

Culture, Media and Sport Committee

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

Tuesday 27 June 2023

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

Questions 157 - 283

Witnesses

[I](#): Anna Hatfield, Public Policy Manager, Amazon; Benjamin King, Director of Public Policy UK and Ireland, Netflix; and Alistair Law, Director of Policy, Sky.

[II](#): Rosie Johnston-Luff, Public Policy Manager, Google; Richard Stern, Chief Executive, TuneIn; and Lewis Walmesley-Browne, Head of programme: Market Access and Consumer Tech, techUK.



Examination of witnesses

Witnesses: Anna Hatfield, Benjamin King and Alistair Law.

Q157 **Chair:** Welcome to this morning's meeting of the Culture, Media and Sport Committee as we continue our scrutiny of the Government's draft Media Bill. Our first panel focuses on streaming and on-demand TV services. We are joined by Anna Hatfield from Amazon, Benjamin King from Netflix and Alistair Law from Sky. A very warm welcome to all of you. Thank you very much for coming.

I ask members that at the point where they ask their questions they will make their own declarations of interest. I will start. I have received hospitality from Sky over the years.

This Bill would designate some video-on-demand services as tier 1 and subject them to greater regulation. I am interested to know what you think the criteria for the tier 1 service should be, Anna.

Anna Hatfield: First of all, thanks very much for inviting Amazon to give evidence here today. It is an important inquiry and an important piece of legislation.

You might not know but Prime Video has been regulated by Ofcom since our launch in the UK in 2014. Our focus on the new video-on-demand code is to make sure that it is proportionate, evidence-based and works for the digital environment and is tailored to that. I am conscious that it does not matter how large your channel is, you come under the Broadcasting Code, whereas in the video-on-demand code there is mention of a tier 1, although there is no mention of a tier 2.

At the moment, we think the best possible way for customers to continue to have a consistent experience is for any video-on-demand service providing access to content in the UK should come under the new video-on-demand code.

Q158 **Chair:** Benjamin, do you have any comments on that?

Benjamin King: Thank you, first of all, for the invitation to come and give evidence to the Committee today.

I think that it is important to start by emphasising that we have consistently supported the introduction of the Media Bill and its broader policy objectives, including proposals to bring our service under Ofcom in the UK, which we have welcomed for a long time.

That said, I agree broadly with Amazon's comments. I think that the approach Government seem to be taking on a tiered regulatory system is not entirely consistent with the approach taken to the Broadcasting Code where all channels are subject to the code regardless of their size. The concern here is that this risks perpetuating the confusion with audiences that greater harmonisation of the regulatory regime for broadcasting and on-demand was meant to resolve. Audiences will not necessarily know



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when they are moving between a tier 1 service that is subject to a different standard of regulation and other less-regulated services. It is not clear why this is in audiences' interests and it is also logically inconsistent with the overall approach of harmonisation.

Q159 **Chair:** Alistair, do you think that the Secretary of State's delegated powers to designate what constitutes a tier 1 service are proportionate?

Alistair Law: First, Chair, I echo the thanks of my fellow panellists for the invitation to give evidence to this important inquiry.

Our perspective on this is that we approach it from a slightly different point of view. We are primarily a broadcaster-first organisation and so the vast majority of our content is already compliant with the Broadcasting Code standard because it appears on live linear TV. Therefore, the change of moving to a higher level of standards from a broad perspective probably will not impact us that much from a compliance perspective.

If Government are going to go forward and have a tiered approach to on-demand regulation—and I am not saying I either agree or disagree with what my fellow panellists have said about the efficacy of that—I think it is incumbent on Government to put the criteria for designating tier 1 on the face of the Bill. That is the way that you get certainty. It could be done at a principles level, on the basis of just indicating it will be on a significant number of users, for example, but I think it is important that it is on the Bill so that people can begin to scope whether they are in or out of that regulation.

Q160 **Chair:** Are you saying that you don't agree that the Secretary of State should have the delegated powers to decide?

Alistair Law: In our view, we would like to see a greater level of specificity on the face of the Bill. At the moment, it is fairly silent on what would constitute tier 1 or not tier 1. From our perspective, if you have a differential approach to regulating VoD it should be on the basis of the proportionality. By that I mean how many people are actually using it and actually watching it. If you want to have two standards, base it on the number of people who are accessing your content in the first place.

Q161 **Chair:** Who would make that decision? What involvement should the industry, for example, have in the designation of tier 1?

Alistair Law: I think what is typical in something like this would be for Government to set out their principle basis on the face of legislation and then for designation it passing to Ofcom to produce specific codes or guidance to be able to come up with a final list, in consultation with industry. As I say, from a Sky perspective it is not necessarily one that we feel hugely strongly about because almost however it ends up we feel that we will be compliant, given that the vast majority of our content is broadcast on live linear TV-first.



Q162 **Chair:** Do the other panellists have thoughts on the Secretary of State's delegated powers or what kind of involvement the industry should have in the designation of tier 1?

Benjamin King: At a minimum, we need a lot more specificity on the face of the Bill. Clearly Netflix expects to be regulated as a tier 1 service whatever the circumstances, but beyond that it is almost impossible to tell whether this approach will ultimately end up being discriminatory or whether it will be future-proof. I worry that any kind of threshold or criteria, whether they are on the face of the Bill or recommended by Ofcom, will ultimately end up being somewhat arbitrary and create perverse incentives for smaller services to avoid a regulatory threshold. I think that it would be much more logical if all TV-like general entertainment services were regulated to the same level in the way that all broadcast channels are regulated under the Broadcasting Code.

Q163 **Chair:** Anna, do you have anything add? I should have said at the outset that if you largely concur with something that has already been said, please feel free to say that because we don't want to be here all day.

Anna Hatfield: I will very quickly add that Amazon supports evidence-based policymaking in the UK and it is important that we have appropriate scrutiny of any decision, whether that is by Parliament, by Government or by Ofcom.

Q164 **Chair:** A nice swift answer. We like that. Benjamin, the Bill would bring Netflix under Ofcom regulation. What practical implications does that have for you?

Benjamin King: It is a difficult question to answer when we don't know exactly what the VoD code will comprise. While we recognise Government's desire for closer alignment between the regulatory frameworks for VoD and for broadcast, it is important to emphasise that for a global service like Netflix the impact of a new VoD code of standards will be global in its ramifications.

The content that we commission and produce and license around the world, if it is going to be available on the service, will be subject to Ofcom's oversight. In turn, that means that going by what we get the impression Government envisages from a VoD code today, that will set a new highwater mark for content standards globally. That will mean in turn that our creative executives, our production companies, our production counsels around the world will need to be familiar with the requirements of the Ofcom code.

Then obviously we need to think about the retrospective compliance of our catalogue when that code comes into force. Netflix has tens of thousands of hours of content in its catalogue today and that would need to be carefully reviewed by Ofcom-trained compliance viewers who could ensure that it was ready for the new regulatory regime. The impact would be non-trivial and that is without knowing the detail of what a new code would comprise.



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Q165 **Chair:** In an ideal world, how could the Bill change that would suit you better or you think would be a better fit?

Benjamin King: As I say, we broadly support the policy objectives underpinning the Bill, including the introduction of a new VoD code. Most services of our size would benefit from a longer grace period when it comes to the introduction of the code, but there are also a couple of areas where we feel the standards objectives themselves require much greater scrutiny.

One of those areas is due impartiality. We have serious concerns about the inclusion of those obligations in a VoD code and how they will work practically for a service such as ours. This is not just about giving Ofcom greater flexibility in how it transposes the existing code. There is a couple of very fundamental differences in the way that a VoD service such as ours is constituted compared to the broadcast channels that Ofcom historically has experience of regulating. In the first place, as I was just saying, we have a library of tens of thousands of hours of content, including an extensive catalogue of documentaries. They sit on the service, if not indefinitely, for very extended periods.

From a compliance perspective in the context of impartiality, that raises the prospect of having to not only comply those titles once at the point of launch but then keep them under review on a rolling basis to ensure that as the broader political context changes, titles that were compliant with due impartiality obligations at the point of originally coming on the service don't then inadvertently breach them as time goes on.

There is a second challenge here, which is that the scope, breadth and subject matter in our libraries is much more global in its nature than anything that you would find on a domestic broadcaster's library. This calls into question whether it is the intention that Ofcom should in turn become something of a global policeman ruling on world events, documentaries that address issues in places like Russia and China and South America, and pronouncing on the changing political context far beyond our own shores. On top of that, whether it is the intention that Ofcom should become a potential target for complaint tourism or forum shopping for foreign actors who want to use a regulator in the UK to seek redress for a particular title where they cannot successfully pursue that redress elsewhere.

These are questions that I think have not been properly examined and debated by Government and raise very concerning practical questions about what the compliance regime looks like and what a good outcome is for audiences here and what problem we are trying to solve for.

Q166 **John Nicolson:** Thank you for joining us. Mr Law, I will begin with you. Looking at the draft Bill—and I accept it is just a draft Bill at the moment—it focuses on the need for impartiality and balance in news and current affairs. I notice a number of different providers are really worried about that, but what could possibly be wrong with the idea of balance?



Alistair Law: Thank you for the question. From our perspective, we obviously operate Sky News, which reaches 25 million people in the UK free to air. Sky News is editorially separate and governed differently from the rest of Sky, as per the undertakings from the Comcast bid in 2018, in that we have editorial guidelines and compliance with Ofcom's ongoing Broadcasting Code for impartiality and we feel relaxed about operating within those guidelines.

Q167 **John Nicolson:** It would make it well-nigh impossible, wouldn't it, for Fox to enter the market because its whole business model is based on enraged screaming by semi-coherent presenters? They would not be able to measure up in this market, would they?

Alistair Law: Without commenting on other services, Ofcom has, under the Broadcasting Code, an existing set of impartiality requirements that it has shown in the recent past that it is willing to exercise and broadcasters that operate in the UK play by those rules. Sky News certainly does.

Q168 **John Nicolson:** Sky was once quite keen on Fox entering the market, as you will remember, and had the same owner. I will ask Mr King the same question. What should any of us here be concerned about when it comes to the imposition of impartiality and balance?

Benjamin King: Due impartiality obligations have worked very well in the broadcast space as standards objectives. I think the concern here is how they work from a practical perspective in the context of a VoD service for the two reasons that I mentioned. First, we have these extremely large libraries of content that exist on the service, if not in perpetuity, for extended periods.

Q169 **John Nicolson:** That is not an argument against it in principle. That is simply an argument for providing you with more time to catch up with the provisions of the Bill when it becomes an Act.

Benjamin King: No, I think we need more clarity on the face of the Bill as to how the impartiality obligations would work in practice for a VoD service such as ours. To be clear, this is not about news content. We are talking about non-news content because the special impartiality requirements go broader than that. I think there is a legitimate question to be raised as to whether these obligations as they are currently drafted, which is very open-ended, are proportionate and what potential debates and investigations they could pull Ofcom into.

We argue that they require much clearer definition, much clearer parameters as to their application, to be workable for a service such as ours. This is not only true for global streaming services. This is true to an extent for all on-demand services, even UK-based ones, because of the library element of their content and the potential need to recompile titles on a rolling basis in response to changing political context.

Q170 **John Nicolson:** Okay. I notice religious programming is included as a



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matter of concern. There is a discussion about whether or not “any improper exploitation of the susceptibilities of the audience for such a programme”, and I quote the words, should be controlled and restricted and observed as a concern. To pick up on what I said to Mr Law, I think that many of us are concerned with the kind of religious programming that you see in the United States—the extremism, the bigotry, the prejudice, the targeting of minorities and the ripping off of vulnerable people for financial gain. This Act, if it comes into force, would try to restrict that and make that much more difficult for bad actors to pursue.

Benjamin King: It is not an area where we have a view. We don’t carry any religious programming on the service, nor do we intend to.

Q171 **John Nicolson:** No, I know you don’t at the moment but we are looking at the broad scope of the Act and that is one positive advantage, isn’t it?

Benjamin King: I don’t disagree with that but I have not looked in detail at those provisions because they don’t affect Netflix directly.

Q172 **John Nicolson:** Okay. Ms Hatfield, can I ask you about the whole issue of impartiality, which I have asked the others about? Do you welcome the impartiality that is required under the terms of this?

Anna Hatfield: I will only echo some of Netflix’s comments here today. As I mentioned before, our focus is that we support evidence-based policymaking. I am very conscious that the Bill has automatically transferred the principles from the Broadcasting Code across to the video-on-demand code. We would welcome further debate to consider are the principles in the Broadcasting Code also for the video-on-demand environment.

Q173 **John Nicolson:** A number of people have raised with me the question of subtitling. I know that this is often not considered in a way that it should be. Subtitling is vitally important to a large section of the population. Some broadcasters do subtitle, others don’t, but there has been a number of submissions that have called into question the need for subtitling, the cost of subtitling. I personally think that subtitling is an absolute requirement if we are to be a progressive and fair society. From your perspective, do you agree or disagree?

Anna Hatfield: We welcome the requirements to make sure that all services are as accessible as possible to UK audiences. As I mentioned, Prime Video has been regulated by Ofcom since 2014. We provide an annual update to Ofcom on our accessibility requirements.

Q174 **John Nicolson:** Thank you very much for those terse answers. They are most unusual. I will ask you about religious programming, which many people have as a concern. Mr King said that they have no intention of ever providing religious programming but you never know what lies down the line. How concerned are you about the Americanisation of broadcasting, the increasing provision of religious programming and the restrictions on it, the limitations on it that this Bill contains?



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Anna Hatfield: Well, not to add to my terse reputation, we echo Netflix's comments on that. I have nothing further to add.

Q175 **John Nicolson:** I will ask you about those two issues, Mr King, religious programming and subtitling.

Benjamin King: When it comes to accessibility—

John Nicolson: I beg your pardon. I meant to say Mr Law.

Alistair Law: I will echo the comments on religious programming again. Provisions already exist in the Broadcasting Code and our content is complied to that. There is no religious programming that I am aware of that Sky carries but to the extent that we ever do touch the subject, we will be compliant with the higher standards that already exist in the Broadcasting Code. That does not concern us from an on-demand perspective.

I completely echo your comments on the importance of subtitling and indeed all accessibility measures. We are pleased that the Bill brings forward requirements from an on-demand perspective in that respect. Sky services are already subtitled to a very high level. Our VoD will be accessible from an audio description perspective by the end of this year. We also operate an EPG, an electronic programme guide, and we have text-to-speech, text magnification and a variety of different functions that people can use to navigate around the Sky environment. We take our accessibility responsibilities incredibly seriously because executing them correctly is paramount to making sure all audiences are included.

John Nicolson: Thank you all. Chair, in handing back I point out, as a declaration of interest, that I have accepted hospitality in the past from Sky.

Q176 **Chair:** Thank you very much, John. Should the Bill allow a donation to the signing organisation, Alistair?

Alistair Law: This is to echo, I suppose, what happens from a broadcasting perspective whereby linear channels, in lieu of doing audio description or signed language, are able to make a contribution to British Sign Language. We make use of that in some capacity and under the pretext of bringing the standards and the current practice that exists in the broadcasting world across to the on-demand world, replicating that seems appropriate.

Q177 **Chair:** Do the others have a view on that?

Benjamin King: I echo that call for an equivalent level of flexibility. I believe that that would be in the best interests of the sign language community as well to ensure that the right programming is made available for their needs. More generally, accessibility is a huge priority for Netflix; 100% of our catalogue in the UK carries English language subtitles and, interestingly, 40% of viewing hours of our content globally



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is watched with subtitles. I think that underlines just how popular that accessibility feature is for so many members for so many different reasons.

In general, we are in support of the obligations in the Bill but when it comes to signed content specifically, an equivalent level of flexibility is the best outcome for audiences as well.

Q178 **Chair:** Would you be happy to make a donation to a signing organisation to deliver that?

Benjamin King: Yes. We would welcome a conversation with the sign language community about how those obligations can be best fulfilled by services like ours.

Anna Hatfield: Yes, we support maintaining the same flexibility.

Q179 **Julie Elliott:** For declaration purposes, I have also received hospitality from Sky over the years.

Benjamin, has DCMS sufficiently engaged with Netflix over the concerns that you have?

Benjamin King: We have had a number of conversations with DCMS. As a Department it is always extremely transparent and willing to talk to industry. Those conversations are ongoing and we are hopeful that ultimately there will be some changes made to the face of the Bill to reflect our concerns.

Q180 **Julie Elliott:** Do you think that they are listening to your concerns?

Benjamin King: We are continuing to talk to them and I hope that the concerns that we are making known are being registered and taken away.

Q181 **Julie Elliott:** I think you have alluded to this in previous answers, but will six months be long enough to ensure that your catalogue is compliant?

Benjamin King: I think it could be a little bit longer, given the size of our library and the fact that potentially we need to subject the entirety of that to careful compliance review. Six months seems rather short. We will not know what the detail of the code is until it is published and so it is only at that point that the compliance process can begin in earnest.

Q182 **Julie Elliott:** Do you think the six months is long enough?

Alistair Law: From our perspective, because the vast majority of our content is already complied to a higher standard from a linear perspective, we see no practical issue with that, but I think the basis of good policymaking is allowing an implementation time that the entire market views as proportionate. I will not speak on behalf of my colleagues on the panel but it would feel proportionate for a longer period of implementation, not that it would cause a problem for Sky.



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Anna Hatfield: We would welcome longer than six months. We have many thousands of titles in our catalogue and we want to make sure that we have an appropriate timeframe to implement any new regulation.

Q183 **Damian Green:** Good morning, everybody. I will move on to the subject of prominence and public service broadcasters and so on. There has been a debate throughout, which can get slightly arcane, about whether it should be “appropriate” or “significant”. I particularly enjoyed the quote from the group director of strategy policy and regulation at ITV who said that “significant prominence could be appropriate and appropriate prominence could be significant”, which is helpful. What do you think would be an appropriate degree of prominence for public service broadcasters?

Anna Hatfield: We are conscious that these provisions have been considered by Ofcom and the Government since 2019. They have consulted a wide variety of stakeholders and they have decided that “appropriate”, if you will forgive the pun, is the appropriate term that should be included in the Bill and we support that.

Q184 **Damian Green:** What is the difference between “appropriate” and “significant” as far as you are concerned?

Anna Hatfield: That is a great question. We already provide prominence to all of the main public service broadcasters in the UK. We currently have mutually beneficial deals in place and they are all bespoke. We already provide that today.

Q185 **Damian Green:** On the principle, would it make it any difference?

Alistair Law: From our perspective, I echo what Anna said. There are two things. The first is remember that prominence already exists in a linear world and the language in the 1996 Broadcast Act that brought that into being was “appropriate prominence” rather than “significant prominence”. That still means that when you turn on every TV set top box in the UK or any smart TV, the linear services will have the PSBs at positions 1 to 5.

A few years ago, Ofcom updated its guidance to put in some really specific and targeted measures that locked the broadcast channels down to those numbers and other examples, for instance ensuring that BBC News was on the first page of a news EPG. Ofcom was able to do all of using the word “appropriate” in the existing legislation, so it is not obvious to us why there should be a difference when we move to talking about on-demand prominence.

The second thing is you asked what the difference between “appropriate” and “significant” might be. Our concern is that “significant” begins to override the preferences of audiences. By that I mean, if you imagine somebody using a Sky remote to search for “Brassic”, one of our comedies set in the north-west of England, it would be disproportionate for the first search results returned to be non-“Brassic” programmes from



the public service broadcasters and then the result of “Brassic” only coming fifth, sixth, seventh down the line. That is our concern about the idea of significant. It can override audience preferences when the word “appropriate” has been shown to be able to deliver huge levels of prominence for the PSBs.

Q186 Damian Green: If they can’t find content, it is quite difficult to assume that the audience preferences are set. The BBC has made the point that Sky puts its own children’s programmes ahead of BBC’s.

Alistair Law: That is not true. On Sky Q the BBC channels are at the bottom of the first page and Sky is just below that. On our latest services, Sky Glass and Sky Stream, CBBC and CBeebies are at positions 201 and 202 at the top of that particular part of the EPG. There is a large area of Sky’s user interface that is unregulated at the moment—all of our apps. We can order them in whatever way we like but if you go there and you load that up for the first time you will see that all the PSBs are there first, second, third, fourth and so on.

That is because we understand, as a TV platform that has operated in the UK for more than 30 years, what audience preferences are and they do expect to see the PSBs first in those situations. We have worked and organised our platform to enable that and deliver that at the moment. We are delivering a level of prominence to the PSBs and I think you quoted ITV’s group director of strategy and regulation. When he was in front of this Committee he described our relationship with them as a win-win one and we absolutely support that. We deliver significant levels of mutual benefits between us, high levels of prominence, easy discoverability and findability, and allow those PSBs to reach the wide audience provided by Sky.

Q187 Damian Green: Obviously related to prominence is the ability of the PSBs to appear on the platforms in the first place. Some of the commercial PSBs have expressed alarm at Amazon’s terms, now compulsorily a third of the ad revenue. That has been brought up in the House before on STV where it was described as blackmail by, I think, Mr Nicolson. Taking 30% off the top of everything does seem invidious, politely.

Anna Hatfield: I certainly don’t agree with the term “blackmail”. Secondly, we have mutually bespoke beneficial deals in place with all of the public service broadcasters today. They work for both parties, for us and for them.

Q188 Damian Green: Up to now, but from 1 September, as I understand it, there is a standard term under Amazon Publisher Services where any ad-funded content provider has to provide Amazon with 30% of the “total advertising impressions in each such country. Amazon will retain 100% of the revenue from these impressions, which must be provided at no cost to Amazon and without excluding or limiting Amazon’s access to times, programs, or categories.” That, as I say, seems that you have got them



over a barrel and you are going to turn up the heat from 1 September.

Anna Hatfield: First, as I mentioned, we already have got bespoke mutually beneficial terms in place. Secondly, 30% is quite common across industry, whether it is across device manufacturers, like ourselves, on YouTube and video-sharing platforms as well. All of the public service broadcasters are incredibly important partners for us. We work incredibly hard to make sure that they are prominent and they are engaging for our customers. Customers expect to see that content on Fire TV devices and it is our incentive to make sure that we continue to provide access to that content.

Q189 **Damian Green:** The interesting thing in that answer is when you said you have got bespoke agreements, which you would expect. You are big and they are relatively big as well. Are you planning to continue to have bespoke agreements? As I say, I am quoting from your standard terms here, which say they apply to everyone. Will they apply to PSBs or will they still get bespoke terms after 1 September?

Anna Hatfield: I would need to go and double check that, but we are conscious that the public service broadcasters are incredibly important partners and part of the UK media industry. We want to make sure that we have deals in place that are mutually beneficial for both of us.

Q190 **Damian Green:** If you reached a point—and this again came up in the STV debate where there was a thought that STV might not be able to afford that. Do you want to keep the PSBs on your platform?

Anna Hatfield: We have an incentive to ensure that we provide access and availability to public service broadcasting content. That is what our customers want and expect from us, and it is an important part of the customer experience. We need to make sure that we keep delivering that.

Q191 **Damian Green:** I will move on to devices because some of the devices, particularly where TV is not the principal device, are not caught by this Act. Mobiles, laptops, games consoles are where one would expect that quite a lot of content will increasingly be accessed through those devices. Do you think they should be caught by this Act? Would it make life easier if they were?

Anna Hatfield: It is an important question. You raise an important point, which is that connected TVs are only one way that customers decide to access streaming content. It is certainly something to consider further.

Alistair Law: If I might briefly go back to your previous point about the standard terms, we are of the view that if PSBs are now being compelled to give their content to platforms, it is reasonable for them not to face significant standard terms that are punitive in any way. There is an important quid pro quo there as well, which is that we, as a platform, are going to be compelled to receive this and to give it prominence, and there should be no expectation that we should be expected to pay a



significant amount of money as standard for access to that content either, particularly when it is freely available elsewhere.

What we think the Bill can be tightened up around is to ensure that if Ofcom ever must look at the arrangements between a platform operator and a PSB, it has a backstop approach that says, "We will ensure the content gets on the platform, that it is prominent, and that there are not significant transfers of value going in either direction". PSBs and platforms are free to negotiate over and above that, and indeed we do with the PSBs. We negotiate significantly with them to add additional features and functionalities that make our platform attractive and make their content easier to watch, but where we think the Bill can be tightened is in ensuring that if Ofcom ever has to act it does so in a backstop proportionate way that sees no charge going in either direction.

Q192 Damian Green: I need to pick up on this. You are happy to do bespoke deals with PSBs?

Alistair Law: We have been negotiating with the PSBs for 30-plus years. We have very deep, long-standing partnerships with them, and again I return to the previous ITV witness's comments that they are win-win deals between Sky and the PSBs.

To answer your question on devices, we are obviously not a device manufacturer from a mobile phone or tablet perspective. At the moment the Bill does not cover something like Sky's out of home service, Sky Go. That is an app that you have on your phone, and it means that you can watch Sky content and content via your Sky platform when you are out of the house. At the moment we have the vast majority of the PSBs on there. We do not have the BBC and the BBC has not given us that content to enable that. My only point is that I have heard calls from the PSBs for inclusion of phones and tablets and so on. If that were the case, there needs to be a broader level of flexibility in providing that content in the first place. It is this example of "must offer, must carry" again. We can only carry and make prominent the content that is given to us in the first place.

Q193 Damian Green: If you include those devices you want "must carry, must offer" to be provided to them as well?

Alistair Law: Yes. We would like to be able to get the content in the first place.

Q194 Clive Efford: Thank you for coming to give evidence today. I hear what you have been saying about the issue of prominence, but on the agreement objectives between the platforms and public service broadcasters, what should be the overall objectives of those agreements? I will start with Alistair.

Alistair Law: They are not far off where they should be. There is the first objective, which is that that content should be made prominent and this is important from a PSB perspective. The last objective, that there should



be the ability for platforms to innovate in the way that they can make that content available to users seems appropriate as well.

For us, it is the middle one, around the extent to which costs flow between the two, where we think things can be tightened up. As I have said, there is the scope for significant commercial negotiation between PSBs and platforms; that is what already happens with us. What we are talking about with these agreement objectives is what Ofcom will look at if it is ever asked to intervene where a platform and a PSB cannot agree. We think that middle one needs to be tightened up to ensure that there is not an expectation that PSBs need to comply with very harsh standard terms, but equally that there is not an expectation that platforms must pay out mandated fees in any way to get access to that content in the first place.

Q195 Clive Efford: How does that differ from the current situation where you negotiate the agreements?

Alistair Law: It is the creation of a regulatory backstop. At the moment when we negotiate, we have always negotiated, certainly in the last decade or more, very successfully with the PSBs and ensured that they are on our platforms as they launch for the first time. Sky Glass, which launched at the end of 2021, had all of the PSBs from standard including their linear and on-demand content. Through this legislative process we are creating that regulatory backstop. If, at the moment, a discussion between a platform and a PSB fell down, you could have the outcome that the content simply was not on the platform. That is creating a regulatory backstop that ensures that Ofcom can step in and make sure that does not happen.

Our point is that that should be as light touch and stripped back as possible. Ofcom should just ensure that the content is available and prominent, and that neither side is expected to pay out material amounts of money.

Q196 Clive Efford: If we read the evidence, the PSBs are concerned that they will have to hand over product and not get a return on it. You are concerned that they will be able to make demands on you that are unreasonable. It seems to me that the situation currently is that you negotiate, and the legislation seems to leave you in the same position, where you are both going to have to come to the table and negotiate.

Alistair Law: We are happy to negotiate, and I am sure the PSBs will be too.

Q197 Clive Efford: What is missing in the legislation?

Alistair Law: To get very technical and specific, our concern is that the wording at the moment around the idea of being consistent with the PSBs being able to meet costs reasonably incurred in fulfilling the public service remit compels Ofcom to step in and start opining on how much of a benefit it is to the PSBs that they have access to this platform. How much



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of a benefit to the platform is it that they have access to the PSBs? All we would like is to ensure that that is tightened up.

Q198 **Clive Efford:** Would you like Ofcom to just sit back and let you negotiate and only be the arbiter if there is no agreement?

Alistair Law: Absolutely, and we think there should be a high threshold. To be fair, the Bill does set quite a high threshold for referral to Ofcom. Our firm expectation is that we would never see an Ofcom process. We have negotiated with PSBs for a long time. They are the most important and critical partners that we have, and we strike these mutually beneficial deals. Whenever you bring regulation into an area that had previously just been covered by commercial negotiations, the risk is that you create a series of perverse incentives. We seek to ensure on both sides that those incentives are lowered so that there is that freedom to negotiate commercially, because we have delivered fantastic deals for customers, and Ofcom are not called upon for every single negotiation.

Q199 **Clive Efford:** Specifically what would you change in the drafting of the legislation?

Alistair Law: We want the wording to be tightened up and we are still working through potential language. One example is, "Ensuring that the agreements do not have a material adverse impact on the ability of the PSBs to meet their costs". By that we mean it removes any expectation that they will have to pay out significant charges just to get on the platform in the first place. It also does not leave open the potential for them to ask for, or Ofcom to be asked to opine on, payments from platforms to PSBs. We are trying to shoot at some language that just maintains, from a starting point, a neutral, equitable position and negotiations can continue from there.

Anna Hatfield: I echo all Alistair Law's comments, but also on the dispute resolution in particular it is important to ensure that it is a last resort. We would welcome Ofcom to consult on specific criteria that one or more parties need to have met before they can refer a case to Ofcom. That will help ensure that Ofcom is focused on the right cases.

Q200 **Dr Huq:** Hi, everyone. I know that some people who have approached me about this draft Bill are worried that cultural diversity, experimentation and innovation could potentially suffer by bits that are not mentioned in here. Clause 1 defines the remit of public service broadcasting, and it states that the old section 264 in the Communications Act 2003 that went on about how cultural activity in the United Kingdom should be reflected with drama, comedy and music and all this stuff has been deleted in the current new clause 1 of this draft Bill. I know you are not exactly public service broadcasters, but Sky News has some aspects of that, because it is free for everyone. Sky has shown some sporting events for free.

Do you have any comment on that? Some people think it is quite sinister that all these cultural activities have been deleted. Does it mean that on-



demand services and public service are merging into the same thing?

Alistair Law: From a Sky perspective, you are quite right to note that Sky News is free to air; we also made Sky Arts free to air in 2020. It has a reach of around 5 million people now and the level of challenging and culturally reflective programming on there I think is unequalled by any other linear TV service that is out there. Earlier this year we launched Sky Kids, which I mentioned earlier, which is our dedicated kids channels. It is ad-free and contains lots of our original productions. That is completely ignoring all the drama, comedy, documentaries and so on that we also produce from a Sky perspective. We spent more than £500 million on original UK productions last year and we do it because we know that it is what our audiences expect and value.

From a Sky perspective, we very much feel that we are delivering public service-type content, even though we are not a public service broadcaster and do not receive the regulatory benefits that the PSBs do.

The one point I will make on this is that the early part of the Bill is designed to give the PSBs a greater level of flexibility in how they meet their obligations. They also get benefits throughout the Bill of on-demand prominence, listed events and various other things that Ofcom are considering now.

It is incumbent on policymakers to ensure that they get their money's worth from the PSBs because of this. The PSBs receive a series of benefits here, and I think it is perfectly legitimate for policymakers and audiences to ask what they are getting in return: what is the programming that you are going to deliver and what is the way that you are going to deliver to that, that makes sure that it is broad enough for audiences and reflective of people's individual experiences?

Q201 **Dr Huq:** People have spotted that national, regional, local news has all been deleted from this new draft Bill. Will Sky News show those sorts of things?

Alistair Law: I mentioned earlier that Sky News is editorially separate, so I cannot speak directly for them. At the moment both BBC News and ITV News provide local services. They do so on a subsidised basis, the licence for the BBC and regulatory subsidies for ITV, so that is a quite difficult market to crack. Sky has a long history of covering the most important national and regional developments in an as effective and efficient way as possible, also remembering that Sky News has a commitment under the undertakings of the Comcast purchase in 2018 to continue to provide the current level of service, with rising budgets through to 2028.

Q202 **Dr Huq:** Things such as the documentaries on Sky Arts will continue? People are worried that there is no genre mentioned here.

Alistair Law: From our perspective, Sky Arts is something that we have very much leaned into, because we spotted an area in the market that



was not necessarily being provided for. That is a dedicated, 24/7 arts channel available free to air. We think it is a totally unique offering and as such it works for us commercially but also because it is the right thing to do.

Q203 Dr Huq: To the other two, do you think that this Bill gives sufficient protection for companies to continue to innovate while meeting “must carry” obligations?

Anna Hatfield: We welcome continued investment in British content. We have co-produced over 25 productions with the public service broadcasters already. Those include the likes of “Fleabag”, “The English” and “Good Omens” and we look forward to further investing in the UK. Hopefully you might have seen our news last week that we have invested £4 billion in the UK creative industries since 2010, and we look forward to furthering that investment longer term in the UK.

Benjamin King: We do not have a view on the detailed provisions in the legislation. That is a question first and foremost for the broadcasters, but as a more general point and to return to your question if there is convergence going on in public service and private media, one of the great strengths of the UK historically has always been that it is a mixed ecology. From Netflix’s perspective the UK is one of our most important markets around the world and our second biggest market in production. We spend US\$1.5 billion here every year on a range of content, and it is also one of our most important markets from a membership perspective. We greatly value our relationships, both commercial and creative, with the public service broadcasters. What is important from an audience perspective is that there is as much choice as possible, and that what we all offer is complementary, to some extent differentiated, and extends and broadens out the choice for audiences here.

To the extent that we can preserve that, ensure both the public service broadcasters can continue to be sustainable and that we can all contribute slightly different things, should always be the end goal. I think the legislation should be drafted with that ultimate objective in mind.

Q204 Dr Huq: It is a draft Bill. I think there are a lot of people who are hoping that music, comedy, drama and those sorts of things go back in for the PSBs.

My other question is I do not know if anybody has studied the dispute resolution framework. Do you think it is fit for purpose? We have had submissions that four months is too long. Media and the modern world moves faster than these timescales.

Alistair Law: As I mentioned earlier, the key element for us is that a threshold for a referral to Ofcom is high. The Bill gets most of the way there, so that is fine. Ofcom also has the power to direct on an interim basis and I think that is critical. The four months from end to end Ofcom could put in place interim measures that allow the content that you are talking about to still be available on the platform in question. I think that



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Ofcom—and I used to work at Ofcom and do telecoms disputes—needs a longer period on some of these things. It needs to take the appropriate period to gather all the facts, but it has the ability to ensure that things happen on an interim basis.

To return to my earlier point, we think there is a very clear path for Ofcom to set out what it views as the way that it will generally resolve a dispute. For instance, not requiring payment on either side and making sure that the content is available prominently, and that should probably serve to both reduce the number of referrals that they have in the first place, and shorten any subsequent dispute resolution process that they are overseeing.

Anna Hatfield: I echo Alistair's comments, but it is important from our perspective that the dispute resolution is reserved for the deals that require Ofcom's attention. That is why we welcome Ofcom creating a set of specific criteria that one or more parties need to meet before they can refer a deal to Ofcom.

Benjamin King: This is not an area where we have a view. It does not affect us directly.

Q205 **Chair:** Anna, do you think that the Bill gives sufficient protection for companies to continue to innovate, while also meeting their "must carry" obligations?

Anna Hatfield: Innovation is important, and it is an important question to look at. I am conscious that objective (c) focuses on innovation, and it is important that the Bill specifically calls out the ability for device manufacturers, such as Fire TV, to continue to innovate and develop the best customer experience.

Q206 **Chair:** Do you think that the Bill facilitates that?

Anna Hatfield: We welcome objective (c) and the fact that it is currently in there. At present it does, but we can see some tweaks that I am happy to follow up on separately, if that is helpful.

Q207 **Chair:** That would be lovely. Alistair, do you agree?

Alistair Law: Yes. We think that agreement objective (c) is immensely important. I return to what I was saying earlier about the interplay with agreement objective (b) in there, which is that if you make sure that you get (b) right and you make sure there are no expectations on either platforms or PSBs that they must accept standard terms, then (a) and (c) work well—(a) gives the prominence that the PSBs require, and (c) gives the innovation and the ability to offer choice that the platforms need. Once you sort out and tweak (b) the others on both sides deliver the objectives that you are looking for.

Q208 **Clive Efford:** What is your view of the legislation restricting who can bid to broadcast listed events to public service broadcasters? I will start with



Alistair again.

Alistair Law: I think it is important to set out from the start that Sky does not currently hold any rights to listed events, and it does not match our business model. It is an area of the Bill that we have a theoretical interest in, but it is not going to have a direct impact on the way that we show sport.

Q209 **Clive Efford:** The Ashes are listed, aren't they?

Alistair Law: No, they are not. I think they are category B, so maybe it is just highlights, but they are not listed as a category A group event. I can clarify that later, though. From our perspective it is important to recognise what the listed events changes do. They change it from what it used to be, which is an objective of making sure that as wide an audience as possible saw the listed events free to air. By making it PSB-only, you are essentially moving to a situation where listed events are viewed as a competitive advantage for the PSBs.

We do not think that only PSBs can drive national moments of unity. It was mentioned earlier about how Sky has previously shown some sports free to air. They were not listed events, but moments of national significance, such as the Cricket World Cup in 2019 and Lewis Hamilton's attempt to win his eighth world championship. We have partnered with PSB partners to make those sports available free to air, but even when we have not worked with PSB partners, when Scotland played Serbia in 2020 to qualify for the Euros, we made that available on our free-to-air channel, Pick TV, which is not necessarily the most well-known channel. It had 63% of the viewing that evening up in Scotland.

We do not think you need to make it a PSB-only benefit, because if you ensure that there is a framework around being able to make the events available free to air you are fulfilling that audience requirement of ensuring that they can get it without cost.

As I say, it will not affect the way that Sky operates because we do not hold any listed events.

Q210 **Clive Efford:** What is your threshold for coverage to be able to qualify?

Alistair Law: I think the coverage already exists and it is a 95% threshold. I think there are changes happening. It is either anticipated that the PSBs will drop below that, or that lots of other channels will become above that. Either way, the differential between the PSB availability and the availability of other free-to-air channels has essentially deteriorated. On a principle basis it is perhaps a shame that you now cannot have as competitive a set of bidding rights. You can still require them to be free to air, but you are restricting yourself to just the PSBs being able to bid for those events.

Q211 **Clive Efford:** Two sets of negotiations spring to mind when you talk about listed events. With the Six Nations, whenever the coverage for that



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comes up for bidding, there is always a big concern that that will go behind a paywall. The other one is the Ashes, that there are no Ashes tests free to air, when there is the ability of a public service broadcaster to bid but they choose not to. Then we get the coverage of the Ashes, so at 7 pm, after the Ashes, BBC has a half-hour programme. Do you have any influence over the amount of coverage that the BBC can give of the highlights?

Alistair Law: The first thing I would say for the Ashes is that the Edgbaston test delivered a record level of views on Sky. Our relationship with the ECB is a long and deep one, and the investment that Sky has made in not just cricket but sports broadcasting is of absolute paramount importance to driving elite levels of sport performance and grassroots participation. The heights that the England cricket team have reached, particularly with the World Cup win in 2019, have been built on the foundations of significant levels of investment by Sky and others into broadcasting rights, and how that has flowed through the game.

I would have to go away and check on the precise relationship between rights holders and sublicences for the highlights requirements from a BBC Ashes perspective. I do not know the extent to which we have discussions or negotiations, so I can write back to you on that.

Q212 **Clive Efford:** I find that a bit surprising, because it is a highly controversial area—the Ashes coverage being behind a paywall and the negotiations—that you would think would come up at this session, given what we are discussing here.

Alistair Law: It is the fact that the Ashes is not a category A listed event and does not require to be shown live on a free-to-air perspective. I returned earlier to our business model and our business model is based on being able to provide the depth, breadth and coverage of sport that cannot probably be replicated on a free-to-air basis. With something such as the Ashes, we are providing a dedicated channel coverage from 7 am until 9 pm every single day. It is not a category A listed event; I do not have the details of how we sub-licence or negotiate anything beyond that.

Q213 **Clive Efford:** Should digital rights be in scope?

Alistair Law: Again from our perspective we do not hold any digital rights to listed events, so we do not hold for example the clips to the FA Cup or something like that. It would not make sense for us because the FA Cup is required to be broadcast free to air and so we do not do that.

It is not a given that the PSBs have unparalleled reach in the digital space. In fact, it is often quite the opposite. If you think about something like being able to tweet out clips or make highlights available on YouTube, Sky Sports has huge numbers of subscribers who follow us on Twitter or YouTube, many times more than BBC Sport or ITV Sport. If your objective is to ensure that this is viewed by as many people as



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possible, I think you are restricting yourself by making that a PSB-only benefit. Again, it would not impact the way we run our business today.

Q214 **Clive Efford:** Anna, do you have any comments on that?

Anna Hatfield: Yes, I do and thank you for the question. Amazon absolutely respects the underlying principle of a listed events regime in ensuring the widest possible access to customers. We think the focus should continue to be on the customer experience and making sure that it is free to air, rather than who delivers that content. Prime Video has a track record in delivering sporting moments of national importance, and we have a history of putting those in front of the paywall. For example, on the fantastic US Open with Emma Raducanu back in 2021, we worked within 24 hours to simulcast that with Channel 4 and donated £1 million to women's tennis. That is one example of how commercial broadcasters such as Prime Video can support the long-term growth in grassroots investment in the UK. We echo Alistair Law's comments on that.

Benjamin King: Live sport is not a priority or a focus for us, so we do not have a view on this area of the Bill.

Q215 **Kevin Brennan:** What you said there is quite interesting. Anna, did you calculate what the value was to Amazon of that exposure on that occasion? The Amazon branding was tremendously prominent, understandably so perhaps, on Channel 4 when that live US Open final was shown, which Emma Raducanu won. Was there any calculation made of the commercial value of that exposure to Amazon Prime in subscriptions, advertising and so on?

Anna Hatfield: Not that I am aware of, although our focus is on delivering the best possible customer experience and the fact that we have content like when we showed the US Open a couple of years ago is fantastic for our customers.

Q216 **Kevin Brennan:** I am not saying there is anything wrong with it. It provided incredible exposure. It was not an entirely one-sided beneficence on your part, if I can put it that way.

Anna Hatfield: I must confess I watched it on Channel 4 rather than Prime Video. It is also good branding for them.

Q217 **Kevin Brennan:** I do not want you to lose your job, so I will not probe any further on that point.

Alistair, it was interesting when we were talking about prominence earlier and Sky News, which as you rightly say is part of the deal that was made a couple of years back. It is now run independently and must adhere to certain standards up until 2028. What do you make of the fact that TalkTV has managed to wheedle its way up the electronic programming guide in large parts of the country by taking over a lot of the time on so-called local TV while Sky News, which is meeting what might be deemed as quasi-public service broadcasting obligations in its output, is not able



to have that kind of prominence?

Alistair Law: From a Sky platform perspective, first we operate an open EPG. We publish our EPG guidelines transparently and we do not therefore have carte blanche to move channels around or anything like that. They operate in line with principles that we publish, and that Ofcom look at.

Beyond that, from a Sky News perspective, we continue to deliver the output that not only we are committed to do under the Comcast obligations but that the Sky News editorial team have been delivering for decades now in high quality, well trusted impartial news.

I cannot speak to what other broadcasters are doing and I am not familiar with the example that you are talking about. Ofcom has the ability to set licence conditions for local TV and EPG requirements more generally. It is within its gift to apply that.

Q218 **Kevin Brennan:** You did say earlier that Ofcom has a role to play in this. What the Committee is interested in is whether they are playing any role in this interesting development of having TV channels that brand themselves as news channels but in fact end up with politicians interviewing other politicians and calling that a news channel, but Ofcom do not consider it to be a news channel. I will leave that point.

The other point that I wanted to raise with you from what you said earlier was that you said that Sky would never envisage going to the regulator on negotiations. Is that not a byproduct, in a way, of the kind of benign outcome of that takeover a few years ago? Had Sky, and if it were in future, been owned by a different type of owner—shall I put it that way?—for example someone like Rupert Murdoch, would it not necessarily be the case that an owner of that kind would never envisage going to the regulator to try to challenge that?

Alistair Law: It is more a product of the mutually aligned incentives that us and the PSBs have. We have been doing these deals with the PSBs for 30-plus years and at the heart of it is this win-win situation. We want their content on our platform because we know that our customers value it. They want to be on our platform, because they know how many millions of homes that we are in and how much of their viewing that we deliver overall. You start from a position where the incentives of both parties are to come to an agreement.

Obviously, there are then specifics but that is what I was talking about earlier in making sure that the referral to Ofcom is suitably high that those specifics are not natural triggers of as soon as you do not get exactly what you want on one little point it is off to the regulator. That should absolutely be a backstop position where the incentives that I was talking about for some reason are not operative and there is a risk of the platform not having the content in the first place.

Q219 **Kevin Brennan:** There was a time a few years back in the past when



Sky would regularly rail against the BBC and so on and public service broadcasting, but that era has long since passed, in a way.

Alistair Law: I described them earlier as our most critical partners, and that is absolutely the case. Sky services are important to the PSBs as well, particularly if you think how we blend linear broadcasting, which is still important to lots of their viewers and important to be able to monetise advertising as well for the commercial PSBs, with on-demand. It helps that we are a broadcaster ourselves that knows the value of live rights, as a sports broadcaster, as well as premium content on demand. Our services and products are designed to bring both of those together along with our other partners, two of whom are on the panel today, and make it easy and available for all our audiences to watch.

Q220 **Kevin Brennan:** I should not forget to say I too have attended events and received hospitality with Sky and Netflix, who are appearing before us this morning.

Moving on to some of the issues around radio selection services, which are also part of this, the draft Bill is trying to address those issues by ensuring that stations are not charged by platforms for the provision of their live services to listeners, and that platforms cannot just overlay advertising on top of those services, and that stations are provided reliably in response to listeners' voice commands, and that broadcasters can choose a default route for their stations to be delivered to listeners. Those are the principles. Anna, what impact do you think these new obligations on radio selection services might have on a service like Amazon?

Anna Hatfield: Thank you for the question. We welcome the debate about the radio provisions in particular in this Bill. It has been less consulted on and had less engagement than other parts of the Bill, so we welcome the Committee's scrutiny on these proposals. I am also conscious that you will hear from some others later today.

First, radio is thriving; 89% of adults listen to it every week. That is fantastic engagement, which many of us would love to see. On the impact, radio is an important part of the Alexa customer experience. We have invested significantly in something called our Radio Skills Kit, which we created in 2019. It is a free service to help onboard radio partners to Alexa to help surface their content to customers. We have over 940 radio partners supporting customers in the UK, and we think it is a fantastic tool and welcome further engagement from other radio partners.

On the specific impacts, as I mentioned we already carry a lot of the radio stations. We already provide a free service. The area that we have concerns around is the preferred route to customers. As I mentioned, we already have our Radio Skills Kit in the UK. There are also two other options for radio partners to onboard to Alexa. One is through an aggregator, such as TuneIn, and another is something called our Custom Skill. The BBC is our current only Custom Skill in the UK today. We focus



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our attention on investing in our RSK. We think it provides the best experience for radio partners and for UK customers.

There is additional functionality. For example, a customer can set their alarm to a radio station who use RSK. On providing and mandating radio partners with the option to decide how best to be routed, they could decide, "We don't want to use your RSK. We want to use another route" either a Custom Skill or something that has not been created yet. It is important for us to continue to be able to own and control how we route content to customers. We are focused on the innovation and developing the customer experience.

Kevin Brennan: That was not a terse answer.

Anna Hatfield: I could talk about radio all day long.

Q221 **Kevin Brennan:** Does that mean that Amazon is very concerned that the Bill is unreasonable in what it is proposing in draft? Is that a fair summation of what you have just said?

Anna Hatfield: Our focus is on ensuring that the Bill is evidence-based, workable and proportionate, and that it protects innovation. On these proposals, we are not sure that that is currently the status.

Q222 **Kevin Brennan:** Alistair, what impact would the legislation have on whether Sky decides to develop its devices' voice control functionality?

Alistair Law: We do not think that we are in scope of this at the moment, but we could see a time in the future where if we continue to innovate on our platform—we carry radio services, and we carry something like BBC Sounds on Sky Glass and Sky Stream, but at the moment we do not fulfil the scope—there is a chance that if we added additional functionality and things that would benefit audiences that we would fall into scope. We have not scrutinised that part of the Bill in the same level of detail as smart speaker manufacturers will have, because we never thought the intention would be to capture devices that have radio as an ancillary service. We would probably be minded to not further those product developments if it meant that it brought us into a huge level of regulation for something that audiences value, but it is not the core and primary reason why they sign up to a Sky Glass TV in the first place.

For us, we think that there is scope to be a lot clearer that if you are introducing this kind of regulation, you are doing so with a particular focus on services or devices that have audio listening as their prime function, rather than just devices that happen to be able to carry radio and fall within the definition.

Q223 **Julie Elliott:** Anna, some broadcasters want to see the Bill extended to include on-demand and online-only content from Ofcom-regulated stations. What is Amazon's view of this?



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Anna Hatfield: First, if we take a step back, what problem are these proposals trying to solve? If we look back, this Bill is based on the White Paper. The White Paper does not commit to introducing any new proposals to support radio in the UK. As I mentioned, we already have a dedicated tool with the Radio Skills Kit that supports an easy onboarding process.

Rather than looking at how we can further expand the Bill, what is warranted is further evaluation to ensure that the current proposals are warranted, necessary and proportionate.

Q224 **Julie Elliott:** Let us assume that it happened—that the scope was widened. Would including them create any additional significant technological challenges for Amazon?

Anna Hatfield: Even the Bill as currently drafted would certainly require a significant tech challenge. As I mentioned, we have something called our Custom Skill and our Radio Skills Kit. The BBC Custom Skill has a dedicated team working on that full time. To roll that out to 600-plus stations would require a significant investment from Amazon. You can see, even by that statement, the significant tech build and challenges that we already face with the current drafting, let alone if it is going to be expanded further.

Q225 **John Nicolson:** Can I return to an interesting point that Mr Green raised with you, Ms Hatfield, and that was this eye-watering amount that you are planning to charge STV—30%? I described it as blackmail because they do not have any choice presumably. Suppose they do? Suppose they just decide you are taking the Michael and they are not going to pay it. What are your contingency plans if they refuse?

Anna Hatfield: As I mentioned, we already have in place bespoke mutually beneficial deals. Again, our incentive is to ensure that we provide access and content to UK customers. UK customers expect to see the public service broadcasters on Fire TV and all other devices, so it is our incentive to ensure that we continue to provide that content to customers.

Q226 **John Nicolson:** That sounds a bit as if you are saying that if they play hardball and refuse to pay you, a bespoke deal might involve a lower percentage than 30%. Is that a fair assessment?

Anna Hatfield: I am not in our negotiating team so I could not possibly say that.

John Nicolson: Everything you say here is confidential.

Anna Hatfield: Phew, I am glad you said that. I would also say 30% as mentioned before are standard terms across the industry. It is nothing specific to Amazon.

Q227 **John Nicolson:** That is not what STV says.



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Anna Hatfield: I would argue that it is nothing specific to Amazon.

Q228 **John Nicolson:** It is a lot of money though, for them to find. They are a relatively small company. They are a successful company, but it is a lot of money to find out of nowhere to give Amazon, and for what?

Anna Hatfield: For our experience. We think we provide fantastic customer engagement and functionality for our public service broadcasters. We drive engagement.

Q229 **John Nicolson:** Come on, that is corporate speak. Fantastic customer engagement. At the end of the day, they must come up with 30% simply for you to put them on your service and that is a lot for them to provide. It suits you to have separate discussions with separate companies and do bespoke deals. Surely your nightmare scenario is if STV gets together with other companies and decides to do a bit of group solidarity and eyeball you and say no.

Anna Hatfield: Again, our focus is on ensuring the best possible customer experience. I am conscious you say it is corporate speak, but it is the truth. We are focused on ensuring the constant availability and access to public service broadcasting content, because that is what our customers expect and want to see.

Q230 **John Nicolson:** It sounds like it might be a good idea for various companies that are in this position with you to get together.

Anna Hatfield: The PSBs are incredibly important customers and partners for us. We are focused on ensuring that we can continue to have fantastic partnerships in the UK.

John Nicolson: I do not think STV thinks it is a fantastic partnership, just reading between the lines.

Q231 **Chair:** Before we bring this to a conclusion, is there anything else that any of you would like to share with our Committee today that you think we should take into consideration when we come to writing up our thoughts on the draft Bill that we have not already covered?

Alistair Law: I might have one, which is on prominence. I think this is shared by the public service broadcasters and platforms, which is that there is nothing in the Bill at the moment on legacy equipment. I think it would be a negative outcome for both sides if the Bill applied to platforms that were long out of technical service and it is in nobody's interests for the PSBs to provide to them in the first place or for platform manufacturers to go back to re-engineer those platforms. Both sides are agreed on the fact that that should be an area that should be made explicit in the Bill, that we should take platforms and PSBs on a forward-looking basis and exclude the legacy equipment that is no longer provided for.

Q232 **Chair:** That is very helpful. Anything else?



Benjamin King: I would like to refer the Committee back to my comment at the start about the unworkability of the due impartiality obligations. I think that they require a lot more scrutiny and consideration by this Committee and some discussion with Government as to how they can be made workable.

I think that there is a broader issue here that we need to consider in the context of the Bill and the VoD code more generally, and that is the concept of future-proofing. Government talked a lot about this legislation being needed to future-proof the regulatory regime as the market evolves. It is important that we think about future-proofing through the lens of potential harms, which might not yet be manifest, but I think it is also equally important that we think about future-proofing in the context of guarding against future threats to freedom of expression and ensuring that in the way the legislation is drawn up there are sufficient guardrails there that mean that that legislation cannot be misapplied or abused at any point in the future, under regimes that are different from the ones that we are currently operating under.

Q233 **Chair:** That is very helpful. We have noted all of that. Anna, anything further from you?

Anna Hatfield: We have not yet seen an impact assessment by the Government on the Bill and we would welcome that. In addition, this is the first legislation in 20 years. It is important that we get it right and we are focused on ensuring that it is workable, proportionate and protects innovation. It is important as well that we have a robust evidence base behind this Bill. I welcome further evaluation, particularly of the radio proposals, by this Committee as part of your draft scrutiny, as well as of the principles in the video on demand code.

Q234 **Chair:** Before I let you go—and this is not part of the draft Media Bill but it is a personal interest of mine and something that may be of concern to all of you—the screen industries are such an ecosystem based upon not only enormous, employed workforces but also a huge network of freelancers. Up until now there has been no single point of accountability for the creative industries and an independent place where people can report bad behaviour or tackle some of the harmful behaviours that we have seen across some of the creative industries that we know are a bit of a problem. A new body is being set up, the Creative Industries Independent Standards Authority, CIISA, which is going to provide for larger employers like TV companies but also streamers to demonstrate their care and commitment to the safety of their workforce. You may not know this because this is not part of your preparation for the draft Media Bill, but do you know whether your organisation has or intends to sign up to CIISA? Anna?

Anna Hatfield: We had our first call with CIISA just last week and it sounds like a fantastic proposal. We are looking forward to engaging with them further.



Benjamin King: We have been talking with CIISA regularly ever since the organisation was first formed and understanding how the organisation might work in practice. What is important from our perspective is it does not seek to replicate or override existing policies and practices that workplaces already provide, and employers already provide to resolve some of the disputes that may arise. That is a conversation that we have had for some time with CIISA. They understand that it is important not to be duplicative, but to step in where there is no existing safety net. We have provided insight and expertise from our perspective and are watching their proposals with interest as they evolve.

Q235 **Chair:** In a short form of words, is that a yes, you think you are going to be involved or no, that you are happy doing it alone?

Benjamin King: I could not say with certainty for now, because it is an ongoing conversation. I have not seen a final proposal from them as to how the organisation will work in practice.

Q236 **Chair:** Are you open to getting involved? I think that across the board it looks better if the creative industries are working more collaboratively than doing their own thing on something as important as this.

Benjamin King: The sorts of issues that CIISA has been set up to address are very serious concerns in our industry. It is incumbent on all of us to tackle them as a matter of priority. It is an area of priority for Netflix. We are the first studio to have a production HR function, to have respect training on all our sets before production gets under way. This has long been a huge focus for us. It is important to understand how the way that we and CIISA work will be complementary to ensure the best outcome for people who are victims of these appalling incidents of harassment, bullying and assault and so forth.

Q237 **Chair:** You are not fundamentally averse to an independent body that can look at this?

Benjamin King: I think that there is a need for that body where existing policies and practices do not exist to provide a means of redress for people who have been victims of these sorts of incidents.

Alistair Law: We seed funded the development of CIISA when it was first announced last year, and we are happy to do so. While we have very robust procedures to protect people both on and off screen, we are conscious that there is potential for a gap to arise, particularly around freelancers and particularly where behaviour is moving from production to production. We are working closely with them as they further and develop their proposals to ensure that the framework that they set up does exactly that and addresses that gap.

Chair: Thank you. It would be useful if Netflix took that view as well. Thank you very much. We are going to take a few moments break now.

Examination of witnesses



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Witnesses: Rosie Johnston-Luff, Richard Stern and Lewis Walmesley-Browne.

Q238 Chair: Our second panel this morning comprises those who are going to focus on the audio streaming and it continues our discussions from last week's session that was on radio broadcasting. Today we are joined by Rosie Johnston-Luff from Google, Lewis Walmesley-Browne from techUK and Richard Stern from TuneIn. You are all very welcome. Thank you very much for joining us today.

As ever, our Committee members will declare any interests at the point of asking their questions. As you may have heard from our previous session, if you broadly concur with everything you have already heard, do not feel like you need to pad out the session with additional comments. We are very happy to take short and concise answers in the interests of time. You are all very welcome and thank you very much.

I will start the questioning and I should start by saying that I have accepted hospitality from YouTube, which of course is part of Google.

Larger platforms have considerable market power over individual radio stations. Do you think that the Bill represents a legitimate levelling of the playing field?

Richard Stern: Thanks for having me. I appreciate it and I appreciate the opportunity to comment on the draft legislation.

When we look at the broadcast community in the UK on TuneIn we have over 3,500 broadcasters working with us today. One of the reasons we are here to discuss the legislation is how quickly all those broadcasters, the entire community, has grown into digital. It has taken everyone by surprise by how efficiently the market has operated. We have not observed that harm—that the long-tail independent broadcasters have been blocked out by the major platforms—or that there has been harm there. That does not mean that there is not; it is just not obvious as we look at the market today. It seems to be functioning efficiently.

Lewis Walmesley-Browne: Thank you for inviting us to speak today. We welcome the fact that the Bill was published in draft form to enable this type of industry engagement.

On the point about platforms having significant market power over radio, I refer the Committee to Ofcom's latest "Media Nations" report, which finds that only 10% of the UK radio listening hours are via smart speaker platforms and 73% remains via more traditional radio sets. Again, we echo what Richard has said. We do not see any evidence of real-world harms at the moment.

Ofcom released some independent research in December 2022 where essentially they ran an experiment. They gave smart speakers to 100 people who previously did not have smart speakers and most of those people found that they were able to access the radio that they wanted to access and there were also additional benefits in discovering new content,



sound quality and accessibility. In challenging some of the proposals put forward in section 6, we are asking where the necessity is.

Q239 **Chair:** Rosie, what challenges do you think the legislation creates for platforms and aggregators?

Rosie Johnston-Luff: Significant challenges. Again, I would like to echo what my panellists have been saying: thank you for the invitation today. This session represents one of the first significant pieces of consultation with the tech industry on this piece of the Bill. You might have heard from other witnesses that this was added in at speed at the end. As you will hear today, that speed is reflected in some of the proposals.

The challenges are multifaceted. First, to reflect on your previous comment, the evidence basis for this review is the Digital Audio Review, which came out two years ago. In that section the word “platform” is used interchangeably to mean the aggregator, the hardware—which is your physical smart speaker on your bedside table or kitchen cabinet—and the software, which is the voice activation that powers it. It is important to disaggregate the three parts when we are talking about platforms. The whole purpose of a smart speaker is to surface what the user wants at speed, efficiently and well. It is not in our interests to direct the user to something that they do not want or need.

The major challenge that has not been reflected very much so far is around the huge burden that goes into both sides when thinking about a default broadcaster route. That is on both sides. We calculate it takes about a year of engineering expertise and tech expertise on both sides for the broadcaster partner and for us to bring someone on board. What is involved in that year is all kinds of coding, understanding the metadata that needs to be surfaced to users. To out my own radio interests, I like listening to Radio 6 Music. If you think of the various ways a person could ask for 6 Music, you could say BBC Radio 6, 6 Music radio, 6 Music, BBC 6 and all that needs to be coded in for every single station.

We work with the big aggregators. Already, the BBC, Global and Bauer are embedded into our platform, and we use TuneIn for the smaller platforms. The three big aggregators account for 90% of listenership, not 90% of stations. There are over 600 stations licensed to operate in the UK. There is a big issue there.

More profoundly, there is also the scope. The scope is not brilliantly defined in the Bill as it stands. We have had some conversations with DCMS, who have told us the intention is to regulate the voice assistant part, so Siri, Alexa and Google Assistant. It would be for significant uses of device. Voice assistant is embedded into a number of devices beyond just the smart speaker. It is in our mobile phones, our laptops, my smart watch, some of my headphones, and not all those routes are primarily for accessing radio. We know that it is in that smart speaker on your kitchen cabinet, but if you are thinking about your phone, 19% of radio listening is through mobile phones in the UK, with only 14% through smart



speakers. A lot of that is done directly through users opening the app they love and just pressing play. Some of that, but vanishingly small amounts in the context of that device, is done by saying, "Hey Google, play Radio 1".

The scope could unintentionally be all voice assistance in all devices of significant usage and we do not have a reassurance of where that starts and ends and the context of what is played. The context of that device and what it is being used for needs to be considered as well, bearing in mind a lot of what the radio industry is calling for already happens on your phone in a different way, or on your laptop, for example. It opens if you ask it to play the radio, it opens the web player, so you already have that direct integration.

Q240 Chair: Do either of the others have any comments? Rosie has answered the question about the challenges for platforms and aggregators, but also the issue of the other devices and whether they should be subject to the regulation. Do either of you have any comments on any of those aspects?

Lewis Walmesley-Browne: I can speak on some of the challenges that our members encounter in complying with these regulations as proposed. As Rosie mentioned, and we heard from Amazon earlier, there are multiple ways that a radio station can get on to a smart speaker platform. There is direct integration that requires a lot more resources on both sides. Then there are aggregators, the Amazon Radio Skills Kit and so on.

The concern here is that whereas in the television prominence regime there has been recognition of a "must carry" requirement, that needs to be balanced with a corresponding "must offer". In the radio section of the Bill that principle has not been recognised, so there is a concern there that if a requirement was placed on platforms to carry radio content but no corresponding "must offer" that creates a lot of leverage for the stations. If I am a station, whether big or small, I can come to the platform to say, "You are legally required to carry my content. I am not required to offer it to you, therefore let's talk about technical specifications, let's talk about what you are going to build for me" and so on. That is the concern on our side.

Richard Stern: I agree with everything that my colleagues have shared. The one thing that has not come up is the idea that a broadcaster chooses their route to market. We have not talked about the impact to the listener—the person who is ultimately consuming that station. Radio is a public trust, and the accessibility of radio needs to be as good or better in digital than it was in its terrestrial form. Even in just some of the testimony that you have received today, RSK integrations behave differently than aggregator integrations and behave differently than bespoke skill integrations. That can have radically different consequences for the listener that we have not contemplated in this legislation. It may be appropriate from the broadcasters' perspective, but it undermines that key principle of universal accessibility for a commercial reason, for a



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reason that they have chosen to do that. That is an area that needs more study and investigation as well.

Q241 **Chair:** Lewis, can I ask you about in-car systems? Do you think including them would create any unique technological challenges?

Lewis Walmesley-Browne: That is not something that has come up with my members in preparing written submissions. I would be happy to look into that and come back to the Committee.

Rosie Johnston-Luff: I can talk to that very briefly. This speaks to the potential scope creep of the legislation. It will directly affect car manufacturers and I encourage the Committee to get some direct evidence from the SMMT or from car manufacturers. The decisions that are made on infotainment systems are made by the car manufacturers. I can talk to you a little bit about how Android Auto works. We have an operating system, which is a completely open platform. We make no decisions about the way that platform is used. It is just for the car manufacturers to build something on. Anyone can use that tool to make the decisions they want to make about app integration.

We also have something called Android Auto, which is a bit like CarPlay if you have ever used that on Apple, which is the reflection of what is happening on your phone on your car. Again, the way as I have described when you ask the assistant to help you listen to audio via that route, it opens the app for you, and it is up to the broadcasters to ensure that they have a good app that is working nicely on that system and on the screen system.

We are already opening the apps directly. They already have the default route, but the infotainment systems sit directly with car manufacturers.

Q242 **Chair:** That is very helpful. Richard, did you have anything to add on that?

Richard Stern: Nothing.

Q243 **Clive Efford:** With regard to the Bill allowing broadcasters to choose a default route for their radio stations, how challenging would that be for a selection service to provide?

Lewis Walmesley-Browne: The concern there would be that at the moment—we do not know—of the 600-plus licensed stations in the UK, how many would demand a direct integration. As Rosie said, an integration just with one radio station can require multiple headcount. That is on both sides, not only on the platform but on the radio station as well. The potentiality of 600-plus stations making that demand would be very burdensome.

Q244 **Clive Efford:** We have had evidence that says that it would not be 600 and that there are platforms like Radioplayer where the smaller radio providers would provide their content. They would provide their content



through that. Is it the problem that some are describing—that there will be all these different providers that will be looking for and demanding that you provide provision for them on the platform? Is it the problem that some are saying?

Lewis Walmesley-Browne: Aggregators definitely have a role, particularly for small stations that may not have capacity to try to build something bespoke, but it is more about not knowing at this stage. The point that I made about leverage, if there is no corresponding “must offer”—maybe I am a small station, but knowing that you have to carry—I might expect you to build it for me. There is an element of leverage there,

Q245 **Clive Efford:** Do you have any comment?

Rosie Johnston-Luff: Yes, I have several comments. Thank you for the question. We are working with Radioplayer now at Google and we hope to onboard it as a partner. Hopefully you will have some good news about it being a fully integrated partner within the next year. However, it speaks to my comment about the length of time that it takes to onboard a partner that we are still in conversations with Radioplayer to make sure that we are providing an effective, seamless, stable connection to its service.

What will happen when Radioplayer is onboarded as a service will be that users will be given a choice about which default route they want to go as a user, because—to the point that my colleague from TuneIn was making so well—it has to be also about how audiences find their content and what apps and services they enjoy using themselves, or which apps and services they have paid for. If a user loves getting Radioplayer content and they are allowed at the moment to set their default as Radioplayer, I am not sure, and my colleagues at Google are unclear, about how to rebreak and then remodel our platforms to empower broadcasters over consumers. If someone said, “I really like Radioplayer,” or, “I really like TuneIn,” but their broadcaster has a different view, we are fundamentally unsure how to address that. That speaks to the lack of consultation that we have had from a pure engineering point of view going into this Bill.

Secondly it is about how long it takes to onboard someone properly. It takes about a year. Even if 10 of those 500-plus radio stations that are not captured by Global Player, Radioplayer, Planet Radio or BBC Sounds say that they want a different default route, we are looking at 10 years of engineering, resource mandated and the maintenance on top of that. It is not just getting it up and running; it is making sure that as radio stations change their names or as user habits change, we are giving that reliable connection.

In the overall package of what we are looking at, again the trouble is that there has not been a market study. We do not know how many radio stations want a different default route. We have no idea so we are not sure how to prepare internally.



Q246 **Clive Efford:** Do you think that the legislation as currently drafted is weighted too heavily in favour of those small radio stations being able to dictate? What would you change?

Rosie Johnston-Luff: You heard some evidence from the Community Radio Network, who spoke very favourably about the role of TuneIn and aggregators. Aggregators play an important role in this ecology because they are able to absorb a lot of the engineering and maintenance time and enable the smaller community radio stations to get on what they are doing best, which is making brilliant British content, and we can get on with connecting audiences to the content that they love. That ecology is broadly working pretty well, but I am sure that my colleagues at TuneIn can talk more to that.

At this point in primary legislation you would expect there to be an Ofcom market study or some kind of independent assessment of the market, and that just has not been the case in the run-up to this Bill, so we are slightly unguided on what to expect with it. Therefore, I would say that the Government should take a breath with this Bill, consult thoroughly, think through the impact and then come back to it.

Q247 **Clive Efford:** TuneIn has argued that device manufacturers and software companies should be the ones to decide how they can best deliver online radio stations. Is that a bit brutal?

Richard Stern: No, there are two elements to this. First I want to say that the reason that we are here is that aggregation has worked incredibly well. If we had left broadcasters to their own devices and device manufacturers to their own devices to form one-to-one relationships, the market that we are studying right now would not have emerged. It emerged so quickly because one relationship with TuneIn and one relationship with the broadcaster and all of a sudden you are on 200 devices. That is great for the customer and that is great for the broadcasters that we are talking about.

The market has largely functioned efficiently up until this point. In fact, the evidence of that is that we are here talking about regulation because it has grown so fast. The only position that we have taken is, before we step in and say that we know better, let's study it very carefully and make sure that we understand what is working and what is not, and understand, if there is harm, what is the harm that we are trying to address. Unfortunately, and it has come up in the conversation today, you start asking is it smart speakers, is it voice assistance, or is it connected vehicles, and you can find yourself down a slippery slope. In each of those cases there are different issues to protect broadcasters and protect listeners that need to be addressed. However, they require study and they require more of a scalpel than a broad-brush approach.

Q248 **Clive Efford:** To push you a bit, is that different from the comment that the device manufacturers and software companies should be the ones to decide how best to deliver online radio stations? Are you saying that we



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need to do some more research or are you saying that that is the route that we should go down?

Richard Stern: I am saying that they have been largely left to do that up until this point. The market has been self-organising to this point and it has operated efficiently. If there are issues with the operation of the market, if there is customer harm, or if there is broadcaster harm, we should study what it is and develop solutions to address that. I am not aware of what those are yet. I have not seen the harm that has come from the growth that we have talked about to this point. Again, consultation has been slight. Maybe that harm has been presented but I think that it would be better to do this transparently and openly.

Q249 **Clive Efford:** Rosie, you used a figure earlier on about the proportion of people who listen through smart speakers and those who listen through mobile phones. You said that it was 14% who use smart speakers. Given the prevalence of mobile phones against smart speakers, that suggests that that is a massive and fast-growing area where people are accessing content from radio broadcasters. That suggests that it is a very important area in the future and therefore does require to be in scope. What is your comment on that?

Rosie Johnston-Luff: There is no doubt that voice-activated listening to radio is growing and it is brilliant. We have all been slightly frustrated to have the argument framed as this being the radio industry versus big tech, when it has been something of a symbiotic success story. This technology came on the market six and a half years ago. In that six and a half years you have seen explosive growth in radio listenership. Just this month Radiocentre said that the industry was the strongest it has ever been. Ofcom has found that there has been increased advertising share, there were more commercial broadcasters broadcasting than ever before and they are reaching more listeners than ever before. They reached this month, according to RAJAR, more listeners than ever, so this is a symbiotic success story.

However, on the specific point about smart speakers, the confusion in the legislation is: is this about regulating the specific Google Nest or Amazon Dot that sits in your kitchen or is it about something else? I suggest in general that there has been a good principle in the UK about not being too prescriptive about one type of tech as it evolves. A future-facing market study that thinks through how this voice assistant tech will show up in the future, what other devices might there be and how this will market evolve would be useful.

Q250 **Clive Efford:** Isn't it about the customer getting access to the broadcaster that they want when they ask for it and not being directed somewhere else? Isn't that basically it?

Rosie Johnston-Luff: Absolutely right.

Q251 **Clive Efford:** Therefore, shouldn't everything be in scope?



Rosie Johnston-Luff: It would not be in our interests. We would be presenting a not very good product if a consumer says, "Play Radio 4" and we do not play Radio 4. They would go somewhere else. I would also add that there is an inbuilt mechanism, which is casting. It takes four taps, if we are not doing a good service, to open your app, pair with device and press play. I understand what you say and I absolutely agree that the consumers should be at the heart of this, and there is a market imperative on us to make sure that we are connecting consumers seamlessly to the content that they love, otherwise we are not doing a good job.

Lewis Walmesley-Browne: Can I come in here? Going back to what is the impact on the consumer of placing heavy compliance burners on companies that provide radio selection services, we understand that saying that it is going to cost money and require more headcount from large companies may not be something that will be prioritised by members of the Committee. We understand that. Coming back to the consumer, looking at whether it is for smart speakers or potentially for a wider range of devices such as tablets, as you had suggested could be looked into, you heard from Sky earlier that that burden creates disincentive for further innovation.

Bearing in mind that these devices have only been on the UK market for seven or eight years, there is still a lot of innovation that can happen that ultimately provides more choice and better functionalities to consumers. There is a risk of pushing that away if you say that once you reach a certain threshold of providing radio service in the UK, you have this big burden to comply with. We think that that is ultimately bad for consumers. Going back to the point, we do not see evidence that consumers currently cannot access the radio services that they want to access.

Q252 **Clive Efford:** One last question on legacy devices. How should they be treated in the legislation?

Richard Stern: Two things. Finishing up on your previous point, there is the potential for perverse incentives in how the legislation is set up today in that a broadcaster might say, for instance, "I choose the path of a scope and I require registration for you to access my broadcast stream". A broadcast stream that would be freely available and terrestrial over radio would not require you to give your email address or anything but in digital they could say that that is their commercial choice. I think that would be a great disappointment for most listeners. The legislation does not address that now in preferred route to market. It says, "You are the broadcaster, you can choose where to put your stream".

On a broader view on legacy devices, it comes back to the more meta issue that most smart speakers are very dumb. They do not do voice processing on that speaker, they do not have any of those capabilities. If I think of something like my Echo device, which is an Amazon smart speaker, it is interacting with another product called Alexa, which is its



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voice assistant and what drives the voice activation. Understanding the relation between those different products in that ecosystem and how they come together is confusing in the legislation today. It specifically talks about speakers but it is actually talking about the interaction between two products in their suite. Google is very similar. There are other companies that have these different product categories.

Therefore, there is an issue of saying for legacy devices, for really dumb speakers, speakers that are Bluetooth enabled and whatnot, how does that work and where does the voice activation come from. Should consumers have an expectation that that would be covered by this legislation or not? As industry groups, this is why we are asking for more study, because we need more guidance on how this should work and what the expectation is of the Committee as well.

Clive Efford: And legacy equipment?

Lewis Walmsley-Browne: Legacy devices is an area where there is quite a bit of consensus with the broadcasters on both sides. Nobody wants to be legally required to go in and re-engineer older products. Sometimes the company that manufactured that product is not around any more. It would not be contentious to include provisions to carve out those older devices. If there was a need for Ofcom to have a view on what was appropriate to keep in and take out, that would be appropriate.

Clive Efford: Dumb speakers would be an extraordinarily unique selling point.

Q253 **Damian Green:** There are jokes to be had there, but I shall not. It is interesting that you all seem to be saying that we are slightly rushing into this, we do not have enough studies and we are not quite sure that the legislation is fine-grained enough. Are you worried that if we include this part of the legislation in the Bill we are going sit back and regret it in two years' time?

Rosie Johnston-Luff: Yes.

Damian Green: Is that shared by others?

Lewis Walmsley-Browne: All well-developed legislation should have proper industry consultation and full regulatory impact assessment. Particularly in section 6 that has not happened yet.

Q254 **Damian Green:** In practical terms, we all know that it has been 20 years since the last Bill of any consequence in this space, and who knows how long we are facing before we come back to this. Do you think that this section should be taken out of the Bill?

Lewis Walmsley-Browne: I think that that would be appropriate at this stage. There needs to be more consultation on this part.

Rosie Johnston-Luff: That is certainly our view at Google.



Q255 **Damian Green:** Even if that would risk not having a properly regulated sector for as far ahead as the eye can see?

Rosie Johnston-Luff: If we are thinking genuinely about safeguarding the British radio industry—which is in our interests; I talk about this being a symbiotic success story—we want to connect consumers to a flourishing and large range of radio stations. Therefore, it is in our interests to make sure that there is a flourishing and large range of radio stations to connect our users and consumers to.

However, a very good phrase was that if you regulate with a scalpel rather than with a hammer, you end up identifying where people think there might be future harm. We have no evidence of industry or consumer harm so far and indeed other witnesses have used the word “might” or is there a risk that there “could be” or “potentially may be” this problem. Until we know what the problems are, it is not great practice to anticipatorily regulate for a hypothetical problem.

Q256 **Damian Green:** It does not take much imagination to think that if the vast majority of radio listening in a few years’ time is through smart speakers, the ad revenue will be creamed off. It is similar to the conversation we had with Amazon earlier. The person who is delivering the service, the platform if you like, can then dictate the terms to even the aggregated hundreds of smaller players, so it is not that hypothetical.

Rosie Johnston-Luff: I will say two things to that. First, in the current legislation, just to give you an example of where it has come through a bit too fast—we have had reassurances from DCMS that this is not the intention of the Bill—there is currently provision that we could not interrupt live radio playback, because that is intended to imagine a future where we might be putting adverts in. As far as I am aware, that has never been an intention of Google. What we want to do is connect customers seamlessly to the radio and provide a good product that way.

However, at the moment, an uninterrupted radio feed would preclude getting your alarm or your timer, if you have put your carrots on. If you are applying that to your mobile phone, which we talked about, that could mean that it could preclude having a phone call because that would be Google interrupting the live radio play. We know that DCMS has not meant that, but it was only when we had some after-publication conversations that we pointed out to them that this was a problem.

Therefore, with rushed legislation and with under-consulted legislation, there are all kinds of niggly issues that could block either new entrants coming into the market or new devices entering the market, particularly where accessing radio is not the primary purpose of the device.

Q257 **Damian Green:** Do you think that the wider the scope, if it does include devices where the primary purpose is not listening to the market, brings more danger to the legislation?



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Rosie Johnston-Luff: I do personally. I will let my colleagues answer as well, but I want to add that some of my colleagues from Google have been doing extensive consultation with the Government on this and we have already the competition Bill going through Parliament right now. That includes provisions within the CMA, the Digital Markets Unit, which is set up to address potential competition issues or abuse of power by tech platforms.

Therefore, we already have a legislative mechanism, which has been well debated and well established, to correct any market issues that might transpire in the future. I would like to give the radio industry some reassurance that even if they think that something did go wrong and this part of the Bill fell out, there is a good mechanism that has had intense scrutiny that is already going through Parliament right now.

Richard Stern: There are lots of issues in the legislation that we are not sure are good or bad. We are just understanding in a practical sense of how they get implemented. One example of this—and it was in testimony last week that came up—was we talked about this long tail of broadcasters and how they would find their route to devices. The answer was through aggregation. Radioplayer is an aggregator, Bauer does aggregation, Global does aggregation, TuneIn does aggregation as well; yet aggregation is not covered by this legislation at all. What it means for a broadcaster to aggregate other broadcasters and what the potential harms in that might be and what the alternatives would be for broadcasters here is not covered by the legislation as it is currently presented.

As an industry, we are all engineers, so we put our hats on and ask practically how the plumbing starts to work here. We understand the intent and there are missing pieces in the legislation as it is currently drafted. They are knowable. They are not things that we could not figure out together as a group but they have not been figured out yet. When I hear broadcasters say, “We’ll solve this. This aggregator will do it versus this aggregator,” and the Bill does not discuss aggregation, that feels like something that is missing quite obviously.

Lewis Walmesley-Browne: By means of comparison of part 6 on radio and part 2 on the television prominence requirements, while we have some concerns around that section, which we might come on to, we have had much better consultation on that over a number of years. When it came out there was less surprise about what was in that and, therefore, there were fewer instances where we were thinking how that works and what the implications are. With part 6, it has been so fast and without consultation, which is why there are so many doubts. It is not the case of big tech just wanting to bat away any type of regulation. We are largely favourable to the television prominence regime but this part 6 has been really fast.

Q258 **Damian Green:** Can I ask some questions about one specific area where



it may be unclear? The Secretary of State can only designate radio selection services that are used by a significant number of people. Do any of you what that means, what “significant” means in this context?

Lewis Walmesley-Browne: No. The understanding is that that would be based on a report created by Ofcom. However, what methodology would be used: is that for devices that are primarily used for radio; does it include multiuse devices; is it based on the absolute number of listeners or some proportion or radio listening or UK online radio listening? It is not clear at this stage.

Richard Stern: One of our concerns is a level playing field in radio. As a company, TuneIn sees radio as a public trust and we want to recreate the kind of ubiquity that exists in terrestrial—that you can turn on a AM/FM or DAB radio—and listen everywhere in digital.

The concentration of power in the legislation, meaning that it is the larger smart speaker manufacturers with the largest broadcasters and everybody else is put to the side, concerns us because on our platform today we have 273 community broadcasters and 3,500 stations licensed here in the UK on the platform. Not all of them are Global, Bauer or BBC. Many of them are small, regional broadcasters. They are small businesses, at the end of the day. They are looking to us for a level playing field to say, “In digital I have just as much right to be on this device and I have just as much access and my listeners have as much access as anyone else”. As it has been structured, the measure, as they read the legislation, is, “This seems to be for the big guys, but what about me?”

Q259 **Damian Green:** When the Bill was published, DCMS mentioned Google and Amazon as two obvious big providers. Who else would qualify?

Richard Stern: For devices that are significant—

Damian Green: Potentially being designated under this.

Rosie Johnston-Luff: I mentioned the digital audio review, which used the word “platform” interchangeably to mean the hardware, the software and the aggregators. The confusion that we have around what “significant” might mean stems from there. Are we talking about the number of significant users of the voice-activated service—Siri, Alexa Assistant, which is what the DCMS have said to us in meetings? In which case, the highest use of devices will be laptops and phones rather than smart speakers, which are smaller part of the ecosystem. Is it significant usage of the device; is that in combination with monthly listenership? We are not sure.

However, I feel, and this comes up in conversations with my techUK colleagues and others, that we are creating confusion for us about what products may be in or out of scope. It might also include cars; it might also include the entire internet because voice search is baked into how we search, increasingly. I know that this Committee has already talked



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about accessibility. For accessibility reasons, voice search is baked into all manner of products. All this for an industry that is working well and we might well be creating not only a cliff edge for new entrants who might not see where to grow, but also for new devices that we manufacture to reach the market.

I will also add that this is the only legislation like it anywhere in the world. We have not seen it in other markets, so it might affect new product plans reaching the UK market as well if, by definition, radio is going to have this level of what I would say is unworkable legislation around it.

Richard Stern: One of things that I will suggest is that TuneIn as a platform is connected to 200 different device platforms today. When you take a voice assistant and combine it with anything that is audio capable, you have a listening service for a customer. That is television sets, microwave ovens, connected refrigerators, thermostats in your home, headphones and headsets. It is also laptops and mobile phones. If there is any hesitancy, it is that you put those things together and it is very hard to predict where the market will go. I would not say that six years ago anybody thought that smart speakers would be as prevalent as they are today, yet that market has taken off. It is a little hard to predict when you put the power of voice anywhere digitally where listening can occur. It is a great strength for radio, because radio can be ubiquitous in that way, but it is hard to pick out single-device categories and ways that this will emerge and become dominant.

The other thing is that there is a whole group of inventors who have nothing to do with Amazon or Google, or any of the major tech manufacturers, who are building products today that will emerge in this world. We want their ability to come to market and succeed with this content as well.

Julie Elliott: Can I place on record my declaration that I have received hospitality from Google and some of Google's companies?

Damian Green: Sorry to interrupt. I have just realised that going way back I have received hospitality from Sky, which I should have declared in the previous session, but I should take the opportunity to do that now.

Q260 **Julie Elliott:** That is fine. Anybody else? We are all worried about getting our declarations out.

I want to ask a question that I asked the previous panel. Broadcasters want to see the Bill extended to include on-demand and online-only content from Ofcom regulated stations. What would be the platforms' view of this?

Rosie Johnston-Luff: Thank you very much, that is a very important question. I was talking about consumer preferencing before and how consumers use the products. At the moment when you set up you are



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given your choice of what services you would like to have as your default. The BBC, for example, makes its podcasting content available through Spotify. If you set Spotify as your default provider, we are not sure—if someone said, “Play the BBC ‘Trailblazers’ podcast” and they have set Spotify as their preferred route—would this legislation mean that the broadcaster preference that it comes out of BBC Sounds takes precedence over what the consumer has wanted? These are the fundamental questions that we are concerned about in that consumer preferencing over broadcaster preferencing.

Lewis Walmesley-Browne: From our perspective, this proposal to include podcast and music-streaming services does not fit with the objectives that this section of the Bill is intended to address. To the best of my understanding, this section of the Bill is intended to protect licensed radio stations against perceived or hypothetical threats from radio selection services. To include podcasts and streaming services would then be to give entirely new privileges to operators of radio licences for non-radio activity. There is a question of how that aligns.

Radio licences exist because not in an IP world but traditionally there was limited radio spectrum and that is why it has to be licensed, but podcasting or online music streaming does not work that way. It is not clear why companies that hold radio licences should be given that privilege over other types of entity.

Richard Stern: As a company, we believe that there are two different classes of content here that we are talking about. Content that originates from a licensed broadcaster that is freely available and terrestrial should be equally available and ubiquitous in digital. That is the future that we would like to build together with our device partners and our broadcast partners.

Podcasts and digital-first content seems to be a slightly different category. It is important and access is a conversation to have but it falls into a different respect for both broadcasters and the platforms than the terrestrial licensed content does. Even customers have come to a place where they think of that content differently. Every one of our listeners expects that terrestrial radio should be available and ubiquitous in any digital surface that they want to go to but they have realised that premium content or digital-first content is the value-add of the digital world and we have not had the same listener questions coming to us on that particular topic.

On the question of licensed broadcast content, we would like to see that be even more free and more ubiquitous in digital than in terrestrial.

Q261 **Julie Elliott:** If the definition does include this, do you think that this will cause significant problems? That is the impression that I am getting.

Richard Stern: Yes, 100%. We are skating on very thin ice just understanding the streaming radio piece of how this would come together



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and work effectively. There is also an on-demand component of this. By the way, it is unclear exactly what that means for everyone today too. It takes something that is already complicated and makes it perhaps even unworkable.

Lewis Walmsley-Browne: Coming back again to the consumer, is there any evidence base to suggest that consumers currently are not able to access the podcasts that they want to access? I do not believe that there is.

Q262 **Kevin Brennan:** Welcome, everybody. I have also been to things with and received hospitality from Google over the years.

Rosie, earlier on you said that Google did not have any intention of serving up advertising to interrupt a radio feed but that other things could happen that could be interpreted from the Bill as an interruption, for example a phone call and so on. Is it Google's position that in principle you are not against what the Bill is saying but you are saying that there are practical objections, or are you saying what you said later in your evidence, that the radio part of the Bill is unworkable and you would like to see the whole thing dropped?

Rosie Johnston-Luff: If we are talking about the principle being are we all working to make sure that the radio industry flourishes and has an amazing future in the UK, yes, we completely support that principle. It is in our interests to make sure that the radio industry is thriving. All the evidence is that it is thriving. Even without regulation there is market incentivisation to ensure that we are competing among ourselves to make sure that we are connecting users to content seamlessly and well.

That aside, and I understand why—exactly to the point that your colleague Damian was making—you can understand the impulse to want to have reassurance through a regulatory framework, but I would say that the way that this particular piece of regulation is being framed is not quite right. I encourage the Government to start from a strong evidence base about where the technology is going and, crucially, how consumers are using technology to get at what they love, to ensure that we are not inadvertently damaging the UK radio industry by blocking users from getting it when they want to and how they want to.

Q263 **Kevin Brennan:** At root you are an ad tech company; you need to serve advertising, don't you? That is where you make your money. What I am trying to understand is would you like to see this whole section of the Bill just dropped or are you saying that with a bit more of an evidence base, some good regulation could be developed in this area?

Rosie Johnston-Luff: This part of the Bill as it currently stands, yes, we would like to see it dropped. With a further evidence base there is an argument for some regulation that is held in reserve power. As and when there is any material evidence of either consumer or market harm, which we do not have at the moment, something could kick in to provide that reassurance to the radio industry. However, a reserve power with a



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mechanism from Ofcom to determine as and when market harm comes in would make sense. However, I would also reiterate that the DMU is being set up to deal with exactly these concerns and there is a risk of double regulation here.

Q264 **Kevin Brennan:** How long do you think it would take to compile the evidence necessary to be able to regulate in that way?

Rosie Johnston-Luff: The DCMS has said to us already that it would have anticipated there being at least two or three years of consultation coming out of this before implementation started. I would work back from that and say let's have the two or three years of consultation and then have some brilliant legislation that is ready to go.

Q265 **Kevin Brennan:** In your view, there is no chance that the radio part of this Bill could receive Royal Assent before the next general election?

Rosie Johnston-Luff: I would not want to make particular comments of parliamentary timetabling but I point to what Lewis has said, which is—

Q266 **Kevin Brennan:** From your point of view, you have said that it would not be possible to have sufficient time for consultation to develop effective regulation in this area prior to the next general election, which has to occur by, at the very latest, January 2025?

Rosie Johnston-Luff: I particularly call into contrast parts 1 to 5 versus part 6. You have parts 1 to 5, which have been well discussed and well debated, bar some technicalities, and this one.

Q267 **Kevin Brennan:** Can I read to Richard and Lewis—which I am sure you have read yourself—a little exchange I had last week with Matt Payton from Radiocentre when I was asking him some questions about the must-offer obligation? When he was asking about that he said about your arguments as organisations on that, "No. This argument is a bit of a try-on, if I am honest. It is a starting point." I asked who is trying it on. He said, "From what I have read in some of the other submissions, it is a little bit of a ruse to try to undermine the aims and objectives of the Bill which as we said—" I interrupted and said, "That is quite a serious allegation. Who is trying to undermine the aims and objectives of the Bill in your view?" He said, "You just mentioned the two other submissions that were aimed at undermining—" and I said, "I did not accuse them of that. You are saying that TuneIn and techUK are trying to undermine the Bill?" He answered, "Yes". Is that correct. Are you trying to undermine the Bill?

Richard Stern: I will say that from the moment that we were asked to participate in this process we leaned into it 100%, and we will. We want to craft the best legislation that we have. You have asked everyone on this panel whether they think that it should go forward. Responding for TuneIn, I have not said anything about that.

Q268 **Kevin Brennan:** Do you want to say something now about it?



Richard Stern: I would like to. Radio is a public trust and radio needs to be protected in the digital world that we are removing into. That world is evolving very, very quickly, much more quickly than any of us could have anticipated, which is why we are having this conversation right now. I would say that the most important area is not exactly what the advertising regimes are, because I have not seen evidence of any of the tech platforms putting ads on top of major broadcasters' streams in that way, nor have I heard any plans to that. Access for listeners is paramount, being able to walk up to a device and get any radio station that you would get in terrestrial without any sort of block, without having to trade your data, without having to register. I encourage us to lean into that part of it, and there has been very little conversation about it.

Secondly, what makes this market function efficiently right now is aggregation. TuneIn is an aggregator, Radioplayer is an aggregator, Bauer is an aggregator, Global is an aggregator. This legislation does not discuss aggregation at all and give the rules of the road for that, and that is essential.

Q269 **Kevin Brennan:** How could what you have just said, which in principle sounds great, be achieved or be guaranteed to be achieved without regulation? Would the major players in the industry sign up to some sort of code of conduct to guarantee that that would not happen?

Richard Stern: By all intents and purposes we have. We have commercial agreements with every single person who has given testimony in front of this Committee. TuneIn has a relationship with Bauer, it has a relationship with Global, it has a relationship with Amazon. Everybody here who has been providing testimony we have commercial relationships with to bar the behaviours that you are talking about here.

Q270 **Kevin Brennan:** It is a funny relationship when the major trade body for a lot of those organisations turns around and accuses you of undermining the Bill. That does not sound like a relationship that is based on mutual trust.

Richard Stern: I cannot speak for radio; I am not a part of Radiocentre. However, I will say that we have contracts with every member of Radiocentre; we have partnerships with all the device manufacturers that are here. I think that if any of them saw TuneIn as working contrary to the market or as a bad actor, they would choose not to do business with us or distribute their content with us.

Q271 **Kevin Brennan:** If they thought that Radiocentre was speaking with a forked tongue, they would not choose to have it as their trade body, would they, so presumably there is something else going on with this?

Richard Stern: We can be frenemies at times. Those same broadcasters have an aggregator called Radioplayer, which does a lot of what TuneIn does, and everyone has a right to compete. However, in this particular



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case I have never received anything but encouragement to keep working with the partners that we are talking about here.

Q272 **Kevin Brennan:** Lewis, I must give you a chance to answer that as well.

Lewis Walmesley-Browne: Yes, it was certainly an interesting session last week. On our side in development of legislation it is entirely appropriate and normal procedure for industry associations to put forward the views of the members that they represent. We are doing that, Radiocentre is also doing that and it is appropriate for both sides to be doing that. Rather than throwing around baseless accusations, I would rather engage with the substance of what he—

Q273 **Kevin Brennan:** Do you think that his accusation was baseless?

Lewis Walmesley-Browne: That we put forward a ruse? I would say yes. To back that up, on what was said about our written submission, two points were raised. One was that we were spreading confusion about whether it is easy or burdensome to get on to a smart speaker platform. I hope that through the evidence of all the companies today we have explained what we mean there. Our written submission refers to the burdens of direct integrations, whereas applications such as Radio Skills Kit are easy.

However, it was also said that within the radio section of the Bill the words “must carry” do not appear. While it is true on a technicality that those words do not appear consecutively next to one another, the Government’s own press release said that there will be new reforms to guarantee access to UK Radio on smart speakers. It is in 362BH. The intention of the Bill is very clear to everybody.

Q274 **Kevin Brennan:** Is there a compromise position that would work for both stations and platforms on this that you want to suggest?

Lewis Walmesley-Browne: That may well be achievable. I am sorry to sound like a broken record here, but that requires proper consultation with both parties, which has not happened. It is perfectly possible that an agreement could be reached via non-legislative means, whether that is through some sort of mutual understanding, code of conduct or, as Rosie said, some sort of last-measure backstop on Ofcom if it perceives companies not to be engaging with radio stations on fair, reasonable and non-discriminatory terms, for example.

Q275 **Kevin Brennan:** Do both of you agree with that?

Rosie Johnston-Luff: In the White Paper that informed this piece of legislation, there was a section about needing further conversation with the industry to enable primary legislation. We have skipped through the bits where we test out codes of conduct and where we test out other mechanisms. I would not want to guarantee that we would sign up to a code of conduct with having seen what a code of conduct could ensure.



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Even that conversation has not happened yet and we would welcome that kind of conversation.

Richard Stern: I will say that we are all sitting here trying to find a productive way forward. That is the truth of the matter.

Q276 **Dr Huq:** Declaration-wise, a Google skills bus came to Ealing town hall and I went on there, and there used to be a Google mug in our office, but I think that someone has pinched it.

It is all very exciting to be talking about modernising the broadcasting regulatory framework but there is evidence out there that 7 million to 8 million people are not going to transfer to digital and 80% of people still watch things through their TV set. Do think that there is a potential rush to digitalisation—you talked about evidence—and that maybe things could happen bit by bit when the evidence shows habits are changing.

Lewis Walmesley-Browne: Are we speaking primarily television here?

Dr Huq: Yes, I guess the whole thing.

Lewis Walmesley-Browne: This is an area that Ofcom has been looking into quite extensively. The conclusion was that we anticipate linear broadcast to continue to play a role in the UK ecosystem for the foreseeable future. Going forward, it is likely to be a hybrid model. I know that the BBC gave evidence to this Committee quite recently saying that it would only ever consider a full digital switchover at the point where the infrastructure was in place and the population was ready to do that in an inclusive way. That is our expectation as well—that it will continue to be hybrid going forward.

Q277 **Dr Huq:** Is universality protected enough here?

Lewis Walmesley-Browne: Our written submission was primarily around the prominence part of the television requirements and that section does not relate to universality.

Q278 **Dr Huq:** Anyone else? I do have a universality question.

Rosie Johnston-Luff: Part 6 of the Bill is about specifically voice-activated technology on digital devices, so in some ways it is already specific in its scope. I do not have the exact statistics to hand but we are still looking at a situation where the majority of radio listenership is done on DAB and traditional analogue radio systems, so online is not up to the same penetration as traditional radio models yet.

Richard Stern: I do not think that we should put our fingers on the scale. There is no reason to try to accelerate the dual adoption. Our concern is that there is equal access in digital so that the content and the freedom of access for the consumer is as efficient and as open as it would be in the terrestrial incarnate.

Q279 **Dr Huq:** We know that the Bill talks about having an appropriate degree



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of prominence on streaming sticks and other devices for PSBs and that the numerical things at the top of the EPG should be for public sector broadcasting. The words “appropriate prominence”, it has been said in submissions, are subjective and ambiguous and what do we mean by it. Lewis, what do you regard as an appropriate level of appropriateness?

Lewis Walmesley-Browne: It is subjective. Anything that went into the primary legislation should be subjective because the intention is for Ofcom to then develop the secondary legislation that will provide the guidelines. Given that the television landscape may develop in the future, you would not want to have those granular-level requirements within primary legislation. Therefore, we think that the way it is structured is appropriate.

On what that should look like, a lot of our members who produce televisions and streaming devices are already giving appropriate prominence. Some members are facilitating showcases for MPs if you want to see exactly what that looks like in practice. Going back to the broadcasting White Paper, it says that it wants PSB VoD apps like iPlayer to be available and easy to find. Similarly it wants the regime to be proportional and flexible and not creating undue burdens.

The question is: are they available and easy to find? That is the question. If I as a consumer want to access iPlayer or ITVX and so on, am I able to do that? That is what defines whether it would be appropriate or not. Ofcom is a respected regulator. We have had engagement with it and we are confident that there will be consultation on the secondary guidelines to ensure that there is not an undue burden there.

Q280 **Dr Huq:** The Bill allows for regional variation between the degree of prominence you face is on what you are turning on. You voiced some concern on that. Do you want to share those with us?

Lewis Walmesley-Browne: Thank you for raising that; I thought that I might have to do it in the AOB. On this point our members are not opposed at all to providing regional prominence. This is more a very practical matter on how they do that. The problem is that if I put a television on the market, I do not necessarily know where it is going. Once a consumer starts using it, I do not have the means of determining their precise locations, particularly around borders. Let’s say I live two miles within Wales. Regional prominence requirements would require those S4Cs higher up in the user interface. However, the television itself might have brought in a shop in Wales or a shop in England. It might have been bought online or it might have been bought second-hand from someone miles away. That would create a legal requirement on platforms to provide regional prominence, but there is not a way for them to be certain that they can meet that. That is a compliance risk for companies.

Therefore, we have put forward an alternative proposal to DCMS that PSB apps, including regional PSBs, should be universally available on devices sold on the UK market but that the user should be able to input their



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location or to select their configuration preferences—do you want a default UK option or do you prefer a configuration for a particular region?

Q281 **Julie Elliott:** I want to turn to the “must offer, must carry” agreement. Lewis, what should be the overall aim of the agreement objectives between a television selection service and a public service broadcaster?

Lewis Walmesley-Browne: On the agreement objectives here I echo what was said in the previous session. The agreement objectives have three points around appropriate prominence, thirdly about the ability to innovate, and then there is a more contentious point on supporting the ongoing sustainability of the PSB framework. We agree that there should not be the capacity for PSBs to demand payment for services that are available freely online elsewhere. I do not have too much more to say there.

Q282 **Julie Elliott:** Do you think that the objectives in the Bill will meet that?

Lewis Walmesley-Browne: Will the objectives in the Bill meet the—

Julie Elliott: What you are describing, that people are not paying money and it is not going all to pot.

Lewis Walmesley-Browne: At the moment that particular class within the Bill is a bit ambiguous and could be subsequently reinterpreted or misinterpreted, so we would like to see some tightening of that language. It is not clear at this stage exactly what the implications would be.

Q283 **Chair:** Thank you very much. I need to ask you all if there is anything else that you think that the Committee should take into consideration when we are thinking about the draft Bill that we have not already covered today.

Lewis Walmesley-Browne: One additional point. On the television prominence section, it is critically important that the prominence regime should create one set of rules that cover all PSBs. We have seen calls from some PSBs, particularly the BBC, saying that there should be distinctive requirements for them specifically. That creates a whole additional level of burden on companies that ultimately gets passed through to consumers. That is a point to be considered.

Chair: That is very good to know. I would like to thank all of you for your attendance and your time today, and thanks to the Committee as well.