[GB] A first look into the UK’s draft Media Bill

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On 29 March 2023, the Department for Culture, Media, and Sport (DCMS) published a draft Media Bill that reforms the regulatory framework for public service broadcasters (PSBs) in the UK. The Bill aims to level the playing field with streaming services and modernise longstanding broadcast legislation to reflect changes in the global media ecology. The Bill is introduced against the background of a “fierce battle to attract and retain audiences” in the broadcast market, with changes to content consumption habits that have put traditional broadcasters “under unprecedented pressure”, as Culture Secretary Lucy Frazer said.

PSBs

The Draft Bill introduces more flexible rules on what TV programmes PSBs are required to show and how they deliver on their obligations in the digital age. The new rules will enable PSBs (i.e., the BBC, ITV, Channel 4, Channel 5, STV and S4C) to better compete with streaming giants by adapting to the changing viewing habits of consumers, who increasingly watch TV on digital services instead of traditional ‘linear’ television. If the Bill is passed, online programming will count towards meeting PSBs’ public service remit, rather than just linear programming as it stands today. Ofcom (the UK’s independent communications regulator) will also be equipped with new powers to require PSBs (where appropriate) to provide more of a particular type of programming if audiences are being underserved.

The Media Bill also provides that Channel 4 (which will continue to remain publicly owned) will be permitted to produce its own content and be given a new legal duty to ensure its long-term financial sustainability and assess its own public service remit (previously assessed by Ofcom). The delivery of this duty will be evidenced via Channel 4’s increased financial reporting and by annual reporting to the DCMS Secretary of State. These changes reflect the position previously adopted in the government’s January 2023 announcement on Channel 4.

Video-on-demand programming

The Bill’s provisions aim to increase the accountability of VOD services and narrow the gap between the regulation of traditional broadcasters and VOD providers. According to Ofcom, younger adults watch almost seven times less broadcast TV than those aged 65 and over. And, 1 in 5 UK households is signed

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up to all three of the most popular streaming platforms, including Netflix, Amazon Prime Video and Disney+. However, most VOD services are not covered by Ofcom's Broadcasting Code, which sets content standards for accuracy as well as harmful and offensive material on television. Some services are not regulated in the UK at all.

The Bill will bring mainstream UK-focused VOD services under rules similar to those already applying to linear TV in order to protect audiences (including children) more consistently from a wider range of harmful material, e.g., misleading health claims. VOD viewers will be able to formally complain to Ofcom, the duties of which will be strengthened to assess audience protection measures on VOD and take action to enforce standards through fines, where necessary and appropriate. The new Ofcom powers will apply to "Tier 1" VOD services (i.e., expected to be the larger, high-reach and high-risk services), which are those provided by PSBs (other than the BBC) as well as those designated as Tier 1 by the Secretary of State (these may or may not be UK services).

The Draft Bill also brings changes to the Listed Events regime. This regime helps ensure that events of national interest (which are listed by the Culture Secretary and include, for example, major sporting events like the Wimbledon finals and the Olympic Games) are available to view live and for free by the widest possible audience. The current framework applies to PSBs (given that only PSBs largely satisfy the thresholds required to make content available to a large enough audience). However, the increased availability of broadband and connected devices means that a non-PSB service could achieve the required thresholds to make available such events. So, the Draft Bill brings VOD services into the Listed Event regime, but such services will only be able to broadcast Listed Events where a PSB is also broadcasting that event or Ofcom consents.

Radio

Commercial radio stations will likewise benefit from increased flexibility, as radio transitions from an analogue past to a digital future. The Bill will relax content and format licence-based obligations (developed in the 1980s) which require them to broadcast certain music genres or to particular age groups. The reforms will replace these with new requirements for commercial stations to provide national and local news as well as relevant local information (traffic and travel) to reflect the importance and value of these services to the public. The Bill will also empower stations to amend or adapt their services without needing Ofcom's approval, thereby reducing costs for the industry.

The Bill also aims to preserve the number of UK radio listeners, given the increasing use of competing larger internet-based platforms that drive audiences elsewhere. To this end, the Bill guarantees access to UK radio on smart speakers. The Bill introduces, in particular, reforms to protect the position of UK radio on

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voice-activated connected audio devices by requiring all smart speaker platforms (like Amazon and Google) to provide access to all licenced national and community UK radio stations in response to listeners' voice commands. Under the Bill, the platforms are prohibited from charging these stations a hosting fee for the provision of their live services and from overlaying their own advertising content on top of those stations' programmes.

Prominence and accessibility rules, and press regulation

Under the Media Bill, major online TV platforms such as smart TVs, set-top boxes, and streaming sticks will be required to prominently feature designated PSB services (like BBC iPlayer, ITVX, All4, My5, S4C's Clic and STV Player) and enable viewers to easily discover them. It thus appears that the Bill mandates a "must offer and must carry" and a prominence regime for PSBs' on-demand services, as viewing increasingly shifts online.

Moreover, the Bill brings forward new rules to make VOD content more accessible to those with visual and hearing impairments. Streaming services will be required to provide subtitles, audio description and signed interpretation to support people with disabilities. Subtitles are currently carried on the majority of VOD programming, but this can be inconsistent across services, while audio description and signing are rarer.

Finally, the Bill contains miscellaneous provisions, including the repeal of section 40 of the Crime and Courts Act 2013 which would have forced news publishers (had it been commenced) to pay the costs of any court case if they were not a member of the approved regulator, regardless of the outcome of the judgement (for background and details on section 40, see IRIS 2018-5/19).

Next steps

The Media Bill (which was formally announced in the Queen's Speech on 10 May 2022) follows the publication of the government's White Paper setting out its vision for the broadcasting sector. It generally tracks against most of the proposals laid out in it with no major surprises. It is anticipated the Bill will now move through the legislative process, but no timings have been confirmed yet. The government has also stated it will continue to engage with the industry to ensure that the reforms in the Bill fulfil its intentions and deliver better quality services for audiences.

Draft Media Bill (CP 822), Explanatory Notes, and Memorandum from the DCMS for the Delegated Powers and Regulatory Reform Committee

https://www.gov.uk/government/publications/draft-media-bill

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DCMS, Up next - the government's vision for the broadcasting sector (CP 671)

https://www.gov.uk/government/publications/up-next-the-governments-vision-for-the-broadcasting-sector/up-next-the-governments-vision-for-the-broadcasting-sector

DCMS, Channel 4 to remain publicly owned with reforms to boost its sustainability and commercial freedom

https://www.gov.uk/government/news/channel-4-to-remain-publicly-owned-with-reforms-to-boost-its-sustainability-and-commercial-freedom

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