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| Title: The balance of payments between TV platforms and Public Service Broadcasters and the future of Electronic Programme Guides IA No:      Lead department or agency:Department for Culture, Media and SportOther departments or agencies: N/A |

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| --- |
| Impact Assessment (IA) |
| Date: 26/03/2015 |
| Stage: Consultation |
| Source of intervention:  |
| Type of measure:  |
| Contact for enquiries: Katharina Ribbe@culture.gsi.gov.uk020 7211 2161 |
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 |
| Summary: Intervention and Options  | **RPC Opinion: GREEN** |
|  |
| Cost of Preferred (or more likely) Option |
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, One-Out? | Measure qualifies as |
| N/A | N/A | N/A | N/A | N/A |
| What is the problem under consideration? Why is government intervention necessary?A complex regulatory framework currently governs the relationship between public service broadcasters and platforms.  We need to consider whether the existing framework is still necessary, and whether regulation is now acting as a constraint on content providers and television companies to deliver the best possible outcome for audiences.This consultation addresses several interrelated aspects of the relationship between PSBs and TV platforms: 1. The need to abolish Section 73 of the Copyrights, Designs and Patents Act 1988 (CDPA).
2. The future of ‘must offer’ and ‘must carry’ obligations.
3. The future regulation or deregulation of the Electronic Programme Guides (EPG) regime. These regulations and their impact are all interlinked.
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| What are the policy objectives and the intended effects?The Government wants to review the scope to deregulate current rules that govern aspects of the commercial relationships between platform providers: e.g. Virgin and Sky and commercial PSBs: Channel 3 licensees (ITV, STV and UTV), Channel 4, Channel 5.The Government believes that removing rules, which affect commercial negotiations between the parties, could lead to a more efficient outcome, and potentially allow PSBs as content providers to invest additional funds in UK originated content. However, the Government is mindful that any deregulation in this area needs to take account of the complex relationships between the parties and the different status of the BBC. These measures do not cover the equivalent obligations on the BBC to offer its services as widely as possible under its Charter and Agreement or the Must Carry obligations as they apply to the BBC and BBC services.  |

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| What policy options have been considered, including any alternatives to regulation?The Government is publishing an open consultation covering three issues. Final policy proposals will be informed by the views expressed. Government does not consider the Do Nothing option viable as the Section 73 of the Copyrights, Designs and Patents Act 1988 (CDPA) is considered obsolete and needs to be repealed. The options are:Option 1 – Remove S73. This will form part of any final policy. The Government considers that removal of S73 alone will have a negligible impact.Option 2a) and 2b) – Changes to must offer and must carry obligations. Option 3a) and 3b) – Changes to the regime covering EPGs, either extension of regulation to new technologies to the abolition of the EPG prominance regime.  |

|  |
| --- |
| Will the policy be reviewed? It  be reviewed. If applicable, set review date:  |
| Does implementation go beyond minimum EU requirements? | N/A |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | **Micro** | **< 20** | **Small** | **Medium** | **Large** |
| What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)  | Traded:       | Non-traded:       |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

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| --- | --- | --- | --- |
| Signed by the Minister : |  |  Date: | 04/02/2015      |

# Summary: Analysis & Evidence Option 1

Description: **Remove Section 73**

FULL ECONOMIC ASSESSMENT

|  |  |  |  |
| --- | --- | --- | --- |
| Price Base Year 2015 | PV Base Year 2015 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) |
| Low: 0 | High: 0 | Best Estimate: 0 |

|  |  |  |  |
| --- | --- | --- | --- |
| COSTS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
| Low  | 0 |  | 0 | 0 |
| High  | 0 | 2 | 17.2 |
| Best Estimate | 0 | 0 | 0 |
| Description and scale of key monetised costs by ‘main affected groups’ The Government’s preliminary view is that is that repeal of Section 73 of the Copyrights, Designs and Patents Act 1988 (CDPA) will not make any material difference to the commercial balance between cable platforms and PSBs and that the most likely scenario is a continuation of the status quo in the short and medium term. However, it could theoretically lead to a shift of funds from cable platforms on cable to commercial PSBs with an upper estimate of a cost to platforms of £2m p.a. This would be a transfer from cable platforms to commercial PSBs so is exactly matched by the benefit to PSBs below. The effect could in some scenarios be affected where accompanied by other changes in policy, as per the other options discussed in this document. The BBC and S4C are not within the scope of the proposal, which means that all potential transfers are between businesses with, no net impact either way on business as a whole.  |
| Other key non-monetised costs by ‘main affected groups’ N/A |
| BENEFITS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
| Low  | 0 |  | 0 | 0 |
| High  | 0 | 2 | 17.2 |
| Best Estimate | 0 | 0 | 0 |
| Description and scale of key monetised benefits by ‘main affected groups’ As above, the Department expects there to be a continuation of the status quo in the short and medium term. However, the upper estimate of a £2m p.a. cost to cable platforms would be exactly balanced by a £2m p.a. benefit to commercial PSBs. In all scenarios the net impact on business is zero.  |
| Other key non-monetised benefits by ‘main affected groups’ Should there be an increase in payments to commercial PSBs this may result in an increase in investment in original UK content (as PSBs spend proportionally more on UK original content than pay channels). However, the best estimate for this option is zero changes to payments. |
| **Key assumptions/sensitivities/risks** Discount rate (%) | 3.50% |
| Information on copyright payments between commercial PSBs and cable operators are not available but our understanding is that zero payments are currently made and this is the most likely scenario going forward. The upper estimate is an illustrative estimate based on the relative significance of this measure compared to changes to must offer and must carry (options 2a and 2b below) which have more data on which to estimate impacts. |

BUSINESS ASSESSMENT (Option 1)

|  |  |  |
| --- | --- | --- |
| Direct impact on business (Equivalent Annual) £m:  | In scope of OITO? |  Measure qualifies as |
| Costs: 0 | Benefits: 0 | Net: 0 | Yes | OUT |

# Summary: Analysis & Evidence Option 2a)

Description: Remove Must Offer and Must Carry

FULL ECONOMIC ASSESSMENT

|  |  |  |  |
| --- | --- | --- | --- |
| Price Base Year 2015 | PV Base Year 2015 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) |
| Low: 0 | High: 0 | Best Estimate: 0 |

|  |  |  |  |
| --- | --- | --- | --- |
| COSTS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
| Low  | N/A |  | N/A | N/A |
| High  | N/A | N/A | N/A |
| Best Estimate | 0 | 42 | 364 |
| Description and scale of key monetised costs by ‘main affected groups’ Removing ‘must offer’ and ‘must carry’ is likely to result in an adjustment to the payments between TV platforms and commercial PSBs for carriage of content. Our central estimate is that this would be a £42m p.a. flow from TV platforms to commercial PSBs, based on an independent analysis of possible negotiating outcomes. However, it should be noted that there is a broad range to these estimates from a £190m flow in favour of PSBs to a £110m flow in favour of platforms. |
| Other key non-monetised costs by ‘main affected groups’ Allowing free negotiations could create in theory a risk that a deal for carrying PSB channels by platform operators will not be reached and the channel will be taken off that platform for a period of time, though a regulatory back stop could prevent this. This would mean consumers would either not be able to access the content or would need to “toggle” their set to a different source (such as Freeview) to access the PSB content. This impact has not been quantified yet and we are seeking further information through the consultation to estimate the impact. |
| BENEFITS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
| Low  | N/A |  | N/A | N/A |
| High  | N/A | N/A | N/A |
| Best Estimate | 0 | 42 | 364 |
| Description and scale of key monetised benefits by ‘main affected groups’ In the central scenario the estimated cost of £42m p.a. to TV platforms is exactly matched by a gain to commercial PSBs. Depending on the final outcome of negotiations this benefit could potentially flow in the opposite direction with benefits accruing to TV platforms and a cost accruing to commercial PSBs. The range of potential impacts exactly mirrors the range set out in the cost section above and the net impact on business in all scenarios is zero. |
| Other key non-monetised benefits by ‘main affected groups’ Should there be an increase in payments to commercial PSBs this may result in an increase in investment in original UK content (as PSBs spend proportionally more on UK original content than pay channels).  |
| **Key assumptions/sensitivities/risks** Discount rate (%) | 3.50% |
| The key assumption underlying these estimates is that the carriage of commercial PSBs by TV platforms is a beneficial arrangement to both sides, and that any net transfer would ultimately reflect this mutual benefit. A corollary of this assumption is that negotiations will be successful as neither side would profit from a breakdown. However, the risk of this happening is highlighted and more evidence is sought on this through the consultation process.  |

BUSINESS ASSESSMENT (Option 2a)

|  |  |  |
| --- | --- | --- |
| Direct impact on business (Equivalent Annual) £m:  | In scope of OITO? |  Measure qualifies as |
| Costs: 33.3 | Benefits: 33.3 | Net: 0 | Yes | OUT |

# Summary: Analysis & Evidence Option 2b)

Description: Amend Must Offer and Must Carry

FULL ECONOMIC ASSESSMENT

|  |  |  |  |
| --- | --- | --- | --- |
| Price Base Year 2013 | PV Base Year 2015 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) |
| Low: -0.24 | High: -0.24 | Best Estimate: -0.24 |

|  |  |  |  |
| --- | --- | --- | --- |
| COSTS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
| Low  | N/A |  | N/A | N/A |
| High  | N/A | N/A | N/A |
| Best Estimate | 0 | 31.7 | 273.1 |
| Description and scale of key monetised costs by ‘main affected groups’ As in the case of Option 2a any additional costs accruing to one side in negotiation would accrue to the other side as benefits. While it is again impossible to predict negotiation outcomes with a high degree of precision, outcomes are assumed to be closer to the status quo of zero net transfers in a process underpinned by statute. The central estimate is again for payments to occur from TV platforms to PSBs at £32m p.a. This transfer could, however, range from £20m to £40m.The discrepancy between costs and benefits under this option results from a small increase in costs to Ofcom due to the need to adjudicate negotiations between TV platforms and commercial PSBs. The net impact on business is zero. |
| Other key non-monetised costs by ‘main affected groups’  |
| BENEFITS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
| Low  | N/A |  | N/A | N/A |
| High  | N/A | N/A | N/A |
| Best Estimate | 0 | 31.7 | 272.9 |
| Description and scale of key monetised benefits by ‘main affected groups’ Similar to Option 2a) any costs to one side in transfers between TV platforms and commercial PSBs will accrue as benefits to the other side. The central estimate is for PSBs to benefit by £32m p.a. This transfer could, however, range from £20m to £40m. |
| Other key non-monetised benefits by ‘main affected groups’ Should there be an increase in payments to commercial PSBs this may result in an increase in investment in original UK content (as PSBs spend proportionally more on UK original content than pay channels). |
| **Key assumptions/sensitivities/risks** Discount rate (%) | 3.50% |
| The risk of negotiations failing in Option 2a) is negated by underpinning them by appointing Ofcom to adjudicate disputes over negotiations. |

BUSINESS ASSESSMENT (Option 2b)

|  |  |  |
| --- | --- | --- |
| Direct impact on business (Equivalent Annual) £m:  | In scope of OITO? |  Measure qualifies as |
| Costs: 24.9 | Benefits: 24.9 | Net: 0 | Yes | IN |

# Summary: Analysis & Evidence Option 3a)

Description: Extend EPG regulations

FULL ECONOMIC ASSESSMENT

|  |  |  |  |
| --- | --- | --- | --- |
| Price Base Year 2015 | PV Base Year 2015 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) |
| Low: 0 | High: 0 | Best Estimate: 0  |

|  |  |  |  |
| --- | --- | --- | --- |
| COSTS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
| Low  | 21.1 | 1 | 0 | 21.1 |
| High  | 100.4 | 0 | 100.4 |
| Best Estimate | 60.8 | 0 | 60.8 |
| Description and scale of key monetised costs by ‘main affected groups’ By extending the EPG regime PSBs will be guaranteed prominence in new and alternative channel / content discovery systems. This is effectively transferring an asset to PSBs from businesses that could have attempted to monetise prominence in those systems (which could be platform operators but could also be TV manufacturers or other businesses). The current value of that asset is estimated at £21m. However, as uptake of alternative systems increases the value of this asset is expected to increase and could be as high as £100m in 10 years time. The transfer would take place in year one of the regulations coming into force but for the central estimate we take a mid-point of the potential 10 year range of values to reflect that the asset is expected to increase in value. |
| Other key non-monetised costs by ‘main affected groups’ Extending the EPG regulations may impose some costs on, for example, smart TV manufacturers who produce their systems for a global market and may need to adjust these for specific UK requirements. The Department is seeking further information on this through the consultation process. |
| BENEFITS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
| Low  | 21.1 | 1 | 0 | 21.1 |
| High  | 100.4 | 0 | 100.4 |
| Best Estimate | 60.8 | 0 | 60.8 |
| Description and scale of key monetised benefits by ‘main affected groups’ As a result of this asset transfer PSBs benefit to exactly balance the costs above, i.e. they gain an asset worth £21m now, which could rise up to £100m over the next 10 years. The BBC is within scope of this change and will capture approximately £8m to £40m of the asset value, making this option a net cost to business. |
| Other key non-monetised benefits by ‘main affected groups’ Securing prominence will help commercial PSBs maintain their advertising revenue as viewers switch to alternative systems in the future. This may result in an increase in investment in original UK content (as PSBs spend proportionally more on UK original content than pay channels), or at least a lesser decline than might be expected should commercial PSB revenue fall. |
| **Key assumptions/sensitivities/risks** Discount rate (%) | 3.50% |
| This analysis is based on underlying data from the secondary market for Sky EPG slots. It is assumed that these values are scalable to other platforms based on viewer numbers. The take up of new ways of accessing content, such as through smart TVs, is at a relatively low level at the moment, and assumptions around future take-up are by their nature speculative but informed by the best evidence available. |

BUSINESS ASSESSMENT (Option 3a)

|  |  |  |
| --- | --- | --- |
| Direct impact on business (Equivalent Annual) £m:  | In scope of OITO? |  Measure qualifies as |
| Costs: 5.6 | Benefits: 3.3 | Net: -2.2 | Yes | IN |

# Summary: Analysis & Evidence Option 3b)

Description: Remove the EPG Prominence Regime

FULL ECONOMIC ASSESSMENT

|  |  |  |  |
| --- | --- | --- | --- |
| Price Base Year 2015 | PV Base Year 2015 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) |
| Low: 0 | High: 0 | Best Estimate: 0 |

|  |  |  |  |
| --- | --- | --- | --- |
| COSTS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
| Low  | 96.2 |  | 0 | 96.2 |
| High  | 137.4 | 0 | 137.4 |
| Best Estimate | 116.8 | 0 | 116.8 |
| Description and scale of key monetised costs by ‘main affected groups’ By removing the EPG regime PSBs will no longer be guaranteed prominence on the current form of linear EPGs. This is effectively transferring an asset currently held by PSBs to platform operators, who will then be able to monetise these prominent EPG slots. The current value of that asset, adjusting for platforms that are all or part-owned by PSBs, is estimated at £137m but is expected to fall to £96m in 10 years time. The transfer would take place in year one of the regulation coming into force but for the central estimate we take a mid-point of the potential 10 year range of values to reflect that the asset is expected to increase in value. Approximately £38m to £55m of this cost is borne by the BBC, making this option a net benefit to business.  |
| Other key non-monetised costs by ‘main affected groups’  |
| BENEFITS (£m) | Total Transition  (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
| Low  | 96.2 |  | 0 | 96.2 |
| High  | 137.4 | 0 | 137.4 |
| Best Estimate | 116.8 | 0 | 116.8 |
| Description and scale of key monetised benefits by ‘main affected groups’ As a result of this asset transfer platform operators benefit to exactly balance the costs above, i.e. they gain an asset worth £137m now, which could fall to £96m over the next 10 years.  |
| Other key non-monetised benefits by ‘main affected groups’ Losing the prominence currently guaranteed will likely mean that commercial PSBs either have to pay additional fees to pay TV platforms or suffer a loss of viewers. This may result in a decrease in investment in original UK content (as PSBs spend proportionally more on UK original content than pay channels). |
| **Key assumptions/sensitivities/risks** Discount rate (%) | 3.50% |
| This analysis is based on underlying data from the secondary market for Sky EPG slots. It is assumed that these values are scalable to other platforms based on viewer numbers. The take up of new ways of accessing content, such as through smart TVs, is at a relatively low level at the moment, and assumptions around future take-up are by their nature speculative but informed by the best evidence available. |

BUSINESS ASSESSMENT (Option 3b)

|  |  |  |
| --- | --- | --- |
| Direct impact on business (Equivalent Annual) £m:  | In scope of OITO? |  Measure qualifies as |
| Costs: 6.4 | Benefits: 10.7 | Net: 4.3 | Yes | OUT |

**Evidence Base**

**1. Background**

Broadcasters and TV platforms co-exist interdependently as part of the value chain that delivers a mix of content, packaged in a range of business models, across various distribution technologies and devices. A regulatory framework which requires that core PSB channels be available for viewers to watch on all TV platforms, governs these complex commercial arrangements and that those and other designated channels feature prominently on electronic programme guides (EPGs).

**a) Definitions**

By *TV* ***platforms****,* we refer to the businesses that deliver TV broadcast content into our homes, using various technologies to do so. The main platforms are:

* Freeview – uses digital terrestrial television (DTT) signal to carry linear TV and other services (though a new Freeview Connected service is expected to be launched sometime in 2015 to carry IP services including on line players)
* Sky, Freesat and FreeSat from Sky– use satellite to carry linear TV and other services with IP to carry on-demand services
* Virgin Media – uses digital cable to carry TV and internet services
* Youview, BT TV, Talk Talk TV – use internet in combination with DTT signals

By ***broadcasters***, we refer to television stations that produce, commission or acquire television programmes and who transmit via the platforms (i.e. television programmes).

By ***public service broadcasters***, we refer to the BBC and other broadcasters who are obliged as part of the terms of their licences to broadcast a specific amount of public service broadcasting, including meeting certain production and content obligations. Public service broadcasting refers to TV programmes that are broadcast for the public benefit rather than purely commercial purposes. The PSB institutions are: BBC, Channel 4 Corporation (C4C), Channel 3 licensees (ITV plc, STV Group plc, UTV Media plc), S4C, Channel 5 and local television services. In addition to delivering core PSB channels, the commercial PSBs also have **portfolio services** which may deliver PSB content but which fall outside the definition of PSBs. This includes +1 channels and HD variants.

By ***balance of payments***, we refer to the net balance of the payments made between broadcasters and platforms for the mutually beneficial exchange of goods and services made in order to deliver broadcast content into viewers’ homes. The precise balance of payments will vary for different broadcasters and across different platforms.

**Electronic programme guides (EPGs)** typically operated by a remote but increasingly using apps on tablets and smartphones, provide users of television and radio with regularly updated menus displaying broadcast programming and updated scheduling information for past current and upcoming programming and facilitate and control access to these programmes. EPGs also allow viewers to select favourites and screen services.

**b) The Regulatory Framework**

**Section 73, Copyright, Design and Patents Act (1988):** This section provides that in certain circumstances the retransmission on cable of certain broadcasts is not an infringement of the copyright in the broadcast itself nor is it an infringement of the underlying copyright in any work included within the broadcast. In other words, cable operators do not have to pay copyright fees to PSBs for content retransmitted via cable. In recent years, online players showing PSB content have emerged that have sought to rely on section 73 to avoid paying copyright arguing that this provision applies to retransmission via the internet. The Government’s view is that section 73 should not extend to content transmitted over the internet.

**Must offer**: These obligations require relevant broadcasters to make their PSB channels available to every appropriate network and satellite services. The scope does not extend to PSBs’ video-on-demand (VoD) or portfolio services.

Sections 272 and 273 of the Communications Act 2003 enable Ofcom to impose conditions on relevant broadcasters to ensure that their PSB channels are offered as available to every appropriate network and satellite television service.

* Section 272 relates to all networks that are used by a significant number of end-users as their principal means of receiving television programmes.
* Section 273 specifically relates to satellite television services and applies insofar as its objectives are not secured by conditions imposed under section 272.

These sections were brought into force in 2010, following which “must-offer” conditions were included in the broadcasting licences for the commercial PSBs.

The BBC is not subject to these provisions but has a similar set of obligations with the effect that the BBC must to do all that is reasonably practicable to make its services widely available to its users; in practice this means that the BBC must offer its services to all significant platforms.[[1]](#footnote-1)

The requirement to offer is ‘subject to the need to agree terms’. However, the PSBs have argued that current regulations deny them the ability to threaten to withdraw a channel, and therefore undermines their ability to negotiate effectively with platforms.

**Must carry:** Section 64 of the Communications Act 2003 implements Article 31 of the Universal Service Directive, which allows Member States to impose must-carry obligations. This provision enables Ofcom to set general conditions to secure the broadcast or transmission of the PSB channels on an electronic communications network.

This power was designed to secure and maintain widespread distribution of PSB channels at a time when digital platforms were still developing and before plans for digital television switchover were developed. To date Ofcom have not needed to exercise this power as no situation had arisen where a platform has refused to carry a PSB.

Overall, the potential impact of changing existing must offer/must carry rules is difficult to ascertain, due to the complex commercial and other relationships between the platforms and broadcasters, and the fact that the basis and outcome of negotiations between platforms and broadcasters tend to be confidential.

**Electronic Programme Guides:** Section 310(8) of the Communications Act 2003 defines an EPG as a service, which consists of—

1. the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and,
2. a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide.

The information is transmitted as a broadcast signal, which is then interpreted by either the built in receiver in the television set or an adjoining set-top box. Digital UK, the consortium of PSBs and Arqiva[[2]](#footnote-2) that is responsible for Freeview, has worked with TV manufacturers, as part of the Digital Television Group, to ensure that the ability to interpret the Freeview data stream has been built-in to all new TVs as standard since 2008. On older TVs, Freeview can still be accessed, but a separate set top box is required. Pay TV providers like Sky, Virgin Media, BT and TalkTalk all supply set top boxes, which receive the data streams for their TV services and EPGs.

The layout of an EPG, its functionality and the number of channels accessible varies from service to service. For example, at the beginning of October 2012 there were 563 channels listed on the Sky EPG across 17 genre groupings, 261 channels listed on the Virgin Media EPG across 13 genre groupings, and 99 channels listed on the Freeview EPG across 7 genre groupings. While channel rankings and availability do vary across the different EPGs, what all three have in common is that they always have a main section headed[[3]](#footnote-3) by the 5 big terrestrial PSBs (BBC1, BBC2, ITV, Channel 4[[4]](#footnote-4) and Channel 5).

For EPG navigation on Sky and Virgin Media viewers have the option of either accessing the entire channel list, or using one of the genre filtering options to restrict the list to the channels within a specific channel genre section. On the Freeview EPG viewers have to access the entire channel list.

The number of channels listed per EPG page will depend on the equipment used though pay TV platforms standardise their EPG pages across different devices supplied[[5]](#footnote-5).

The regulation in sections 310 and 311 of the Communications Act 2003 only covers EPG listings of certain standard definition, linear services reflecting the TV provision available at the time. With the arrival of high-definition (2005 on Cable and 2006 on Satellite), on-demand and catch-up services (limited services introduced in 1999 first services on cable in 2005), and the emergence of more interactive and varied TV menus, we are concerned about the regulations becoming obsolete, and PSB content becoming less viable as a result. For example, PSB HD and on-demand services are not included within the regulations, nor are the wider PSB portfolio channels, some of which, such as children’s or local channels, we may want to consider including. The rules also fail to fully reflect the prominence needs of new local TV services resulting in different channel allocations on different platforms and an unsatisfactory outcome for local TV services in Scotland and Wales.

In addition, the rules on prominence are increasingly difficult to apply, as the range of tailored TV menus increases as EPG providers create different visual interfaces, giving the viewer increasingly interactive, non-numerical content displays and access to content which can be listed in different sub-categories or broken down into programme listings.

**2. Policy Options Considered**

This IA refers to an open consultation on a broad range of policy options covering several interrelated aspects of the relationship between TV Platforms including satellite and cable, commercial PSBs, and to a limited degree the BBC and other channels. The areas broadly covered are the removal of Section 73, the future of must offer and must carry obligations, and the future of the EPG regime. The Department has a preferred option for the removal of Section 73 but, at this stage, has an open view on the other policy proposals.

While a final policy proposal may cover a combination of these options, the Department considers it disproportionate and impractical to provide a summary and analysis for all possible permutations. As a consequence, this IA provides a separate summary and analysis of the main policy options within the three broad areas. The Government does not rule out that there are interactions between these options, and intends to improve its evidence base on these through the consultation process. The final stage IA will be updated to take account of this new evidence gathered though given that some of the effects will be directly or indirectly due to the various layers of commercial relationships between the parties, there will always be limitations on the evidence and information that will be made available as part of the consultation, even on a confidential basis.

**2.1 Option 1: Remove S73**

The first option is the removal of S73 of the **Copyright, Design and Patents Act (1988)**. This option would ensure an effective copyright regime underpinned negotiations between cable TV providers (Virgin) and PSBs, but would otherwise make no changes to the current balance of payments.

Removal of S73 in itself may result in a limited flow of payments from cable to the commercial PSBs. However, in view of the complexity and breadth of these commercial negotiations, and in particular if must offer is retained, this is considered an unlikely outcome in the short and medium term, as must offer and must carry obligations would continue to ensure that neither party would unilaterally be able to exit negotiations and withdraw/remove PSB services. This is considered in more detail in our analysis of costs and benefits below.

The Government believes there is no longer a justification for S73 and for the purpose of this IA this is considered a minimum policy requirement by the Government, and will thus accompany any combination of the remaining policy options adopted as a final policy proposal.

**2.2. Option 2: Amend or remove must offer and must carry**

The Government does not currently have a single preferred policy option within the options presented here, but believes that removing barriers to freer negotiations could result in stronger outcomes and support increased investment in the creative industries sector, and at the same time protect reach and discoverability of PSB content for audiences. However, while the Department considers that options to deregulate negotiations between platforms and commercial PSBs may be desirable, we are mindful of the complexity of the relations and therefore want to build a stronger evidential base and gather a wide range of views on the detailed and cumulative impact of deregulating the existing must offer and must carry regulations. Given that some of the effects will be directly or indirectly due to the various layers of commercial relationships between the parties, there will always be limitations on the evidence and information that will be made available.

For the purpose of this Impact Assessment, we describe two options in order to assess the impact of the change, however, whilst relaxing requirements and providing commercial PSBs with more latitude would require amendments to the regulatory framework and greater involvement from Ofcom.

*Option 2a): Remove must offer and must carry regulation and require that EPG slots be held*

This option would remove the regulation requiring commercial PSBs to offer their content to TV platforms and similarly would remove the power for Ofcom to compel platforms to carry PSB content. This option would allow parties to negotiate freely on the balance of payments between them for the carriage of PSB content on TV platforms. This would introduce a risk of consumers seeing blank screens if commercial negotiations failed to reach agreement, as has been experienced in other countries with such arrangements. This possible outcome will be softened by all PSBs staying to be available via DTT as this carriage is not secured via must offer and must carry but also via their licences under section 214 of the Broadcasting Act.

*Option 2b) – Amend must offer and must carry*

Current must offer legislation already requires that PSBs offer their channels ‘subject to agreeing terms’.  Under this option, Government could legislate to make clear that must offer and must carry obligations are only applicable in the case where a ‘commercially reasonable’ offer has been made, and the second party refuses to accept this proposal.  This option would include the specification of an arbitration system – similar to the already existing TPS system on Sky, which would be administered by Ofcom in the case that agreement over what would constitute a reasonable offer could not be reached.

**2.3 Option 3: The future regulation of EPGs**

Option 3a): Strengthen the EPG regime to make it more resilient to technology change

The existing EPG regulations were developed in 2003 to ensure that PSB services remained prominent as television migrated from analogue to digital. The evolution of television since then and the emergence of smart TVs controlled by increasingly sophisticated interfaces will over time make these increasingly irrelevant. Indeed platforms and other services providing programme listings and access to content may, for financial reasons, choose to promote other TV ahead of PSB content. This could lead to PSB content being less discoverable and therefore less frequently watched than at present.

As set out in the benefits section we estimate that the prominence reduction, in terms of volume of viewers switching to alternative systems, could be around 30% over the next decade. This would be a substantial reduction in prominence, and as such we would expect the change to reflect other recent losses in prominence with an equivalent negative impact on viewing figures.

The reduction in viewing figures resulting from less prominence (rather than other reasons) will not only reduce the prevalence of PSB, but will also have a knock on effect which, particularly for commercial PSBs, could be significant. This is because, other things being equal, revenues derived from PSB licenses will be squeezed making it harder for them to justify the funding public service content, in areas such as children’s programming, regional news and programming and independent production if their advertising and sponsorship revenues come under downward pressure because of declining audiences. As a result, without intervention the current prominence regime may no longer support wider public policy aims to maintain and strengthen PSBs. Strengthening the system at least for the medium term is therefore our preferred option.

The Government is therefore consulting on redefining an EPG service so that it is brought up to date with recent developments in TV technology and to give it the flexibility to adapt to future technological developments. We have identified three areas in the consultation where amendments could be made in order to maintain the current policy objective and ensure regulation remains fit-for-purpose:

(1) amending the existing framework to be technology neutral,

(2) including VoD content where this is part of a package offered alongside broadcast content;

(3) integrating technologically advanced services (e.g. HD services) into the existing framework.

*Creating a technology neutral framework*

At present we capture only EPGs, which take their information from a broadcast data stream, but in the converged media environment we are aware that some services providing materially the same function as broadcast EPGs, are underpinned partly or completely by data transmitted via the internet (e.g. on the Virgin TiVo EPG or TV-CatchUp). In order to remain technology neutral, this option would extend prominence to apply regardless of how the information underpinning an EPG services is communicated.

*Including video-on-demand content*

Currently, the EPG definition only extends to live broadcast content. It is possible that content transmitted via the internet on-demand e.g. through services like iPlayer might not be as easily discoverable in the future. Currently, the PSB players (e.g. iPlayer), which distribute VoD content, are already prominent on the EPG-like listings of VoD players on the major platforms; this option would ensure this continues.

*Integrating technologically advanced services*

HD channels can either be accessed from within the main EPG menu, or from within an HD submenu. The prominence of PSB HD channels in both menus is variable, despite the fact that, for example, BBC 2 SD and BBC 2 HD are perfect simulcasts in offering exactly the same programmes. We do not think that SD and HD services should be listed next to each other on the EPG but we do think that there should be a consumer friendly way of accessing PSB programmes in the best quality that the consumer’s TV-set can receive.

There is a possible a technological solution: HD channels can swap into SD slots where a broadcaster offers their content in HD and the consumer has the technology to enjoy it. Where the consumer’s TV set only receives content in SD quality that is what they will access from the same EPG listing. We believe EPG providers should ensure that the highest quality version of PSB content that the consumer can access – whether that’s HD or in future UHD - is available from the most prominent listing. Government is aware that there are some services, such as BBC1, which are not perfect simulcasts in SD and HD as they offer local news and local TV. If there is no feasible technological solution for accessing these channels or programmes in HD and SD from the same slot by the consumer an alternative solution is that Ofcom has the discretion to determine what appropriate prominence is in this case.

Option 3b)**:** Abolish the EPG prominence regime

This option would remove the current requirement for EPG providers to offer appropriate prominence to PSB channels, and allow those parties to negotiate over these EPG slots as they do with the PSB portfolio and commercial channels.

Rather than updating the existing regime for technical innovation, this option would recognise that the importance of traditional EPGs may be declining as TV viewing habits change, and that discovery may be being unnecessarily maintained at the cost of a more dynamic market in which non-PSB channels could more effectively compete with the commercial PSBs for audience share.

We are seeking views if this deregulation would provide a productive route to ensure the best quality content is easily discoverable for viewers while also maximising investment and supporting a diverse, vibrant and healthy creative sector.

**3. Analysis of Costs and Benefits**

Due to the breadth of options covered, the lack of a preferred option (other than on s73) and the likelihood of a hybrid option adopted as a preferred option post consultation, the following assessment aims to focus on first order impacts of the individual proposals included. The proposals largely impact on negotiations between different firms and therefore the impacts tend to be transfers between firms rather than a net impact on business. This impact on negotiations has been estimated where possible, and consideration has been given as to whether increased costs and benefits to TV platforms or PSBs will be passed on to consumers and production companies based in the UK.

However, under any new regime, the outcome of commercial negotiations between TV platforms and commercial PSBs will be subject to a variety of factors, many of which are not observable. Figures presented in this Impact Assessment should thus be regarded as illustrative of the magnitude of the impact different options could have on negotiations, rather than firm predictions of outcomes. Best estimates are thus presented within a relatively large range. The final stage IA will be updated to take account of any new evidence gathered through consultation but due to the various layers of commercial relationships between the parties, there will always be limitations on the evidence and information that will be made available and this will be the case for a final stage IA.

**3.1 Option 1: Abolition of Section 73**

This option in itself would leave must offer and must carry obligations in place and thus only lead to a minor change for negotiations between commercial PSBs and cable operators (i.e. Virgin). To carry out a detailed assessment of potential impacts we would ideally examine the copyright payments between different broadcasters and Virgin, but as this is commercial information it is not available. Currently section 73 secures that zero payments are made between PSBs and Virgin, and we are aware that through negotiations this is also the case for PSBs and Sky, although we have no information what payments are made for PSBs portfolio channels (ITV2, E4, etc.).

In terms of cable providers, there could conceivably be a shift in negotiating power towards PSBs and therefore a transfer from Virgin to PSBs. Section 3.2.1 below provides analysis of the impact on negotiations of removing must offer and must carry negotiations and abolition of Section 73 could be modelled as an extension of this shift in negotiating power. There is a lack of evidence to inform this but illustratively we have considered a high estimate of a shift of 5% of the central estimate discussed in Section 3.2.1 in favour of PSBs, i.e. **£2m annually**. We are seeking further evidence to inform this assumption through the consultation.

**3.2 Changes to Must Offer and Must Carry**

All viable policy options identified in this area that with the aim of deregulate the legislative framework underpinning commercial negotiations between TV platforms and commercial PSBs as far as possible. All of the options discussed will only have an impact on five large enterprises, namely ITV, Channel 4, Channel 5, Sky and Virgin. As a consequence, by far the largest expected impact is a change in negotiation outcomes and an associated shift of funds between businesses, meaning that **headline business impacts of all policy options will net to zero, regardless of the option adopted post consultation and the detailed outcome of negotiations, subject to the assumptions set out below. The following scenarios describe some of the possible outcomes however the issues described are by necessity simplified and cannot fully reflect the complex contracting arrangements between commercial PSBs and platforms.**

***3.2.1 Potential Negotiation Scenarios***

A key assumption made in the following assessment is that the carriage of commercial PSB channels with established audiences by TV platforms on satellite and cable is mutually beneficial, and that both sides will act in their rational self-interest during negotiations and that commercial PSBs would not want to weaken their position with advertisers. Thus, negotiations are assumed to succeed, with a net benefit for both parties compared to a scenario in which the platform terminates arrangements or the broadcaster withdraws some or all services.

The following estimates should be considered as illustrative of the potential benefits at stake for the parties involved in negotiations, and thus of potential shifts in the balance of payments. A precise estimate of negotiation outcomes is not possible without a deep analysis of the contractual relationships, which would entail access to sensitive commercial data. Further evidence is being sought through the consultation to inform these estimates but at this stage it is considered disproportionate and speculative to provide firm estimates, particularly as impacts on business overall always net to zero.

*Remove Must Offer and Must Carry (Option 2a)*

Outcomes of commercial negotiations between TV platforms and PSBs cannot be predicted with a great amount of precision and additional information will need to be sought through the consultation and thereafter. Nevertheless, a report commissioned by DCMS from Mediatique[[6]](#footnote-6) aims to estimate the impacts of a ‘fully deregulatory’ system in which the commercial PSBs (i.e. excluding the BBC) can freely withhold their programming from TV platforms, while TV platforms are free to withhold carriage. Crucially, this “carriage consent” regime would go further than the deregulation proposed here, namely by abolishing the EU-mandated Technical Platform Services regime on satellite, which the Department does not consider a viable option[[7]](#footnote-7). In spite of this limitation, Mediatique’s analysis remains the most detailed available assessment of the likely distributional impacts of deregulation prior to consultation. Among the options considered here, it has some resemblance to Option 2a).

The analysis by Mediatique is based on the distribution of benefits from TV platforms’ carriage of PSB channels between platforms and PSBs, and which side would stand to lose more from a failure of negotiations. The potential losses to platforms take the form of users cancelling their subscriptions if platforms no longer carry PSBs (which they term “incremental churn”), which are available on alternative, free to view platforms, such as Freeview and Freesat. Potential losses to PSBs take the form of lost reach to consumers (which they term “viewing impairment”), who may not make the effort to access their content if they cannot do so via Virgin or Sky (and would have to ‘toggle’ their TV sets in order to access digital terrestrial signal where PSBs would still be available). Economic theory would suggest that if one side has more to lose from negotiations failing then they would be willing to pay more to strike a deal and net payment flows between PSBs and platforms would reflect the relative magnitude of these impacts.

*Figure 1: Mediatique estimates of net payments under commercial negotiations including satellite (£m per year, 2012 prices).*



Figure 1 shows Mediatique estimates of payment flows from platforms to PSBs depending on the drop in subscriptions for TV platforms because they no longer carry PSBs (incremental churn, Y axis) and reduced viewership of PSBs in homes keeping their platform subscription (viewing impairment, X axis) if negotiations fail. Given the unpredictability of impacts these are presented to reflect a broad range, from 0-20% incremental churn and from 0-100% viewing impairment. For example, a 6% drop in subscriptions for platforms combined with a 10% reduction in viewers for PSBs is estimated to lead to a £80m per annum payment from platforms to PSBs. Negative figures in the table above represent a payment from PSBs to platforms. The outer ranges of this table provide estimates for extreme outcomes which are highly unlikely in practice. Note that the table above represents Mediatique’s estimates based on collective negotiations by PSBs. The report states that under individual negotiations the figures are skewed slightly more towards platform operators but that the overall figures are quite similar, largely because there is one dominant party (ITV) in both sets of negotiations. Central estimates are produced for both individual and collective negotiation scenarios (see below) but the full table of scenarios above is only provided for collective negotiations.

Mediatique’s best estimate of where’fair payment’ equilibrium would settle is of £20m to £220m per year in favour of PSBs if PSBs were to negotiate collectively, and of £110m in favour of platforms to £190m in favour of PSBs per year if PSBs do not negotiate collectively. The report concludes “while payments in favour of PSBs are in our view more likely, payments flow in the opposite direction cannot be ruled out.” Under all options considered here, **PSBs will not be able to negotiate collectively.** As a consequence, **our central estimate is a flow of £42.3m annually from TV platforms to commercial PSBs** in 2015 prices (i.e. the mid-point of £40m uprated from 2012 to 2015 prices).The NPV over 10 years of this transfer is **£364m**.

Under this option there is a risk that negotiations do not result in agreement and viewers are left with blank screens for a period, as has occurred with similar regimes in other countries (most notably the US). As both parties lose out under such a scenario and the UK has a history of very few disputes between platforms and channels (unlike the US) this is considered to be unlikely. There are a number of other interactions between PSBs and pay platform operators that may also limit such an action, including contracts with advertisers and agreements over sports rights. However, blank screens are considered a risk and should it occur there would be a loss of welfare to viewers. This loss of welfare is assumed to be small as even if a certain paid for platform had blank screens for a certain PSB channel the majority of consumers should be able to switch to an alternative free source (such as Freeview) and continue to receive the channel. There would be a minor annoyance value in having to do this but the impact on welfare should be minimal. However, it is currently unclear how many people may be unable to do this, for example because they only have access to satellite services and/or have no functioning outdoor aerial. The consultation seeks further evidence on the likelihood of this occurring and the impact it would have on viewers.

*Amend must offer and must carry (Option 2b)*

Option 2b aims to replicate the outcome of free commercial negotiations, while avoiding potential adverse impacts on consumers by invoking must offer and must carry regulations in case one party rejects a ‘commercially reasonable’ offer. The Department’s initial assessment prior to the consultation is that outcomes under this option should be close to Mediatique’s estimate of free negotiations. However, it is assumed that negotiations will be slightly more biased towards the status quo of zero net payments and within a narrower range than under options which allow either party to pull out of negotiations. Through the consultation we will seek further evidence to inform this assumption. Thus, we estimate net transfers from TV platforms to commercial PSBs of between £20m and £40m annually, with a best estimate of **£32m** in 2015 prices. The NPV of this transfer over 10 years is **£273m**.

***3.2.2 Wider Impacts***

Any changes in payment flows between platforms and PSBs will likely have wider impacts on consumer prices and programming budgets. It is speculative to estimate precisely how platforms and PSBs might pass on or absorb additional costs and revenues but Mediatique do provide some indications of what might happen[[8]](#footnote-8).

If payments were to flow from platform operators to PSBs then Mediatique believe there is likely to be a net increase in original content spend. This is because PSBs spend a high proportion of their revenues on content and it is likely any increased revenue would be reinvested, up to around 40-60% depending on the PSB. However, such an increase in content is not guaranteed and additional revenues for PSBs could be spent on other investments.

There may be some loss of content spend for the in-house channels of platform operators (e.g. Sky1) but given a far smaller proportion of their budgets are spent on original non-sports content[[9]](#footnote-9) there is likely to be a net gain overall, and competitive pressures may force them to maintain investment anyway. Increasing the commissioning of original content benefits the UK creative industries by ensuring more TV production takes place in the UK, rather than being bought from overseas. The increased costs to platform operators in this scenario may lead to increased prices for consumers as operators pass on the costs through higher subscription fees. Mediatique suggest that between 50% and 100% of the costs could be passed on to consumers based on US experience. Depending on the size of the payment this could be a relatively small impact when spread across all platform subscribers. For example, the £42m per annum central estimate above would result in just a few pounds per year being added to subscription fees. However, this would depend on the impact of churn and the overall position on other rights. For example, Sky could pass charges to Virgin by trying to up fees for carriage of Sky services while Virgin couldn’t do the same.

If payments were to flow from PSBs to platform operators the opposite impacts could be expected. PSBs might be expected to cut their original programming spend, and the additional revenues for platform operators could lead to lower prices to consumers. Given that the estimates for flows of payments above are speculative, could flow either way and depend on a wide range of factors we have not provided a central estimate of the impacts on original content spend or consumer prices.

**3.3. Option 3: Future-Proof or Remove the current EPG Regime**

One of the reasons for exploring reform of the current EPG regime is the appearance of new technologies and new non-linear ways of watching television, such as through catch-up and video on demand services. It is therefore important to consider the counterfactual in any analysis of impacts – i.e. what can be expected to happen in terms of take up of these new technologies and what impact this would have. Such analysis is by its nature speculative. Technology is moving fast and it is very difficult to predict new developments, which may lead to shifts in how people access content. However, to provide a meaningful counterfactual a series of conservative assumptions are presented below and their impact on the EPG regime estimated.

*Increase in connectivity*

The main changes in how people access content are likely to be driven by connectivity to the internet. This not only reflects increasing access to content through smartphones, tablets and laptops but also the use of internet connected TVs. Ofcom’s 2014 Communications Market Report[[10]](#footnote-10) establishes that the TV remains the dominant device for watching audio-visual content, with 97% of UK adults watching a TV set each week and on average spending 4 hours 2 minutes per day doing so. In comparison, laptops are used to watch audio-visual content by 14% of the population, desktop computers by 13%, tablets by 11%, games consoles by 7% and smartphones by 7%. In terms of TVs, the Communications Market Report also indicates that 12% of UK homes now have a smart TV (one with in-built internet functionality) which is an increase of 5pp since 2013, while 38% of UK households had an active internet-enabled set-top box in March 2014 which is an 11pp increase since 2013[[11]](#footnote-11). In 2014 82% of smart TV owners used the in-built internet connection on their TV, a 5pp increase on 2013, and of the 18% who did not a third were connected instead through another device such as a set-top box. Smart TVs also accounted for 45% of all TV sales in Q1 2014, increasing from 20% of sales in Q1 2012 and 28% of sales in Q1 2013. This indicates that although the TV set remains the dominant way of accessing audio-visual content (in particular long-form content that is not a short clip) consumers are increasingly able to access content through the internet on their TV.

The Communications Market Report also highlights how the roll-out of VoD has accelerated in recent years, with an increase in activity since 2010 and a diversification in VoD services offering consumers new ways to access content. In H2 2013 50% of UK adults claimed to have used a VoD service within the previous 12 months, a 23pp increase on H1 2010.

*Selected VoD service developments (Source: Ofcom Communications Market Report 2014)*



Despite this increase in available services and ability of consumers to access them VoD currently only accounts for a small proportion of all viewing time. Results from Ofcom’s Digital Day diary research reported in the 2014 Communications Market Report showed that adults watched an average of 2 hours 59 minutes of live TV per day, equating to 69% of all their media viewing time. The next most popular viewing activity, recorded TV, accounted for 40 minutes (16%). The research also showed that, on average, people spent about the same amount of time watching TV or films on DVD, Blu-ray or VHS video (physical media) as they did watching free on-demand/catchup TV (12 minutes, or 5% of all viewing time, each). Paid-for, downloaded or streamed TV or films accounted for 7 minutes (3%). Added together, free and paid on-demand and streamed content accounted for 8% of all viewing time across all devices. Although only a small proportion of total viewing it is estimated that unique programme requests for long-form VoD (programmes rather than short clips) have risen by 38% between the second half of 2012 and the second half of 2013. This followed an increase of 21% between H2 2011 and H2 2012[[12]](#footnote-12).

There is no simple measure which represents how much viewing takes place through traditional linear EPGs and how much takes place through alternative methods. The increase in demand for VoD is one indication but other forms of TV viewing can also take place through alternative methods (for example, live TV viewing accessed through a streaming app). However, the evidence suggests that such non-linear viewing is currently a low proportion that is growing and is likely to grow further.

In 2013 it was estimated that PSBs had a risk of losing the prominence secured through traditional EPGs by 30pp over 10 years[[13]](#footnote-13). This was based on projections of the proportion of people owning connected TVs increasing by 45pp over the period (extrapolated from an estimate by Enders analysis) but adjusting downwards for people continuing to use linear EPGs on their connected TVs and alternative forms of organising content continuing to choose to promote PSBs anyway. Since producing that impact assessment there has continued to be a fairly show shift towards connected TVs and VoD, as outlined above, but there is no new evidence on the specific issue of EPG prominence. Therefore the Department continues to believe a 30pp shift away from using linear EPGs to access content is a reasonable central estimate. This is modelled as a gradual impact with a 3pp shift each year over the 10 years. As stated above this is by its nature a speculative estimate with a high degree of uncertainty but provides a central estimate on which to base a counterfactual.

*Value of EPG Prominence*

EPG prominence is guaranteed for PSBs under the current regime on the basis that a prominent EPG position will help to secure a greater number of viewers for PSB content. More widely, for any commercial channel the economic value of EPG prominence can be seen in the extent to which it secures more viewers and therefore greater advertising revenue. Technologia commissioned by DCMS in 2012 explores this in a paper[[14]](#footnote-14). As part of the study Technologia interviewed stakeholders who all confirmed the importance of EPG positioning while identifying various factors (such as being top of a category or page, or having a memorable round number) as being important rather than just being as high in the listings as possible. The study also cites a YouGov survey for the BBC where the majority of Sky users access their content through channel menus (68%) or through scrolling up and down channels (18%) with relatively few typing in specific channel numbers (just 12%). Both use of menus and scrolling would be expected to favour channels at the top of an EPG (either overall or within a genre). Clearly EPG positioning is not the only factor in determining whether people access content and some content will always be sought out no matter where it is located in the EPG. However, the evidence presented suggests that EPG position does have some influence on viewing numbers.

As part of the Technologia study, Technologia asked Canis Media to estimate the economic value of EPG slots on the Sky platform. EPG positions on the Sky EPG can be traded on a secondary market, subject to certain rules, and Canis Media are brokers that specialise in the valuation and trading of these positions. The top 5 positions that are currently occupied by the PSBs have never been traded as they are effectively reserved by the prominence regime but Canis have used their experience of other trades to estimate that the value of the top slot in the entertainment genre (BBC1) would be worth approximately £20m on the secondary market. Technologia use the top and bottom genre values from Canis to create a geometric series model of all EPG slots and estimate the top 5 currently occupied by the PSBs would be worth around £90m. This is illustrated below.

*Illustration of geometric model of the value of EPG slots (Technologia, 2012, based on Canis Media upper and lower figures)*



This estimate represents an asset value if the EPG slots were to be traded on the secondary market. Given a reasonably competitive market this should in theory equate to the amount of additional value that channel slot could earn for a prospective channel (through additional advertising revenue) over the life of the asset.

The estimate of a £90m value only reflects the value on the Sky EPG. Ofcom’s 2013 Communications Market Report estimates the take-up of pay digital satellite providers (of which Sky is the only major provider) at 36% of households. Given that all the main platform providers EPGs currently follow a similar format and value should relate directly to volumes of viewers we have assumed that this £90m can be extrapolated to all EPGs using the 36% market share. This indicates the total value of the top 5 slots across all traditional EPGs (including Sky, Virgin, BT, Freeview, etc.) is **£250m** (in 2012 prices). As explained above there is no explicit measure of the number of people currently accessing content through alternative systems but the 8% of viewing time currently accounted for by VoD (as reported in the Ofcom Communications Market Report) is the closest proxy available. It is not clear whether a market has developed yet in prominent positions on alternative systems given their early stage of development and low current usage. However, an 8% market share implies the value of equivalent prominence for PSB channels on alternative systems would be approximately £20m (in 2012 prices)

As outlined above the Department expects there to be a gradual shift towards alternative ways of discovering content, which is estimated at 30% over 10 years at 3pp a year. The result of this shift is that the value of a prominent position on a traditional EPG is eroded while the value of a prominent position on an alternative system gains in value. Effectively as viewers shift from one method of discovering content to another the value of prominence shifts too in proportion to the number of viewers. So a 30% shift of viewers from using traditional EPGs to using alternatives systems implies a loss of 30% value in EPG prominence and a gain of equivalent value in alternative systems prominence. This is illustrated in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| Year | Shift of viewers to alternative systems | Value of PSB prominence on traditional EPGs | Value of equivalent prominence on alternative systems |
| 0 | 0% | £250m | £20m |
| 5 | 15% | £212.5m | £57.5m |
| 10 | 30% | £175m | £95m |

Note that this assumes that prominence in accessing content (through whatever method) remains at the same overall value over this time period, it merely shifts from one method to another as viewers shift.

*Future-Proofing the EPG Regime (Option 3a)*

Extending the EPG regime to new forms of viewing effectively ensures that an asset (prominent EPG slots or prominent positions on alternative systems) remains allocated with PSBs. Therefore other businesses cannot benefit from the boost to viewers and advertising associated with these positions. As outlined above the value of this asset is estimated at £270m currently across all systems but this value is expected to fall for traditional EPGs (which are currently reserved) and rise for alternative systems (which are not reserved). The impact of extending the EPG regime to alternative systems is that all of that value continues to be reserved for PSBs. This is effectively transferring an asset to the PSBs which is estimated to be worth £20m now but could be worth £95m in 10 years time. It’s important to note that this transfer secures the original intention of the current regulation and updates it to reflect technological change. The transfer of a £95m asset to the PSBs balances a loss of value that those PSBs will suffer in their current asset of traditional EPG prominence. Given that this one-off asset transfer effectively occurs in year 0 as soon as the regulation comes into force the estimated NPV over 10 years of the transfer is **£21m to £100m** in 2015 prices.

Given the early stage of development of alternative systems it is not yet clear who will capture the value of prominent positions if they are not reserved for PSBs. It could be TV platforms who decide to sell the best slots on their new systems, but it could conceivably be TV manufacturers or Internet Service Providers who control prominence depending on how the technology develops and therefore they could attempt to capture the value. The PSBs, who also own or part-own some TV platforms (such as Freeview and Freesat) may capture some of this value without any protection anyway. What does seem likely is that a business or combination of businesses will capture the value of the asset. Any transfer of assets between those businesses and the commercial PSBs is therefore a transfer between businesses. However, for the BBC’s positions, this would be a transfer of an asset from business to a publicly funded body. Based on the BBC accounting for two of the 5 positions reserved for PSBs (BBC1 and BBC2) this would be the equivalent of transferring an asset currently worth £8m to the public sector, but which could be worth £38m in 10 years time. Taking this full value of the asset to the BBC is considered an upper estimate in that the BBC would be reasonably likely to secure some value anyway through its investment in platforms. Again, as this one-off asset transfer away from business occurs in year 0 as soon as the regulation comes into force the estimated NPV over 10 years of the transfer **is £8m to £40m** in 2015 prices.

There is an additional potential cost associated with this option in that the new requirements will apply to smart TVs which are produced as part of a globalised market. Adding UK specific requirements to their operation may not be straightforward and may place a burden on manufacturers. We will seek further information on this and technical advice through the consultation process.

*Removing the EPG Regime (Option 3b)*

Removing the EPG regime entirely means that the PSBs will lose the entire value of their current guaranteed prominence. In the counterfactual analysis above we assume that this will be partly eroded anyway as alternative systems are developed and viewers switch to these. However, removing the protection entirely means that the current value secured through prominence on linear EPGs is also lost to PSBs. Who might gain in this scenario is again quite difficult to predict. On platforms that are owned or part-owned by the PSBs (Freeview and Freesat) it might be expected that the PSBs will continue to hold their prominent positions while on other pay-TV platforms (most notably Sky and Virgin) the operators will be able to reallocate the prime slots to the highest bidder. According to Ofcom’s Communication Market Report pay digital satellite platforms and digital cable account for 52% of households so it is estimated that 52% of the value of linear EPG prominence is likely to be transferred from PSBs to platform operators. This currently implies an asset value of £130m transferring from PSBs to platform operators but is expected to fall to £91m over the next 10 years. Given that this one-off asset transfer effectively occurs in year 0 as soon as the regulation comes into force the estimated NPV over 10 years of the transfer is **£96m to £137m** in 2015 prices.

As above any transfer of asset from a commercial PSB to a pay platform operator is a transfer between two businesses. However, transferring the BBCs prominent slots to a pay platform operator is a transfer to business from a publicly funded body. Based on the BBC accounting for two of the 5 positions reserved for PSBs (BBC1 and BBC2) this would be the equivalent of transferring an asset currently worth £52m to the public sector, but which could be worth £36m in 10 years time. Again, as this one-off asset transfer to business occurs in year 0 as soon as the regulation comes into force the estimated NPV over 10 years of the transfer **is £38m to £55m** in 2015 prices.

**3.4 Familiarisation and Compliance**

The Department estimates transitional familiarisation costs to be negligible, as this measure only applies to five very large companies. Compliance costs to business relative to the status quo are equally estimated to be zero.

Option 2b) provides a minor exception to this, as Ofcom’s greater involvement in the arbitration of negotiations could lead to costs, most likely in the form of time spent by existing staff. At this point, our best estimate of these costs is £28,000annually, based on the cost of a senior official (ASHE 2014) at 0.3 FTE in 2015 prices, including 21% non-wage costs.

**3.5 Small and Micro Business Assessment**

There are currently no small and micro businesses covered by these proposals. The five enterprises currently clearly falling within their remit, namely ITV, Channel 4, Channel 5, Virgin and Sky, all have well above 250 staff. The Department will seek views on any potential impact on SMEs during the consultation. Concerning the liberalisation of the EPG regime, it is considered unlikely SMEs would be able to acquire EPG slots currently held by the BBC or commercial PSBs. Due to the prevalence of sizeable economies of scale in the broadcasting sector, it is not currently the Department’s view that SMEs could feasibly operate in the space covered by this consultation, regardless of the option adopted. The Department will seek further views on this in the consultation.

**3.6 One In Two Out and EANCB**

As outlined above, our best estimate of the business impact of Options 1, 2a) and 2b) is that they will have no impact or lead to sizeable transfers within business that net to zero. For the purposes of OITO, Option 1 and Option 2a) are considered as deregulatory, and thus as an OUT of Zero Net Cost. Option 2b) is considered an IN of Zero Net Cost.

Options 3a) and 3b), on the other hand, have the potential to introduce substantial redistribution between business and a public entity. Option 3a), extending the EPG regime, is considered an IN with an EANCB of **£2.2m.** This is based on the asset transfer occurring in year zero and taking the mid-point of the range of potential asset values over 10 years. Option 3b), abolishing the EPG prominence regime, would be deregulatory and lead to substantial net gains to business, and thus count as an OUT. Prior to consultation, our best estimate of its EANCB is **-£4.3m.** This is again based on the asset transfer occurring in year zero and taking the mid-point of the range of potential asset values over 10 years.

**4. Indicative Policy Timetable**

Consultation will run throughout purdah, and a response would be expected in summer 2015. Our intention is that this consultation will be timed so that the evidence gathered in Ofcom’s statutory PSB review, which is currently on going and will report in summer 2015, will also feed into Government’s overall consideration of the issues under consideration. Issues may also need to be considered in the context of the BBC Charter review, which will be underway by summer 2015. Therefore the Government will have a full suite of evidence available when deciding, after the consultation, how to take this policy area forward.

Removal of s73 would go ahead as early as possible within the parliamentary timetable, however it is not possible at this stage to provide any further indication about other potential options, which will depend on the outcome of the consultation.

Any preferred option adopted after the consultation would be reviewed five years after coming into force.

1. An Agreement between the Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation, July 2006. [↑](#footnote-ref-1)
2. Arqiva are a telecommunications infrastructure company whose services include broadcast transmission services in the United Kingdom and Ireland. [↑](#footnote-ref-2)
3. On Virgin the “channel” is a portal. [↑](#footnote-ref-3)
4. Except in Wales, there it is S4C [↑](#footnote-ref-4)
5. On Freeview, for example, this can vary from 5 channels per EPG page to as many as 12 channels per page, depending on the type of set-top box or TV with built in Freeview reception being utilised. On Virgin Media the number of channels listed is also likely to range from 6 to 8 channels per EPG page depending on whether one is using an old/basic set-top boxes or one of the later V+ HD or TiVo PVRs. It is a similar situation on the Sky platform, where the older Sky boxes display 10 channels per EPG page, but the EPG displayed by SKY+ HD boxes has fewer channels per page (currently 8 channels per page on the latest version of the EPG, which Sky began rolling out to its Sky+ HD customers in June 2012). [↑](#footnote-ref-5)
6. Mediatique (2012). Carriage of TV Channels in the UK: policy options and implications. Report for the Department of Culture, Media and Sport. [↑](#footnote-ref-6)
7. Under the EU Access Directive, Sky’s conditional access services are regulated under the Technical Platform Services (TPS) regime. This means it is able to charge fees for defined services, which are set on a cost-recovery basis and must be fair, reasonable and non-discriminatory (FRND) in accordance with the EU Access Directive. The relevant TPSs are: conditional access (i.e. encryption); geographic masking; Electronic Programme Guide (EPG) listing services; regionalisation; and access control services (e.g. interactive services). TPS charges are set by Sky, but they are subject to the regulatory condition requiring them to provide TPS on fair and reasonable terms, conditions and charges. As they are defined by an EU directive changes to TPS are not within scope of the proposed regulatory changes. [↑](#footnote-ref-7)
8. Mediatique (2012). Carriage of TV Channels in the UK: policy options and implications. Report for the Department of Culture, Media and Sport. [↑](#footnote-ref-8)
9. Mediatique estimate that 27% of commercial PSB revenue is spent on non-sport originations in 2010, compared to just 2% for pay-TV channels. [↑](#footnote-ref-9)
10. Ofcom (2014) The Communications Market Report [↑](#footnote-ref-10)
11. Note that these figures are not exclusive and are likely to overlap [↑](#footnote-ref-11)
12. Ofcom (2013) Communications Market Report [↑](#footnote-ref-12)
13. DCMS (2013) Impact Assessment on Amendments to the Communications Act 2003 (Electronic Programme Guides). IA accompanying the “Connectivity, Content and Consumers: Britain’s digital platform for growth” paper. [↑](#footnote-ref-13)
14. Technologia (2012) The value and optimal management of channel position and prominence in electronic programme guides [↑](#footnote-ref-14)