

## Written evidence submitted by Directors UK

### Directors UK response to the DCMS inquiry into 'The future of public service broadcasting'

#### About us:

Directors UK is the professional association of UK screen directors. It is a membership organisation representing the creative, economic, and contractual interests of over 7,500 members — the majority of working TV and film directors in the UK. Directors UK collects and distributes royalty payments and provides a range of services to members including campaigning, commercial negotiations, legal advice, events, training, and career development.

#### Summary:

- i. The Covid crisis has highlighted the importance of UK Public Service Broadcasting (PSB) to British audiences for both news and entertainment during the pandemic. Any review of PSB must take into consideration the significant impacts of Covid-19 on the broadcast and production sector.
- ii. The concept of PSB still has enormous value. It is vitally important for the health of society, it ensures that a broad range of content, reflecting the lives and viewpoints of people from across the UK is shown, and is integral to the UK production industry and creative economy.
- iii. The current regulation of PSBs is disproportionate in comparison to the absence of regulation of the new global digital platforms. There needs to be a levelling up of the marketplace to support and protect the UK broadcasting and production sector.
- iv. Regulation is necessary to ensure delivery of the social and cultural responsibility to UK audiences that guarantees output reflecting life in the UK and across its nations and regions; represents diverse communities; covers a broad range of genres; and upholds the principles of safeguarding and impartiality. Current regulation needs to be reviewed to bring digital providers in line, so that it does not unfairly disadvantage UK PSBs.
- v. Global platforms operating in the UK should have an obligation to show an amount of UK-originated content.
- vi. Prominence, discoverability, and accessibility is essential for Public Service Broadcasting.
- vii. PSBs and other platforms operating in the UK should be required to invest in workforce skills training and career development.
- viii. Any proposed changes to funding models for the BBC and commercial PSBs must be subject to consultation and full market impact assessments, and there should be greater transparency over arrangements for assessing and setting the BBC's licence fee.
- ix. It is essential to preserve accessibility, affordability, and universality via a form of free to air PSB.
- x. Creating distinctive, UK-originated content is critical to the future success of PSB. This must be supported by a robust copyright framework that protects IP and creators in the global digital market.

## **PSB Review in light of Covid-19**

1. Directors UK welcomes the opportunity to respond to the DCMS committee inquiry into 'The future of public service broadcasting'. However, we do wish to raise concerns regarding the timing of the inquiry in light of the ongoing Covid-19 crisis, and the impact on the industry. Many organisations in the broadcast and production sector will be focused on managing the immediate and significant consequences arising from the pandemic, and may not have the capacity and resource to give the inquiry the necessary consideration, even with the deadline extension.
2. Any review of the Future of PSBs needs to take into consideration the impacts of Covid-19 on the sector. The depth and scale of the crisis has affected all aspects of the PSB environment including: changes in consumption, subscription and viewing patterns during lockdown; the halting of production and commissioning which will affect the availability of content for broadcast; the slow recovery back to full production for some genres and the costs and insurance risks associated with this; the impact on the self-employed production workforce and the independent production sector; the significant fall in advertising revenue for commercial PSBs which will affect their programme budgets and service provision, leaving some PSBs in a precarious position.
3. PSBs were already facing the challenge of how to adapt and survive with the rise of global digital SVOD platforms. We are likely to see further divergence between our highly regulated domestic broadcasters and Pay-TV providers, and the relatively unregulated global subscription services and media platforms, as the differing conditions in which they can operate become even more stark as a result of the Covid crisis. If the costs and risks associated with getting back into production are too great for the smaller, domestic broadcasters and production companies, we are likely to see a greater risk of an asymmetrical return to work and potentially further over-dominance of global streaming services. PSB funding models, inward investment, regulation, retaining and developing ideas and talent must be looked at in this new light.
4. The current Covid-19 crisis has however highlighted the importance of UK Public Service Broadcasting to British audiences for both news and entertainment during the pandemic. Notably the BBC has demonstrated what it does best in terms of delivering a universally accessible public service to the UK population at a time of crisis, offering a range of services through news, entertainment and educational resources, on TV, Radio and online. This has played a vital role in keeping the country and its communities informed, safe and connected. Something that is neither possible, or appropriate, for non-domestic subscription services such as a Netflix, Amazon, or Disney to fulfil. More than 20million people tuned into the BBC to watch the Prime Minister address the nation at the start of lockdown, reflecting the need for such a service in a time of crisis. During the pandemic as many as 94% of the UK adult population, and 86% of younger people<sup>1</sup>, have turned to the BBC.
5. It is imperative that the purpose and values of Public Service Broadcasting are maintained and protected. The Government must redress the regulatory imbalance between the domestic and global content providers so that UK services and content creators are operating on a level playing field. If left unchecked market forces will squeeze out the PSB broadcasters who are inextricably linked to the UK production sector and the health of the wider creative economy.

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<sup>1</sup> <https://www.bbc.co.uk/mediacentre/latestnews/2020/annual-plan>

**Impact:** What value, if any, do PSBs bring to the UK in terms of economic (local and national), cultural and societal impact?

6. Public Service Broadcasting (PSB) was established to ensure that the public has access to high quality television that reflects the UK, brings the nation together, and informs and educates society<sup>2</sup>. PSB is available to everyone, and free at the point of use. It is also traditionally intended to provide programming content for audiences that the commercial broadcasters and platforms, with their profit-driven priorities, may not provide. e.g. news, arts, religion, and original children's content. With a duty to produce content in the nations and regions, PSBs obligations also ensure that the UK's production industry is not London-dominated and voices from across the UK are heard.
7. This concept of PSB still has enormous value. PSB is vitally important for the health of society – even more so in a fragmented digital world where misinformation or fake news is a real risk. It ensures that the content we all have access to is not unfairly skewed by majority preferences or a pervading point of view. It supports the social fabric of the UK enabling different opinions and perspectives from across the UK to be shared, encouraging wider understanding. Without this we risk becoming a polarised society with a narrowing of opinions and thinking. Ofcom's Media Nation report found that 74% of viewers claimed to be either very or quite satisfied with Public Service Broadcasting<sup>3</sup>.
8. PSBs also play a significant role in the UK Creative Industry's ecosystem. They currently invest £2.5bn a year in commissioning approx. 32,000 hours of UK-originated content and engage the services of UK independent production companies, UK freelance production talent and crew, and a wide variety of ancillary services. PSBs also play a role in training, developing, and investing in the talent and skills needed in the creative industry. It is this talent and the quality of content produced that has made the UK a centre of excellence for production, attracting inward investment from international productions.
9. While the concept of PSB is not outdated, the current regulatory system is adversely impacting our PSBs through the obligations placed upon them compared to the SVOD and digital platforms whose content and operations remain unregulated in the UK. The issues are what form Public Service Broadcasting should take in order to ensure it remains relevant and accessible in the digital age? Who should be making it? How is it funded? How is it distributed/accessed? What regulation or policy is needed?

**Regulation:** Are the current regulations and obligations placed on PSBs, in return for benefits such as prominence and public funding, proportionate? What (if any regulation) should be introduced for SVODs and other streaming services?

10. The UK broadcasting sector is a British success story, but the rapid growth of the international SVOD/VODs has changed the marketplace immeasurably bringing both opportunity and challenges. The emergence of these big global companies, causing massive disruption to the UK broadcasting model, is new and the regulatory environment has yet to catch up. They operate in

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<sup>2</sup> The purposes of PSB are set out in the Communications Act 2003 (the 'Act')<sup>7</sup>

<sup>3</sup> <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/media-nations-2019/media-nations-2019-interactive-report>

a global space and have proved very adept at moving their operations to avoid the impact of regulation, taxation, and copyright obligations. The current regulation of PSBs is therefore hugely disproportionate in comparison to the absence of regulation of the new platforms. We need to level the playing field in order to support and protect the UK broadcasting and production sector, and enable PSBs to adapt and thrive at a pace to keep up with these new global competitors.

11. In the past, one of the justifications for regulations and restrictions on the BBC was because historically it was the dominant player in the market and there was concern about its distorting influence over smaller commercial rivals. Now, the likes of Netflix, Amazon, Google, and YouTube are becoming the dominant players, and the current PSB obligations need to be looked at in the context of these new digital services operating in the same marketplace.
12. However, we would not want to see all regulations and obligations for PSBs removed as these are what create the social and cultural responsibility to UK audiences. It is the regulatory obligations on PSBs to provide a percentage of output focusing on nations and regions, arts, religion, children, and local news which ensures this type of programming is made. Regulation will be the key to protecting UK content and the role that PSBs have in its production and transmission. The Government should be looking at how to update these regulations and how to bring the digital providers in line, so that they do not unfairly disadvantage our UK PSBs in favour of international global platforms.
13. In many ways the existence of the PSB system allows UK audiences to be more satisfied with what they get from SVODs and other platforms as their fundamental needs are being served by the BBC and commercial PSBs.

### **Regulatory measures**

14. In reviewing the regulations, the Government and regulator should explore exactly what is trying to be achieved with regulation and how they know if it has been achieved. These are just some issues that we believe need to be considered:
15. **What sort of content needs protecting by regulation?** i.e. what is unlikely to be provided in sufficient quantity/quality by the commercial market on its own? E.g. When the regulatory obligations for children's programmes on ITV and Channel 4 were removed in 2003, it resulted in them no longer commissioning children's content. We anticipate the same would happen with other niche areas of programming if regulatory requirements were removed.
16. **How content is measured/assessed** - Many of the current broadcasting content requirements for PSBs are set and measured as a percentage of hours of programming or spend in specific genres. Currently, if a PSB meets the number of hours required then the quota is met. In this new marketplace it is not just a case of putting PSB content out, but making sure it is received and seen by a variety of audiences who are watching in different ways. A review of the metrics used may be required.
17. **How much needs to be provided by the various PSBs all together?** Should different PSBs take on different areas, removing some of the burden and releasing them to compete for commercial audiences in other areas? Should the global SVODs be required to produce an amount of PSB?

18. **Safeguarding** - Current PSB obligations also play a role in protecting younger and more vulnerable audiences from inappropriate content. In traditional linear TV this is addressed through the watershed and safeguarding rules. In a VOD/SVOD marketplace where scheduling does not apply it is even more important that there is adequate regulation and safeguarding measures in place to prevent access to inappropriate content. If we are going to regulate our PSBs to ensure safety, fairness, balance and right to redress, we should also be regulating VOD/SVODs to the same high standards, with a complaints process to allow viewers to make formal complaints over SVOD content and to have these investigated and sanctions imposed if required.
19. **Impartiality & news provision** – PSBs, particularly the BBC, have a duty to be impartial and to represent the broadest range of perspectives and experiences from across the UK. They offer a forum for difficult subjects to be debated fairly, opinions to be aired and should be free from political influence. It is imperative that this impartiality is upheld in any future regulations, especially from the BBC. The Covid pandemic has affirmed the BBC and PSBs as trusted source of news and information, something which the many SVOD platforms are unable to provide.
20. **UK & regionally originated content** – PSBs currently have an obligation to provide local content for UK audiences and it is important that this requirement is retained. Without this they may stop creating diverse and distinctive content and instead focus on high value, mass-appeal global dramas and documentaries in order to compete. A key part of the PSB remit is to provide stories that appeal to a variety of UK audiences reflecting back the diverse range of communities and perspectives that make up the UK, which is unlikely to be provided by the non-PSB global platforms.
21. PSBs also have regional quotas (up to 50%) to ensure that UK storytelling and production is not London/SE centric. The experience of our members working in the nations and regions is that without clear guidance and requirements from the regulator, broadcasters and producers would not automatically create content for those regional communities and produce it from within those regions, as was highlighted in Ofcom’s Review of Regional TV Production and Programming Guidance.<sup>4</sup> Regulation is necessary to ensure a range and diversity of content to reflect and represent the entirety of the UK.
22. In comparison, the on-demand providers are seeking to create content that appeals on a global scale. They are investing huge amounts in producing very high-end productions and in order to get a good return on their investment they must be appealing to the largest possible audience i.e. a global audience. The new SVODs are responsible to their shareholders, and the content they provide is driven by growth and retention of subscribers not the public interest. Providing domestically specific content is of limited value as it is very difficult to monetise outside of that nation or region. As a result, we have seen a rise in high quality drama and factual programmes being made for on-demand services, but they are not necessarily telling UK domestic stories. This need to have global appeal risks a narrowing in the variety of content away from original UK stories from across the nations and regions. In 2018 just 9% of Netflix’s total catalogue hours were UK-produced original content, and 8% for Amazon Prime Video, or 210 hours.<sup>5</sup>

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<sup>4</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/regional-production-programming-guidance-review?showall=1>

<sup>5</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/116006/media-nations-2018-uk.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/116006/media-nations-2018-uk.pdf), p49

23. These new global platforms have been able to enter the market and make content production and acquisition decisions based purely on consumption and demand, without any obligations or public purposes to fulfil. Not only does this distort what stories get told, but it is also setting production spend expectations which are driving out mid to lower budget level production. This cannot be left unchecked and a wholesale review of the market and the challenges facing domestic broadcasters is now required.
24. We welcome the European AVMS directive and its requirement for 30% of content to be from the country of broadcast as a way of supporting local content. Whilst this is a step in the right direction it may not go far enough to level the playing field. Some argue that the setting of minimum quotas risks reducing any incentive to achieve above the minimum. In addition, the legislation was drafted over 3 years ago and to have any effect it will need constant attention to keep it updated and relevant and to be future proofed. It will also be important to ensure that the AVMS directive will still apply in the UK now we have left the EU, or a similar UK regulation stipulating a requirement for an amount of local content on all UK-based services should be introduced. Without this, the international players are under no obligation to invest or show UK-led content.

### **Prominence**

25. Prominence is extremely important for PSB. In our view greater prominence is needed for PSB programming in an on-demand world to ensure that PSB content is discoverable and accessible to all. It is not enough to simply make sure a range of quality programmes are made and available, it must also be easy to find and watch by viewers. Last year Ofcom undertook a review of prominence and in its report (July 2019) it recommended that *“New legislation is needed to keep PSB prominent and support the sustainability of the public service broadcasters (PSBs)”*.
26. Current legislation includes an obligation to give “appropriate prominence” to PSBs which has generally meant that consumers will see BBC1, BBC2, ITV, Channel 4 and Channel 5 at the top of linear EPGs when switching on their televisions. The lack of prominence for PSB content across all devices, particularly on-demand platforms, will result in valued PSB content being harder to find, leading to a loss of the UK-values and investment in UK content. Ensuring prominence for PSB content is fundamental.
27. On linear television the variety of PSB content is presented to you regardless of your preferences or opinions. The risk with on-demand services is that you are presented with the most popular choices based on what you have previously watched or on programmes that are trending/popular, narrowing the choice of programmes and the way people look for them. These algorithms that drive greater personalisation of services for consumers will at the same time lead to a reduction of choice and diversity. We do not believe that the likes of Netflix and Amazon would give prominence to PSB programming without intervention and this will require the Government to introduce some form of legislation or incentive. As the technological ability to curate through algorithms does exist, the focus should be on how the SVODs and platforms are obliged or compelled to use their algorithms to improve discoverability and highlight PSB/Free to air content.
28. Prominence will need to not just be in a programme guide as it traditionally has in the past, but as a portal through which to access PSB content e.g. a tile for British content on a connected TV, and this needs to have prominence. As outlined in Ofcom’s report, PSB content should be easy

to find on the homepage of connected TVs, and PSB content should be given protected prominence within TV platforms' recommendations and search result.<sup>6</sup>

29. Handheld remotes sold with televisions also currently have buttons that link to some on-demand channels e.g. Netflix and Amazon buttons. This gives search prominence to these channels. The Government should include in its review of the sector what role television manufacturers have to play in the prominence and delivery of UK content and what relationship they have with the global content providers, as this may be an additional way of addressing how the market operates and may require regulation. As this on-demand market will continue to evolve, regulation will also need to have the flexibility to adapt with it.
30. Ofcom's review of PSB has also highlighted that young audiences are more likely to watch UK PSB content on another service or platform, and not always attribute it to the originating PSB channel<sup>7</sup>. Branding, or prominence of the brand is therefore going to be an important consideration in digital distribution and recognition of UK-originated PSB content.

### **Training & Skills Development**

31. We propose that part of reviewing PSB obligations should include a commitment to training and skills development. In the last 15 years, as the production industry has moved away from a permanent staff-based model, and the use of freelance workers has expanded to the point where over 40% of those working in television are freelance<sup>8</sup>, we have seen a reduction in the training and career development opportunities being made available to freelance production talent.
32. Recently, the only funding for television training available to freelance directors, was through the High-end Skills Levy, which is funded as part of the High-end tax break requirement. This Levy is used to develop talent working on high-end drama productions, a booming area for inward investment. However, the focus of production on high-end has had the knock on effect of reducing the number of programmes being made for UK broadcasters at the mid-budget level – an essential area for directors and other talent to develop their craft and progress in their careers. There is a clear lack of investment in training for those working in other genres such as factual programme making and low-to-mid level budget drama productions. This is only serving to increase the skills gap between low and high budget productions. In addition, the Apprenticeship Levy model is unsuitable for a freelance workplace.
33. The result is that there has not been the appropriate investment in skills and talent to keep up with the increased production demand and ensure that we have enough UK talent who are experienced, ready and able to work on high-end productions. Pre-Covid, we were seeing evidence of an overheating in the creative economy<sup>9</sup> with production staff working longer hours and people burning out, this is unsustainable. It is essential that we support and develop the talent supply both now and for the future.

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<sup>6</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf)

<sup>7</sup> Ofcom – Small Screen, Big Debate – A 5-year review of Public Service Broadcasting (2014-18), 27 Feb 2020

<sup>8</sup> [Creative Skillset Employment Census of the Creative Media Industries](#)

<sup>9</sup> <https://www.screenskills.com/about-us/press-releases/new-research-reveals-skills-challenges-for-high-end-television/>

34. However, we do not believe that the BBC and other PSBs should shoulder the entire burden of training the industry. New platforms operating in the UK should also be required to invest in the training and career development of the UK production workforce who they also benefit from.
35. Supporting the industry's talent and skills base is even more important given the significant impact the Covid pandemic has had on the creative workforce. Film and TV production is made up of a high percentage of self-employed/freelancer workers and the lack of financial support available to them during the Covid pandemic has meant that a large proportion of the workforce are now in financial crisis and are considering leaving the workforce. There needs to be a coherent plan to manage the creative workforce to ensure that we have the skills and talent base to see us through the crisis and to fulfil demand once it returns.

## **Funding**

36. The biggest challenge facing the future provision of PSB is how it is funded. According to Ofcom, between 2014-2018 the BBC's revenues from the licence fee fell by an average of 4% each year, while the net advertising revenue for the commercial PSBs fell by an average of 3.8% each year. Despite this the PSBs level of investment in original productions has remained relatively steady with the shortfall being made up by deficit funding from third party investments; or from co-productions with global companies. But this inevitably has an impact on what is being made and who retains the rights.

### **BBC Funding**

37. The BBC licence fee has come under increased scrutiny and regulatory pressure following licence fee freezes, budget constraints, and the new requirement to fund free licence fees for over-75s. While the recent inquiry into the decriminalisation of licence fee evasion, and the ongoing debate about scrapping the fee altogether and moving to a subscription model pose further threats to the BBC's funding base.
38. We do not see any value in curbing the BBC's ability and ambition at a point in time when the UK wishes to consolidate its soft power and showcase its content for export. It would be wrong to make further changes - such as decriminalisation of licence fee evasion, which has budgetary implications and may compromise the BBC further - before a full review of the role, purpose and funding model of the BBC has been conducted. If we continue to remove budget and add regulatory hurdles to the BBC it will struggle to survive.
39. In order to strengthen and support the BBC as the main national Public Service Broadcaster, the Government needs to enable the BBC to access the proper financial support from the licence fee, unhindered by additional burdens such as the Over-75s concession, or any further concessionary or contestable funding grabs. Thereby enabling the BBC to channel its finite funding for content into delivering on its duties to the licence payer and audiences and on improving discoverability of content to meet the market expectations.
40. The breadth of channels and services and the budget and regulatory pressures of recent years has left the BBC faced with a choice between maintaining services or maintaining programme quality. We would much prefer to see the BBC concentrating on making the highest quality programmes and content, and then finding the best outlet for them, even if that means having fewer channel outlets, rather than creating the outlets and then worrying about how best to fill them. We also

do not believe it should have its hands tied in ways that prevent it from demonstrating its wider value by creating popular content with broad appeal, particularly when SVODS are able to focus solely on the most popular content to retain subscribers.

41. One of the main problems the licence fee has is the public perception and understanding of what it is and what it pays for. The BBC licence fee funds a wide variety of services: TV, Radio, websites, iPlayer and more. It is not just a provider of TV and TV content. The BBC plays an enormous role as an ambassador for UK culture, talent, and storytelling globally and is central to the success of the UK creative economy. It reaches 9 out of 10 UK adults every week and 426 million people globally<sup>10</sup>.
42. Many don't realise how far reaching the licence fee is and there is a growing generation of young people who may not connect it with the content and services they are using. There is a disconnect between what people perceive as a 'household tax' for services they often use away from the TV or outside the house. The BBC should be freer to promote awareness of the breadth of its services and provision.
43. The purpose of the BBC Licence fee could be likened to the role of National Insurance in funding the NHS, or council tax charges for services such as street cleaning and bin collection etc, where not every resident accesses every service, but there is a recognition that ongoing support for the full provision is important in order to preserve the availability and accessibility of a service.
44. If we were to move to a subscription-based model it has the risk that it removes this universality of access, and introduces huge uncertainty into the BBC's funding: how would it be assessed? What programmes or services would be placed behind a subscription wall? How could the BBC respond to the competition it would inevitably attract if it introduced subscription services? How could subscription programmes be financed with no certainty as to audience take up? Any changes to the BBC's funding models, including a subscription based model would require a full analysis, impact assessment and consultation.
45. We also believe there should be a far greater transparency over the arrangements for reviewing and renewing the Licence fee. The impression left by recent licence-agreement settlements is that they were determined by deals done in great haste and secrecy, most notably the changes to the over-75's licence fee arrangement, in marked contrast to the openness with which the Charter Review process is conducted. With so many elements of the BBC's performance and provision being dependent on funding, it is vital that funding is subject to the same open scrutiny as all other aspects of the Charter process.

### **Commercial PSBs**

46. The commercial PSBs are also facing funding and investment issues as increased competition is having an impact on the commercial PSBs' advertising revenue, initially from the multiple digital channels but latterly from Facebook and Google offering a more targeted approach, and also from increased restrictions on advertising rules. Commercial channels such as ITV and Channel 4 have responded by exploring ways of adapting their advertising models for on-demand markets.

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<sup>10</sup> <https://downloads.bbc.co.uk/aboutthebbc/reports/reports/bbc-consultation-response-decriminalising-licence-fee.pdf>

47. It is important that as part of any PSB review, the regulatory regime surrounding advertising both on television and on digital platforms is also examined to ensure there is a level playing field for commercial PSBs and commercial on-demand providers of content. The regulatory burdens should not unfairly inhibit the commercial PSBs potential to generate revenues for future investment in content. Particularly as ad spend is migrating across to digital platforms who are not subject to the same regulations.
48. Covid has had a further impact on the commercial PSB channels. They are experiencing a significant fall in advertising revenue which will inevitably have a knock-on impact on their budgets for future programme making and service provision. ITV reported a 42% drop in advertising revenue. Channel 4 reported a 40% drop and were seeking £75million of credit to shore up operations.
49. It is vital that the regulatory regime is updated so that our commercial PSBs can compete on a level playing field in the global on-demand marketplace; and that the BBC has stability of funding, in whatever form, so that it can meet its public service remit and commitment to attract wide audiences to its services. PSBs should be given enough room to realise their full commercial potential, and may require lifting some of the restriction on domestic broadcasters so that more money can be channelled back and reinvested into content provision.
50. In the longer term the Government will need to find a new way of subsidising PSB content and services. This may involve a split model with people paying/subscribing for access to popular content with free access to PSB content funded through a licence fee or levy/tax. Or the Government may need to explore an additional levy on streaming hardware such as Connected TVs, tablets and/or handsets as a means of subsidising PSB content for the public and ensuring universal access to a basic level of services. Particularly as access to content is increasingly seen as a 'utility' by many individuals/households rather than an optional extra.
51. One option that could be explored more fully is this idea that delivering PSB's public purpose is in the national interest, and should be treated as a form of utility service that every member of the UK population should have access to. This could be funded through a levy applied to broadband access via the service provider. This would move focus from the content provider towards the telecommunications infrastructure that enables access, choice and maximises discoverability. Making the connection between the funding of PSBs (such as the BBC) and the digital infrastructure has a precedent set by the previous administration that designated the BBC to use a proportion of its licence fee to roll out broadband across the UK. This could be regarded as a return on investment to the licence fee payers and UK audience. This would only be a real possibility if there has been full switchover to online delivery, which will take time and would need to be properly funded.
52. Canada's PSB, CBC, has recently made the transition to a model where all Canadians have access to the same basic level of service through conventional television and paid subscribers have access to new features above and beyond what's already offered including access to the full CBC on-demand library<sup>11</sup>. BritBox is in many ways a pre-cursor to this split, subscription-model approach.

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<sup>11</sup> <https://cbchelp.cbc.ca/hc/en-ca/articles/360013585533-What-is-CBC-Gem->

53. However, as Netflix and Amazon subscriptions grow, and the rise in new subscription and streaming services such as Disney Plus and Apple TV takes audiences away from traditional linear services, it raises the question of how many subscriptions people are prepared to pay for? The more subscription services there are, the more diluted and fragmented audiences will become. By asking people to only pay for content that they use there is a risk that the value of subscription revenue may go down across the board which may affect the amount of money available to invest in original or PSB content by the various platforms.
54. There may be scope to make the tax credit more of an incentive to encourage a broader range of UK-focused production content from online global services? Should the online platforms have to pay a levy or tax on revenues for UK content as a way of creating a contestable funds for PSB content that is not taking money away from the BBC licence fee? Should global operators be allowed access a levy pot to help fund PSB content for UK audiences?
55. All options for regulation and funding of the PSBs will require careful consideration and proper impact assessment as there is a risk of introducing incentives or obligations that could have unintended consequences for the UK production sector and audiences.

**Representation:** How would representation be protected if changes were made to the PSB model? How would the nations and regions be affected by changes to the PSB model? Is the 'quota' system the most efficient way to maintain and improve representation in broadcasting?

56. Evidence indicates that PSBs do more than other non-PSB services to provide news and content for a diverse audience across the UK. The existence of a long-established regulated system of quotas for public service programmes has been necessary to ensure a range and diversity of content to reflect and represent the entirety of the UK. Without this we don't believe the industry would be committed to making content from and about the regions. Ofcom highlighted a downward trend in first-run spend on non-networked original programming for the nations and regions, dropping 3% from 2008-2018<sup>12</sup>. Our own member research highlighted the need for clear guidance and regulation to ensure productions which claim to be made outside London to meet quotas are using talent and companies from within the regions<sup>13</sup>. This market failure will require continued management through specific interventions, as it is unlikely to be commercially driven.
57. Similarly, our research into who directs programmes has shown that there are very low levels of diversity and equality behind the camera<sup>14</sup> which has a real impact on what is seen on screen. The culture and experiences of programme-makers does inform their storytelling and undoubtedly impacts on how appealing or relevant programmes are to a more diverse audience. In our experience regulation is the only way to achieve this. Even with PSBs being tasked by their licences to deliver diversity and equality, this remains an area in need of significant and urgent improvement. This is exacerbated by the lack of monitoring and reporting on the make-up of the workforce, particularly the freelance workforce. We have backed industry calls for the Government to introduce regulation giving Ofcom a mandate to require greater diversity reporting, and a diversity tax break to encourage greater employment of under-represented groups on and off-screen.

<sup>12</sup> <sup>12</sup> Ofcom – Small Screen, Big Debate – A 5-year review of Public Service Broadcasting (2014-18), 27 Feb 2020

<sup>13</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0020/114257/Directors-UK.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0020/114257/Directors-UK.pdf)

<sup>14</sup> <https://directors.uk.com/campaigns/bame-directors#evidence>; <https://directors.uk.com/campaigns/gender-equality-in-uk-tv#evidence>

58. Where the new VOD/SVODs do achieve well in terms of public service is that they seem better able to tap into how young people engage in the world and aren't afraid to create bold content addressing issues such as diversity and inclusion. They have created boundary pushing shows with more diverse characters on screen, being presented in positive a light. These help to break down barriers and normalise differences and this should be applauded and encouraged. As global platforms it maybe they are less cautious about any backlash than UK broadcasters may be. This may be due to a number of significant factors – they have no licence constraints, have a high level of investment/budget spend, use demand-led commissioning driven only by rates of consumption and retention coupled with the ability to calibrate perceived choice through algorithms. In contrast the PSBs have a complex range of requirements to balance alongside audience viewing trends and conflicting tastes and needs, whilst coming rightly under a far greater level of public scrutiny, and whose existence and purposes can become deeply politicised.

**Accessibility:** How would changes to the PSB model affect the accessibility of services? How would a wholly internet-based service compare to the current PSB model?

59. In terms of accessibility, affordability, and universality it is essential to preserve some form of Freeview and free to air PSBs. Subscription models will never be universal as they are led by a pricing model. To lose free-to air PSB in its entirety would be detrimental to those unable to pay subscription prices.
60. The ongoing debate over the provision of free TV licences to over-75s has brought focus to the issue of affordability and universality of access to television services and again plays to the importance of PSB, in providing access to content for all. The decision to move what has always been a government welfare provision to the BBC as part of the license fee has placed a significant burden that will incrementally rise at the same time as the BBC budget is increasingly stretched. Our position remains that if the licence fee is seen as an essential welfare provision then the Government should take back responsibility for it, or accept that the BBC will need to make difficult funding decisions based on affordability.
61. How and where audiences find and access PSB is a challenge. It is different across the various audience demographics, and will change as they get older. What is important is ensuring that PSB content is available for them in a way that they can access it. For some, particularly the elderly, the schedule of linear TV gives them an anchor and structure to the day and offers a lifeline and access to the outside world. Whereas younger audiences have grown up viewing on different devices and are less committed to linear television as the primary means of accessing content. There is no one-way of getting content to the viewer. It is the content offer that is most important and making it discoverable on platforms that audiences are accessing. The recent reinstatement of BBC3 on the main schedule is indicative of the value of linear TV as one means of reaching younger viewers.
62. A move to a totally online model needs very careful consideration and would require market impact assessments. Ofcom found in its review of Public Service Broadcasting that *“television remains the best way to reach large audiences”*, with audiences watching an average of 3 hours and 12 minutes a day of broadcast TV<sup>15</sup>. In addition, there are still large numbers of people who do not have access to a fast Broadband service in order to support online viewing. According to

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<sup>15</sup> Ofcom – Small Screen, Big Debate – A 5-year review of Public Service Broadcasting (2014-18), 27 Feb 2020

Ofcom, 94% of households have access to superfast broadband, but only 54% have signed up to it<sup>16</sup>. Moving to a wholly internet-based service risks excluding those who are unable to afford or use the service, leaving them more vulnerable and isolated from mainstream viewing and PSB content. As with any major infrastructure change, if it were implemented it would need to be a phased programme with appropriately funded support to assist viewers with the switchover, just as there was with the digital switchover project (2007-12).

**Looking ahead:** What should a PSB look like in a digital age? What services should they provide, and to whom? In what way, and to whom, should they be accountable? Is the term ‘public service broadcasting’ still relevant and, if not, what is a suitable alternative?

63. The focus now should be on identifying the elements of PSB that are of lasting value and use these to build a PSB structure for the modern age. Making distinctive, UK-originated content is what sets the BBC and other PSBs apart from others, and is what we should be looking to protect.
64. Rather than trying to fit content into the current architecture of channels or devices, PSBs should be focusing on creating content that meets the characteristics of what audiences enjoy watching on those channels and making it more discoverable for audiences. That may require multiple access points, whether that is through linear TV, tiles on a screen, or other innovative means. UK PSBs need to be given regulatory support and scope to develop their offerings.
65. The BBC has in the past been recognised as a world leader in developing creative technology. It was the first to develop its online iPlayer platform and as a PSB shared the technology with others. It is this innovative technology which paved the way for the current models of on-demand viewing. The blocking of Project Kangaroo in 2007 was a huge set-back for the UK TV sector as international streaming services such as Netflix and Amazon have since entered and filled the space in the market.<sup>17</sup> The launch of BritBox, a paid-for platform streaming British content, and recent developments in the PSBs own catch up/on-demand services show that PSBs are seeking to respond to market changes. Being at the forefront of innovation and entertainment is key to the public continuing to see PSBs value in everyday life and British society. Central to facing the current challenges will be creating the necessary conditions for PSBs to tackle the issues of prominence, discoverability, and aggregation with unfettered ambition. This is likely to require a legislative mandate and designated funding, not dissimilar to what the development of the iPlayer represented at the time.

### **Content and Rights**

66. Content is central to the success of all these services and audiences now have an expectation that they can watch whatever they want, whenever they want for as long as they want. This has an impact on the complex system of rights for the use of content on these new streaming platforms.
67. Significantly, the growth of subscription and VOD services is having an impact on the traditional rights and remuneration models that underpin the TV production industry. Many royalty-remuneration models reward rightsholders for success through payments based on revenue from secondary uses after the first transmission of a programme. Recognising the value of owning content, SVOD platforms are beginning to commission and produce their own works and to take

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<sup>16</sup> Ofcom – Small Screen, Big Debate – A 5-year review of Public Service Broadcasting (2014-18), 27 Feb 2020

<sup>17</sup> <https://mediatel.co.uk/newslines/2018/03/14/project-kangaroo-bounces-back-sort-of/>

all rights in the content, exploiting it solely on their own platforms and services. This business model means there may be no secondary market at all and therefore no further revenue stream for rightsholders or for future investment in new work. Instead, rightsholders are coming under increasing pressure to accept a buyout of all their rights up front before there is any way of assessing how well a programme would perform. Buyout models remove any incentive to make a success of a work.

68. This impact on business models is aggravated as SVODs and VODs rarely make their consumption information available to rightsholders. This means any remuneration model, such as royalties, calculated on consumption or use of content cannot be applied. This absence of data reporting is causing a great deal of disruption in the industry as we work to establish new models for how royalties can be paid for by VOD and SVOD platforms based on little or no information. Bargaining is currently taking place between global organisations such as Netflix and individual freelance agents or their CMOs, but there is a serious imbalance of power making negotiations difficult. This issue of lack of reporting compared with the PSB reporting obligations must be resolved for the future benefit of the UK creative economy e.g. making sharing usage data a condition of operating in the UK market.
69. The BBC's recent changes to its iPlayer viewing window from 30-days to a minimum of 12-months also has a significant impact on underlying rights and royalties models. Whilst we recognise the need for the BBC and PSBs to be able to respond to the new viewing dynamics in this rapidly changing market, we are concerned with ensuring that rightsholders are fairly compensated for this extended use. Without royalties many freelance creatives struggle to survive in the industry. The services are only as good as the content available on them and that requires a creative workforce who can afford to sustain a living creating new works. It is more important than ever that creators are fairly remunerated for all uses of their work - whether it is on traditional linear TV or on-demand digital use.
70. Pivotal to this is ensuring that our Copyright protection remains fit for purpose for the digital age. As viewing habits and consumption trends change, strengthening and enforcing the IP framework effectively for the digital world will protect these important industries and revenue streams, incentivise our creators to continue to achieve innovation and success, whilst giving audiences access to a wide array of content which is sought after internationally.
71. It is also important that the high standards of copyright enforcement and protection in the UK are reflected and protected in future trade deals so that the UK creative industries can continue to be a success story. Trade negotiations with the EU and others present a timely opportunity to review UK policy and enshrine in UK law principles that are fundamental to the continued success of our sector and sustaining the careers of freelance creators.
72. In terms of accountability, we believe that Ofcom is currently best placed to assess and uphold the regulatory requirements for both the traditional PSB providers and the new global/digital platforms.