

Culture, Media and Sport Committee

Oral evidence: Pre-legislative scrutiny of the Draft Media Bill, HC 1287

Tuesday 6 June 2023

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Members present: Dame Caroline Dinenage (Chair); Kevin Brennan; Clive Efford; Julie Elliott; Damian Green; Dr Rupa Huq; Simon Jupp; John Nicolson; Jane Stevenson; Giles Watling.

Questions 1 to 77

Witnesses

[I](#): Magnus Brooke, Group Director of Strategy, Policy and Regulation, ITV; Khalid Hayat, Director of Strategy and Consumer Insight, Channel 4; and Mitchell Simmons, Vice President, Public Policy and Government Affairs EMEA at Paramount.

Examination of witnesses

Witnesses: Magnus Brooke, Khalid Hayat and Mitchell Simmons.

Chair: Welcome to the first evidence session of the Culture, Media and Sport Committee's pre-legislative scrutiny of the Government's draft Media Bill. We are joined today by the commercial public service broadcasters. We have Magnus Brooke, the group director of strategy, policy and regulation at ITV; Khalid Hayat, the director of strategy at Channel 4; and Mitchell Simmons, the vice president of public policy and government affairs at Paramount, which includes Channel 5.

It might be helpful for the panel and those watching our proceedings to be clear that today's session is not about the widely reported issues at "This Morning" and ITV, and the broader implications for public service broadcasting. We will be hearing next week from Dame Carolyn McCall, ITV's CEO, specifically to discuss those matters, and we will be raising them with other broadcasters in due course as well. Today we very much want to focus on the draft Media Bill and the significant implications that it has for the industry.

Before we begin questioning, can I ask Members if they have any interests to declare, please?

Simon Jupp: I am a former employee of ITV.

John Nicolson: I am a former news presenter at ITV.

Damian Green: I used to work for ITN, which is part of ITV, specifically on Channel 4 News, and I have accepted hospitality from Channel 4 in the past two years.

Giles Watling: I have worked for ITV.

Q1 **Chair:** Thank you very much. I am going to kick off the questions, and I want to start by talking about the public service remit. We know that the current legislation has a requirement to provide specific coverage of various genres, including things like education, drama, comedy, children's programming and religion, but those specifications will be removed by this new legislation. What will be the consequences of removing these specific genres from the public service broadcasting remit, Magnus?

Magnus Brooke: I am not sure there necessarily will be very significant implications from that, partly because what that does is look at the system as a whole. It does not look at any individual broadcaster and say, "You have to provide each of those genres as part of your contribution to PSB."

In ITV's case, a core part of our contribution is news—whether regional or national news—and also current affairs, production outside London and independent production. We make a significant contribution to PSB in those areas, but no individual PSB, with the possible exception of the BBC,



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can cover every single area of the PSB waterfront. What that looks at is the system taken as a whole: is it providing appropriate coverage of all those genres?

I do not think, in our case at least, that it will make an enormous difference to how we deliver PSB, because we are very clear what our unique contribution is as part of an overall system. Of course, the Secretary of State is proposing to take a power to impose a new quota obligation should that be necessary and should there be a concern, from Ofcom in particular, that there is a particular genre of programming where there is a shortfall of delivery.

Khalid Hayat: We are in a similar position. We very much support a more outcomes-based approach to the regulation of PSB, and therefore support the approach—the PSB remit—that is being defined in the draft Media Bill. At the same time, we as Channel 4 will also retain our own specific, distinctive PSB remit to challenge and to provide innovative content.

We will therefore continue to fulfil that remit, and we measure ourselves on the delivery of that remit through the statement of media content policy, which we publish and Ofcom review and hold us to account on. At the same time, of course, there will continue to be obligations in the licence for Channel 4 and other broadcasters on news, current affairs, regional productions and independent productions that all fit with the key areas of content specified by the Government in the draft Media Bill, and again we will make positive contributions to PSB in the round.

Q2 **Chair:** Mitchell, what kind of reassurances can you give us that, taken together, public service broadcasters will continue to be able to provide diversity in the range of programmes in such things as arts and religion?

Mitchell Simmons: The key point to make—just to go on the two previous answers—is that the PSB ecology is built around a certain level of complementarity between the different broadcasters. We have increased obligations on children’s content—we have the “Milkshake” programme each morning—and we have responsibilities on current affairs, regional programming and news that are different from the obligations on other public service broadcasters.

The idea is that taken as a whole, the obligations on each of the broadcasters create some diversity and complementarity between the broadcasters. We never called for a simplification of the remit; I think we are very happy with the simplification of the remit, and we do not foresee—from ourselves as Channel 5—any change in the output that we will put on our schedule as a result of these changes.

Q3 **Chair:** Do you think there would be a decline in the way that these different aspects are covered in the linear services, and a temptation to put everything on to the on-demand?

Mitchell Simmons: I think that will be an important safeguard for Ofcom when it is looking at this issue. Clearly, a key element of the draft Media Bill is recognising that as audiences are moving away from live TV and



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linear TV viewing and starting to view online, PSBs will be able to meet some of their obligations through their online services. Equally, it is important that viewers who are still watching primarily on the linear channels are also able to access that PSB content.

As we manage that move away from linear towards VOD, which will happen over a period of time, we need to ensure that the Bill—which we feel is pretty good, in the round—ensures that Ofcom has the duties to ensure, just as Khalid has remarked, that if there is a gap or issue, in conjunction with the Secretary of State they are able to make an intervention to correct things if they think that they are not happy.

- Q4 **Chair:** Khalid, we are concerned that those who are not digitally enabled—those who do not have access to the internet for a whole range of reasons—will be excluded from the range of different types of programming. What reassurances can you give us that there will not be any decline in the public service provision on your main linear channel?

Khalid Hayat: We are committed to our main linear channel—the core Channel 4 service that is the designated public service broadcaster. We deliver our remit across all our services, of course, but we are committed to the core linear service while, at the same time, transforming our business in order to drive digital growth to anticipate and reshape what we are doing in response to the market changes and changes in viewing behaviour described by Mitchell.

It is worth being clear that we as Channel 4—indeed, all the broadcasters—have very much supported the extension of the licences for the digital terrestrial multiplexes; we are all committed to and want linear terrestrial digital broadcasting to continue well into the 2030s, so that is absolutely core to what we are doing.

We are talking to Ofcom right now about the renewal of our broadcasting licence, which expires at the end of 2024, and again, it will continue to include obligations on the linear channel. At the same time, given that Channel 4 skews younger than other public service broadcasters, we are of course anticipating what a younger audience are doing. Where are they watching content? How can we deliver our remit across streaming platforms more effectively and drive growth in that area and, similarly, expand on to social platforms through 4Studio?

- Q5 **Chair:** Magnus, what about ITV? We know that you have had an enormous amount of investment in your online services and viewing-on-demand services in the last couple of years and, at the same time, cuts to some other aspects, such as children's TV. How will we protect the linear services at ITV?

Magnus Brooke: I think I can reassure you on that, in that what I think we are moving to is a hybrid world of linear and on-demand, with streaming effectively a hybrid of hybrids in a way; it's a delivery of a linear broadcast service, but not linear service, through IP.



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We have never really made niche PSB content; we have made content for which we are trying to find a mass audience. We are trying to find that spot where we can get a big audience for PSB content. That is our rationale as a PSB. And the truth is that we are going to have to serve the linear audience and the on-demand audiences equally over time, because half the audience or more than half the audience is currently linear and there is a significant audience in on-demand. If we are going to be able to pay for the content, we are going to have to use it on both linear and on-demand for some time to come.

At the moment, I think, there are about 3.8 million households that are IP-only, so they don't have a broadcast feed coming in. Some estimates suggest that that might be up to 50% by 2030. We anticipate that there may be 50:50 viewing in the UK television market as a whole—around 50% of viewing will be on demand and 50% linear—by about the mid-2030s. So for us to be able to afford to pay for the content, we are going to have to, as it were, advertise to an audience on linear, because there is a very significant audience there. But there is a very significant growing audience in on-demand. So for us, the idea that we just put content in one place or the other doesn't make any commercial sense.

Chair: Thank you very much.

Q6 **Simon Jupp:** Good morning. To start with, could we talk about the shift from proportion-based quotas to absolute ones? How will that change the way you fulfil your public service remit. Mitchell, I will come to you first if that's all right.

Mitchell Simmons: The first point—just to pick up on Magnus's earlier comment—is that Channel 5 still has quite a significant linear audience. Channel 5 is a destination for factual television, for leading on social issues and for the early broadcast of news at 5 pm, so it tends to skew outside the metropolitan centres and outside London. As a consequence, we have quite strong linear viewing.

In terms of remit delivery, we don't foresee a significant change. We feel that what we provide brings audiences to our schedule. It is absolutely critical that we do a full day of programming, people arrive and we provide some complementarity to the rest of the market. At the same time, My5 is growing, and we are also ensuring, as audiences gradually move there, that we are providing for all of them. So we don't foresee any significant change to our output.

Q7 **Simon Jupp:** On that, Khalid, your audience is very different at Channel 4, because you're more metropolitan. Do you perceive a difference in approach there?

Khalid Hayat: In terms of application of the quotas?

Simon Jupp: Yes.

Khalid Hayat: In the area of absolute quotas, we absolutely support the principle that the Government has set out that public service delivery



should count across a range of platforms. As we are all saying, we are about balancing output on linear and streaming services. We also support and welcome the principle that any new absolute quotas will be no more onerous than existing quotas.

But as you will have seen from our written evidence, we have expressed some concern about the concept of absolute quotas, and the reason for that is the reduction in flexibility that those absolute quotas would provide. Indeed, we think the effects of them are twofold, one being that having absolute quotas reduces the incentive on broadcasters to overdeliver on quotas when times are good, because there is an absolute number that you are trying to hit; and partly it reduces the incentive to overdeliver in order to save up, as it were, because there is reduced flexibility to adjust commissioning activity when times are tougher. So we do have some concerns about the lack of flexibility that those absolute quotas would require. It is an area that we have been discussing with Ofcom and DCMS.

Q8 Simon Jupp: Do you feel you've been heard in those discussions?

Khalid Hayat: I think the Government's position is that they do want to implement the absolute quotas. We understand that Ofcom shares some of the concerns about the lack of flexibility. What we do not have at this point is a ready-made solution to how to address those risks, but it is an area that we are alive to.

Q9 Simon Jupp: How much of a risk is it to your business?

Khalid Hayat: We are facing into the ad market. We make commissioning decisions in order to fulfil our remit and in the light of the commercial circumstances that we face. Therefore, reducing the flexibility that we have available to us reduces some of the levers that we have to pull—particularly in relation to, for example, regional production quotas. Where we are working with a supplier-based distributor across the country, absolute quotas create a degree of compliance risk; if certain programmes are pushed out later and so on and so forth, it becomes a compliance risk in relation to the fulfilment of those quotas.

Simon Jupp: Understood. Magnus, the same question to you.

Magnus Brooke: We are in a slightly different position from Channel 4. We broadly support volume-based quotas, with one small exception. The reason is that for us, as we have talked about, there are 3.8 million households in the UK at the moment who do not have a broadcast service. For them, ITVX is effectively ITV's PSB contribution, and that number will only increase over time—potentially as much as 50% or so in the next 10 years. So, for us it is important that we can deliver our quotas online as well as on linear.

We think volume quotas delivered online are quite important. The reason for that is simple: the denominator of a percentage-based quota on an online service is a floating denominator, effectively, because we have 15,000 hours on ITVX, for example, at the moment. That number fluctuates rapidly over the course of a year. It is not like a 24/7 linear



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service where you have in effect a fixed number of hours more or less, and therefore you can have a percentage quota relatively straightforwardly.

On a service where you have a very big or significant fluctuation over time—it is never constant, never exactly the same number of hours—you would not know what the percentage number was until you got to the end of the year, if you are basing a percentage quota around ITVX. That is why we would support a volume-based quota—as Khalid said, no more and no less onerous than, let us say, the average of what the quota would have been over the last five years or so, which I think is the Government's proposal.

The area where I don't think we agree, or at least we have concerns, is in relation to the out-of-London spend quota, because there the Government's proposal is to write a number down—this is the minimum amount of money that you have to spend outside London.

To Khalid's point about fluctuations in the advertising market, if you take the covid year, for example, would you be able to guarantee that you could meet an absolute number of spend? In the end our budgets have to fluctuate over time to reflect fluctuations in the advertising market, because we are commercially funded. We have a concern that writing in a number without any caveat around it having to be a reflection of economic circumstance, or if you are outside a certain set of tramlines, there might not be flexibility around that number. That is our concern.

Q10 Simon Jupp: Focusing on ITVX for a second, I know that you perceive that there is a problem with keeping programmes online for 30 days. Could you explain and contextualise to us why that is such a problem for you?

Magnus Brooke: Yes, I am very happy to. The reason it matters is that it links into the prominence obligation or the prominence benefit from the PSB point of view, but also, as we might come on to talk about, the agreement objectives for the settlement of disputes between PSBs and platforms. That is why it matters.

Content has to be up for 30 days on ITVX in order to count towards those two things. From our point of view, we want to keep content up for as long as possible because, by definition, that maximises the number of people who see it and therefore maximises the amount of money we can make from advertising. That is our baseline position. We want as much content for as many people as possible for as long as possible. That is where we start.

There are rights reasons in a handful of areas, particularly news and daytime. The specific issue there is that we rely on the fair dealing exception in relation to news, music and images and so on. Our own legal view is that it is difficult for us to keep that content up longer than seven days if we are relying on those exceptions to maintain those programmes. It is specifically about news and daytime. As it happens, not that many



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people want to access news and daytime programmes after seven days—in fact, a vanishingly small number of people do. We also think that it is important that news programmes in particular have an ability to get prominence on platforms.

In the case of some sports, we simply do not have the right to keep it up for as long as 30 days, but we would love to keep it up for as long as possible.

Q11 Simon Jupp: Khalid and Mitchell, do either of you have the same issue as ITV or similar concerns in relation to keeping content online for 30 days in your respective on-demand services?

Mitchell Simmons: We are sympathetic to the ITV position. The main issue for us historically has been around the sports rights issue. Sometimes we simply cannot get the rights. We like to keep content on there as long as possible, but in certain instances, that is simply not possible.

Khalid Hayat: I understand that position. From our perspective, we want the fully array of Channel 4 content that we carry on our linear and streaming services to be subject to PSB prominence.

Q12 Dr Huq: Sports rights were just mentioned. I want to turn to listed events. I suppose that is one where your usual binge streaming of a box set versus linear real time does not work. People do watch it in real time. In particular, for the listed events that go traditionally to broadcasters with 95% reach and are offered for free, there are worries that the draft Bill does not protect that listed events regime enough for things such as the FA cup and Wimbledon. Do you foresee any problems with the fact that the Bill does not include digital rights at all?

Magnus Brooke: Yes, we do. Listed events are very important for the delivery of PSB. They are one of the best examples of the way in which PSB can bring the whole nation together. Young and old, people from all over the country come together. I think we had a peak audience of 27 million people watching the Euros in 2020.

Q13 Dr Huq: And demand on the national grid when everyone is putting on their kettle at the same time.

Magnus Brooke: Quite. Interestingly, within that, about 7.5% or so of our viewing for the 2020 Euros was streamed, not broadcast. That is quite a significant percentage.

We have two concerns on the digital rights. The first is around streaming. An exception already exists where if you are not on a regulated EPG but run a streaming service—that is a lot of the streaming services at the moment—you are not covered by the listed events rules. In principle, you could buy the rights to a listed event and then charge people to access it. We do not think that loophole has been closed entirely by the Media Bill. In fact, it has not been closed, nor will it be closed entirely by the extension of the regulation of EPGs, because quite a few of the streaming services are not on EPGs. That, in particular, is a really important loophole



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in the existing regime that needs to be closed, because that is about live rights. The Government have gone a bit of the way, but not quite as far as they need to go to close that.

The second one is other digital rights. To give you an example, for something like clip rights, you can imagine a situation where someone could auction clip rights, which we currently get as part of our overall live rights for coverage. You can imagine someone separating them off and saying, "Here's a separate package of clip rights." You can show clips almost immediately after the coverage has been broadcast, and you can show every single clip if you want. You could string that together on an online or social media platform and it would look a bit like—it would not look like live coverage, but it would be quite close.

The risk of that is, first, it undermines the value for the PSBs in listed events. Secondly, it fragments the audience. Potentially you get categories of the audience—younger people, potentially—choosing to watch on a social media service run by YouTube or Facebook rather than watching a PSB. We offer all these things currently via our own services, and it would be a pity to split up that audience to allow those rights to go to other people. Gradually, the PSBs would find themselves in a bit of an old world of simply live streaming, rather than bringing the whole audience together with the whole event and being able to create a national buzz around what we do, which is what we do at the moment.

Q14 Dr Huq: You are on the record, aren't you, as criticising the loophole, and you don't think that the Bill sufficiently deals with it, do you?

Magnus Brooke: I don't, no.

Q15 Dr Huq: How would you amend the Bill?

Magnus Brooke: I think what you need to do is to extend the definition of those people who are not PSBs, as it were. At the moment, there is a definition of broadcasting service and internet programme service. The definition of internet programme service requires you to have an on-demand service associated with a streaming service, and I think that is the nub of the problem. If it just said a streaming service—if the definition of internet programme service did not require you also to have an on-demand service associated with it—that might do it. That is the difficulty of the definition under the proposed amendment to section 98 of the Broadcasting Act 1996.

We are happy to write to the Committee with the detail of that, because it does get you into the drafting of how you would close that loophole. We thought the Government had closed it, but looking at the definition of internet programme service, if you are a streaming service without an on-demand service, you would not fall into that category, and therefore you would not be covered by the regime. Quite a lot of them would not have an on-demand service associated with them.

Q16 Dr Huq: Khalid, the Commercial On-Demand and Broadcasting Association says it is misguided and restricts competition to not have



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digital rights within this regime. Do you agree?

Khalid Hayat: I echo and agree with everything Magnus has said. Thinking about the context of the Media Bill as a whole—this is consistent with everything that we are all saying—we think that the legislative framework needs to keep up with viewer behaviour. As Magnus has said, over 50% of viewing today is of live content. In about 10 years' time, that will be about a third of all viewing. If the policy intent is that there are certain sporting events that are considered important enough that they should be universally available to all audiences and free to watch, we can absolutely support that principle. Given the way viewing behaviour is changing, it is only right that that principle extends to digital platforms as well as linear platforms.

Mitchell Simmons: We wholeheartedly agree at Channel 5. Channel 5, as the smallest PSB, has not had any listed events for a while, though we have carried highlights for listed events where the main listed event has been on a commercial channel. We have taken highlights, particularly from cricket in recent years. We absolutely agree that the direction of travel towards making it a PSB benefit and, we also hope, including digital rights is the right way forward.

Q17 **Dr Huq:** Do you think this Bill, as currently drafted, would enable digital rights to be added?

Mitchell Simmons: I do not see any reason why it could not be added.

Q18 **Dr Huq:** It sounds like the Government are dithering a bit in deciding what to do. They have not quite made their mind up.

Magnus Brooke: To be fair to the Government, it is not a totally straightforward issue. The streaming issue is relatively easy to deal with, because you are talking there about live coverage, and that is what the listed events regime does. I do not think it is difficult to make that change. Digital rights is possibly slightly more tricky, and my suggestion would be that there is a secondary power for the Secretary of State to define other types of coverage or other types of rights, subject to the same regime, and for that to be subject to the approval of Parliament via secondary legislation. That would be my suggestion.

Q19 **John Nicolson:** Good morning, everybody. I am hoping to return to Channel 4 later on in today's questioning, but perhaps I could start with ITV and you, Mr Brooke. Let us begin on the question of prominence. A lot of people are very concerned with prominence. For people watching at home who do not know what that means, when you turn on your telly and you are looking at a list of channels, how high up are certain channels? I checked this morning with Virgin and, astonishingly, right up at the top, or near the top, is TalkTV, which has fairly small viewing figures and would not be something that I would particularly recommend that anybody watch, given the daily ranting that you hear there from presenters. For companies like STV in Scotland, or for ITV and others, what protection do you think there needs to be in the Bill over prominence?



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Magnus Brooke: I think the Bill is trying to do the right thing, which is to ensure that ITV, STV and others can get prominence for their on-demand services, which include streaming versions of our channels. There is a very difficult balance that the Government is trying to strike between making it absolutely clear that these services are going to be prominent, and not just the services themselves—the apps, as it were—but the content within them and the streaming services themselves if they are provided within the app.

Q20 **John Nicolson:** How did we end up in the position where TalkTV is right up there at the top? What can be done about that? That is promoting TalkTV way above its position in the national discussion, its viewing figures or any other criteria by which one would judge a broadcaster.

Magnus Brooke: You have put your finger on a really important point. I suspect there is a commercial relationship, somehow or other, between that channel and the platform. That is the nature of the problem that we will have to deal with—

Q21 **John Nicolson:** What do you want in this Bill to address that?

Magnus Brooke: I think what we have got in the Bill is a clear obligation on platforms to make services like STV Player or ITVX prominent on platforms, and for content within them to be prominent. What there is not in the Bill is enormous amounts of detail about exactly what prominence means. It is different from the world we have at the moment with the communications Bill, where you have the concept of an EPG written into primary legislation. I think that is something we are all quite keen to avoid, because there is not such a fixed concept in the world of internet TV that is hurtling towards us.

What we need is a set of principles in the Bill and some detail around things like the fact that algorithms cannot override prominence, which is a really important part of the proposals that the Government have made. What we are then going to need is a really muscular interpretation and implementation by Ofcom with very clear marching orders from Parliament: "This is what Parliament wants to see in terms of the prominence of PSB content and players. You, Ofcom, must now go and implement that through a muscular set of guidelines, which you draw up on the strength of the legislation that Parliament passes." I think that is the right way to do it, because otherwise the problem is that you will end up with a piece of legislation that is out of date before it has even gone through Parliament. The number of ways in which platforms make content prominent or not in this new world are so varied, from recommendations to voice search and other forms of search, to the prominence of apps, and to all sorts of surfacing in various other contexts. You will have to have a much more subtle and sophisticated approach.

Q22 **John Nicolson:** Okay. As the Chair has explained, we will have the boss of ITV before us very soon to talk about the news story that is dominating at the moment, but I think it would be very odd if we had somebody senior like yourself from ITV without asking a couple of



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questions about the “This Morning” story. I suppose I should ask, first of all: are you okay?

Magnus Brooke: Am I okay?

John Nicolson: Yes.

Magnus Brooke: Yes, I’m fine, thank you.

Q23 **John Nicolson:** I know that is the question du jour at “This Morning”. I spent some time over the weekend talking to whistleblowers from ITV, including people who work and have worked at “This Morning”. It seems like a very unhappy place. Are you satisfied with the duty of care that the editorial team and senior managers provide to staff, especially young staff, working there and at ITV more generally?

Magnus Brooke: I think there is a very sophisticated and significant system of safeguarding and duty of care at ITV, with a very significant set of policies. We have a code of conduct that sets out our expectations about how people behave, and that deals with a number of different issues, from equal opportunities to respect at work, dignity and understanding. We then have an important set of requirements that hold people to account internally.

Q24 **John Nicolson:** Why are so many of the staff so unhappy—former and current staff?

Magnus Brooke: I cannot answer that question at the moment, Mr Nicolson. As you know, we have also appointed Jane Mulcahy KC to have a look at the circumstances—

Q25 **John Nicolson:** Yes, I know. You have already had an inquiry, and, of course, we will come on to this on the 14th in more detail, but several of the claims that ITV made about that previous inquiry do not quite seem to hold water on closer inspection. What do you make about the bullying allegations we have heard over the last week?

Magnus Brooke: What do I make of them?

John Nicolson: Yes, what do you make of them? As a senior ITV official, what do you feel when you hear staff complain about bullying? Surely, that is the worst thing you can possibly hear as a senior manager.

Magnus Brooke: Look, we take our responsibilities in relation to safeguarding and duty of care very seriously. Bullying is absolutely in breach of our code of conduct. It is very clearly set out. We have a set of policies around bullying and harassment at work. Clearly, bullying is unacceptable. If we find bullying, it is inconsistent with our policy; we would expect people to report it and we would expect it to be dealt with appropriately, and it will be.

Q26 **John Nicolson:** Of course, the person they would report it to in the first instance would be the editor of the programme. We all saw yesterday that surreal performance by the editor of the programme who, when asked by a reporter from Sky about bullying on the programme, started



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talking about aubergines. It was surreal and bizarre, and I think most people watching it would have thought, "This is the person who is responsible for safeguarding young staff. He's being outrageously dismissive and flippant, on camera, about an immensely serious issue." I wouldn't like to have been a young staffer going and talking to that editor about bullying, given that that is the way he treats the subject matter on camera, in public.

Magnus Brooke: Let me reassure you, Mr Nicolson, that we take these issues very seriously.

Q27 **John Nicolson:** But what about what he said?

Magnus Brooke: I would not endorse what he said. In fact, I—

John Nicolson: Do you agree it's bizarre?

Magnus Brooke: I would not use that word.

John Nicolson: What word would you use?

Magnus Brooke: I would certainly say it was extremely ill-judged to say what he did, but I can reassure you on behalf of ITV that we do take all these allegations very seriously, precisely because we have a culture in which people's conduct matters enormously to ITV.

Q28 **John Nicolson:** Is his position secure after that?

Magnus Brooke: That is not a question for me, and it is not a question for now. As you know, one of the ways in which we are demonstrating that we are taking this seriously is by appointing a very senior KC with significant experience in dealing with HR issues, particularly sensitive investigations. We have to take multiple things into account here around privacy and so on, as you will appreciate, so it is appropriate that the KC establishes the facts and gets to the bottom of what has happened, and that is exactly what we are doing.

Q29 **Giles Watling:** I, too, have questions on that issue, but I shall leave them until Carolyn McCall comes before us in a week or so's time. Following on from John Nicolson's comments on prominence, and going to Magnus first, if I may, it is said that for a public service broadcaster to benefit from prominence, it must be designated as an "internet programme service" or IPS, and it has to be "readily discoverable". That is a bit of a wishy-washy term. What does it mean to you?

Magnus Brooke: When you say readily discoverable, do you mean the PSB content within the service?

Giles Watling: Yes.

Magnus Brooke: Let me give you an example. If you go on to ITVX and you are looking to find last night's news programme, all you need to do is scroll down the home page of our service to find the news content from ITV. Is it quick to find it? Is it easy to find it? Do you have to search 10 times and put different words into the search function, or can you browse



and find the content relatively easily? In a sense, I can put your mind at rest from an ITV point of view, because I think about 70% of ITVX's content is originated UK content. It is not all first run, but it is originated UK content, which absolutely meets the remit we are set by Parliament as a public service broadcaster. Our entire purpose at ITVX is to make our PSB content as prominent as we can, because, in truth, that is why people come to ITV. They do not come for content they can find elsewhere, but for very distinctive British content. Therefore, I can assure you that that content will be the most prominent content on our service.

Part of what we are providing is news, and the interesting thing about news on ITVX is that we have had really quite good audiences for it. If you take the first four months, we have had on average about 8 million views of streamed and on-demand news on ITVX since we launched. Quite a lot of that is streamed viewing, but some of it is on demand. However, we have also had 6 million views or so in the first four months for our short-form content on ITVX. One thing we are experimenting with is whether there are other news forms that we can build an audience for via ITVX that are not necessarily about having to go the day after and watch on demand the news programme from the day before. Are there more imaginative ways that we can repackage individual items and put them up? We are experimenting with that, and it feels much more in keeping with how people consume news online, rather than watching an entire long-form programme the day after.

- Q30 **Giles Watling:** You seem to be very happy with the way the Bill deals with the promotional and readily discoverable aspect of it all, but is it a level playing field? I will go to Paramount on that question. Is it a level playing field for you, Mitchell, do you think?

Mitchell Simmons: Of all of us at this table, Channel 5 in particular has a peak schedule that is very much UK originated, and it fits in that factual genre. That is our go-to. If you want to go and binge-watch "Susan Calman's Grand Day Out", you are able to do that, and it is readily findable on the service.

One way in which we are slightly differentiated from those on this table is children's content. If you want to go and catch up on "Peppa Pig" or "Thomas the Tank Engine", My5 is clearly a space in which parents and families are able to do that. We think the Bill is broadly correct in terms of holding us to account and ensuring that within our VOD services, the PSB content is suitably findable and accessible. Ofcom will have powers to provide guidance to us, to ensure that we are being held to account. Broadly speaking, we are happy.

Giles Watling: Okay, that is good to hear. Khalid, you were nodding.

Khalid Hayat: It is a similar point. We at Channel 4 deliver our remit through all our services, and we consider that we deliver our remit through our content as a whole. Within our Channel 4 streaming app, which was recently rebranded from More4, as Magnus describes, we think about the design of app in order to think about how viewers navigate



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through and find the content they need, but we also have at the top what we call the hero carousel—the titles that we are promoting at the top of the app and the home screen. Those will include the most popular content, which provides a gateway into more challenging public service genres. We also apply a public service overlay, and the remit I mentioned, to how we think about what we are recommending at the top of the app.

We absolutely think about surfacing the right PSB content and challenging content through the app. Then, as Magnus described, the Bill has the principles of ensuring that the app as a whole gets prominence, and that PSB livestreams and content get prominence in the user interfaces into which we are placing those apps. While we think there are areas in which the regime could be strengthened, particularly on the agreement objectives and Ofcom dispute resolution, the principles are sensible ones, which we want Ofcom to—

Q31 Giles Watling: Sorry, can you say that again? Which are the areas that could be strengthened?

Khalid Hayat: The area where we think that strengthening is required is in relation to the agreement objectives in the event that Ofcom needs to intervene. This is about prominence for PSB apps and content, but it is also about securing fair value in our relationships with platforms. The regime will require that we as the PSBs, or as Channel 4, are negotiating with a platform in relation to prominence and access to our content and services. In the event that we fail to reach an agreement with the platform, Ofcom has a role to play as a backstop in order to intervene and ensure that prominence is delivered.

Q32 Giles Watling: So, in your view, that is a carry-out for Ofcom.

Khalid Hayat: Yes, so Ofcom will have that role. The way the draft Bill describes those objectives at present is that it frames them in terms of Ofcom needing to take into account the costs associated with public service delivery. We think that applying cost is too narrow, because we think the policy intention, and indeed Ofcom's recommendation, is that prominence should be provided on terms that are consistent with the sustainable delivery of public service obligations. We think that those agreement objectives need to take into account the value of PSB delivery, and the value that the PSB content provides to these platforms, so that in the event that Ofcom has to intervene, it can take that broader value into account, not just the costs associated with delivery.

Q33 Giles Watling: That is a very good point. Thank you very much. I would like to talk about video-on-demand services. Magnus, I will come to you on this. On what basis do you decide which content to give prominence to on video-on-demand?

Magnus Brooke: It is a mixture of things. Fairly obviously, when we have a new drama that we have invested a small fortune in, and we are proud of it and it has some top talent, we will want to make that prominent because we want to tell viewers about it, and we want them to watch it. There are some fairly obvious things like that. There are other



considerations about the audience. Do our numbers show that we are reaching all the audience? Do we need to target particular segments of the audience more than we have been? One thing we are trying to do with ITVX is reach more of what we call “light viewers”, so people who have not necessarily come to ITV as much over the past few years—can we get them back into ITV? We will look quite carefully at the sort of content that those viewers like, and try to make that prominent. As I said, we have a pretty prominent news rail on the service, and news is bringing in quite a bit of traffic.

Q34 Giles Watling: As you said earlier, you are a commercial operation. There must be commercial considerations to prominence.

Magnus Brooke: Of course, and the light audience point is absolutely about that, because that is about the reach of our services. Advertisers are interested in volume but also reach—are we reaching as much of the UK population as we can with our advertising? That is absolutely part of what we are trying to do.

Q35 Giles Watling: Because the advertisers will go to where the prominence is and your largest reach.

Magnus Brooke: The reason prominence matters is that it drives a bigger audience. It creates more eyeballs for advertisers, effectively.

Q36 Giles Watling: Absolutely, but the question I want to put again is: is there a level playing field here? Everybody is looking for the same pool of advertisers who want to come to their streaming service or video-on-demand service, and they want to make sure there is a level playing field. The question I am fundamentally asking is, does the Bill do that?

Mitchell Simmons: I do not think we have any challenges. To build on Magnus’s point, not to be facetious, but, for example, PSB players and PVID services have a huge wealth of content—many thousands of hours. Obviously, we want to support the PSB remit-meeting content target, but equally, we are a commercially driven organisation. It will not be uncommon, particularly on My5, that as you move towards Christmas, you will start to see a rail of Christmas movies, which will bring people in. The point is that that commercial-type content—the Christmas movies—will bring people into a PSB service, and then when they are there, they will be able to move on to watch some of the content that was previously shown on Channel 5 as more traditional PSB content.

We are trying to both hit our objectives as a PSB to reflect people’s lives back to them and, at the same time, create a customer value proposition that is commercially orientated and helps us to generate revenue that we can reinvest back into content.

Q37 Giles Watling: Fantastic; that is a very honest answer. Khalid, do you have anything to add?

Khalid Hayat: On the level playing field point, I do not think the prominence regime is intending or seeking to override consumer choice. Ultimately, viewers will watch what they want to watch, but we as the UK



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have taken the view that public service content matters and public service broadcasting matters, and therefore we all think that public service content should be easy to find so that viewers can discover it and ultimately make the informed choices that they want to make.

Giles Watling: Thank you, gentlemen.

Q38 **Jane Stevenson:** Good morning. I want to turn to selection services, smart TVs and how people are accessing content. The Bill aims to capture selection services, but it does not cover mobile phones, tablets and other devices. The BBC said that a quarter of content hours on iPlayer in 2022 were accessed on other devices that would fall outside the Bill. Do you think that loophole needs closing, and are you concerned about it?

Magnus Brooke: Yes, to an extent. You can see in the market that access through tablets and computers is going down quite rapidly, and people are increasingly watching on TV-like devices. There are dual-use devices—particularly gaming consoles and so on—where there is more of a question about whether the Bill ought to cover them, but we think that the Bill currently will cover the majority of ITVX’s viewing. Of course, we would prefer it if it went further, but I do not think we are desperately uncomfortable with where the Government have ended up.

I will make a more general point. We are talking a lot here about the defects of the Bill. Stepping back for a second, we think the Bill is, broadly speaking, going absolutely in the right direction. The definition of selection services is quite flexible, and there is a possibility in future that that could be broadened out if viewing behaviour changes. One of the things we are keenest to make sure is that things that might be excluded at the beginning could potentially come back in if it turns out that we were wrong and viewing through tablets increases, for example.

Imagine that YouTube starts providing what looks like a television selection service because it starts aggregating lots of on-demand television services. It would be entirely appropriate for YouTube, at that point, to be covered by the Bill, and it seems to me that there is nothing in the Bill at the moment that would stop that happening. It may well not be the case and legitimate at the beginning, but the important thing is that we have a Bill that is capable of extending to those platforms, which I think the Bill is. I think the only thing that it rules out is the button on the remote control, because I think the Government’s view was that that would take them into international trade territory, which could cause a difficulty. It seems to me that the hardware exception in the Bill is the main area that is not going to change, but the rest of it is sufficiently flexible to change over time.

Khalid Hayat: I agree with all that. As with ITV, we would clearly prefer to be prominent on as many platforms and devices as possible, but when you look out there at the consumer landscape the real battleground, for want of a better term, is in smart TV operating systems. It is Samsung, LG and Google TV, Roku, which is obviously small in the UK but big in the US, and so on. Prioritising big-screen devices feels reasonable, and will capture



the core of viewing, but I absolutely agree that the Bill is proposing a principles-based regime with flexibility to evolve over time, and we are supportive of that.

Mitchell Simmons: I do not have anything particularly to add. We are sympathetic to the idea that the Government must try to draw a boundary somewhere, and we think that they have broadly done it in the right place. The in-built flexibility for audience change is welcome.

Q39 **Jane Stevenson:** Thank you. Is the Bill sufficiently clear on whether Ofcom could remove a legacy selection service when something is outdated and not receiving technical updates? Do you think that there are gaps on those very old platforms?

Magnus Brooke: It isn't quite clear, actually. This is a slight concern that we have. We know this through bitter first-hand experience of launching ITVX last year. You think of Samsung, say, as a single platform, and that therefore if you write Samsung on the list it will be fine, because you will be able to have a must-offer obligation on us and a must-carry obligation on them. Actually, Samsung is not a single platform; it is a set of different platforms over time, all under the same umbrella but some of them with different operating systems. Some of them, frankly, are not supported by Samsung any more, as we discovered. Therefore, it was literally technically impossible to put ITVX on some of those legacy or older platforms. It was either literally impossible technically or economically entirely unfeasible to do it, partly because the software simply could not support the sophistication of the service that we were offering.

It is really important—we put this in our submission to the Committee—that there is discretion for Ofcom to say, "There are certain variants of platforms that we may designate that don't have to be covered by the obligation to offer and carry because it wouldn't be appropriate." We tried very hard on the launch of ITVX and we got nearly to 100%, but we did not quite get to 100% of all the platforms that ITV Hub had been on, because there were some that we simply could not work out how we could get it on. Nor could the platform, in quite a lot of the cases.

Q40 **Jane Stevenson:** Do you think that that needs to be on a case-by-case basis?

Magnus Brooke: I think so. You would definitely say that Samsung smart TVs need to be on the list, and various other manufacturers. What is probably impractical is to have a list that is 35 pages long, and to literally list "not the 2015 variant" and so on. It is right that there should be discretion for Ofcom to say, "Actually, because of practical difficulty it should not apply to the following models in practice."

Khalid Hayat: I agree with all that. I absolutely agree with the principle that it is an area that Ofcom needs to look at and there needs to be flexibility. Operationally, we encounter these kinds of issues ourselves in areas and platforms where we as the PSBs have a stake. All our organisations are shareholders in Everyone TV, formerly known as Digital UK, which operates Freesat. We are all part of YouView. We see that



different devices have different technical specifications. Therefore, our tech and product teams end up engaging in bespoke work in order to enable delivery on those devices. As there is increasing competition in the device landscape and increasing proliferation of devices, that creates complexity that should be taken into account in the way the regulatory regime is applied.

Mitchell Simmons: I will just add that I read some of the responses to this inquiry over the weekend, and I was struck by the fact that on this point specifically, many of the platforms have some of the same concerns. It would seem odd if, in a must-offer, must-carry regime, we could potentially be in a situation where both a PSB and a platform were struggling to make the technological requirements in order to have that PSB on that specific platform, yet there was not the flexibility in the regime to say, "Actually, this is a 2009-type TV." We need to have that flexibility and Ofcom needs to be able to make the judgments, because it does feel like there may be some consensus in the industry.

Q41 **Jane Stevenson:** So the other side of it is having an annual release and avoiding regulation from that—

Mitchell Simmons: Well, there will need to be a judgment made by Ofcom in terms of which specific devices still have suitable proliferation among viewers, and also that we as PSBs are able to reach the correct technological hurdles to make our products available to them. I am not an expert on this matter, but my assumption is that we will not be in a purely linear environment where you just say, "Oh, after 10 years, there are none." There could be some devices that are much more popular than others, so I do think there needs to be flexibility. But clearly, it is in the interests of both PSBs and platforms to make sure there is a regime that addresses the issue of legacy devices.

Jane Stevenson: So flexibility under Ofcom, basically.

Magnus Brooke: One thing that really struck us in the course of the launch of ITVX was that consumers have not quite realised yet that televisions are basically computers. Whereas people think about how long a computer would typically last, people's expectations are that televisions last for ages—"Mine's only 10 years old!" Imagine using the computer that you had 10 years ago. There is something that all of us need to do to help educate consumers that these are different things now when you have a connected TV.

Q42 **Clive Efford:** I want to ask about the must-offer, must-carry agreement objectives. Do you think the Bill as it is drafted meets the overall agreement objectives between a regulated television selection service and a public sector broadcaster?

Magnus Brooke: No, I do not think it quite does at the moment. I think the basic set-up of a must-carry, must-offer regime, as it were, is the right one, and I think you do have to have a dispute resolution function in case we cannot agree. In a sense to reassure you, what we are looking to do is have a commercial agreement with the platform—a partnership; a win-



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win, where we benefit and they benefit. That is what we are looking to do, and we definitely have those sorts of relationships with Sky and Virgin now. That is what we want to replicate. In our relationship with them, we sell our advertising; we have our relationships with our advertisers. We can innovate in how we offer things like Planet V, which is our programmatic advertising platform, and we can use data to help target our advertising on ITVX more effectively within those partnerships. That is what we are looking to do.

What we see coming down the track—this is specific to internet television—are a set of internet television platforms that will apply, or try to apply, a set of terms globally. Those terms are going to be pretty stringent: they are going to require us to give away at least 30% of our revenue—revenue, not profit—to them, simply for being on the platform. They will effectively require us to go into their advertising system, so we will not necessarily have a relationship with advertisers, we will not be able to innovate in terms of our ad tech, and we will not necessarily have access to any data. That is the threat that is coming, and I would not want to understate this: that is an existential threat to PSB. There is no other way of putting it. A third of our revenue is approaching the entirety of what we spend out of London in a single year. That is the threat that is coming.

We need to make sure that the dispute resolution regime enables Ofcom to have enough strength and discretion to avoid that outcome, and to get us into a place of a win-win in the way that we have with a Virgin or a Sky. That is what we would like, and at the moment we do not think that the second agreement objective, which talks only about cost, is the right approach. Effectively, what it says is that all the PSB can expect from that relationship is to get its costs back. We are a commercial business. If we have a hit, we do not just want to get our costs back; we want to make a bit more money so that we can reinvest in original content.

Similarly, if we want to innovate, as we are doing—in advertising, in data, in programmatic advertising, or in our relationships that we have built over many years with our advertisers—we want to be able to have that relationship, not the platform. The danger with the formulation at the moment is that it is winner-takes-all for the platform beyond cost. As a business, we cannot simply get our costs back: we have to make a profit. We want to innovate, we want to build on the relationship with our advertisers, so we think that agreement objective needs to be recast. It is really important—I cannot emphasise enough how important it is—for that agreement objective to be recast. We put some proposed drafting to the Committee but, broadly speaking, what we are suggesting is that Ofcom should have discretion to ensure, or to look at, the arrangements we have with other players, such as Virgin or Sky. To use Sky's words, this agreement objective ought to protect the PSBs from unreasonable demands from the platforms. I have never heard Sky talk about protecting PSBs from unreasonable demands, but even they use that language.



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The first bit of it is that Ofcom needs to be able to look at other arrangements, to ask whether what a platform is saying is consistent with the other arrangements that we, as a PSB, have in place. The second is that we ought to have the potential to make the most of our investment in our content, in terms of getting value from hits, in terms of innovation and in terms of use of data. We ought to be able to fulfil the potential of our business. It may be that cost is a backstop. In other words, no lower than cost should be a basic backstop, but it has to go further than that. Give us more potential to achieve success with our business on our own merits.

The third is that Ofcom ought to be able to have a look at whether an agreement materially weakens the business of ITVX. If, in the end, the agreement is one-sided and ITVX cannot innovate in advertising or data and is forced to go into someone else's system, that is not an agreement that will result in a sustainable PSB system. I think it was DCMS that said the purpose of this is to improve PSBs' sustainability. It is not going to do that if we simply have cost as the criterion, because every platform will simply say, "What is the cost of your programmes? Let's allocate that across all the platforms. We'll give you that cost and, frankly, you can take every other term we want to impose on you." That cannot be right, because we are obliged to supply the service.

Q43 Clive Efford: You mentioned Sky, and there seem to be concerns from both sides of this argument about that particular area of the Bill. Is there any consensus coming from the industry itself?

Magnus Brooke: I think there is broad consensus among the PSBs. I have not asked Sky about our proposed amendments, but we drafted them in a way that, as far as I am concerned, meets Sky's test of protecting PSBs from unreasonable demands from the platforms. People like Sky and Virgin, which have a constructive partnership approach—not a cookie-cutter, "these are the terms" approach, but a genuine "how can we both win from this relationship?" approach—have nothing to worry about from these arrangements. You will have to ask them, but it has been very deliberately drafted in the light of what we see coming down the track, mainly from the US. A one-size-fits-all, "these are the terms" approach is what we are particularly concerned about, and that is why we have constructed the proposed amendments in the way we have.

It is not about Sky and Virgin. We would be really happy to have conversations with them about how we can make sure it does one thing and not the other, because we want to get to a commercial deal, a partnership deal. We do not want Ofcom to intervene; we would rather have a commercial negotiation, because these are complicated relationships with lots of facets, whether that is data or technology, and all the rest of it. These relationships are much better negotiated than imposed by a regulator, but what we are worried about, just in case I have not said it enough, is the one-size-fits-all approach that we see so graphically, and it is nearly here. We had a devil of a job at ITVX negotiating some of those demands.



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Khalid Hayat: This links very closely to my response to Mr Watling's earlier question. Ofcom recommended that PSBs should be made available on terms that are consistent with the sustainable delivery of public service obligations. As Magnus says, a cost recovery-based approach is not consistent with that objective. We need to take into account PSB value in the round.

Mitchell Simmons: We currently have positive deals with Sky and Virgin, and we essentially want what we have now on these new platforms, with a bit more prominence. The way we think about these things is not hugely complicated, but the reality is that we are not able to do that at the moment and this legislation should hopefully help us do it. As Magnus and Khalid alluded to, the language of the legislation could be tightened and nuanced, but we think the overall principle is broadly correct.

Q44 **Damian Green:** I want to ask a couple of questions about Channel 4, starting with clause 24, which sets out the duty of long-term sustainability. It puzzles me a bit, if I step back from the whole debate over the past couple of years about privatisation, in that the 1990 Broadcasting Act says that one of the duties of the board is to keep Channel 4 sustainable. Indeed, the 2006 Companies Act says that any board has the duty to make their firm successful. What is added by this new sustainability duty?

Khalid Hayat: It is correct to say that the members of Channel 4 Corporation—the board directors—absolutely do comply with directors' duties, as if they were directors of companies by way of the Companies Act 2006. We do that through their contracts of engagement and via the fact that C4C, as a corporation, is run to conform with the UK corporate governance code. In the discussions with DCMS and the Government around the package that was announced in January, the Government had the priority to set out explicitly in legislation a duty on the directors to ensure the financial sustainability of Channel 4. We are comfortable with that principle and the principle of adding in a clause on that basis. We have had some discussion with DCMS around the precise wording of that clause to ensure that it does not have unintended consequences.

Q45 **Damian Green:** I am still puzzled. Does it add anything? Are your directors going to behave any differently from the way they already do because of this clause?

Khalid Hayat: The directors are required to fulfil the primary functions of Channel 4, which includes delivery of the core Channel 4 main channel. Therefore, if there is a sustainability clause in the Media Bill, per clause 24, we would want that to refer more directly to the primary functions of Channel 4 and to make sure that they align with the Companies Act 2006, particularly section 172.

Q46 **Damian Green:** So you would prefer it if it did not change much of your existing remit?

Khalid Hayat: The intention, as we understand it, is to codify the requirement on the members of the corporation to support and ensure the



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financial sustainability of Channel 4. We are comfortable with that, where it is consistent with the delivery of the primary functions of the corporation.

Q47 Damian Green: Part of it is to sustain the activities long term. You must have thought this through. How long is long term?

Khalid Hayat: In terms of how we think about the longer term and how we think about the business, we have got a strategy to transform Channel 4 into a digital-first public service media organisation—our Future4 strategy, which is about prioritising digital growth and diversifying revenue streams. We have set ourselves specific targets in that strategy for 2025 to double the size of our streaming service in audience terms, to grow digital advertising to 30% of our total revenues by 2025 and to grow non-advertising revenues to 10% of total revenues by 2025. We are making good progress against those targets.

As we look beyond 2025, we have not set formal targets for the rest of the decade, but, as far as we are concerned, the principles of that strategy remain. As we look to Channel 4 over the rest of this decade and into the next decade, over the next Ofcom licence period, we do need to think about the fact that by the end of the next licence period, Channel 4 will continue to deliver live linear content but it will be increasingly a streaming-based organisation—a streaming-based proposition—and delivering public service content on streaming and social platforms. The business needs flexibility to enable and support that evolution, and the sustainability duty needs to be consistent with that. One area where we have expressed some concern is in the drafting language about the level of activities: “activities” is not clearly defined, and “level of activities” would appear to, or could, run the risk of limiting the ways we can evolve what we are doing in how we deliver the remit in the interests of viewers. Again—I come back to this—that is why we think that linking to primary functions would work better, because “primary functions” of C4C is more clearly defined in existing legislation.

Q48 Damian Green: And there is precedent there. Basically, you would prefer the Bill not to tie you down too much.

Khalid Hayat: There are well rehearsed and clear definitions of Channel 4’s primary functions and duties. Therefore, ensuring commercial sustainability and delivery of those duties and functions would appear to be a reasonable way forward.

Q49 Damian Green: The biggest specific change is the abolition of the publisher-broadcaster split. Is that particularly helpful for your long-term sustainability, for you to become more of a publisher-broadcaster?

Khalid Hayat: The independent production sector is the lifeblood of Channel 4. We have spent the past 40 years working very closely with our partners in the independent production sector. They are our lifeblood; we do not make our own content, and we never have for Channel 4.



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As the Committee will be aware, a change to the publisher-broadcaster status is not something that we called for during the DCMS consultation on the future ownership of Channel 4; it is a decision that the Government made in order to give Channel 4 the flexibility and optionality to make its own programmes in future, if that is what we want to do. We accept that proposal, but we would say that, in the event of the publisher-broadcaster restriction being removed—that requires the Media Bill to pass—we do not have any in-house production at present, so it would take time to build up and we would do it in a way that has to consider carefully the business case, the public policy and commissioning aspects, and the wider stakeholder relationships.

Q50 Damian Green: Assuming the Bill passes in roughly its current form, have you decided yet that you will definitely go down that route and make your own content?

Khalid Hayat: I have been very transparent with you. What we are doing is looking at the strategic options available to Channel 4 in the event of the restriction being removed. When we look across the market, we see a whole host of ways in which organisations have built up in-house production or intellectual property-based activities.

We could build up from scratch and therefore have greenfield, organic growth, as it were. That is an option, but it requires a lot of investment. Production margins can be quite tight and an organisation like Channel 4 does not currently have the capabilities in-house to do that quickly, so it would be gradual and take time. As ITV grew its already large production business, for example, it did a lot through acquisition of production companies. Again, that is an option that is potentially available, but we have a debt limit and do not have the levels of resources to go big on something like that. There are other ways—we could look at partnerships and joint ventures, for example—to help drive intellectual property growth.

We do not have a set way forward. We are exploring options and discussing them with our board, but we are also interested in understanding where Government will come out in the process that DCMS is engaged in with the wider production sector in order to help understand the impact of the change on the production sector. We share the Government's objective, in that while there is benefit to Channel 4 in greater flexibility from this change, it needs to be managed in a way that is consistent with an independent production sector that continues to flourish.

Q51 Damian Green: With that in view, as a final probe, are you yet at the stage of thinking what kind of quota of your own content you would want to make? Is it 20% or whatever?

Khalid Hayat: We do not have a fixed view, because we are thinking through the strategic options as to what in-house production might look like in the event that we did it. The Government are thinking, "Is there a need for additional protections and mitigations for the production sector in the event of the change? Should that involve any changes to quotas?",



and so on and so forth. Ultimately, we think that is a matter for Government to reach their view based on their consideration of the pros and cons.

Our general starting point is that if the Government wish to give optionality and potential commercial flexibility to Channel 4, a proportionate way forward would be to allow Ofcom as the sector regulator to consider what protections and mitigations might be needed to enable them to evolve over time, rather than set any additional mitigations in legislation, for instance, in order to fix them at this point in time and therefore make them harder to evolve. The broader point, which we have made to DCMS, is that if the Government want Channel 4 to generate value from having commercial freedom and flexibility in this area, the more onerous the additional restrictions that are placed on it in the event of that change, the harder it will be to develop a commercially sustainable business case.

Q52 **Chair:** May I press you on that? We are clearly in a different place from where we thought we would be in this piece of legislation regarding Channel 4, but there is no doubt that you are still facing some considerable challenges. As you say, you have a business model based upon paying others to make your product and then effectively letting them keep the profits. You have huge overheads at a time when advertising revenues are being sucked up by many of your streaming competitors. You have huge wage bills. The CEO is reportedly on £1.4 million a year—the highest in the network’s history—and reportedly cancelling shows at the 11th hour. What is the plan? Is Channel 4 genuinely sustainable in the long term?

Khalid Hayat: Channel 4 is in very strong creative health. You will have seen that we recently won nine BAFTA awards—the most we have won in 22 years—for programming such as “I Am Ruth”, “Derry Girls” and our Ukraine news coverage. In film, we have had 40 nominations at the big film awards, and we have won eight awards. We are in very strong creative health. The pressures that you describe in relation to some of the commissioning decisions that we have recently made, for instance, are short-term market pressures. All of us as commercially funded broadcasters are experiencing pressures in the ad market relating to the economic conditions in which we find ourselves as the UK.

Our priority throughout this period is to preserve shows as much as we can, and to minimise any disruption or cancellations to commissioning. Any decisions that we make are about ensuring and delivering the sustainability of Channel 4’s remit. The year 2022 was a record one for content investment for Channel 4. We invested more in 2022 than we did in any other year. We are going to invest a similar amount in content this year, but what we are doing is phasing our activity a bit more, given the market conditions in which we find ourselves. While we acknowledge that our activities in the short term are painful for some of our suppliers, and we are grateful to them for working with us through this period, they reflect short-term market conditions. They do not in any way reflect any concerns about long-term sustainability. What we will be doing shortly is



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briefing indies on our 2024 and 2025 commissioning needs. We will be briefing indies on that later this year in order to give visibility of our commissioning plans going forward.

Q53 **John Nicolson:** Could I come in, Mr Hayat? This is the second time since I joined Parliament in 2015 that we have fought off the privatisation of Channel 4. I hope this is the last time you have to do it. The fallout from it is quite odd, isn't it? You don't really want these changes, do you?

Khalid Hayat: Look, Channel 4 is a publicly owned asset. It is entirely reasonable for the Government from time to time to look at whether the current ownership model is the right one.

Q54 **John Nicolson:** But you think it's the right model, don't you?

Khalid Hayat: Through the consultation process, we saw our role as providing evidence and analysis to set out the implications for remit delivery.

Q55 **John Nicolson:** Exactly. You didn't say, "What we really want is for you as a Government to allow us to make our own programmes." You didn't say that at any point.

Khalid Hayat: We set out the implications, or the impact on remit delivery, of potential changes to the model.

Q56 **John Nicolson:** Am I right in saying that what has happened is that the Government are trying to justify this whole long process of looking at privatising Channel 4? They cannot simply retreat and say, "Well, that was a complete waste of time. We are walking away from it. Channel 4 has won." They have to have a fig leaf to show that they have achieved something, and the fig leaf appears to be that you are now going to be allowed, or forced, to make your own programmes—except that you are not going to do it, are you?

Khalid Hayat: You will have to ask the Government about their decision-making process—

John Nicolson: I will, but I am asking you at this precise moment.

Khalid Hayat: Thank you. My understanding is that in autumn 2022 the Secretary of State made a decision to re-examine the business case for Channel 4 privatisation. We inputted into that process. The business case was re-examined; the Secretary of State looked at the evidence and took the view that privatisation of Channel 4 is not needed in order to sustain the remit delivery.

Q57 **John Nicolson:** What happened last time was a long, expensive process. Are you going to start making programmes?

Khalid Hayat: As I said, we are looking at the strategic options. We do see how, over the medium term, Channel 4 owning more intellectual property and making its programmes could deliver value for Channel 4. We are looking at the strategic options and working with our board on



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those options. In parallel, we are also trying to see where Government comes out in relation to—

Q58 John Nicolson: I have talked to lots of senior people at Channel 4, and I will be astonished if in five years from now you are making your own programmes. I understand why you say, “Yes, we will look at it,” but in reality you are being given a power that you are never going to use. It just seems a monumental waste of time to give you something as part of this Bill that you have not asked for, that you do not want and that you will never use. Is that not the ultimate in pointlessness when it comes to legislation?

Khalid Hayat: The Government is providing the commercial flexibility and optionality for Channel 4. It will be a matter for Channel 4, the corporation and its board to decide whether and how to use that optionality.

John Nicolson: We will wait with bated breath.

Q59 Kevin Brennan: Good morning, everyone, and welcome to this place of warmth and magic, to coin a phrase.

I want to follow up on Channel 4. Is John Nicolson not right that basically the proposal for the privatisation of Channel 4 in the first place was a solution in search of a problem? The current proposals in the draft Media Bill about Channel 4 are exactly the same thing: a solution in search of a problem, in order that the Government can save a bit of face over the second debacle in less than a few years around Channel 4 privatisation. That is a fair assessment, is it not?

Khalid Hayat: The Government chose to re-examine the business case for Channel 4 privatisation and made a decision—

Q60 Kevin Brennan: I know that, and you have said that already, but I am asking whether you agree with me that, basically, all of this is a solution in search of a problem. I expect you, as a Channel 4 executive, to say—as your very highly paid chief executive has said to us quite frankly on occasions—that you do not agree with these proposals and that effectively that is what they are: a solution in search of a problem that does not really exist.

Khalid Hayat: The package announced by the Government in January is intended to ensure the long-term commercial sustainability of Channel 4 as a not-for-profit, publicly owned public service broadcaster.

Q61 Kevin Brennan: You have said all that already, but is there really a problem here that this is a solution to? That is what I am saying. In your opinion, as a Channel 4 executive speaking for the company, is there a problem with the current structure and boundaries that apply to Channel 4 to which this is a solution?

Khalid Hayat: Through the consultation process, we made clear our view that we do not see a commercial—

Q62 Kevin Brennan: So the answer, then, is that you do not think it is a solution to anything,



Khalid Hayat: The Government have decided on this sustainability package, and we have welcomed the Government's announcement.

Q63 **Kevin Brennan:** I know that, and you have said that already. I thought Channel 4's position on this was quite clear until you started speaking about it—that is, that Channel 4 thought this was not something it particularly welcomed or wanted because it did not solve any problem that exists. But are you saying that there is a problem that exists? The Government obviously think there is a problem—I accept that—but I did not think that Channel 4 thought there was a problem.

Khalid Hayat: Having commercial flexibility to evolve one's business in the future does not mean that there is a problem with the business; it just means that there will be levers available to Channel 4, and Channel 4 will decide how to use them.

Q64 **Kevin Brennan:** On the sustainability clause, Damian Green asked a question earlier that I don't think you really answered: what difference will the sustainability clause make to the way your directors behave in practice?

Khalid Hayat: The sustainability clause in the Media Bill will create an obligation on the directors in terms of that long-term sustainability challenge.

Q65 **Kevin Brennan:** I am aware of that. What difference will it make to the way your directors behave in practice? That is what Damian Green asked you earlier on. Is the answer "none"?

Khalid Hayat: The sustainability clause needs to be implemented in a way that is consistent with the delivery of the primary functions of Channel 4.

Q66 **Kevin Brennan:** I'm sorry, but that doesn't answer my question. Do you expect your directors to behave any differently from the way they currently do, as a result of the introduction of the sustainability clause? There are two options to answer that with: "Yes, they will behave differently," or "No, they won't behave differently because they are behaving in that way already."

Khalid Hayat: The directors focus on the primary functions of Channel 4, and it is important for that focus to remain.

Q67 **Kevin Brennan:** I don't understand that answer, to be honest with you. I think it means, "No, it will not make any difference, because they already behave in that way in any case," but correct me if I am wrong in my interpretation of what you are saying.

Earlier you mentioned commissioning activity in Channel 4 and the difficulty of doing that when times are tough. During the privatisation process, Channel 4 introduced a new current affairs programme, "The Andrew Neil Show". Andrew Neil is a brilliant political interviewer, without a doubt; I may not agree with his politics, but undoubtedly he is a top political interviewer. He was given a show, and some people suggested that he was given that show to try to call off the dogs on the right of the



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Conservative party and the Government around privatisation—to show, if you like, that Channel 4 was not just about Channel 4 News, which is a particular *bête noire* of some people in the Government and on the right of the Conservative party. I think that that show has had three seasons. Will that be recommissioned now that privatisation is off the cards?

Khalid Hayat: I do not make commissioning decisions for Channel 4.

Q68 **Kevin Brennan:** Do you have any information you can share with us about that?

Khalid Hayat: What I would say is that we are committed to the delivery of impartial news and current affairs. That is a licence obligation; it is at the heart of what we do. We are absolutely focused on that. All our news coverage has always been found to be impartial. We have never been found to be in breach of those licence requirements. We see the role of Channel 4 news and current affairs and public service broadcasting in the round as providing a range of perspectives and viewpoints and providing challenge.

Q69 **Kevin Brennan:** So it might be recommissioned—you just don't know. Is that the answer to that question? It is not going to just drop because privatisation is off the cards.

Khalid Hayat: I do not make commissioning decisions for Channel 4.

Q70 **Kevin Brennan:** Okay. Can I just ask—perhaps I will turn to Mitchell—about the new video-on-demand code that is being proposed in the Media Bill? What is your view of that, and what changes do you think might be needed in relation to it? If possible, can you reference any implications it might have for coverage during election periods?

Mitchell Simmons: I should begin by saying that Paramount is in a slightly unique position in the UK market. Obviously it is the owner of a public service broadcaster, Channel 5, but also of a global streaming platform, Paramount+, to which we would anticipate that the tier 1 standards code would apply.

At a general level, we are very sympathetic to the notion that as a viewer moves between devices, different regulatory regimes exist, or do not exist, for some services, and that it is important that standards are upheld between services. When a viewer is watching on a PSB linear channel and then maybe goes to watch on an SVOD service, and then a simulcast on another service, they need to expect that they are getting a similar delivery in terms of broadcasting standards.

We broadly welcome the regime. We think it makes sense and is logical. I say that both from a PSB perspective, as Channel 5, and from the Paramount+ side of the business. I think one area that is interesting, which has come up previously, is around the direct transposition of some aspects of the broadcasting code to the VOD environment. Clearly there are differences in the way we view linear content. You can turn on a TV channel and you will just land on something when it comes to linear viewing, whereas on a VOD service you are pulling content.



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Broadly speaking, on the area of impartiality and transposing those rules and the rules around elections, for example, we recognise that there are some concerns in the market and in the industry, but we would say that we are already regulated by Ofcom. Paramount+ is notified to Ofcom under the current rules, and we would anticipate that Ofcom, as a well-versed regulator, would address those differences and find a way to ensure that audiences are sufficiently protected, that impartiality is suitably delivered and that during election periods the right processes are taking place without instigating significant business disruption. It is important that the regulator gets the balance correct, but we have a high degree of confidence that Ofcom will be able to deliver that.

Q71 Kevin Brennan: Finally, may I come to you, Magnus? Earlier on, John Nicolson asked about a matter I have raised before with Ofcom at this Committee about TalkTV and its prominence on the electronic programme guide, which comes about as a result of it purchasing time on the local TV slot in many parts of the country. Would the draft Bill, as drafted, do anything to prevent that sort of activity from taking place in future: broadcasters and so-called news channels that have no actual public service broadcasting remit being able to purchase places high up on the electronic programme guide by acting as a sort of succubus on local TV channels?

Magnus Brooke: No, I don't think so. In a sense, the whole question of prominence—

Q72 Kevin Brennan: Do you think that it ought to? You are there on channel 3 with your news as a public service broadcaster, and there they are on wherever it is—channel 8 or 9.

Magnus Brooke: In a sense, I think the future of local TV is a question for Government, rather than a question for ITV.

Q73 Julie Elliott: Mitchell, may I go back to the video-on-demand code? Should existing catalogues have to be compliant with the new code?

Mitchell Simmons: Certainly from a My5 perspective, the vast majority of content has already been broadcast, so we would anticipate that it would already meet the standards of any new code. Clearly, services have many thousands of hours of content, so we would seek either some kind of suitable implementation period to give companies time to ensure that catalogues—

Q74 Julie Elliott: How long do you think it would take for it to be checked that your catalogues are compliant?

Mitchell Simmons: That is a good question. I do not know the answer, so I cannot answer right now, but what I would say is that Ofcom should consult with industry and find a suitable period. I think it is completely reasonable.

Q75 Julie Elliott: Could anybody in your organisation answer that, or is it just that your company does not know the answer?



Mitchell Simmons: For My5 most of the content has already been broadcast on linear TV, and for Paramount+ we are already notified in the UK to Ofcom under its ODPS codes, so I would imagine that for us as a business it would be a reasonably short period of time. However, at the same time I recognise that some services are planned that are currently not regulated in the UK and that this Bill intends to bring into scope. Clearly that must be a consideration for Ofcom as well.

Q76 **Julie Elliott:** In what way could the requirements for signed programming on Paramount+ be problematic?

Mitchell Simmons: We think that there needs to be consultation with those who use British Sign Language to assess what their expectations are. To give you an example, I will talk you through our business, as it were. At Channel 5, we have 5% signing: that is our obligation, and that is what we deliver. We also have a series of paid TV channels; you will know the brands—Comedy Central, Nickelodeon, MTV. For those, we hit the threshold of being required to have signing, but because the expense is deemed to be so great to put signing on those channels, and it would be a very limited amount of signing on channels that have relatively low viewing compared with the PSBs, a scheme was set up—I am going to get my dates wrong—around a decade ago with Ofcom where instead of putting signing on those channels, we give a very significant amount of money to the British Sign Language Broadcasting Trust, which makes programming in British Sign Language. We feel that that scheme works very well, and we feel that there should be some kind of consultation—

Q77 **Julie Elliott:** Do you think that that would be a model to be extended to make this work?

Mitchell Simmons: If that is what the British Sign Language community wants. We pose it as a question in our response, rather than saying, “This is what is required,” but clearly that scheme works very effectively. There may need to be some flexibility with that scheme, but clearly there needs to be some consultation. Those users of British Sign Language should also be consulted as part of that, to explain what they would like to see as outcomes from this Bill.

Chair: That concludes our session. May I thank all the witnesses for their time and particularly for their forbearance at the beginning of the session when we had a few technical issues? Some of you mentioned additional written evidence, which we would be very grateful to receive. In the meantime, thank you very much for your time today.