

Written evidence submitted by techUK

Call for Evidence: <https://committees.parliament.uk/work/7642/prelegislative-scrutiny-of-the-draft-media-bill/>

techUK welcomes the opportunity to respond to this inquiry. Our members actively support the British media sector by offering innovative devices that enhance consumer choice and help them to discover new content (smart televisions, streaming devices, smart speakers), investing in commercial agreements with broadcasters and production houses, and supporting the connectivity infrastructure and technical standards that deliver a reliable and high-quality consumer experience. We are pleased to see the sector thriving, with Ofcom's own [research](#) identifying year-on-year increases in Broadcaster video-on-demand (BVOD) viewing times, high proportions of the population tuning into radio services, and record revenues for commercial radio broadcasters.

techUK has been closely involved in the government's recent consultations into how the sector can be strengthened while responding to changing consumption habits and preferences. We have had productive discussions the Department for Culture, Media and Sport and with Ofcom around the television-related parts of the draft Bill and we welcome the government's intention to introduce a proportionate regulatory regime that protects future innovation whilst also meeting the policy goal of ensuring easy access to media content. The 'Radio' section of the draft Bill has been developed without substantive engagement with the technology sector, and we have significant concerns that the draft proposals are disproportionate interventions that are not evidence-based and will not lead to better outcomes for radio listeners.

There have been extensive advocacy efforts by public service broadcasters (PSBs) and other content producers to secure additional privileges and benefits via the Media Bill – these interventions deliver minimal benefits to actual consumers and carry considerable costs to other parts of the industry. The benefits and costs of such proposals must firstly be readily acknowledged by the Government and secondly, they should be subject to proper impact assessment. We wish to add balance to the debate and ensure that the provisions of the final Bill are proportionate, evidence-based, and designed to deliver the best outcomes for consumers.

As our submission is over 3,000 words, we provide below a concise summary of our key concerns and recommendations relating to each Section of this Call for Evidence:

Section 1 – Public Service Broadcasting:

- techUK agrees that the details of the new regime for prominence in online services should be defined within secondary legislation and/or guidance in order to futureproof the Bill.
- We have highlighted specific clauses that contain ambiguous terms or objectives that could lead to misunderstanding or unintended consequences, and have proposed amendments. In particular, the Bill must be clear that there will be no presumption of payment by platforms to PSBs for content that is freely available via other means.
- We remain concerned that new regional prominence regulations could create disproportionate requirements on platforms that they cannot reasonably be expected to comply with in all circumstances.

- Allowing Public Service Broadcasters to meet at least part of their remit by online programming could help to ensure that the regulatory framework is equipped for the future, but it is essential that Live IP streamed PSB services are included as part of the 'Must Offer' obligations placed on PSBs.

Section 2 – Video-on-Demand:

- A new VoD code must account for the inherent differences between linear and on-demand viewing and cannot simply be a copy and paste of the existing Ofcom Broadcasting Code.
- We are concerned that 6 months is not a reasonable time period for VoD services to ensure full compliance with new requirements.
- We welcome the new accessibility measures, provided that as industry are afforded flexibility in how to meet these requirements.
- Further clarification is needed on how on-demand programme services based outside of the UK will be treated within the regime.

Section 3 – Radio

- There was considerably less industry consultation around this section of the draft Bill prior to publication and we have significant concerns. We do not believe that these proposed legislative interventions are proportionate to real-world harms, particularly when the UK radio sector appears to be in a very healthy position and has been responding well to changing consumer listening habits and the introduction of new devices onto the market.
- We strongly urge that more substantive regulatory impact assessment is undertaken in relation to this section of the draft Bill.
- The draft Bill does not provide clarity on which radio selection services are likely to be regulated, and the proposal to potentially list the live simulcast of any of the 600+ licensed radio stations in the UK risks creating unreasonable requirements on RSS providers.
- Government can ensure optimal outcomes for consumers by focusing efforts on ensuring that RSS platforms engage with broadcasters on Fair, Reasonable and Non-Discriminatory (FRAND) terms rather than a legislative requirement to carry content.
- However, if a 'Must Carry' requirement is put forward, a more balanced intervention would mirror the television prominence section of the Media Bill by also ensuring that IPSs 'Must Offer' their services to RRSSs that are required to carry such services.

Section 4 – General Issues

- We are concerned that the government is underestimating the risk of PSBs refusing to provide services to TSS providers that do not meet PSB's commercial terms or technical specifications, and that this could create considerable burden on Ofcom in fulfilling its dispute resolution function for the new prominence regime.
- Ofcom's dispute resolution process must have a specific time period for review (we recommend 2 weeks), must be resourced appropriately in order to align with TV launch dates (typically in late Q1 every year), and must ensure that platforms are able to access existing 'core' PSB services with full continuity of service during the process.
- For both television and radio requirements, we urge the government to ensure that there is an exemption for devices already on the market, including those that are no longer supported by manufacturers, as placing retrospective legal requirements on these products that were legally put onto the UK market in good faith would place excessive and disproportionate costs and logistical challenges upon platforms.

- The proposed potential penalties are wildly disproportionate for failing to fulfil television prominence requirements.
- It is essential that PSBs are required to supply all metadata to TSS providers to provide them the technical capability to meet new prominence requirements.
- Furthermore, the PSB 'Must Offer' must adhere to accepted standards.

Providing our more detailed responses to the Call for Evidence questions below, we look forward to working with the Department for Culture, Media and Sport and other policymakers to resolve these concerns and ensure that the Media Bill is developed in a way that is conducive to the government's policy objectives, described in the Broadcasting White Paper, while maintaining the best possible customer experience and supporting continued innovation.

Section 1 – Public Service Broadcasting

- [Should the Media Bill provide a clear definition of what prominence in online services looks like?](#)

techUK has had productive discussions with Dep. CMS during the development of this draft Bill, and it has always been our understanding that primary legislation will provide a framework and objectives for the new prominence regime for on-demand players, while more granular details will be developed by Ofcom within secondary legislation or guidance. We believe this to be the correct approach – defining prominence in online services within secondary legislation provides greater flexibility for Ofcom to respond to continuing technological changes and changing media consumption habits, and will help to future-proof the Bill. This approach can secure prominence of PSB content in a proportionate manner and ensure that the UK can continue to champion a competitive and innovation-friendly regulatory framework.

Nonetheless, it is important that the primary legislation should not contain any ambiguous terms or objectives that could lead to misunderstanding or unintended consequences. Any proposed Regulation and Code needs to ensure that business has certainty to bring products to the market. Below we highlight some concerns around specific clauses:

- Clause 362AA appears to include similar clauses to the German Media State treaty which allows many non-PSB services to be designated if they can justify that they contribute to the public service remit or are tangentially associated with a public service broadcaster. We understand that it is not the government's intention for prominence requirements to apply to non-PSBs and recommend that this clause is redrafted to make this intention more explicit.
- Clause 362AL requires platforms to provide “an appropriate degree of prominence to each of the designated internet programme services included in its service”. While we agree that ‘appropriate prominence’ is proportionate terminology that should not be amended, we have some concerns over how this requirement will apply to regional PSBs. While 362AL(2) makes clear that a designated IPS does not have to have the same degree of prominence throughout the United Kingdom, this wording does leave open the possibility of secondary legislation placing prescriptive regional prominence requirements on platforms. We emphasise that there are a number of technical and privacy challenges that can limit a service's ability to know the exact geographical location of their customer and therefore this risks creating a disproportionate legal requirement that some services cannot reasonably be expected to comply with in all circumstances. We have previously submitted to Dep. CMS a proposed solution that would see platforms guaranteeing the UK-wide availability of regional PSB apps and providing users with reasonable means to select their region and to access UI configurations that provide regional prominence appropriate to that region and would urge the Government to re-consider this.

- Clause 362AM(1) mandates OFCOM to include within its Code of Practice "actions that OFCOM recommends for the purpose of securing that the manner in which a regulated television selection service presents internet programme services to its users complies with the duties in section 362AL". We are concerned that this creates the potential for the Code of Practice to be too prescriptive, restraining platforms from designing User Interfaces that work best for their customers and preventing innovation. We recommend that this clause should be reworded to be more principles-based, and therefore more aligned with other parts of the Bill.

Furthermore, an additional concern derives from the must offer/must carry obligations. In particular, within the agreement objectives which are meant to govern must offer/must obligations there should be no ambiguity in the language that could lead to a presumption of payment to PSBs for content that is freely available via other means or rules that disadvantage services that make a substantial contribution to the UK content system.

- [Are proposals allowing a Public Service Broadcaster to meet its remit by online programming as well as linear appropriate?](#)

This bill is intended to provide a regulatory regime that will be in place for decades, and therefore needs to be agnostic to the delivery mechanism in order for it to be future and technology proof. Allowing Public Service Broadcasters to meet at least part of their remit by online programming could help to ensure that the regulatory framework is equipped for the future.

The first bullet point of the Secretary of State's "Up Next" foreword expressed an intention to "Ensure TV-like content, no matter how audiences choose to watch it, is subject to similar standards." techUK had therefore envisaged that the Media Bill would provide the necessary holistic update to the Communications Act 2003, resulting in a future-proof common level playing field for all "TV-like" content, rather than simply updating the issues relating to the new on-demand programme services (ODPSs).

Although audience habits have clearly demonstrated a desire to consume on demand content, as reflected in the focus of the Bill, this does not mean that linear content is disappearing. Indeed, consumers spent 144 minutes a day watching live TV in 2022, compared to 58 minutes for Subscription Video on Demand (Ofcom Media Nations 2022). So whilst the Bill comprehensively addresses non-UK ODPSs, the same cannot be said for equivalent IP-delivered linear services, and how user interfaces (UIs) and electronic program guides (EPGs) can display all such services in a compliant manner to consumers, especially when they are merged into a single UI.

Live IP streamed PSB services have to be included as part of the 'Must Offer' obligations placed on PSBs. If PSBs were to offer IP live streamed services exclusively via Freeview/Freeview Play, would conflict with the PSB remit to deliver equally for all delivery mechanisms. As consumption patterns change, some customers are no longer connecting their aerial – if PSB linear IP channels are not available to them then PSB prominence/usage will further decline as they will consume content from other services.

- [Are the proposals in the draft Bill adequate for securing the future of Channel 4 and supporting independent content producers?](#)

n/a

- Do the proposals for S4C meet the legislative changes required by the independent S4C review in 2018, and are these changes still relevant and appropriate today?

n/a

- Is the draft bill sufficiently flexible to legislate for any future extension of the Listed Events regime to include digital content?

n/a

Section 2 - Video-on-Demand

- Are the requirements for the Tier 1 standards code proportionate?

We are still working with members to provide feedback on specific clauses of the VoD sections of the draft Media Bill. At this early stage, we emphasise that a new VoD code must account for the inherent differences between linear and on-demand viewing and cannot simply be a copy and paste of the existing Ofcom Broadcasting Code.

We also wish to raise concern that 6 months is not a reasonable time period for VoD services to ensure full compliance with new requirements. If the new code is not designed in a proportionate manner, respecting the inherent differences between linear TV and VoD, with reasonable implementation timeframes this could ultimately result in a restriction of catalogue sizes in the UK, impacting UK audiences and their selection options.

- Are accessibility requirements for Video on Demand set at an appropriate level?

Overall our members welcome these measures so long as industry are afforded flexibility in how to meet these requirements. Industry should be given the same options as PSBs to reach compliance (i.e. if PSBs have the option to provide a financial donation as part of meeting their requirements, the same principle should apply to VoDs).

Our members note that simply placing quotas on VoD services to provide an accessibility service, for example subtitles, does not guarantee that those subtitles would be displayed to the viewer. There are very many different technical subtitling formats and devices generally do not support all of them. We do not expect the bill to specify which technical formats are allowed, nor do we believe that Ofcom should do this. Similar to the way that the UK D-Book defines such matters to enable digital TV service interoperability there should be a similarly agreed industry agreed specification for providers and devices to adhere to. As such it would be appropriate that the bill gives Ofcom the ability to delegate such matters to another independent body to set the more granular detailed requirements where necessary.

- Do the proposals in the draft Media Bill create any risks to UK's desirability as a market for VoD content?

We urge the government to conduct a comprehensive impact assessment to consider this important question. The new regulatory regimes created by the Media Bill will have a bearing on international investment considerations, and if the Bill is written in a way to give disproportionate protections to PSBs at the expense of other stakeholders within the sector this naturally would make it less attractive for such companies to do business in the UK.

- [What should be the specific criteria for designating an on-demand programme service as Tier 1?](#)

Clause 368HB is, in our view, unclear as to what criteria will determine if a non-UK ODPS is Tier 1 or not. We request clarification. Furthermore, if a UK PSB provides content to a non-UK ODPS, does that automatically make such a non-UK ODPS service a Tier 1 or not?

Section 3 - Radio

- [Is the definition of a radio selection service appropriate?](#)

The proposed definition of a 'radio selection service' within clause 362BA is very broad and could potentially include a wide range of devices (such as a number of TSSs) beyond those that we understand the government to intend. We therefore ask that Dep. CMS introduce wording into Section 362BA that narrows the definition of an RSS.

In practical terms, the clause 362BB which defines a 'regulated radio selection service' is the more significant definition, and here we are concerned by a lack of clarity about which RSSs will or will not be regulated. In particular, we believe that the phrase "used by a significant number of members of the public in the United Kingdom" within 362BB(2) is ambiguous and should be more precisely defined in order to provide clarity to platform operators.

We request that the government provide more information not only on the minimum user thresholds for potential designation, but also how a 'use' will be defined (for example, will the threshold refer to the number of persons that use the service, or those that use the service and listen to radio, or be calculated as a proportion of online radio listening, or of all radio listening?).

It is essential that these definitions are more precisely defined and that, once the methodology has been determined, that the numerical threshold is set at a suitably high level so that only RSSs with genuinely significant usage levels are within scope of the legislation in order to ensure that this legislative intervention is proportionate.

Furthermore, we are concerned that the definitions as currently drafted do not preclude the possibility that legacy devices (i.e. devices already placed on the market) could be included within the scope of the regulation. Producers of these devices may not have the ability to retrospectively modify them in order to meet new regulatory requirements, and in some cases the producers of devices may no longer even be in business. Please also see our response to '*Are the proposed powers to be given to the Secretary of State proportionate?*'

- [Is the definition of an internet radio service appropriate?](#)

Clause 362BF, as currently drafted, proposes that the live simulcast of any licensed radio station in the UK could potentially be listed as an 'internet radio service'. There are currently around 600 licensed radio stations in the UK, and we are concerned that potentially requiring RRSSs to provide preferred routes to listeners for such a large number of IRSs is an excessive and disproportionate legislative intervention. Building potentially hundreds of bespoke services on this basis is unrealistic for RSS providers in the short to medium term, nor is it a reasonable ask or investment for them to make.

We recommend that these clauses be redrafted to ensure that the definition of an 'internet radio service' that would be within the scope of the legislation is restricted to services that contribute significant public value, defined by a significant number of users and an appropriate 'public interest test' that should be developed by Ofcom in consultation with both radio selection service owners and the radio industry. Whilst radio as a whole contributes undoubted public value, licensed stations deploy a diverse range of content and business models with varying public service remits, that should be considered in any new privileges attached to their license.

We agree that on-demand services should be excluded from the definition of an 'internet radio service', as is currently the case within the draft Bill.

- [Are the obligations on radio selection services proportionate?](#)

techUK has a longstanding interest in supporting British radio and has been closely involved in the government's recent consultations into how the sector can be strengthened while responding to changing consumer listening habits and preferences. Our members have a number of partnerships and tools for the UK radio industry such as Amazon's Radio Skills Kit which provides no-code tools to onboard radio stations with ease, just by submitting their station data, permitting deeper integration with other services such as alarm calls and multi room listening.

We are concerned that the radio-related provisions within the draft Media Bill were introduced without consultation with industry, in contrast to the television prominence clauses. techUK and our members were very surprised to see these provisions, particularly as the Broadcasting White Paper last spring only committed to "gaining a deeper understanding of the policies and practices of the smart speaker platforms, in order to ensure that we are putting in place the best possible regime to allow radio to continue to reach its listeners well into the future".

We are still working with members to identify specific draft clauses and requirements that we would request to be amended, but overall we are deeply concerned that the obligations that are proposed to be placed on radio selection services are excessive and do not relate to real-world harms to the radio industry or to consumers. The Digital and Audio Review is also over 3 years old, which is a long time in what is still an emerging industry, including over the pandemic, and we are concerned that premature legislation, based on outdated evidence, could stifle innovation and customer choice.

First and foremost, we are concerned by the lack of evidence for the *need* for such interventions, as the UK radio sector appears to be in a very healthy position and has been responding well to changing consumer listening habits and the introduction of new devices onto the market:

- The UK enjoys a thriving radio sector with national stations including BBC Radios 1-5, Absolute Radio, Classic FM and talkSPORT, 40 BBC local radio stations, and over 250 commercial stations which reflect a variety of cultures, demographics and tastes in the UK. This mixed ecology has delivered an abundance of choice for UK users.

- Ofcom's latest Media Nations Report finds that 89% of adults in the UK listen to live radio for at least five minutes each week, and on average, listeners tune in for about 20 hours across the week. 73% of listening hours are via radio sets, while only 10% are via smart speakers.
- While listening to live radio remains very popular, the proportion of adults listening to the radio this way has been declining as more listeners turn to online audio activities such as music streaming and podcasts that offer them greater control and choice over the content they consume.
- Broadcasters, including the BBC, the commercial and the community radio sectors, have been responding to these evolving consumer listening habits and preferences by developing their own online radio services, both on and off their platforms and websites, offering both live streaming and catch-up services.
- Radio revenues have been growing, and reached 638m in 2021, up 20% year on year, and 4% higher than 2019.

Radio selection services operate within a competitive market and know that consumers expect their favourite radio stations to be available on their chosen devices. Failing to provide access to these stations would be a competitive disadvantage for device sellers in the same way that a supermarket would lose customers if it didn't stock a range of popular products, and there is no evidence that radio selection services are currently engaged in such practices. Indeed, the most popular radio selection services have existing partnerships with the BBC and the largest commercial radio players such as Bauer and Global to integrate these content providers onto their platforms. In addition, our members have dedicated programmes to support the radio industry such as Amazon's Radio Skills Kit. These direct integrations cover roughly 90+% of the UK's radio consumption, and consumers can also access a wide range of global radio stations via these platforms.

Given the radio sector's strong financial performance in recent years, and given the apparent lack of evidence of harm, we question the proportionality of these proposed interventions, which would place significant new requirements upon radio selection service operators and could expose these companies to unreasonable demands from radio stations in order to access and their content and ensure compliance with 'Must Carry' requirements. Such disproportionate intervention would make it considerably more costly for technology companies to provide radio services and could ultimately undermine innovation, investment and participation in the sector. To address these concerns:

- A proportionate regulatory regime for this sector would ensure that services and devices have the freedom to innovate, design and develop the best interfaces and consumer experiences for their users and to meet evolving habits and demand, and that radio service providers are able to reach mutually beneficial commercial arrangements with specific RSSs. Government can ensure optimal outcomes for consumers by ensuring that RSS platforms engage with broadcasters on Fair, Reasonable and Non-Discriminatory (FRAND) terms rather than a legislative requirement to carry content.
- However, if a 'Must Carry' requirement is put forward, a more balanced intervention would mirror the television prominence section of the Media Bill by also ensuring that IPSs 'Must Offer' their services to RRSSs that are required to carry such services. Without a 'Must Offer', the regime would create an unlevel playing field for device manufacturers and it is important to ensure that safeguards are in place for all parties involved.

- In all scenarios, it is essential that a full **regulatory impact assessment** be completed as part of the pre-legislative scrutiny process.
- Does the draft Media Bill sufficiently protect the relevant internet radio service to be played in response to a voice command?

Related to our response above, we do not believe there to be any evidence that internet radio services are currently unable to be played in response to a voice command.

To take the example of smart speakers, which provide voice-activated radio selection services, A recent [Ofcom study](#) into user experiences of accessing the radio via smart speakers highlighted key benefits of accessibility, convenience, discoverability, & sound quality. Within the study, people generally felt that they listened to the radio more than they had done before they had a smart speaker, because it was now quicker and easier to do so. Most were confident that they could access all the radio stations they wanted to, and that their smart speaker allowed them to listen to a wider range of stations than had previously been available to them via their radio sets.

We welcome the opportunity to provide more context on how smart speakers provide consumers the freedom to decide for themselves which stations they want to listen to, and enable them to conveniently access their preferred radio stations:

- First and foremost, consumers can easily access their preferred radio stations by name via a simple voice instruction (e.g. “play Classic FM”).
- Consumers can also access radio content by providing their smart speakers with more generic instructions such as “play pop music” or “listen to the news”. For these types of instructions, smart speakers invite users to select their preferred broadcasters when they first engage with the smart speaker. For example, users can specify that their ‘news’ should by default come from the BBC. These default settings, which can be changed by the user at any time, ensure convenient access to preferred radio sources.
- In addition to encouraging users to select their preferred default stations for particular audio categories, services also support users in accessing the best content by using ranking signals like popularity and authoritativeness to promote channels of higher quality, and having clear policies that guide which content would not be made available (e.g. illegal / harmful content).
- Within the above-mentioned Ofcom study, around half of participants reported listening to radio stations or programmes that they had not listened to before – they felt that the speakers offered access to different stations that they had not been able to easily tune into previously, and some had discovered new stations that their speaker had suggested to them.

- Are the provisions in the draft Bill sufficient to protect the identity and content of local radio?

n/a

Section 4 - General issues

- Is Ofcom able to deliver its new and updated obligations set out in the draft bill?

We are concerned that the government is underestimating the risk of PSBs refusing to provide services to TSS providers that do not meet PSB's commercial terms or technical specifications. If PSBs' current practices were to continue under the new Must Offer Must Carry regime, this would create considerable burden on Ofcom to fulfil its dispute resolution function for the new prominence regime. If Ofcom is not adequately resourced and empowered to resolve disputes quickly, within the 4-month timeframe the Bill proposes, with fair and reasonable interim solutions during a dispute resolution process, it could take too long to adjudicate a dispute which would mean that manufacturers could miss TV launch dates and UK consumers would miss out on innovations that are accessible in other markets.

In particular we are concerned by clause 362AR(2) which provides scope for Ofcom to refuse to handle a case if 'alternative means' of dispute resolution are available (e.g. private arbitration or mediation). The consumer electronics industry moves at too fast a pace to allow for parties to exhaust all alternative options before turning to Ofcom as a last resort - industry needs Ofcom to be able and required to resolve disputes quickly in order to ensure that latest products can reach the UK market in a timely manner.

Accordingly, we recommend that Ofcom's dispute function process must have a specific time period for review (we recommend 2 weeks), and must be resourced appropriately in order to align with TV launch dates (typically in late Q1 every year). Platforms must be able to access existing 'core' PSB services with full continuity of service during any Ofcom-led dispute resolution processes, as to allow otherwise would disrupt consumer access to PSB services. Current PSB services should roll over and be applied to "disputed" matters whilst Ofcom adjudicates, and we recommend using the previous year's agreement as a rollover arrangement pending the resolution of the dispute.

- [Is the draft bill flexible enough to address future developments in audience habits and new technology?](#)

As discussed in more detail in our response to the 'Public Service Broadcasting' section of this Call for Evidence, we believe that the government is taking the correct approach in using primary legislation to provide a framework and objectives for regulating the media space, while more granular details will be developed by Ofcom within secondary legislation or guidance. Ofcom is a respected and knowledgeable regulator, and this structure will provide opportunity for industry to provide substantive input into future regulations to address future developments in audience habits and new technology.

- [Does the draft Bill provide sufficient protection for those without internet access or who prefer to use broadcast services?](#)

n/a

- [Are the proposed powers to be given to the Secretary of State proportionate?](#)

Clause 362AE confers powers on the Secretary of State to designate television selection services that the SoS considers to be used by a significant number of members of the public in the United Kingdom. This creates some level of uncertainty over which devices (or types of devices) will ultimately be designated. There is also no mechanism for a designated TSS to challenge a designation, which is not the case with designated IPS. We urge the government to ensure that the final list of designated device categories is informed by a full independent analysis and report from Ofcom on what is appropriate to be included.

Furthermore, our members are deeply concerned that these clauses do not provide an exclusion for 'legacy devices' (i.e. devices already on the UK market that are not supported by current software). We urge the government to amend these clauses to include an exemption for devices already on the market, including those that are no longer supported by manufacturers, as placing retrospective legal requirements on these products that were legally put onto the UK market in good faith would place excessive and disproportionate costs and logistical challenges upon platforms. This concern applies equally to the draft definitions relating to 'regulated radio selection service'.

Furthermore, we are concerned that a potential financial penalty of 5% of the person's qualifying worldwide revenue for the person's most recent complete accounting period is wildly disproportionate for failing to fulfil television prominence requirements.

- Does the draft bill sufficiently address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the UK?

n/a

- Are there any issues missing from the draft Bill within the scope of public service broadcasting, video-on-demand or radio?

1) PSB supply of metadata to TSS providers

PSB supply of metadata to TSS providers is critically important, as is the ability of TSS providers to integrate usage data to power content discoverability. This must be part of the 'must offer' regime. We cannot understate how important this matter is, and provide additional context and recommendations below.

The Bill has been written with today's media landscape in mind, which is heavily focused around "partitioned-apps". Looking forward, consumers have consistently expressed the desire that all content would be better exposed in a wider user interface, similar to traditional all-encompassing EPGs etc.

The draft Bill's Explanatory Note #108 onwards, and the definition of a TSS in 362AD (1), requires RTSSs to be able to select between IPSs (e.g. BBC iPlayer and ITVX) and between programmes provided by those (IPS) services. 362AI (7) then lists the "channels" for which must-offer will apply. Although not explicitly stated, it is inferred that these are all the relevant PSB's linear TV services, but delivered over IP.

Designated RTSSs (which, according to the terms indicated in 362AE and Explanatory Note #108, are likely to include the majority if not all of our techUK members) must then include these services from 362AI(7) within its user interface (362AJ) and provide prominence in line with Ofcom's guidance (362AK, 362AI (5)(a)).

However, if PSBs are not required to provide metadata to designated RTSSs, our members would encounter two technical barriers that will prevent them from complying with the regulations.

Firstly, it is important to note is that an RTSS has no visibility of the programmes available within an IPS. Currently an IPS is a "black box" application which does not expose any of the content it contains to the TSS. In order to meet this requirement, **all** necessary programme metadata must be made available to an RTSS from the IPS. Accordingly, **all** programme metadata must also be included as a component

part within the “Must Offer” obligations. This will require a new subsection (8) under section 362AI that states that all necessary metadata associated with the channels in subsection (7) must also be offered by the IPSs. In order to enable interoperability and efficiency this metadata must conform to a single common standard specification. Ofcom must be charged with identifying how such an agreed specification can be arrived at.

Secondly, in order to meet consumer (channel changing) expectations it must be possible for the RTSS to directly access the listed linear IP channels in 362AI (7) over IP without having to first initialise an individual RTSS application. If the RTSS has to re-start the IPS application for every channel selection this will result in channel switching times of many tens of seconds rather than the almost instant experience consumers have currently. This would be a huge backwards step for consumers. It therefore must also be a requirement in the 362AI ‘Must Offer’ section that the channels listed in subsection (7) must also be offered as standalone IP services and not only accessible from within the IPS application. As above, such IP linear services must be made available using a single common standard specification and Ofcom must be charged with identifying how such an agreed specification can be arrived at.

2) PSB ‘Must Offer’ must adhere to accepted standards

We also emphasise that the Bill must be drafted in a way that does not provide PSBs with opportunity to leverage the ‘Must Carry’ requirements on platforms to force manufacturers towards technological roadmaps that may be at odds with their overall product strategy. To mitigate against this risk, the Bill must require designated internet programme services (DIPs) to offer services that are fully compliant with open international standards and/or continuation of existing business arrangements, and to provide solutions (at least for a core offering) that work across generic platforms. It would not be sufficient for PSBs to offer services ‘based on’ international standards, as this actually means various levels of divergence from those international standards and therefore results in fragmentation that is ultimately costly to UK consumers.

3) Need for a ‘Must Offer’ requirement within Radio

Additionally, as emphasised in our responses to Section 3, it is essential that any ‘Must Carry’ requirement placed on regulated radio selection services are balanced with a ‘Must Offer’ requirement on internet radio services to offer their services to RRSSs that are required to carry such services. Without a ‘Must Offer’, the regime would create an unlevel playing field for device manufacturers and it is important to ensure that safeguards are in place for all parties involved.

- [Do you have any recommendations for additional or amended drafting to the draft Bill?](#)

n/a