers of content, and many more ways in which consumers can access it.

An important part of meeting that challenge is to ensure that public service content remains easy to find and access, whichever platform, content package or device is chosen by consumers in future.

In the current multi-channel world, there are rules which require providers of electronic programme guides to list PSB channels in an appropriately prominent position. As we move into a more converged environment, with both linear and on-demand access to content, these rules will need to be updated to remain relevant and effective.

The value of public service content

First, though, it is worth reminding ourselves why we are right to be so concerned about public service content. The rationale for significant public investment in certain types of audio-visual content is widely accepted in the UK and in many other countries, especially in the rest of Europe. It is based on three key premises: the special power and impact of audio-visual media (traditional broadcast TV, radio – and now new digital methods of delivering content), the important social, cultural and educational benefits that can arise from the effective use of those media, and the recognition that markets alone, guided as they are by commercial returns, will not deliver the range and diversity of content which society as a whole would like to see made available.

The BBC's Charter, Ofcom's various public service broadcasting reviews, and the 2003 Communications Act all point to a clear and coherent rationale for the continued provision of such public service content, which should be universally available and free at the point of use. More widely, the EU recognises the role of public broadcasting in meeting the democratic, social and cultural needs of societies, and the preservation of media pluralism[6].

It is not enough, however, just to invest in the production of public service content and think "job done". If public service content is to fulfil its purposes in return for public funds or other forms of public support[7], then it is surely important to find ways of ensuring as far as possible that the content produced is universally available, easy to find, and actually consumed. If the value of public service content to society as a whole is that it can influence the way we all live our lives as citizens of the UK, including our ability to participate effectively in our democratic society,

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[6] As set out in the "Protocol" on the system of public broadcasting in member states, EU Amsterdam Treaty, 1997
[7] For example in the UK, access to spectrum or guaranteed EPG prominence

then it has to be watched or listened to in aggregate by most people for some of the time.

Communications Act 2003

Purposes of PSB:

- To deal with a wide range of subjects
- To cater for the widest possible range of audiences
- To maintain high standards of programming

Includes:

- Programmes that reflect UK cultural activity
- News and current affairs, international and social issues
- Sport and leisure
- Education, science, religion
- Children's programmes
- Programmes that reflect different interests and traditions in the UK

Ofcom Core Public Purposes (PSB Review 2, Phase 1)

- Informing our understanding of the world
- Stimulating knowledge and learning
- Reflecting UK cultural identity
- Representing diversity and alternative viewpoints

"If content is publicly funded, a large majority of citizens need to be given the chance to watch it"

BBC Purposes (Charter and Agreement)

- Sustaining citizenship and 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
- Delivering to the public the benefits of emerging technologies and services

This does not mean that every public service programme needs to reach large audiences, but that the public in general has a real opportunity to be told about, to find, or simply to stumble across the range of programming available.

This makes sense from a social and cultural perspective. The value of impartial and accurate public service news, for example, especially its role in supporting an informed national debate, is inextricably linked to its ability to reach as many people as possible. An important part of the cultural impact of public service content is its ability to promote shared values and to bring large audiences together[8] for shared viewing and listening experiences. As noted by the EBU, public

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[8] 51.9m (or 90% of the UK population) watched at least 15 minutes of the BBC's coverage of Olympic Games, with, for example, peak audiences of 27.3m for the opening ceremony and 20m for the men's 100m final

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service providers offer citizens a valuable point of reference in a diverse media environment, acting as guarantors of accurate information which is trusted because of its independence from commercial and political influence[9].

It also makes sense from an economic perspective – the more that public service content reaches audiences (either directly or indirectly through being talked and written about), the better value for money that any given level of public investment represents.

A consistently high level of consumption of public service content also helps create, as Ofcom has explained[10], a virtuous circle of programme investment, revenues and audiences. For those PSBs like Channel 4 which depend on advertising income, high audiences lead to high revenues which support high programme investment and again high audiences. For the BBC, a strong audience reach helps sustain public support for the licence fee, which in turn supports the programme investment needed to attract those audiences back in future.

Engaging audiences

At the heart of a thriving and relevant public service ecology, therefore, is the challenge of engaging with audiences. It takes two forms: attracting audiences to the PSB channel or brand, and then using a range of techniques to lead audiences to a wider range of content than they might otherwise have chosen for themselves.

In the early days of broadcasting, of course, it was quite straightforward – with only one or a few channels, it was easy for audiences to find out what programmes were on TV each evening, and to select from a limited number of choices by simply changing channel. Public service content was found on all the main broadcast TV channels (BBC, ITV and later Channel 4), and all of those channels were "prominent".

Once they had persuaded audiences to tune in, schedulers were able to use a variety of techniques to introduce them to programmes that they might not otherwise have decided to watch – "hammocking" more serious or experimental programmes between two old favourites in the schedule, launching new programmes after successful existing programmes, cross-promoting programmes within and on different channels. Broadcaster and channel brands began to emerge, which signalled to audiences the type of programmes they would find on each channel – for example, more edgy and innovative programming on Channel 4, more mainstream programming on BBC One. These were tools within the control of each of the public broadcasters.

With the advent of multi-channel platforms the situation changed. With some 300 plus channels on the Sky platform, and a wide choice even on DTT Freeview, the shelf space occupied by public service channels and content was proportionately much reduced. The ways in which consumers were finding and selecting content were also changing. To help users find their way around the much greater channel

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[9] "On the road to a hybrid world of TV and the web", EBU submission to the European Commission, 2012
[10] Ofcom submission to the DCMS seminar on investment and growth in the UK's TV content industries, September 2012

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choice, electronic programme guides (EPGs) were developed, typically taking the form of programme grids organised by channel and genre[11].

Figure 3: The importance of EPGs: recent experience

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"**What method do you use to find what to watch on TV?**" (IpsosMORI,2012)

- EPG   59%
- Direct number entry   42%
- Scrolling channels   37%

What are top EPG slots worth? (Technologia report for DCMS, 2012)

- Top entertainment genre slots   £20m
- Top sports genre slots   £5m
- Top other genres slots   £1-3m

Relationships between EPG position and channel performance (Attentional, various studies for Ofcom and others)

- Statistically significant correlation between EPG position and audience share (lower channel numbers = better performance)
- Major moves into or out of prominent positions have a statistically significant impact
- Probability of attracting browsing viewers drops off significantly in the lower half of the entertainment sub menu

Audience performance

- Top 5 EPG slots (BBC 1, 2, ITV1, Channel 4 and Channel 5) currently account for around 56% of viewing (Barb, Q1 2012) – all platforms

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EPGs have had a big impact on how we find and select programming. A consistent finding of research into consumer use of EPGs is that listings in the guide are a key tool for consumers, and that channels which have slots near the top of each section of an EPG have an advantage in viewer selection over those which are much further down the list. Other factors which influence selection include having a memorable EPG channel number and being adjacent to another popular channel.

Existing prominence requirements

In recognition of the importance of EPG positioning, prominence regulation was introduced in the UK to ensure that PSB channels were able to benefit from a reasonably high profile on the broadcast-platform EPGs.

The current approach is set out in Section 310 of the 2003 Communications Act, which requires Ofcom to draw up a code on 'appropriate prominence' for PSB

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[11] An electronic programme guide (EPG) is an on-screen guide or grid which allows viewers to navigate and select broadcast TV channels. In most cases, channels are presented in order of their so-called logical channel number (LCN). Guides may be divided by genre and, in some cases, are linked directly to PVRs which allow programmes to be recorded. In the UK, the main PSB channels are found in positions 1-5 at the top of the 'all channel' menu of the EPG and prominently on EPG sub-menus on nearly all platforms.

channels. The Secretary of State has the power to add to or subtract from the list of channels to which the code will apply. Ofcom has chosen to set out general principles in its code, rather than to specify precisely what appropriate prominence means for each relevant EPG (for example by specifying actual EPG slots). Those principles include a requirement that EPG positioning must be objectively justifiable and that in assessing the appropriateness of any ordering mechanism, Ofcom will have regard to the interests of citizens and expectations of consumers.

The code also reflects EU requirements on EPGs[12], including conditions pertaining to fair, reasonable and non-discriminatory behaviour – for example to guard against EPG providers from unfairly favouring their own channels over those of competitors when allocating EPG slots.

Figure 4: UK prominence regulation

EPG providers for linear broadcast services require a TLCS licence from Ofcom

Section 310 of Communications act requires EPG providers to observe an Ofcom Code of Practice

Must give "appropriate prominence" to the listing and promotion of public service channels

- Approach must be objectively justifiable
- Ofcom will have regard to the interests of citizens and expectations of consumers

These principles "would have broad application" – e.g. could justify a decision by an EPG operator using a menu-based approach to position public service channels no more than "one click" from the home page.

Prominence regulation does what it says on the tin. It helps ensure that valued PSB content gets appropriate prominence on relevant EPGs. In doing so, it helps audiences find content they value and ensures that investment in public service content reaches as wide a public as possible. Prominence regulation cannot make bad public service content successful. Audiences cannot be forced to watch the programmes they actively do not want to see. But it can ensure that public service content is easy to find and is given a reasonable start at persuading audiences to sample and consume the types of content which we as a society think are important and worthwhile.

In terms currently popular with some academics and policy makers, prominence regulation is an example of "nudging" people towards the choices we hope they will make both in their own and society's wider interests.

This approach has so far worked reasonably well. The main PSB channels are found at the top of general channel lists, and feature prominently in relevant genre lists on most platforms.[13] This outcome is consistent with the aim of securing a high

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[12] For example, see Directive 2002/19/EC of the European Parliament and Council, 7/3/2002 (the "Access" Directive).
[13] Although recent changes in EPG structures, such as genre-specific and HD sub-menus, have eroded PSB prominence to some degree and should be re-assessed in any updating of Ofcom's approach.

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profile for public service content, is in line with reported audience expectations (who want the convenience of finding their favourite channels near the top of an EPG), and is also largely in line with the commercial interests of platform operators – who want to offer an attractive and easy to use EPG to their customers, where the most watched channels are easy to find.

In a recent survey for the BBC[14], the majority (71%) of respondents who had been exposed to the policy arguments for and against prominence supported listing the five main PSB channels at the start of the on-screen guide. The main reasons they gave for this were: ease of locating the channel, the popularity of the channel among the public, and the channels' PSB values deserving priority.

The costs of securing such prominence are spread across a large number of commercial channels who might otherwise have gained slightly higher audiences by being one or a few places closer to the top of any EPG list, hence easing the burden placed on any one channel.

The value of prominence to public service channels and content arises from more than simply the direct effect on their consumption. More intangibly, prominence for public service content on key platforms also sends a very public signal about the role and relevance which we, as a society, assign to that content and its providers. It sends the message that we collectively believe in the value and importance of public service content. It lets people know that public service content matters, and has something significant to offer. It also helps send a message about our wider expectations for standards in the rest of the broadcast media sector. This signalling role may be especially important for public service news channels (which deliver an impartial and widely trusted service) and children's programming, which offers stories, voices and characters grounded in our own national and regional culture.

Overall, as Ofcom has argued, it is in the public interest (implicitly for all the above reasons) that public service content can be easily discovered and accessed by audiences.

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[14] Survey for the BBC carried out by Ipsos MORI November 23-24, representative national sample of 1098.

2. A changing world

Key trends

Looking to the future, the relatively simple world of linear broadcast channels and channel-based EPGs will be subject to significant change, evidence of which can already be seen today. Over the past decade, the emergence of competing digital television platforms has meant that TV systems have become larger and more complex[15]. And there are many new ways of guiding audiences to content on those platforms.

An increase in platform and content choice has been driven by the availability and capacity of high speed broadband, and the emergence of "hybrid TV". Whereas TV content was traditionally delivered through the broadcasting network and television sets alone, today it can be delivered over fixed and mobile IP networks to a large and heterogeneous range of devices (smartphones, tablets, games consoles, hybrid devices, etc.).

While we cannot say with certainty what the future looks like, the direction of travel is clear, with three key developments:

- A shift towards on-demand viewing
- New content gateways
- New approaches to guiding users to content

Shift to on-demand and time-shifted viewing

Today linear TV accounts for 85% of total viewing across all devices[16] but the next 5-10 years will be characterised by an inevitable growth in viewing on-demand. Catch-up, on-demand and other forms of non-linear viewing will increase in relative importance, as consumers take advantage of new on-demand and catch-up services on their living room television sets, alongside content consumed via PCs and new portable devices.

Most analysts suggest that on-demand will typically be used by viewers to complement linear viewing rather than to replace it. Nevertheless, change is on its way. This is likely to occur first for viewing outside of the living room and on mobile devices, but will gradually influence main-set viewing too. We will remain in a mixed economy for some time, but content providers will need to design services to take advantage of both types of viewing, and to reach audiences using many different devices.
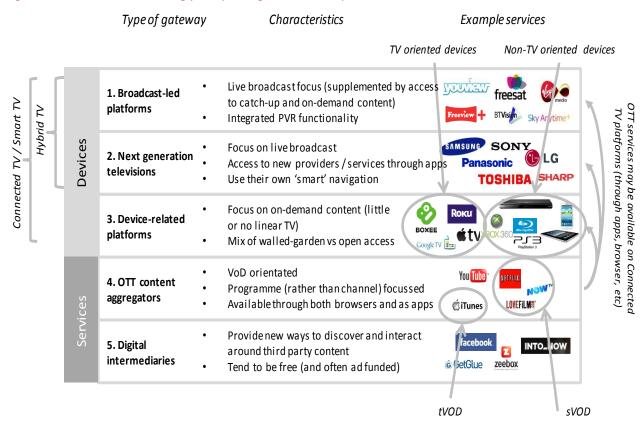
Growth in the number of content gateways

Alongside this shift in viewing behaviour, the digital TV landscape will become more complicated with many more platforms, services and devices for accessing

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[15] In 2002, 236 television channels were broadcasting in the UK. By 2011, this had grown to 515. The average number of channels watched has also increased considerably, from five in 2002 to 24 in 2011.
[16] Source: Enders Analysis, TV, non-linear and disruption, October 2012

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content. In this report we call these different platforms, devices and services "content gateways". Content gateways are those organisations which select and organise content from a range of different providers. They are developing increasingly sophisticated user interfaces to enable consumers to find the content they would like to watch. They include existing broadcast/IPTV platforms, connected TVs and other device-based gateways such as tablets and games consoles, and over-the-top content aggregators. Content providers will need to work with many different content gateways to reach their audiences. In many cases this will involve striking commercial relationships with each gateway to secure carriage and ensure their content is effectively promoted.

To help navigate this increasingly complex landscape, we think it useful to think of five broad types of content gateway.

Figure 5: Illustration of increasingly complex digital TV landscape

In the medium term, the current broadcast-driven platforms are likely to continue to account for a large share of audio-visual content consumption, and will remain important content gateways. Vertically integrated platforms like Sky and Virgin will be able to leverage their large existing subscriber base, access to premium content, customer interface, marketing power and understanding of audience needs to drive uptake of their own evolving IP-driven platforms. Alongside these platforms, connected or smart TVs may be increasingly significant as alternative gateways, although it seems likely that many households with smart TVs will also continue to use their TV set-top box as their primary access gateway. Away from the living

room, many new gateways will be used by different consumers. If PSBs are to secure universal reach for their content, they will increasingly need to build relationships with these gateways, too.

New approaches to guiding users to content

Integral to these new content gateways, new, more sophisticated forms of packaging and listings are emerging to help audience navigate this increasingly broad range of content, and each gateway is likely to offer users a choice of several different tools for sorting and finding content. Alongside the channels and branded on-demand environments still controlled by broadcasters and other content providers, there will be features curated by the content gateways themselves, and also user-driven tools such as pure search and user recommendations.

Conventional EPGs

Over the next decade and given the enduring demand for linear TV, grid-based listing systems (EPGs) will still be important on many devices. However, the traditional EPG will undoubtedly evolve (e.g. incorporating backwards scrolling), driven both by innovation by new gateways and by established broadcast-led platforms who have clear incentives to do so (customer expectation and goodwill, competitive advantage, opportunities to exploit new advertising opportunities, etc.). Furthermore the EPG itself could be arranged in different ways (for example, by favourite channel, most watched content, or genre).

Alongside the linear EPG, new ways of listing, navigation and discovery will become increasingly common, with some under the control of the content gateway rather than the content provider.

Graphical menus and apps

The growth of next generation hybrid platforms is creating a new environment in which linear channels are only one element of the television offering. Increasingly, screens of graphical displays, icons and apps could form consumers' first view, providing one-click access to catalogues of on-demand content, including the main broadcasters' catch-up "player" services. YouView and Virgin's TiVo boxes, for example, already allow users to access a range of on-demand apps.

Genre- based guides

Conventional EPGs tend to offer "all channels" lists and then sub-menus which allow a very broad genre classification where appropriate – for example for children's channels. In an on-demand world, a much more precise genre listing can be offered, with viewers able to choose a programme category (for example comedy or sports) and then to be taken to a list of programmes in that category. The inclusion of programmes in such genre lists might be based on date of release, popularity, viewer recommendations or some other criteria.

Push recommendations

Some content gateways will incorporate push recommendations to help users find relevant content, based on the judgements of the content gateways themselves, or viewers' observed behaviour, stated preferences and content ratings:

- Passive filtering can be used to make recommendations based on past behaviour (in a manner similar to Amazon recommendations). Recommendations can be made by analysing the content and finding similarities (genre, actor, etc.).

- Alternatively, active filtering - where the viewer provides information that will be used as the basis for recommendations – can be employed (e.g. the Netflix recommendations engine).

- Curated recommendations can vary from those chosen by "editors" to provide viewers with an interesting range and diversity of featured content, to those paid for by programme providers or sponsors.

Search

Increasingly, search functionality is an important feature offered by gateways, allowing users to key in programme names or more general search terms, which then take the viewer directly to a list of programmes matching the search results, by-passing channel lists or broadcaster-branded on-demand services.

Social discovery

Digital intermediaries are providing new ways to offer a more personal level of recommendations than can be achieved using solely algorithmic or editorial recommendations. Social recommendations can be served through specific mobile apps, connected TVs, companion devices, Facebook apps, and social TV guides. For example, second screen guides[17] such as Zeebox tap into social networks to make recommendations based on friends' viewing behaviour without the need to access an EPG directly. Social tools are beginning to be integrated into user interfaces themselves. For example, the NDS OONA interface now integrates social media and personalisation to contextual recommendation.

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[17] The Future Media Research Programme categories second screen apps as falling into four categories: remote control, remote management, content interaction and remote consumption.

3. Opportunities and risks

Opportunities for public service content

Clearly, the existing concept of PSB prominence – focused on linear channels and programme grids – will need updating for this more complicated world. However, while the challenges are clear (and we will return to them shortly) it is worth first acknowledging that this new world will also bring real opportunities for public service content. A more converged world should provide many more opportunities for audiences to engage with the range and diversity of public service content which is released every week.

First, the continued popularity for some time to come of linear broadcast channels should help public broadcasters secure a high public profile for the programming they release on those channels – even if an increasing proportion of total consumption is via non-traditional means. BBC One or ITV1 are incredibly powerful shop windows for high quality content, and will remain so even in a fully converged world. Programme popularity will ensure that some PSB content features prominently on "most popular" lists or guides.

Second, channel brands or branded on-demand and catch-up services such as BBC iPlayer may become even more valuable as consumers, faced with an increasing array of programme choices, look for reliable and trusted ways of finding content that they might like.

Third, the availability of many more opportunities to access and consume programming – via catch-up services, from on-demand archives, or using mobile and tablet devices – means that public service content has many more chances of reaching audiences now than when it was first available via a small number of broadcast services. Programmes in future will have a longer initial release window, and may go on to have a permanent secondary window in the form of digital on-demand archives – which will almost inevitably increase the returns they generate for the public (in terms of public value generated per pound invested). PSB archive material can help build up PSB shelf space in on-demand catalogues.

Fourth, the converged world could improve the "discoverability" of public service content in a number of exciting new ways. Social media like Facebook can help generate interest in programmes – a recommendation from a friend may be much more highly valued than from a third party source. Twitter can quickly build awareness of interesting or controversial content and can add to the programme experience by enabling public comment and debate. Rather than depending only on guides offered by broadcasters or professional critics, consumers will be informed by user recommendations, "featured" or "most popular" lists.

As long as public service content remains of high quality and in tune with audience needs, it should be able to benefit from these opportunities. High quality and popular content will also be initially sought by those new platform and content package providers, who want to attract customers to their products and services.

Connected TV manufacturers like Samsung and Sony, for example, are currently heavily promoting the availability of the BBC's iPlayer and other catch-up services on their new TVs[18]. They understand that viewers want to be able to access their favourite content brands.

Emerging risks

If this were the complete story, it would be reasonable to question the future need for prominence regulation. But there are also a number of important risks, which clearly mean that the converged world will not always be so benign as far as finding and accessing public service content is concerned.

Changing functionality

The first key risk, as explained in the previous chapter, is that the guides and consumer interfaces which people increasingly rely on in future to find content are designed to operate in a very different way to that of existing EPGs. In the current world, guides are generally organised around channel brands (the BBC, ITV, Sky etc.) and broad genres (entertainment, news, sport etc.). This helps ensure that users can find "BBC" content or "BBC news" or "BBC children's" content relatively easily. By enabling users to scroll horizontally along channel lists, it can also highlight the range and diversity of programming offered on any one day by each PSB. This is still quite an important feature for PSBs and for public service content, as it gives viewers a chance to discover programmes in the schedules which they might not otherwise have noticed or considered watching.

In contrast, guides to on-demand content use different approaches – either alongside or instead of conventional EPG grids. As explained in the preceding chapter, some are organised around genres and programme series or titles, not channel or broadcaster brands. Others offer curated lists of content, which may or may not include the range and diversity of programming associated with PSB. Still others offer search functionality, which takes users straight to the content being searched for. This sort of approach makes it harder for casual viewers to identify or find public service content, and certainly increases the risk that public service broadcaster/channel brands become less visible, and hence less powerful in leading viewers to public service content.

Commercial imperatives

Another significant problem is that the commercial interests of the new commercially-driven content gateways are not axiomatically consistent with the goal of the widest possible access to public service content. It is convenient now for Samsung and Sony to exploit the popularity of the BBC iPlayer in selling their new internet-connected TV receivers. They need well-known content and brands to persuade consumers to take the plunge and purchase a new type of TV set. This leads to a prominent position for iPlayer on the relevant on-demand menu. Platform managers like Sky and Virgin Media need to be able to offer BBC and

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[18] The BBC's active syndication strategy, for example, has resulted in widespread availability of BBC iPlayer: on YouView, Sky, Virgin Media, Freesat, BT Vision, various smart TVs, the Apple iPad, Android 2.2 devices, various other portable media devices, Xbox 360, Nintendo Wii, Playstation 3 and more.

other PSB content in a prominent position on their conventional EPGs to meet the expectations of their subscribers.

In future, though, the commercial balance may swing in favour of other (non-PSB) content suppliers.

This will be driven in part through the increasing importance of paid-for on-demand content in media business models. Today, the main digital platforms make most of their revenues from monthly subscription fees which cover a package of services. The presence of free-to-air public broadcasters in their basic packages enhances the consumer proposition offered by each platform and hence subscriber revenues. While those public service channels may take some audiences and revenues from non-public channels carried on each platform, their value to the platform operator more than offsets any associated loss.

In a converged world, though, it is likely that some business models will be increasingly based on direct consumer payments for on-demand programming. These new platforms will regard "free" on-demand content (for example as supplied by the BBC's iPlayer), as a potential drain on their incomes, as it will substitute directly for pay content that they might otherwise have sold. There is thus the risk that suppliers of free content, including PSBs, will suffer a downgrading in the prominence with which their programmes and services are featured on new platforms.

It is also possible that prominence becomes a valuable commodity which can be bought and sold directly. Commercial content suppliers may be prepared to pay platforms directly for a prominent position in their guides (whether at the top of a programme grid or on the home page in an apps store) or for inclusion in a "recommended" or "featured" list – perhaps to launch new content or to "buy" shelf space for their products[19]. Even where payments are not required, gateways may demand exclusivity in return for prominence. PSBs particularly the BBC, which are charged with meeting universality obligations, will be unable to strike these sorts of deal.

This risk would be even greater where platform operators are also content providers themselves, or where they forge revenue-sharing partnerships with other content providers. Their incentive then might be to favour their own content over that provided by others, including PSBs, which could adversely affect the prominence with which public service content is displayed. Such vertical integration does seem to be an increasingly common business model in the delivery of audio-visual content. Existing operators and new entrants are combining content ownership with gateway services (for example, BT's recent moves to acquire premium content rights, and YouTube's plans for investment in original content).

Shelf space

A final risk is the step change in "shelf space" which convergence represents. While the advent of multi-channels has already resulted in much more competition for eyeballs, public service content and its providers have been able to maintain a

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[19] We understand that EPG slots are already traded between channels for the Sky EPG

reasonable market share in the face of such competition, helped by investment, brand legacy and prominent EPG positioning. In a converged on-demand world, the availability of content increases by a further order of magnitude. Enhanced access to globally-produced (and especially US) programming forms the core proposition of many new content packagers. UK–produced public service content will have to fight even harder to secure access and prominence especially on these new platforms. New on-demand brands focused on specific demographics or genres may crowd-out the smaller number of mixed genre, general interest PSB brands.

Consumer sovereignty and the filter bubble effect

In one sense of course, the converged world transforms the relationship between consumers and content platforms/packagers. It offers much more power to consumers in finding and selecting the content they want to watch or listen to. It is possible that many consumer interfaces and guides of the future will offer scope for consumers to customise their guide so that they can give prominence to the brands and services they prefer, rather than those chosen for them by the interface provider. Even if this is not the case, content will often be organised in "most popular" or "recommended" formats, which rely on user-generated information rather than the preferences of the content packager.

Where does the case for public service prominence fit in this consumer-led environment?

Part of the answer lies in addressing what has become known as the "filter bubble effect". It is argued by some that, through the filtering of news and other content via friends, or through the increasing personalisation of search engines, converged media encourage people increasingly to remain within their own comfort zone – choosing content they already know they like, or opinions they know they agree with. Eli Pariser[20] uses the term "filter bubble" to describe this phenomenon, in which search engines and social networks (and in future new versions of EPGs) use algorithms and personal data to select only content which matches existing tastes and preferences. As a result, people get less exposure to conflicting viewpoints, are less likely to watch programmes which expand their horizons, and become less open to new ideas, subjects and information.

There are those who are more sceptical about this effect, and indeed there is not much hard evidence yet of its extent or consequences. But ensuring that public service content and its providers are easy to find and access on key audio-visual gateways, and are protected from being downgraded or blocked by pure search engines would provide an effective insurance policy against its more extreme manifestation. In an on-demand world, once a PSB provider has grabbed the attention of an individual viewer or listener, it then at least has a chance to use that attention to good effect – finding new ways of guiding its audiences through the many types of content it can offer, and providing a trusted source of impartial news and information.

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[20] "The Filter Bubble: What the Internet is Hiding From You" Eli Pariser, (Penguin Press, 2011)

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Globalisation

A further risk worth noting here is that associated with the increasingly global nature of the business of content production, aggregation and distribution. The public benefits immensely from the activities of big international companies who can invest in high quality content and also develop the sophisticated distribution systems and innovative customer interfaces we now expect. Apple, Google, Microsoft and Amazon have all produced great innovations in pricing, packaging and distribution of the content that we like to consume. But they are all big American companies with an eye on the global market, and are understandably less engaged with UK-specific social and cultural priorities. The designs of their consumer interfaces might not easily accommodate the level of customisation needed to meet local preferences.

Here, all mainstream audio-visual platforms (Sky, Virgin, and Freeview) are subject to a range of regulations which aim to secure the wide availability of and prominence of public service content. The key operators of those platforms understand those priorities, and have built their business models to accommodate them. Many of the new platform operators or content aggregators come from a very different environment and are unaccustomed to public interventions of this kind. Prominence regulation in the UK currently typically works with the grain of the market, but these new players may be much less sympathetic corporately to its aims, and much less inclined to work with policy makers and PSBs to achieve outcomes which are in the public interest, especially where such outcomes are of no direct commercial benefit to them.

The continuing importance of prominence

Given these risks, and the importance of securing continued access to and consumption of public service content, a strong case can be made for finding ways of extending prominence requirements into the converged world. In many respects, a new form of prominence regulation in future may be even more relevant than it is today:

- Hard-nosed commercial decisions will ultimately drive how content is selected and organised on many of the new gateways

- Free content – especially from PSBs – will be seen as a direct competitor to paid for on-demand content

- Public service providers will have to fight even harder for shelf-space than they have had to in the multi-channel world

- Global operators may be less sympathetic to UK public policy and cultural goals, where those goals diverge from their direct commercial interests

- The filter bubble effect may lead to a narrowing of the range and diversity of content and ideas available to and selected by individual consumers

- Audiences will find it increasingly difficult to identify content providers who they can trust to deliver high quality, accurate and independent information and analysis, free of commercial influences.

While the case for action to secure PSB prominence is strong, there remains the challenge of devising a regulatory approach which makes practical sense in what, as the previous chapter explained, will be a very different world, and one which will continue to change over the lifetime of any new legislation. We now turn to this challenge.

4. An updated prominence framework

Need for an updated framework

It is clear that the existing regulatory framework is not fit for purpose, given the likely developments described in this report.

Ofcom itself notes that: " If securing prominence for public service content remains a public policy objective, it could be necessary to adapt the current regime, possibly by extending it to the various different ways of discovering content increasingly available within EPGs, and to content made available on-demand. Otherwise the value of EPG prominence to PSBs may decline, and the legislation will fail in its intention to ensure that this content is prominent for viewers".[21]

The current regime is focused on linear public broadcast channels, and applies only to EPGs offered by organisations under a Broadcasting Act licence. In practice this means EPGs which are offered by the TV platforms like Sky, Virgin, Freeview and Freesat. If prominence policy objectives are to be secured in future, regulation will need to be updated to cover content delivered on-demand and by a much wider range of new content platforms or gateways.

Initially the priority is to ensure that prominence regulation can address the key challenges posed by the mix of linear and on-demand content on existing key TV platforms and the rapidly growing consumer demand for connected TVs. In the longer term, any new framework should also be capable of responding to new content gateways (and new types of guide).

In this chapter, a twin track approach is suggested. It is recommended that Ofcom should be given backstop powers by the new Communications Act or an alternative legislative vehicle to extend prominence regulation to guides offered by content gateways which meet certain threshold requirements and where benefits outweigh costs. Over the longer term, work should be done with EU partners to ensure the importance of PSBs and their prominence is recognised in any future revisions to European media regulation.

Broad principles

First, though, it is useful to set out some broad principles which should inform any new approach to prominence regulation. We think they should include:

- Consistency with citizen and consumer needs and expectations
- Proportionality
- Flexibility
- Value (benefits must exceed costs).

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[21] "Response to the House of Lords Inquiry on Media Convergence", Ofcom, October 2012

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Consistency with citizen and consumer expectations

It would be inappropriate to impose prominence requirements which were not valued by the general public or which significantly restricted consumer choice (for example by making it hard for them to find the content they would like to consume).

The 2004 Ofcom code of practice on linear EPGs places an emphasis on the interests of citizens and the expectations of consumers. Broadly, this means that regulation should be informed by both the wider public interest (in gaining prominence for the sort of content valued by society for its social and cultural benefits) and consumer preferences (the expectation by individual consumers that they will be able to find the content they want to consume themselves in a transparent, straightforward and easy to use manner).

To understand these expectations and interests, it will be important for Ofcom to carry out periodic survey work to ascertain changing consumer needs and expectations regarding PSB prominence on a range of gateways (while noting that research might to some extent be influenced by existing patterns of display and prominence).
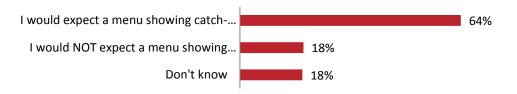
Recent research carried out by YouGov for the BBC among existing connected TV users confirms the importance viewers place on being able to access the main public service catch-up services in a prominent position on any on-demand menu. As shown below:

- 64% of respondents think that it is very or quite important for catch-up services to appear on the first page of a menu or at the top of a list
- Catch-up services are expected to appear before other VOD services or apps in a menu, and reflect the current prominence of PSB channels in a TV guide
- The majority of respondents expect BBC iPlayer to be displayed first in a list or menu of services in the connected TV environment.

Figure 6: Consumer research on expectations about listing order of catch-up TV[22]

How would you expect catch-up TV to reflect the TV guide?

I would expect a menu showing catch-…   64%

I would NOT expect a menu showing…   18%

Don't know   18%

How would you expect catch-up TV, VOD services and other apps to be listed?

Catch-up TV services listed first   63%

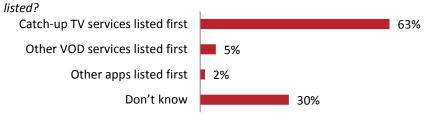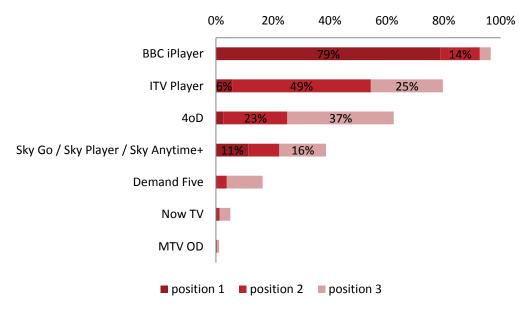Other VOD services listed first   5%

Other apps listed first   2%

Don't know   30%

Figure 7: Consumer expectations on the ordering of the first three positions in the menu of catch-up services[23]

■ position 1   ■ position 2   ■ position 3

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[22] Source: YouGov survey, BBC iPlayer Prominence in a Connected TV Environment, November 2012, n=828
[23] Source: YouGov survey, BBC iPlayer Prominence in a Connected TV Environment, November 2012, n=828
'If there was a menu showing a list of catch-up TV services on your device, which services you would expect to appear in the first three positions of the menu?'
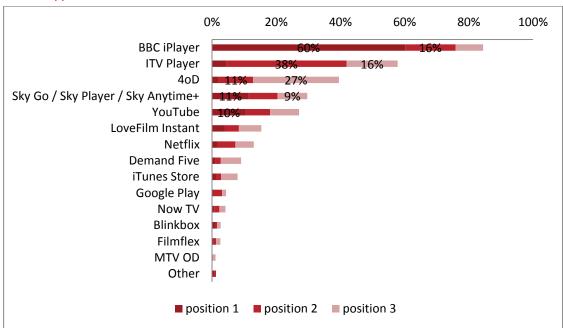
Figure 8: Consumer expectations on the ordering of the first five positions in a broader app menu[24]

To avoid unduly restricting consumer choice, though, it would be appropriate to make any prominence requirement a "default" setting on the guide, menu or catalogue in question. Consumers would then be able to choose whether to retain the default setting (with appropriate prominence for public service content) or to change to an alternative setting (perhaps one based on their own preferences).

Proportionality

Regulation can risk distorting market developments and chilling innovation. This is a particular concern in fast changing markets where consumers will benefit if new technologies and services are given the chance to launch and develop as freely as possible. Prominence requirements designed for such markets should be focused on the minimum needed to deliver the desired results.

To avoid excessive regulation, it would be sensible to apply prominence requirements only to those content gateways which are judged by some agreed measure to have a significant influence on audio-visual long-form content consumption. Significance could be measured in a number of ways – see later. Within content gateways, requirements should be focused on the core parts of any guide – for example an EPG or on-demand home screen menu.

Moreover, it is worth distinguishing here between gateways whose primary focus is on the provision of an audio-visual content experience, and those which offer more general services such as search engines and social networks. For the latter, a "precautionary" approach would make more sense, with measures where needed to ensure that access to all content, including PSB content, is provided on a fair reasonable and non-discriminatory basis.

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[24] Source: YouGov survey, BBC iPlayer Prominence in a Connected TV Environment, November 2012, n=828
'If catch-up TV services, other VOD services and other apps were all shown on the same menu together, which services you would expect to appear in the first five positions of the menu?'

Flexibility

It is impossible to predict with certainty precisely which content gateways and types of guide will become important to consumers over the next decade and beyond. Any updated prominence requirements should therefore be sufficiently flexible to adapt to change. This can be done by expressing legislative requirements in terms of broad duties for Ofcom, requiring Ofcom periodically to review content gateways (to determine if specific action is warranted) and by Ofcom establishing broad principles and general guidance in any updated prominence code, rather than specific requirements.

Benefits exceed costs

Most regulation imposes costs as well as benefits. In this case, the costs – in terms of any negative impact on innovation, costs incurred by platform operators, and effects of prominence requirements on other content providers would need to be taken into account.

As a general rule, prominence requirements should be designed to complement the approaches taken by different content guides and menus rather than to change the way they work. Ofcom would be expected to assess the costs of imposing any new prominence requirements before so doing.[25]

In this way, prominence requirements can be designed which impose relatively small costs on both content gateways and content providers but deliver potentially significant protection for PSB content, which can benefit both UK citizens and consumers.

Practical application

What do these principles mean for the practical design and implementation of any updated prominence regime? An extended legislative framework would need to include the following areas.

Coverage

In Chapter 2, we examined various types of content gateway which might play a key role in enabling people in future to find the content they wish to consume. They include:

- Broadcast and IPTV platform operators
- Connected (smart) TVs
- Other device-based content platforms
- Over-the-top content providers
- Others, including search and social networks.

These entities are more than just neutral pipes or conduits, but they are not always active publishers (in the sense that publishers commission and take editorial responsibility for individual items of content). Many are more akin to those high

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[25] For example, if a newly launched content gateway subsequently crosses the significance threshold, the costs of any redesign of the consumer interface would need to be taken onto account by Ofcom when weighing benefits and costs of any prominence requirements.

street department stores which feature mini "stores within stores", where space is rented to individual brands within the overall store.

There is a difference, too, between those gateways which actively select and aggregate content from a range of suppliers, and those which provide pure search or social recommendations from across all the available content they can track.

As a general rule, it would seem sensible to focus the scope of any new prominence regulation on those content gateways which satisfy the following criteria, by reference to the overall approach of the AVMS Directive and the UK AVMS Regulations 2009:

- Their purpose is to make available a selected range of TV-like audio-visual content to the public[26]

- They actively select the third-party content providers they wish to host on their gateway, alongside any individual items of content they may themselves select or commission

- They design and organise the on-screen environment through which users can access such content, and provide various menus, guides and other features which enable content providers to promote their content and help users find the content they are interested in.

If this approach is adopted, the following gateways might fall within the scope of the regime (but prominence requirements would only apply if the significance threshold was met- see below):

Now:

- Broadcast and IPTV platforms
- connected TVs and other device-based gateways which deliver audio-visual content and services

As they develop their propositions over time:

- over-the top aggregators of audio-visual content and services
- app stores with a substantial catalogue of audio-visual content or services.

The following would not typically be covered by the regime at all:

- Internet service providers (ISPs) – to the extent that they exercise little or no control over the content they carry

- Media publishers, whose business is focused on their own or commissioned content, rather than distributing a range of content from other suppliers

- Pure search engines and social media sites.

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[26] As defined in the AVMS Regulations 2009, the programmes viewed by the user may be received by the user by means of an electronic communications network (whether before or after the user has selected which programmes to view).

Second, thresholds will need to be established which help determine when regulatory action is justified. To meet the proportionality test, Ofcom will need to take a view on the significance of any content gateway covered by the framework. Significance could be assessed in a number of ways. One approach would be to express significance in terms of user needs and expectations, drawing on the sort of survey work outlined above. Prominence requirements would then be guided by periodic consumer research into whether audiences expect PSB providers to be prominently displayed by different content gateways. Such research could help determine which PSB providers are to be included and which gateways should be subject to any requirements.

Another approach would be to measure share of consumption. Establishing an appropriate threshold in this way, however, is not straightforward. Given that in a converged world content will be made available and consumed across many different types of network and device, a threshold defined in terms of each gateway's overall audio-visual consumption might seem the best starting point. However, outside of the main linear broadcast-based platforms, likely market fragmentation suggests that any such threshold would have to be set quite low to have an effect. [27]

A supplementary metric might therefore be useful to help identify any particular audience groups for whom one or more content gateways are especially important. In such cases, prominence requirements might be warranted even if that particular content gateway did not breach the overall share threshold.

Allowance would also need to be made for the fact that some gateways (such as connected TVs) can be "overridden" by users (for example Sky or Virgin customers). Any consumption-based threshold would therefore need to be adjusted to reflect actual use of each gateway, not just the purchase of a particular device.

Thresholds such as these could be used either as "bright line" caps (above which prominence regulation would be introduced) or as guides for possible regulatory intervention. Although caps have the advantage of bringing certainty to market participants, we think guidelines would be preferable at least in the early years of any new regulatory framework, given uncertainties about how media markets and content gateways might change and develop over time. At the start of the new regime, Ofcom would be expected to carry out an immediate review to establish which content gateways would be initially included in the regime.

Scope

We also need to think carefully about the form which prominence requirements might take and the level at which they might be exercised. Ofcom would be expected to provide guidance on this in any updated code.

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[27] EU Member States may impose reasonable "must carry" obligations on electronic communications networks, which are used by a 'significant number' of end users as their principal means of receiving broadcast television services (Art. 31 Universal Services Directive). Member States have discretion to define 'significant'. In some cases, networks (in particular IPTV networks) are deemed "significant" for the purposes of the obligations in countries where that platform has a penetration rate of upwards of around 5% of TV households (e.g. in the Netherlands, Finland, Germany). Cullen International, August 2012.

<u>Form of prominence</u>

Prominence, in today's terms, refers to channel positioning on a linear EPG grid, and is relatively simple to determine. In future, as we have seen, consumer interfaces and guides will take many different forms. The broad principle should be the same, however – public service content should be easy to find and prominently displayed in whatever format is adopted by content gateways for guiding users around their content.

If EPG-type lists or grids are still used for linear channels, then it would still be appropriate for designated PSB channels or services to be listed towards the top of the EPG or any relevant sub-category within it. As HD becomes the standard for viewing, for example, so prominence requirements should be applied to any HD section of the guide. Where menu or app-style approaches are used for access to on-demand services and content, with on-screen buttons or icons, PSB services might expect to be listed along with those of other content providers on the first page of the guide and on any relevant sub-category pages.

Developments so far suggest two further emerging approaches to help consumers find content – recommendations and search.

As described earlier, content gateways increasingly offer an edited selection of "featured" or "recommended" content to help guide users to programmes they might enjoy. If these became central to the consumption of audio visual content in future, then they could have a significant impact on access to and demand for public service programming. Featured programme lists might contain only programmes of proven popularity or those which have paid for prominence. Even where public service content is included, these features remove the link between the PSB brand and the programme, reducing the effectiveness of those brands in helping consumers find programmes which they might value.

We would, however, suggest caution before extending prominence rules to such applications:

- Any such rules might slow down the introduction of innovative approaches to content presentation and organisation, which could bring real benefits to users
- It will be hard, from a practical perspective, to design prominence requirements which could work well in such an environment – would all featured content be obliged to contain public service recommendations – if so how would they be selected and what proportion of the total would be acceptable?
- At present, these features typically supplement rather than replace the core grids, menus and catalogues for most (not all) gateways.

A balance needs to be struck between providing enough prominence to make a difference, and imposing undue costs on the content gateway. It therefore makes sense in the first instance to keep any intervention focused on the basic elements of any guide (e.g. channel grid or on-demand menu), rather than on those parts, such as "featured" content which involve more "editorialising" – where gateways should be encouraged to innovate and respond to consumer needs as much as

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possible without interference. Ofcom could be asked to keep these developments under review: should curated content guides become a significant portal for content, or if content gateways refuse to provide prominent space to a PSB's own branded on-demand service, then prominence requirements might need ultimately to be extended to them. Any backstop regulation should be sufficiently flexible to enable this to happen without needing further primary legislation.

As far as search functionality within content gateways is concerned, prominence rules are not desirable. Where users are actively searching for specific programmes, it would be inappropriate to present different content to them. Where they are making general searches, it is likely that the search functionality will be based on a range of algorithms (such as popularity, relevance). Here –see later – the main regulatory concern should be whether the search results are unfairly influenced in any way to favour one content provider over another.

Level/type of PSB service or content

A final key choice to be made is at what level to apply any future prominence regulation, for example to PSB as a whole, to PSB channel or service brands, or to individual series or programme titles.

The main options are:

- "Public service content" as a single category of content – for example, unlike today, programme grids could have a separate "Public service" category, or an on-demand home page could have a "Public service" button or link to content provided by all the different public service providers (meaningfully branded for consumers).

- Key corporate PSB brands – like the BBC, Channel 4. Future guides could be required to contain a separate branded link for each of these designated providers, which takes users to the content that each provider wishes to make available.

- Individual PSB linear channels, on-demand services or brands (such as BBC One, BBC iPlayer, or 4OD), rather like the designated public service channels in today's EPGs.

- Individual programmes: for example, guides or catalogues could be required to contain a certain proportion of public service content, or to promote a certain amount of such content in any "featured" content category[28].

The public service rationale – which is to support the discoverability of a range and diversity of public interest content and to secure the availability of trusted sources of independent information - suggests that prominence intervention would be most effective if it focuses either on the relevant public service brand or on the main public service channels/services, rather than individual content titles. A prominent PSB brand can attract attention better than a scattering of programme

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[28] For example, in accordance with the AVMS Directive Art.13, in France, there are analogous requirements for providers of on-demand audio-visual media services to prominently display on their homepage a substantial proportion of European works or works in French (Décret n° 2010-1379).
See http://ec.europa.eu/avpolicy/docs/library/studies/art_13/final_report_20111214.pdf

titles, and is more likely to be of value in helping users find their way to a range of public interest content. It can provide audiences with a clear signal about the quality and standards of content they can expect to find.

Once in the "PSB world" (for example, within the iPlayer or 4OD environment), the PSB provider can guide audiences in imaginative ways to the full range of public service content available. Consumers are likely to find trusted supplier brands a more effective way of finding content they like than trawling through long lists of programme titles from a wide range of suppliers. A focus on brand prominence also helps avoid the complex task of determining what proportion of a catalogue of programme titles would deliver the goal of appropriate prominence.

The choice between a PSB corporate level brand (e.g. the BBC) and individual service brands (e.g. BBC iPlayer) should be determined by audience needs and expectations and practical considerations. If, for example, there is space for only 10 or so icons or buttons on a guide's home page, it would be hard to argue that they should all be PSB-related buttons. Individual service buttons might be justified if audiences expect to find them there and they achieve high levels of consumption. Otherwise, a corporate PSB brand might be the sensible ambition, behind which audiences would find all the different services on a single page. When only one or a limited number of buttons are available for PSBs, the choice of approach (that is, whether to opt for a corporate or service brand) should be left to each broadcaster.

The option of having a single "PSB" button or icon for public service programmes from all public service suppliers would be much less effective. Its dry sounding nature would probably deter users from selecting that category in the first place, and, because different PSBs have different remits and target audiences, it would convey little information about what users might find when they got there.

Precautionary measures

Other gateways, in particular search engines, may also in future emerge as an important means of accessing audio-visual content. This is especially important for news. In a recent paper for the Reuters Institute on news plurality, one of the current authors identified the significance of Google as a means of accessing news stories, and the potential risks associated with its influential position. The paper explained how elements of editorial judgement are present in the design of Google search algorithms, and also how increasing personalisation of news searches could lead to a diminution in plurality[29].

The paper also identifies the potential risk posed where gateways also own their own content, where they may have an incentive to give greater prominence to that content than to similar content provided by competitors. Where the gateways concerned have a dominant market position, this could enable them to distort competition.

These concerns do not at present warrant intervention to secure prominence for public service content. But to prevent future problems, it was suggested that some relatively low-cost actions might be considered, including requiring publication of

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[29] "News Plurality in a Digital World", Robin Foster, Reuters Institute, July 2012

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the principles used in designing search algorithms, and ensuring there is a clear route for content providers to take if they wish to complain about any decisions to block content or about significant and unexplained changes in search rankings or other forms of prominence.

These so-called precautionary measures could be considered alongside the prominence rules described above. They might require gateways such as search engines to demonstrate that they are not in any way discriminating unfairly against content providers, including PSBs, in the way in which they provide access to content, and to provide appropriate mechanisms for complaint and redress.

In the longer run, as outlined in the Reuters Institute report referred to above, if these approaches do not prove effective, it is possible to envisage more specific requirements which could be imposed on search engines. Such measures would only need to be considered if Ofcom found there to be problems as part of its periodic reviews of public service prominence.

Legal and regulatory underpinning

If the broad principles of a new prominence framework can be agreed, the remaining big challenge is to establish clear legal and regulatory underpinning for any action in the next Communications Act or alternative legislative vehicle.

For the longer term, given that many of the new content gateways are likely to have Europe-wide operations, and may also be head-quartered outside the UK, it is also relevant for the UK, other EU Member States and the EU institutions to consider the place of PSBs as part of the policy debate on connected devices and any future legislative reviews.

Existing EPG framework

As noted earlier, existing EPG regulation is set out in the 2003 Communications Act, which requires Ofcom to draw up a code giving guidance for the provision of electronic programme guides. While it has been largely effective to date, this approach will not work in future: it is limited to EPGs for listed broadcast PSB channels on 'television licensed content services'. It will not cover on-demand services and content on those services, or menus and guides on new content gateways. On-demand guides on connected TVs, for example, are not covered by the current framework.

The UK's current approach is consistent with and seeks to implement the provisions of the EU Access Directive which contains provisions for access obligations to be extended to electronic programme guides by the main traditional TV platforms. The EU notes that "competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television" and requires access to EPGs to be provided on fair, reasonable and non-discriminatory terms to "ensure accessibility for end-users to specified digital broadcasting services".

However, it is unclear that this framework is able to meet the future challenges of prominence on guides to on-demand programmes and services on existing or new content gateways.

Options for the future framework

A twin track approach is therefore needed. Much progress can be achieved in the near term by updating Ofcom's powers in the forthcoming Communications Act or alternative legislative vehicle. Such new prominence rules are not directly covered by the existing EU regulatory framework, and can therefore be introduced for any content gateway established in the UK[30]. Alongside this, work should be progressed over the longer term with EU partners to inform the connected devices policy debate and to ensure future revisions of the relevant EU legislation recognises the importance of PSBs and accommodates the new prominence challenges identified.

Updating Ofcom's powers

Ofcom could, in any new legislation, be assigned a broad duty of securing prominence for licensed public service broadcasters and their content on any relevant content gateways. The criteria which content gateways must meet to be included in the framework would be set out in the legislation, and could be based on the characteristics suggested earlier.[31]

To ensure prominence requirements are only introduced where they will make a real and positive net impact, Ofcom could be required to carry out periodic reviews of content gateways to assess the implications for prominence of any developments, for example based on surveys of consumer and citizen needs and expectations and measures of consumption. Ofcom could be required, subsequent to any such review, to reach a determination as to whether any specific action needs to be taken to secure prominence for designated providers on specified content gateways. Thresholds (in terms, for example, of consumption shares) could be established to provide guidance for such decisions. In the first instance these would inform Ofcom's judgement rather than acting as bright-line triggers for action.

Significant content gateways would be defined as those which meet specified threshold tests and which select, aggregate and organise content from a range of different providers in the form of channels, applications or programme catalogues. This would enable Ofcom to act if certain market and audience conditions are met in future[32].

It would probably not be practical to extend the existing licence-based approach to EPG regulation to new content gateways. Rather (as with TV-like on-demand services, which are regulated in the UK by Ofcom and ATVOD) a system of notification could be used. Providers who met the criteria set out in legislation would be expected to notify their activities to Ofcom or to a designated co/self-regulatory body.

Once notified, the provider would then only be subject to specified prominence requirements if it was judged by Ofcom to have passed a defined threshold test in the context of one of Ofcom's periodic reviews. It would then be subject to requirements as set out in a published code. Ofcom would be able to take action should the response to those requirements be deemed inappropriate. These

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[30] For example by reference to criteria in the EU AVMS Directive (2010/13/EU)
[31] This would follow the general, approach adopted for describing TV-like on-demand services in the EU AVMS Directive.
[32] This could be achieved, for example, by extending the scope of the existing Clause 310 in the 2003 Communications Act.

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changes should provide Ofcom with enough scope to secure prominence on the key UK-based content gateways if necessary.

Given the rapidly changing market and multiplicity of different types of content gateway, it would not be sensible now to specify the precise meaning of prominence or the detailed form it should take, but Ofcom could be asked to set out its broad expectations regarding the level at which prominence might be required and to which aspects of a guide it would be applied, drawing on our earlier discussion of those matters.

Application

In practice, this approach could apply to any of the following, if they passed a significance threshold and are established in the UK:

- Hybrid broadcast/IPTV platforms serving UK audiences. These currently account for the vast majority of consumption of TV content in the UK and will continue to do so for in the medium term
- Connected TV devices and other device-based gateways targeting the UK market.

As noted earlier, in time, over-the-top aggregators and app stores meeting the criteria set out might also be considered for prominence requirements.

Gateways in any of these categories who are not established in the UK could avoid prominence requirements, but it is to be hoped they might be persuaded to join in voluntarily.

European framework

Immediate steps

In parallel, consideration could be given in the UK to the next stage of implementation of Article 13 of the existing AVMS Directive (which would only require secondary legislation).

The AVMS Directive could provide indirect help in securing PSB prominence in some circumstances. It provides for regulation of on-demand audiovisual media services, and contains a provision (Article 13) on the promotion of European works. In particular, the Directive indicates that

'Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works *or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service*'.

While not specifically targeting *PSB* prominence, as PSBs in the UK account for a large share of all UK original programming, they would gain some indirect benefit from a stronger implementation of this requirement.

However, this provision is quite limited. In essence, the Article applies only to catalogues of *individual programmes*. It would not cover menus of icons for whole catch-up services (such as the iPlayer or 4OD apps).

Longer term

In the longer term, the forthcoming EU Green Paper on connected devices, and the wider debate about possible revisions to the AVMS Directive, provide good opportunities to ensure that the future EU media framework recognises the

importance of PSB services and content in a converging world, and considers approaches to securing appropriate prominence for PSB services and content. Ultimately, it would be helpful if measures were available to help secure PSB prominence requirements for any significant content gateways established in any EU Member State. This could also capture gateways used in one Member State (like the UK) but established elsewhere in the EU where relevant prominence regulation is in force there.

Conclusions

This report has identified both the importance of prominence for public service providers and their programmes, and also the risks that convergence brings, especially with the emergence of new content gateways.

The current review of communications legislation brings an opportunity to modernise the existing PSB prominence regime to address some of the challenges identified, especially for those gateways likely to be most significant for some time to come, while work at an EU level will help secure a clear recognition of the role of PSBs and the importance of PSB prominence for the longer term.

To avoid over-intrusive regulation in what is a fast moving and innovative market, Ofcom should be required to act only if certain significance tests have been met, and the public benefit is properly established in mandated periodic reviews. If that happens, then both the citizens' interest in easy access to public service content and consumers' expectations of competition and choice in a dynamic marketplace can be met.

Annex: The Impact of Digital Media

[attached as a separate document]