

Written evidence submitted by Channel 4

Channel 4 submission – CMS Commons Committee - pre-legislative scrutiny of the Draft Media Bill written evidence

1. Introduction

We strongly support the publication of the draft Media Bill

- 1.1. It has been 20 years since the Communications Act was passed and the rules that govern the television landscape are in need of urgent modernisation to reflect the rapidly evolving market. We back the Government's commitment to – and opposition support for – bringing forward these changes.
- 1.2. We also appreciate the CMS Select Committee's invitation to submit evidence to its pre-legislative scrutiny of the draft Bill. This is a defining piece of sectoral legislation that will lay the groundwork for the future of Public Service Media (PSM) in the UK. The draft Media Bill needs to provide foundational support the UK's vibrant PSM ecology, which plays a central role in British public life, supporting democratic values and driving investment in our world class creative industries.
- 1.3. Audiences are watching just as much long form tv-like content as ever, but increasingly view it in a streaming environment. C4C is focused on changing how we distribute our content, to become a digital first public service broadcaster, and reach these audiences. Our Future4 strategy is at the heart of this change and delivering real success - we are focused on reaching viewers in innovative ways, driving streaming views and capitalising on growth in the digital advertising market. Ultimately the PSM ecology in the 2030s will look markedly different than it does today with audiences using new technology and streaming more. We therefore need a future-facing legislative framework that enables and supports this transformation, protects audiences, and supports the defining role PSM play in this ecosystem.

Legislative reform is urgently required

- 1.4. The regulatory and legislative framework must be modernised to ensure that the media and creative sector in the UK is able to thrive, and to reflect the rapid changes in technology and audience behaviour. It is essential that legislation reflects this evolving environment, and ensures that public service content remains easy to find and access. This is not always the case under the existing rules, and so it is vital that the Media Bill is introduced as soon as possible within this Parliament to support the future sustainability of PSM.
- 1.5. Overall, we broadly support the key provisions within the draft Media Bill. The principles-based approach on key issues such as the new PSM remit and prominence framework seems appropriate as a means of ensuring that legislation will be sufficiently proportionate and flexible to adapt to evolving consumer habits and technology. We strongly support the fundamental role that Ofcom will play in designing and enforcing many of the key provisions.
- 1.6. As this Committee considers the draft Bill, our key points on the provisions are:
 - **C4C clauses:** Two provisions in the draft Bill seek to implement parts of the package of measures which the Government set out in January 2023 to ensure the future sustainability of C4C. The first is a new sustainability provision to apply to C4C directors which we think needs to be clear and mirror the well-understood directors' duties in the Companies Act 2006. The second is the proposal to remove the publisher-broadcaster restriction on C4C. DCMS is currently engaging with industry on

how best to implement this change, which we welcome as an important part of the policy-making process given the complexities involved. The change requires some consideration to ensure that C4C's vital role in stimulating growth in the independent production sector is maintained whilst also providing meaningful new freedoms to further diversify our revenue streams should we wish to do so in future.

- **PSM Remit:** We welcome the simpler, streamlined PSM remit that encourages reaching audiences on a wide range of platforms.
- **Prominence:** The new prominence framework brings forward rules that are crucial for the digital streaming age and are well balanced between principled legislation and allowing Ofcom the space to design detailed guidance.
- **Listed events:** Reforms to strengthen the role of PSM within the Listed Events framework are welcome, but digital rights must be included in the updated framework to ensure UK audiences can come together for moments of national importance.
- **Accessibility Code:** The accessibility requirements for VoD services are set at an appropriate level and we support that they are applied consistently across in-scope platforms.
- **Standards Code:** We support the new VoD regime that establishes a level regulatory playing field between broadcasters and online streaming services.

1.7. C4C's view on these sections and answers to a range of inquiry questions suggested by the Committee are outlined in the below submission.

2. Channel 4 clauses

Removal of the publisher broadcaster requirement

- 2.1. Following eighteen months of uncertainty about C4C's future, we welcomed the Government's decision in January 2023 that C4C should remain in public ownership. This decision provides a firm basis on which to ensure a sustainable future for C4C, safely in the hands of the British people.
- 2.2. Having thoroughly examined the business case for a potential change of ownership, the then Secretary of State concluded that the privatisation of C4C was not the best way to ensure our long-term sustainability, and instead concluded a package of measures intended to support the future success of C4C.
- 2.3. The Government's decision allows C4C to do even more to support creative jobs and skills across the UK and to continue opening-up the sector for those aspiring to a career in TV and film, with new commitments to double our investment in 4Skills to £10m per annum, and to increase the number of C4C roles in the Nations and Regions to 600 by 2025.
- 2.4. One of the key measures in the Government's decision was that it: *"wishes to give Channel 4 more commercial flexibility ... while also ensuring that Channel 4 continues to play its key role in incubating and supporting the independent production sector, which often includes new and highly-innovative companies. The government will therefore legislate through the Media Bill to relax the publisher-broadcaster restriction in Channel 4's remit so it has a greater ability to produce and monetise its own content, accessing a wider range of potential strategic options that could put it on a more stable financial footing by growing its commercial income.*

- 2.5. *In determining how this relaxation should be designed and implemented, the government will work closely with the independent production sector to consider necessary steps to ensure that Channel 4's important role in driving investment into the sector is safeguarded.*
- 2.6. *Any changes to Channel 4's commissioning model would need to be introduced gradually, with appropriate checks and balances, and following consultation with the sector. For example, this will include increasing the level of Channel 4's independent production quota, which is currently set at 25 percent of programmes; and potentially introducing specific protections for smaller independent producers.”¹*
- 2.7. The draft Media Bill therefore includes a provision to remove the publisher-broadcaster requirement that currently applies to C4C, thereby enabling C4C to produce some of its content in-house, should it wish to do so.²
- 2.8. Independent producers are crucial to the success, both now and in the future, of C4C. Each year, we work with around 300 production companies based across the whole of the UK, including both those that qualify for regulatory protection under the Terms of Trade and those that do not. We remain committed to delivering our PSB remit and commissioning the best ideas and content from across the UK.
- 2.9. We want to ensure that the publisher-broadcaster change is implemented in a way that – as far as possible – does not have unintended consequences on the UK production sector, particularly on smaller production companies or those based outside of London. We welcome the Government's approach of collaborating with industry to seek their views on what mitigations might be appropriate as potential changes are considered.
- 2.10. We will properly assess the options for the business once more detailed proposals are published about what, if any additional requirements the Government will seek to introduce if the publisher-broadcaster requirement is removed. In the meantime, we will continue to contribute constructively to these discussions and work with DCMS officials to better understand the issues raised by the industry following the Government's announcement.
- 2.11. Should the Government conclude that additional measures are required, we believe that the most proportionate and effective means of doing so would be for Ofcom to set any mitigations, rather than doing so in primary legislation. This would ensure flexibility for the rules to be amended as necessary over time reflecting changing circumstances, whereas amending legislation can take decades.

New sustainability duty

- 2.12. Section 24 of the draft Bill includes a new duty on C4C to carry out their activities in a way that they have reasonable grounds to consider would promote the long-term sustainability of C4C.³
- 2.13. The Directors of C4C comply with Directors' Duties of the Companies Act 2006 and are already well versed in balancing their duty to deliver against the remit with the duty to ensure that C4C remains financially sustainable in the medium-long term. They are held accountable for delivery against these requirements through the publication of an Annual Report, and by answering questions from elected representatives who represent our owners, the British public.
- 2.14. It is vital that any new duty is clear and not overly onerous; and we would recommend the way to do this is to link it to C4C's primary functions and that, as agreed previously with DCMS, that it is based as far as possible on well-understood directors' duties in the Companies Act 2006 (with section 172 being most

¹ [Channel 4 to remain publicly owned with reforms to boost its sustainability and commercial freedom - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/channel-4-to-remain-publicly-owned-with-reforms-to-boost-its-sustainability-and-commercial-freedom)

² Draft Media Bill, Part 2, Section 25

³ Draft Media Bill, Part 2, Section 24

relevant to sustainability).

3. PSM remit & quotas

- 3.1. We support the new, shorter remit for PSM which removes the overlapping set of 'objectives' and 'purposes' set out in the Communications Act 2003. The new definition is clearly focused and simpler, and we welcome that multi-platform delivery will contribute towards meeting the PSM remit in future, recognising the increasing shift to digital and social viewing.
- 3.2. The overall volume of long-form viewing minutes has remained broadly stable across all audience groups – but the split of that viewing has changed materially, with audiences increasingly choosing to stream VoD content (which includes both live and on-demand broadcaster content) rather than consuming it in a scheduled linear form. We expect this to continue in future, with total long form viewing minutes remaining constant, but with a shift in the split from linear to VoD.
- 3.3. By 2034, we predict that live viewing will account for about c.30% of total viewing, compared to c.50% today. In contrast, we expect viewing to VoD services will grow to account for approximately 65% of viewing time. Our business, like many other broadcasters, will evolve accordingly during this time, highlighting the need for ongoing digital transformation in businesses, and a sufficiently flexible regulatory regime to account for these changing viewer habits.
- 3.4. We therefore welcome the flexibility to deliver our remit through a wide range of audio-visual services, including both linear and streaming services. We note that some of the existing quota obligations are still tied to linear (e.g. News and Current Affairs) whilst others will allow for on-demand streaming viewing (e.g. regional productions, originations and qualifying independent production quotas). This is good for audiences who want high quality PSM content on streaming services, good for content producers to reach new audiences and develop innovative content, and good for public service broadcasters who engage audiences across multiple platforms and seek to leverage the huge opportunities of digital transformation.
- 3.5. However, it is important that the right balance is struck between linear and streaming, and that legislation is flexible enough to account for some genres shifting to digital over a longer period. In relation to the originations quota, we understand that there will still be a 'peak' requirement tied to linear viewing.⁴ Given that the concepts of 'peak' and 'off-peak' are likely to become less relevant over time, we welcome that it is left to Ofcom discretion as to whether to set a sub-quota for originations in peak. The notion of 'repeats' is also integral to where the level of the quota is set and we understand that the high-level policy intention is for repeats to continue to be counted for original productions on both linear and VoD. However, it is not clear what impact this will have on the level of quota and how this will be applied to streaming viewing – there is still quite a lot of detail to be worked through. Arguably, the concept of 'repeats' will become less relevant over time as audiences increasingly migrate to VoD viewing.
- 3.6. The draft Bill also amends how certain quotas are calculated, changing them from proportional to absolute figures (for both hours and spend) to enable streaming delivery and based on the principle that they should be no more or less onerous than the quota requires at present.⁵ Whilst we support the principle of enabling streaming content to contribute towards quota delivery, we have concerns about the move to absolute quotas and the lack of flexibility that this affords to PSM which could prove difficult in future. Locking in a set level of hours and spend does not take account of fluctuating revenues or increases in inflation.
- 3.7. For commercial PSBs, content spend fluctuates materially based on a variety of factors, including advertising revenue which is important for C4C and other commercial PSMs. Therefore, it is not just about unexpected and seismic events, such as the Covid pandemic, but more general economic cycles and other issues which influence how much we spend. The net effect of this is that there would be no requirement or incentive for PSM to invest more in content when times are good, and no flexibility to

⁴ Draft Media Bill, Part 1, Section 9

⁵ Draft Media Bill, Part 1, Section 8 / 9 / 14

invest less in exceptional circumstances (for example, during Covid). We know that viewers continue to seek high-quality, original content that reflects British culture and values – this is the essence of what distinguishes us from global streamers - and therefore disincentivising PSM from investing in originations where it will have the most impact would not be in the interests of UK viewers and audiences.

- 3.8. As a result and as Ofcom is already aware, C4C has concerns about this proposed move to absolute quotas – and so this will require further discussion as the Media Bill progresses.
- 3.9. Finally, the draft Media Bill gives the Secretary of State powers to set new quotas following a review and recommendation by Ofcom.⁶ We consider this to be an appropriate mechanism to allow sufficient flexibility for the rules to evolve over time. However, we are concerned that in the draft Bill, the Secretary of State would also be granted powers to set new quotas regardless of whether or not Ofcom have made a recommendation. In our view, it is important that any new powers are proportionate and do not, as a consequence, place additional new burdens or quotas on PSM organisations without a robust business case or evidence base for doing so. For this reason, we believe that Ofcom should have a formal role in any review process prior to changes being introduced.

4. New prominence regime

- 4.1. C4C strongly welcomes that the government has recognised the need for a new prominence framework that supports UK audiences to find PSM content. The original linear framework has not been updated in 20 years and therefore has not kept pace with the huge growth of new TV platforms, major advancements in technology, and how consumers access content.
- 4.2. On some television platforms (such as smart TVs) it has become more difficult to find public service content such as news, current affairs, children’s programmes and major sporting events. On linear television, PSB channels have a regulated place at the top of electronic programme guides (EPGs). But this regulatory protection does not extend to streaming and, due to the global presence of many major TV manufacturers and content platforms, commercial deals often take precedence over public service requirements in each country. Without a new modern framework, PSM is at risk of fading away from the British public - greatly weakening the creation of distinctively British content, democratic debate and harming the UK’s creative economy.
- 4.3. The new prominence framework set out in the draft Media Bill brings forward rules that are crucial for a digital streaming age and reflect the huge advancements in technology. While targeted improvements are needed, overall the framework provides a workable balance between flexible, principle based legislation and giving Ofcom the space to set out critical detail in guidance that can be adapted as technology and consumer habits change. Specifically, C4C welcomes provisions on:
 - Requirements for the availability and prominence of PSM apps, PSM IPTV live streams (internet enabled television streams) and PSM content on designated “TV-like” services
 - A broad definition of “television selection services” (TSS) that includes TV platforms, streaming sticks and set top boxes that is adaptable enough to capture new market trends and players
 - Strong dispute resolution and enforcement powers for Ofcom such as the ability to impose significant penalties of 5% worldwide revenue on non-compliant television selection services
- 4.4. While the draft prominence provisions are a solid foundation, there are three areas that require further action in order to achieve a future proof framework that meets the government’s stated intention to “improve PSM sustainability”⁷.

⁶ Draft Media Bill, Part 1, Section 10

⁷ DCMS, Up Next – the government’s vision for the broadcast sector, 2022

- 4.5. The first area is on the clarity of the prominence definitions. C4C believes the current wording of “appropriate prominence” may not go far enough to secure adequate protections for PSM. In a linear world, “appropriate degree of prominence”⁸ has been codified to mean a fixed, high slot on the EPG. However, in digital streaming landscape, the ambiguity of “appropriate” leaves a risk that PSM could be minimised or lost on complex TV platform user interfaces which offer consumers a huge array of options.
- 4.6. For example, a key element of the regime will be prominence rules around content discovery, such as recommendation algorithms and voice search which is increasingly how consumers look for content. While it is right that Ofcom should work out complex detail in forthcoming guidance, it is important the independent regulator has a clear steer from parliament. One option to address the ambiguity is to strengthen the definition to “significant prominence” to set clear expectations on designated services and ensure PSM content is easy to find for UK audiences.
- 4.7. Additionally, while it is strongly welcomed that where available PSM IPTV live streams will be given prominence protections⁹, there remains a growing regulatory gap over IP EPGs. Internet delivered EPGs (e.g. IPTV enabled “live TV” tabs on TV platforms) enable viewers to stream their favourite channels over the internet without the need for traditional television equipment (e.g. a satellite). However, unlike linear EPGs which have a well-established regulatory framework with clear ordering of PSB channels, IP EPGs are unregulated with channels appearing in any order. This means that UK viewers have no guarantees that PSB channels will be available on IP EPGs and no consistency on what order PSB channels appear in. We understand that DCMS is conducting further work on IP EPGs and would stress the importance of a holistic prominence framework that addresses a major way consumers access content. In order for this new prominence regime to be future-proofed and provide British viewers easy and guaranteed access to PSM live streams, IP EPGs must be included within the scope of the legislation. We look forward to seeing the conclusions of the DCMS review on this issue.
- 4.8. The second area which requires attention is on the “agreement objectives” which encourage independent commercial negotiations between designated public service broadcasters and TSSs and set clear expectations on the outcome of these discussions. C4C understands the policy intention is for these agreement objectives to support PSM sustainability, however draft legislation only focuses on “costs reasonably incurred in fulfilling the public service remit.”¹⁰ This cost exchange approach is far too narrow and restricts Ofcom’s ability to look at crucial commercial and strategic issues such as access to data, advertising deals and brand attribution. The legislation should be updated to ensure that the agreement objectives refer to wider strategic and commercial issues, not just cost, so that these factors can be fairly negotiated and if needed, escalated to Ofcom as a final backstop.
- 4.9. Finally, the third issue is guaranteeing there is an ability for Ofcom to de-designate legacy TSS platforms. Currently, it is not clear whether there is a simple route for Ofcom to remove TSS services that have stopped being supported by their manufacturer. For example, a 10+ year old smart TV that is no longer receiving technical support updates. It is not feasible or financially sustainable for public service broadcasters to provide our services to unsupported, legacy platforms. The draft Media Bill must ensure there is a clear mechanism for Ofcom to review designated TSSs and remove them under agreed circumstances.

5. Listed events

- 5.1. C4C strongly welcomes that the draft Media Bill safeguards the role of PSM in the listed events framework.¹¹ The framework has ensured that major sporting moments which have “special national

⁸ Draft Media Bill, Part 2, Section 362AI, subsection 5A

⁹ Draft Media Bill, Part 2, Section 362AI, subsection 6

¹⁰ Draft Media Bill, Part 2, Section 362AI, subsection 5A

¹¹ Draft Media Bill, Part 1, Section 20

resonance” and which serve to “united the nation, a share point on the national calendar”¹² are available to all UK audiences on free-to-air television. Public service broadcasters like C4C have obligations for universal free coverage, meaning our coverage can have transformative cultural, economic, and social impact. Our broadcast of the Tokyo 2020 Paralympic Games was viewed by over 20 million viewers and a fifth of young people aged 16-34. This coverage doesn’t just increase exposure for these sports, it has the power to fundamentally change attitudes - 79% said C4C’s coverage of the Paralympics improved society’s perception of disabled people.

- 5.2. These reforms to strengthen the role of PSM within the Listed Events framework are hugely welcome, but we consider that digital rights must be included in the updated framework to ensure the regime is future-proofed and that UK audiences can enjoy universal coverage for events of national importance. For example, sports rights holders can sell exclusive digital rights to a streamer, bypassing the listed events regime which is still tied to linear rights. C4C engaged with DCMS during its call for input on digital rights and we look forward to publication of the findings. Price should not be a barrier to people being able to cheer on their sporting heroes when they are participating in events of national significance. In our view the case is straightforward: if the rationale for ensuring that events of national importance are available free to air still stands, then the regime should be extended to reflect the way people now view content.
- 5.3. The importance of digital rights is accelerating given the growing importance of digital distribution (e.g. simulcast, social media clips) and audience expectations to engage with content across a range of platforms. C4C’s top 10 days for IPTV streams are all from days with live sport (e.g. Cricket World Cup, F1 final, Cricket World Cup). The central importance of digital content is clear and set to significantly increase over the next five years. Our social platforms such as YouTube and TikTok have generated record number of hits for highlights and digital clips of live sport. For example, C4C’s sport content on YouTube has seen huge growth in 2022 with 16.8M global views (up 430% YoY) and 8.2M UK views driven primarily by the Nations League and F1 coverage. These rights are crucial for driving engagement with younger audiences who are heavy users of social media platforms – 26.7% of C4C’s sport content on YouTube is viewed by UK 13 – 24-year-olds.
- 5.4. If the regime for listed events isn’t fully modernised and brought up to date with digital developments, British audiences could see more of their cherished sporting events hidden behind paywalls.

6. Access Services for VoD

- 6.1. We are firmly committed to ensuring that our content is accessible to the widest possible audience. This includes providing access service provision and we support the Government and Ofcom’s work to improve the accessibility of Video on Demand Services. As a public service broadcaster with a statutory remit to reflect the cultural diversity of the UK and innovate, we want our content to be available to everyone. Driving progress in this area is central to our role as a champion of diversity and inclusion and key to our remit to innovate and inspire change.
- 6.2. We consider that the accessibility requirements for VoD services set out in the draft Media Bill are set at an appropriate level and that it is right that they are applied consistently across in-scope platforms. At the moment, C4C is currently on 28 platforms (e.g. Playstation 5) and each platforms requires its own extensive development work and technical changes. We strongly appreciate the recognition that delivering access services requires co-ordination across industry - content providers, host platforms and device manufacturers – therefore a roadmap for implementation is needed.

¹² Broadcasting Act 1996

- 6.3. We look forward to closely engaging with Ofcom as the detail of the VoD accessibility code is designed and consulted on.

7. Standards Code for VoD services

- 7.1. We support the new VoD regime as set out in the draft Media Bill which establishes a level regulatory playing field between broadcasters and online streaming services. Currently these major services play a significant role in engaging UK audiences and yet do not face the same level of regulation as UK broadcasters. Viewers should have confidence that VoD services are abiding by high content standards and applying robust audience protection measures, such as those that C4C applies across its broadcast and streamed services. This proposed new regime which brings content shown on VoD services within Ofcom's jurisdiction creates a level playing field which fundamentally supports fairer competition between UK providers and international streamers.
- 7.2. The new regime should help support growth in the UK VoD sector because it would create a fair regulatory environment that protects consumers. This will boost competition, promote audience trust in VoD services and promote innovation. The new rules should not deter new providers from entering the market, as only the larger VoD services can be designated as 'Tier 1' services. Advertisers will have confidence that major VoD services are 'brand-safe' environments, helping to sustain the advertising revenue on which much of the sector depends.
- 7.3. We are pleased to see that the Government has not mandated a 'one-size-fits-all' approach to audience protection, such as requiring Tier 1 VoD services to comply with BBFC classification guidelines. This would be costly, inefficient and cause unnecessary regulatory overhaul while providing no additional levels of protection for BVoD viewers.
- 7.4. The new Standards Code for VoD services cannot be a 'copy and paste' of the existing Broadcasting Code. It should however cover the same areas as the existing broadcast code (e.g. harm and offence, due impartiality and due accuracy in news, fairness & privacy). Audiences are familiar with these concepts and expect a level of protection in these areas. Nonetheless, the Government has recognised that certain aspects of the broadcast standards regime are inappropriate in a VoD context – for example, the requirement for programmes to be balanced regarding matters of current public policy or industrial controversy.¹³ We agree with the Government's reasoning that, as programmes may remain available on a VoD service for several years, they are less likely to relate directly to 'current' events in the same way as linear broadcast content.
- 7.5. For similar reasons, we would welcome further clarification from Ofcom on what rules the Standards Code is likely to set regarding the conduct of Tier 1 providers during elections/referenda, as the draft code develops.¹⁴ We do not think that transposing the rules that currently apply to linear broadcasters under the Broadcasting Code to VoD services would be appropriate because doing so could lead to disproportionate complexity and costs. For example, if the VoD providers were required to temporarily remove any relevant archival content from their services during election periods – something that would be very expensive and operationally complex.

8. Next steps

¹³ Specifically the CA 2003 requires "the prevention... of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies" regarding "matters of political or industrial controversy" and "matters relating to current public policy" [CA 2003 320(1) and (2)]. This has not been transposed into the draft Media Bill.

¹⁴ Draft Media Bill, Schedule 9, subsection 1

- 8.1. We welcome the opportunity to participate in this Committee's pre-legislative scrutiny of the draft Media Bill and the close engagement with DCMS on the technical elements of the draft Bill.
- 8.2. With regards to the provisions in the draft Bill that are specific to C4C, we will continue to engage with DCMS officials to ensure that C4C's views are incorporated as officials draft the relevant clauses ahead of the Bill being introduced in Parliament at the earliest opportunity.
- 8.3. Additionally, we look forward to reviewing the findings of the ongoing DCMS reviews into designating IP EPGs as part of the new prominence framework and the review of digital rights with regards to the listed events framework. Both of these are crucial elements of policy and it is important that these are included in the final Media Bill.