SKY’S RESPONSE TO
THE BBC CHARTER REVIEW PUBLIC CONSULTATION

1. Executive summary

1.1 Sky welcomes the opportunity to comment on DCMS’s public consultation on the BBC Charter review (“the consultation”).

1.2 Sky has some important perspectives on what kind of broadcaster BBC should be. All of our UK customer households are licence fee payers – approximately two in every five British homes – and we have a multi-faceted relationship with the BBC as a competitor and partner. Sky is also a vital part of the UK content ecology, which delivers public and private investment through a range of sources and supports high quality original content, creative competition, and innovation.

1.3 The BBC has an unparalleled position in the TV market. Its guaranteed and substantial funding of £3.7bn from the licence fee is further strengthened by the prominent EPG positions it is afforded, its substantial reserved spectrum holdings and its profitable commercial arm, BBC Worldwide. This gives it the ability to influence and condition what its competitors can achieve. The scale of the BBC and its wide universal remit makes it inevitable that its impact is felt far beyond the creation and supply of public service content.

1.4 For that reason companies like Sky have a legitimate interest in the future scope, scale and governance of the BBC. Our perspective is unique, but our views on the BBC support much of the wider debate about how the future BBC should best meet the public interest.

1.5 The BBC exists to serve licence fee payers. But the expectations of licence fee payers have changed irrevocably during the period of the current Charter. The UK has a dynamic and competitive media services marketplace that provides viewers with access to a vast and growing array of content. The last ten years have been characterised by rapid change which has significantly increased the choice available to viewers, both in terms of the content they watch and the way in which they watch it.

1.6 The Charter now needs to be updated to better reflect the needs and expectations of licence fee payers in the digital age. With this in mind, Sky believes there are some key principles which the Government should consider for the new Charter.

The BBC should be a dedicated public service content provider, universally available to licence fee payers

1.7 The market in which the BBC now operates is much changed from the one in which the current Charter was agreed. In particular, there has been an explosion in the choice available to viewers when accessing content. For example, Sky subscribers now have a multitude of ways in which to watch content – whether that be via linear channels broadcast over satellite, time-shifted content recorded on Sky+ boxes, on-demand programming streamed to tablets or smartphones using the Sky Go app, or movies downloaded to keep from Sky Store. Other British providers offer similar services, whilst overseas providers such as Netflix, Amazon, Apple and Google have also launched platforms in the UK. The market is very clearly delivering and doing so at a speed and scale the BBC cannot hope to match.
1.8 Consequently, the BBC should over the course of this Charter period seek to scale back its platform activities, adjusting its remit to focus on investment in distinctive, high quality content. This is the best way to serve licence fee payers given the choice they are now granted by private provision of platforms.

1.9 In this digital age, licence fee payers now expect to access BBC content and services on multiple platforms and devices. However at present, the BBC’s approach to distribution is too restrictive, limiting the choice available to viewers and depriving them of enjoying BBC content in their preferred manner. This cannot be in the public interest, or indeed the BBC’s.

1.10 In a world where consumers make use of everything from on-demand OTT services to content streamed on-the-go to tablets or smartphones, Sky considers that ‘universality’ must be taken to equate to ubiquity. To be truly universally available, the BBC must ensure that licence fee payers can freely consume its content in whatever way and on whatever devices they choose themselves.

1.11 The new Charter should therefore include a new positive obligation on the BBC which ensures that content which has been funded by the licence fee is widely distributed with as few conditions as possible. This would maximise licence fee payers’ choice in accessing BBC content.

**BBC content should be distinctive and focused on the areas that matter**

1.12 The last decade has also seen significant changes in the volume and range of content available to UK viewers. In particular, non-PSBs are providing an increasing array and diversity of content, with Sky playing a significant role in this growth.

1.13 In the face of this changing market provision, the BBC can best deliver value to licence fee payers by ensuring that its output remains recognisably unique. The potential for the BBC’s activities to crowd out alternative provision is significant, and it must be mindful of the need to minimise any negative competitive impacts of its activities on the wider market.

1.14 While the current Charter seeks to achieve this, in Sky’s experience the BBC has not been rigorous enough in ensuring that its output is sufficiently distinct from that of commercial broadcasters. Addressing this issue would both enhance the BBC’s public service broadcasting output while also providing greater certainty for commercial operators.

1.15 The challenge in drawing up a new Charter is to put in place a robust framework that ensures distinctiveness and public service broadcasting are core to all of the BBC’s services and activities. A reform of the governance and regulatory framework would provide more robust scrutiny of the BBC’s activities. This, in turn, should lead to a greater distinctiveness in the BBC’s services, strengthening its contribution to public service broadcasting and delivery for licence fee payers.

1.16 In particular, there is no sound reason why Ofcom should not be given responsibility for all BBC regulation. Ofcom’s regulation of the BBC should come with a “triple guarantee” which ensures that BBC activities are distinctive, deliver public value and come with minimal market impact. First, at the launch of or in the event of major changes to services, a reformed public value test should be applied – one which rejects any proposal which has a significant market impact, irrespective of any claimed “public value”. Second, each service should be reviewed on a three-yearly basis, with greater enforcement powers and the ability to recommend reducing or closing services if market provision has increased. Finally, Ofcom should be able to conduct its own initiative investigations on any activity that falls outside of the first two tests, making active enquiries of the BBC Executive.

1.17 Along with greater regulatory scrutiny, an increase in transparency would help the BBC to be more accountable to licence fee payers, and ensure that the decisions it makes deliver
greater value for money and distinctiveness. In particular, the NAO should have an expanded role in scrutinising BBC spend, while the BBC itself should publish much more detail in relation to its spending.

**The BBC’s activities should contribute to a thriving broadcasting ecology**

1.18 The BBC remains an enormous intervention by the state in the media sector and its actions can have both a negative as well as positive impact on other players. The Charter should therefore ensure that the BBC recognises that licence fee payers are best served by a thriving and plural UK media sector. The BBC has a responsibility to ensure that its actions benefit the sector as a whole.

1.19 At the heart of this approach should be a positive requirement for the BBC to create opportunities for others in the sector on a fair, reasonable and non-discriminatory basis when carrying out its activities. The BBC should, for example, position itself as a partner to platforms and content providers, seeking to freely share content such as national events or archive programming in order to enhance the wider market and create opportunities for others.

1.20 It would also be in licence fee payers’ interests for the BBC to embrace opportunities to promote greater competition in its own activities such as production and international distribution. Not only would this drive efficiency, value for money and better on screen outcomes, it would also serve to strengthen the wider UK content sector by providing further growth opportunities for other market players.

1.21 However, neither licence fee payers nor the wider sector would benefit from parts of the BBC being provided on a subscription basis. Such a move would, over time, inexorably and fundamentally change the nature of the BBC. In particular, it would skew the BBC’s approach to content creation, incentivising a greater focus on programming that could attract commercial returns rather than distinctive content which delivered public value. Subscription would also be at odds with the core BBC remit of providing universally available public service content – limiting the availability of BBC content through subscription could not be said to be in licence fee payers’ interests.

Securing these principles will ensure the BBC can most effectively serve licence fee payers’ interests over the next Charter period

1.22 The BBC remains a vital institution in the context of the UK content market, but exists today in a changed world. The needs of licence fee payers have changed in light of the significant developments in the market. Given its size, position, and the advantages it is afforded, the BBC has a responsibility to adapt so it can deliver in line with expectations of licence fee payers. This means ensuring that its content is widely available, focusing on producing high quality, distinctive output and taking additional steps to provide opportunities to the sector more widely. Achieving these goals will require changes to the way the BBC is run, governed and regulated.

1.23 Sky looks forward to contributing further to the Charter review process as it progresses.
2. Introduction

2.1 Sky is Europe’s leading entertainment company, serving 21 million customers across five countries: Italy, Germany, Austria, the UK and Ireland. We offer a broad range of content, deliver market-leading customer service and use innovative new technology to give customers a better television experience, whenever and wherever they choose.

2.2 In the UK and Ireland, Sky has 12 million customers accessing television services on the Sky TV digital satellite service and Sky's Now TV streaming service. Those services include Sky's own entertainment, sports, movies and news channels, as well as those of its pay TV content partners. Sky's content is also available on other major platforms including cable, DTT, IPTV and OTT platforms. Sky's satellite platform also provides access to a wide range of free-to-air services, including the BBC's public service channels.

2.3 Sky has a multi-faceted relationship with the BBC. As a content provider, Sky competes fiercely with the BBC in programming, commissioning and talent acquisition. As a platform operator whose UK viewers are also all licence fee payers, we also collaborate with the BBC in order to bring its content to viewers. Sky understands the importance of optimising customers’ viewing experience, both in terms of quality and in enabling viewers to discover the content they want quickly and easily.

2.4 Sky’s response to the consultation is framed by these interests, and further informed by our experiences of dealing with the BBC.

3. The BBC’s place in the market

3.1 The BBC is a huge intervention in the broadcasting market. It receives substantial guaranteed funding that is immune to fluctuations in viewing figures, advertising budgets or the health of a subscriber base. Regulated prominence across all linear EPGs affords BBC content exposure above that of its commercial rivals, while the BBC can ensure wide distribution through the guaranteed access it has to extremely valuable spectrum.

3.2 It is no surprise, therefore, that the BBC remains a dominant presence in the UK TV sector on any number of metrics. As the BBC has frequently highlighted, 97% of UK adults use its TV, radio or online services each week, with an average consumer spending 18.3 hours using BBC services a week. Cumulatively the BBC channels possess significant influence across the television market, with the largest (and growing) share of viewing in multichannel homes. In 2014 BBC One was the most watched channel in the UK reaching 73% of adults each week, while BBC Two’s reach remained high at 47.3%. BBC Three has a large influence in particular on younger audiences reaching 24% of 16- to 34-year-olds each week.

3.3 This significant presence is amplified in specific genres and activities. In news, for example, BBC One is the most used news source in the UK, reaching 53% of UK adults per week, while the BBC News website is also increasingly important, and now stands as the third most used news source in the UK, with 24% of adults making use of it. Similarly in children’s programming, the BBC has a dominant presence, with the most watched channels, and significant usage of CBBC and CBeebies apps and websites.

3.4 The BBC’s online services have grown significantly over the course of the current Charter, and now consist of BBC desktop, TV, tablet and mobile online services, including digital interactive services delivered through the Red Button, and catch up and on-demand online services. In particular iPlayer is the UK’s most used on-demand service with a weekly reach of 24.7 million, and 343 million iPlayer programme requests in January 2015 alone. The

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2 Ibid.
4 The consultation, p.7.
BBC is also expanding its online influence through alternative media such as YouTube – the Radio 1 YouTube channel has 1.3 million subscribers, and led directly to the creation of a dedicated Radio 1 iPlayer channel.5

3.5 It is clear, therefore, that the BBC enters the Charter review process from a position of significant strength in terms of its influence and scale.

4. **Refocusing the BBC: a dedicated public service content provider, universally available to licence fee payers**

4.1 The consultation rightly adopts a broad starting point for the review of the BBC’s Charter, seeking to establish what the BBC’s mission, remit and purposes should be. These fundamental questions will in turn have a direct bearing on the services, scale, funding and governance of the organisation during the period of the next Charter.

4.2 The market in which the BBC now operates is much changed from the one in which the current Charter was agreed, and unrecognisable from the broadcasting sector that existed in the decades before that. The UK now has a dynamic and competitive media services marketplace that provides viewers with access to a vast and growing array of content. The last ten years have been characterised by structural changes which have significantly increased the choice available to viewers, both in terms of the content they watch and the way in which they watch it:

4.2.1 Digital television platforms are now ubiquitous, meaning almost all households have access to a wide range of channels.

4.2.2 Broadband penetration stands at over 80%, granting the vast majority of the UK access to an almost unlimited array of content sources.

4.2.3 The mainstream adoption of technological innovations, such as the explosion in online video on-demand services and the significant take-up of Digital Video Recorders (DVRs), allows viewers greater choice and flexibility over how and when they will consume content.

4.3 Along with (and in part because of) these developments, provision of UK content and other high quality programming from sources other than the BBC and the commercial public service broadcasters has increased significantly.

4.4 This changed marketplace, and in particular the growth in the services and platforms offered by commercial providers, means that the needs of licence fee payers are now being met in different ways and by a variety of operators. The changing interests of licence fee payers will have a consequential impact on the underlying rationale and remit of the BBC.

**In an age of platform proliferation, the BBC no longer needs to control all elements of content distribution**

4.5 As the consultation notes, market developments have directly challenged a number of the original rationales behind PSB interventions. In previous decades, public intervention was justified on the basis of spectrum scarcity and high barriers to entry in the broadcasting market. But the shift to digital broadcasting and IP delivery means consumers have access to a wide variety of platforms and services. Equally, in many areas private companies no longer face high barriers to entry, and can easily enter the market to provide new content and products.

4.6 This is not to suggest that rationales for public intervention in the broadcasting market no longer exist. As the consultation highlights, “high quality PSB content has generally been

seen as a ‘merit good’, which would be under-provided in a free market\(^6\). However, it is notable that this market failure relates to the provision of certain types of programming, rather than the distribution and availability of content per se.

4.7 There is now enormous choice for consumers in how to access the content they want to watch. A majority of households in the UK receive services via platforms operated by pay TV providers such as Sky and Virgin Media. Beyond this, a cursory analysis of the sector demonstrates that the availability of VOD services (whether free, subscription based or pay-per-view) is widespread and growing rapidly. As Ofcom stated in its third PSB review: “changes in availability and take-up of platforms, devices and connectivity now support a wider range of content services than ever before”\(^7\). In this review, Ofcom presented an overview of selected VOD developments with more than thirty service launches or key developments between 2007 and 2013. This includes further offerings from UK based companies such as Sky, as well as a myriad of platforms from overseas providers such as Google, Apple, Netflix and Amazon.

4.8 It is therefore increasingly apparent that there is no market failure in the distribution of content or the provision of platforms. As such, the BBC no longer needs to devote significant resources to controlling, running and further developing its own platforms.

4.9 The BBC’s existing activities in this area are significant. It has part ownership of three mainstream TV platforms, Freeview, Freesat and YouView. Beyond this, the scope of the BBC iPlayer has widened significantly since its launch in 2007 to include live streaming and exclusive content, while in the near future the BBC will launch BBC Store, a new online commercial service that allows users to buy and keep BBC programmes on a download-to-own basis.

4.10 This significant presence as a platform operator no longer appears necessary given that the market is very clearly delivering, and doing so at a speed and scale the BBC cannot hope to match. Instead, the BBC should over the course of this Charter period seek to scale back its platform activities, adjusting its remit to focus on investment in distinctive, high quality content. This is the best way to serve licence fee payers given the choice they are now granted by private provision.

4.11 By stepping back in this area, the BBC would be able ensure that greater investment is diverted towards public service content, where it can most effectively meet licence fee payers’ needs. Previous platform developments have frequently required significant funding. The BBC’s involvement in Project Canvas (now YouView) was approved on the basis of a £25m spend\(^8\), while its ongoing contribution to Freeview and Freesat is estimated at £9m per annum\(^9\).

4.12 By focusing on content rather than new platform ventures, the BBC would also remove the risk of its activities in this area distorting competition in the market. By way of example, the BBC’s investment in YouView represents a significant intervention that has conferred substantial advantages on commercial players. Sky’s experience in dealing with YouView demonstrates that what may have begun as a public service spirited idea to develop a unified open standard platform has singularly failed to deliver on that promise. Instead, as one commentator put it, “the main beneficiaries have been the broadband service provider partners, BT and TalkTalk, who have gained an enhanced platform and personal video recorder

\(^6\) The consultation, p.14.
\(^7\) Figure 2, Ofcom’s third review of public service broadcasting, December 2014.
design at comparatively low cost, with the positive support of the BBC and other public service broadcasters" 10.

4.13 That the BBC’s previous extensive activities in this area have been permitted is illustrative of how broadly the public purposes are current drawn, such that the BBC is able to claim with ease that virtually any of its ideas and/or services meets at least one of its public purposes. Clarifying and tightening the scope of the BBC’s public purposes could refocus the BBC on producing content, enhance the quality of its public service output, and also provide greater certainty to commercial operators.

4.14 In particular, the sixth public purpose (“delivering to the public the benefit of emerging communications, technologies and services”) is couched in very broad terms, and sanctions an extension of the BBC’s platform activities into almost any area using digital technology. Sky sees little reason for this purpose to endure, given how well licence fee payers are served by the market in this area.

4.15 Clearly, the BBC needs to keep up with developments in digital technology in order to remain relevant in the digital era. However, there is a material difference between keeping up with developments on the one hand and leading developments on the other. The BBC has no need to be, a technology company – the internet age has removed that rationale. Instead, the BBC’s mission should be focused on the delivery of high quality, distinctive content to all licence fee payers.

Despite the choice already available to licence fee payers, the BBC continues to seek to expand its activities in this area

4.16 The BBC itself has recognised the significant shift in the sector brought about by the internet. But its response to these changes has been to seek to significantly expand its remit, rather than refocusing it. The BBC has put forward a number of new proposals in its September 2015 publication “The BBC’s programmes and services in the next Charter”. The most material of these is a proposed new scope for the iPlayer, repositioning it as a content aggregator that brings together programming from the BBC with content from other UK broadcasters.

4.17 Ralph Rivera, Director of BBC Digital, describes this ambitious proposal in the following terms:

“At its heart would be a free offer, with BBC content funded from the licence fee, and commercial content through other business models such as advertising. We would also aim to make it possible to buy and keep programmes, as we’re doing with BBC Store, due to launch soon” 11.

4.18 This is clearly a significant step, and one which may raise questions as to the public value it could deliver to licence fee payers, as well as the competitive impact it might have on other existing providers 12.

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12 Sky notes that the BBC has previously proposed content aggregation services on previous occasions – most obviously “Project Kangaroo”, a proposal to bring together on-demand content from the BBC, ITV and Channel 4. This proposal was subsequently blocked by the Competition Commission on the grounds that it would restrict competition from other current and future providers of video-on-demand services to UK viewers. The BBC Trust also blocked the BBC’s proposals in Project Marquee, which would have seen the formation of a so-called “federation” of PSBs who could link their on-demand services to the iPlayer. It was envisaged that these links would drive traffic between the various PSB sites. The BBC also wanted to create a new video on-demand listings website to which all PSBs would link.
4.19 In announcing this proposal, Tony Hall claimed that this new ‘Open BBC’ it would be part of was the “polar opposite” of an ‘expansionist’ BBC\textsuperscript{13}. It is difficult to see how this is the case when the BBC is suggesting it should now act as an aggregator for British content online. This significant proposal is further indicative of how broadly the existing public purposes are drawn with respect to platform activities, as well as the lack of effective constraint on the Executive.

**The BBC’s current approach to content distribution is too restrictive and acts against the interests of licence fee payers**

4.20 A BBC that is focused on producing distinctive, high quality content should not only seek to step back from platform provision. It should also adapt its approach to content distribution more generally, providing for multiple platforms, services and technologies to deliver BBC content, and thereby offering maximum consumer choice.

4.21 The interests of licence fee payers are clearly best served through providing widespread access to the audiovisual content intended and paid for by them, on the platforms on which they choose to consume such content. This is currently recognised in the BBC Framework Agreement which requires the BBC to make the UK public services “widely available” by securing access through “a range of convenient and cost effective ways”\textsuperscript{14}. Indeed the Framework itself acknowledges that “the BBC can only fulfil its public purposes if it has in place adequate arrangements for making its services widely available to audiences”\textsuperscript{15}.

4.22 However at present, the BBC’s approach to content distribution unreasonably constrains the ability of platforms to make BBC content available. This limits the means by which licence fee payers can enjoy BBC content and deprives them of the benefit of enjoying that content in familiar and convenient ways.

4.23 Sky has had difficulty in reaching agreement with the BBC in a number of areas, including:

4.23.1 the availability of BBC content on Sky Go. Sky Go lets Sky customers stream content to their mobile, tablet, computer or games console. The service is highly valued by customers as different ways of viewing become more prevalent. However, the BBC has continually refused to allow its content to be included on the service, depriving licence fee payers who use Sky Go access to the BBC’s content in a consistent manner. The screen images presented in Annex A (figures 1 and 2) illustrate the other content listings available on Sky Go, where the absence of the BBC is notable.

4.23.2 the use of BBC metadata in Sky’s companion iOS Sky+ application. The Sky+ app enables customers to view and interact with programme listings, control their set top box and download on-demand content to their set top box for viewing on their main screen wherever they are. It provides users with an innovative and convenient way to explore and discover the full-range of content available to them and reflect modern patterns of content consumption. [\textsuperscript{\n}\textsuperscript{\n}]. The screen images presented in Annex A (figures 3 and 4) illustrate the poor experience that licence fee payers have experienced without the BBC’s content included, and the negative impression it gives of the BBC, and Sky as service provider.

4.23.3 surfacing of BBC on-demand programming outside the iPlayer curated experience on Sky’s connected boxes, with the consequence that BBC content does not

\textsuperscript{13} Tony Hall, speech at the Science Museum, 7 September 2015.

\textsuperscript{14} The BBC Framework Agreement, clause 12(1).

\textsuperscript{15} The Framework, paragraph 1. This is in line with clause 12 of the Framework Agreement, the BBC is required to make the UK public services “widely available” by securing access through “a range of convenient and cost effective ways”.

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benefit from the complete range of services and functionality offered by full platform integration. [3x]

Other platforms appear to have encountered similar issues in negotiations with the BBC. For example, BBC channels are not available to stream via Virgin Media’s ‘TV Anywhere’ product.

4.24 The examples above illustrate the BBC’s preference strategy for delivering its content exclusively via the standardised syndicated iPlayer experience, rather than being open to alternative delivery, distribution and promotion arrangements. Such an approach cannot be in licence fee payers’ interests.

4.25 This approach is harmful to the BBC’s interests as well, in that it acts to reduce the reach and value that its programming delivers, with the consequence that BBC content may be viewed less. For example, by allowing searching across all the content on a platform or service, the BBC’s public service content would be more readily discoverable by licence fee payers. Indeed, Ofcom recently recognised that better integration between on-demand and linear content within the EPG could make it easier and more convenient for individuals to search for content16.

4.26 The BBC’s strategic preference for delivering its on-demand content exclusively via the standardised iPlayer is also inconsistent with its approach in other areas. Sky notes that the BBC currently accepts a wide range of alternative arrangements in relation to its audio content, which is widely available across the BBC’s websites as well as from podcast and audio aggregation services. These arrangements demonstrate that the iPlayer is not analogous to the BBC’s TV or radio channels17, which are curated and scheduled. In fact, the iPlayer is merely one ‘shop window’ in which the BBC’s linear and on-demand content can be made available. Licence fee payers and the BBC have derived considerable benefit from arrangements in respect of BBC audio content18. It is unclear why BBC video content should not simultaneously benefit.

4.27 Sky notes that the other PSBs – ITV, C4 and C5 – can be expected to have similar content distribution strategies to the BBC, in that all are incentivised to seek mass audiences through free-to-air broadcast, and add to that reach through standalone catch-up players. Yet that has not prevented these broadcasters from reaching agreements with Sky for the full integration of their content into platforms chosen by the very many Sky households – including on Sky Go and catch-up services delivered through the Sky+ box. It is odd that the licence fee funded BBC’s approach to universality is narrower than that of commercial broadcasters.

4.28 As a result of being unable to agree terms with the BBC, potentially millions of licence fee payers who chose to watch TV on these platforms could be denied access to BBC content via their preferred manner. This cannot be in the public interest, or indeed the BBC’s. It must significantly alter this approach if it is to serve its public.

Universality for licence fee payers should be secured by obligating the BBC to distribute its content as widely as possible

4.29 The consultation asks for views on what ‘universality’ should mean in the context of the BBC. It suggests a number of different definitions - providing all types of content to all

16 Market impact assessment of proposed changes to BBC Three, BBC iPlayer, BBC One and CBBC published 30 June 2015, paragraph 7.58.

17 As the BBC Trust noted in its decision approving the BBC’s on-demand proposals, “the BBC iPlayer is not the service offering in itself but is an interface through which a number of services will be provided”. See http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/consult/decisions/on_demand/decision.pdf.

18 For example, in the week beginning the 27th September 2015, 36 of the top 100 iTunes podcasts were from BBC radio shows. See http://www.itunescharts.net/uk/charts/podcasts/.
audiences, regardless of private provision; the coverage of ‘unifying’ events like the Olympics; or content being available on all platforms and devices.

4.30 In a world where consumers make use of everything from on-demand OTT services to content streamed on-the-go to tablets or smartphones, Sky considers that ‘universality’ must be taken to equate to ubiquity. To be truly universally available, the BBC must ensure that licence fee payers can freely consume its content in whatever way and on whatever devices suits them best.

4.31 Sky notes that this differs from the existing definition adopted by the BBC. The current Framework describes universality as the need to ensure every household has access to “each BBC service on at least one platform free at the point of use”. However, households now consume content in markedly different ways, with some watching content via a ‘traditional’ TV set while others opt for laptops, tablets or mobile devices\(^{19}\). This suggests that the BBC’s provision of its free platforms is no longer sufficient to deliver the ubiquity of availability that the licence fee demands.

4.32 The BBC itself has recognised the importance of a wider definition of universality. Tony Hall, speaking in September 2015, stated that:

> We need to guarantee that the British public can continue to access public service content on platforms they are using, whatever they are in the future. So we need policy-makers to modernise the regulatory framework around us. Today, audiences can find public service channels easily on traditional TV platforms. We need to ensure public service broadcasting is easy to find on future platforms as well.\(^{20}\)

4.33 These comments were made in relation to prominence rules. While Sky considers that mutually beneficial incentives rather than new regulation will deliver prominence on new platforms, we wholeheartedly agree that it is important for viewers to be able to discover and access public service content. But the counterpoint is self-evident – the BBC’s discoverability on these platforms is entirely dependent on its availability on those platforms in the first place. This supports Sky’s view that universality should relate to availability via whatever methods licence fee payers choose.

4.34 The new Charter should therefore include a new positive obligation on the BBC which ensures that content which has been funded by the licence fee is widely distributed with as few conditions as possible, maximising licence fee payers’ choice in accessing BBC content.

4.35 Sky notes that such an obligation would be in keeping with Ofcom’s recommendation in its recent PSB review, which stated that:

> “[t]he PSBs will need protection to ensure that their channels and on-demand services are widely available and easily discoverable in all of the places audiences expect. At the same time, PSBs should be required to provide their services to all major devices and platforms.”\(^{21}\)

4.36 This obligation should ensure that the BBC cannot stipulate use of specific technologies in order to restrict distribution agreements, but rather that the BBC should be open to alternative delivery and distribution arrangements in order to maximise the opportunities

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\(^{19}\) Ofcom research shows that, among 16-24s, only half (50%) of their time spent on ‘watching’ activities is accounted for by live TV. A fifth (21%) of their viewing time is spent consuming online content; 13% consuming downloaded/ streamed content and 8% watching short online video clips – a significantly greater proportion than for any other age group. See Ofcom’s Digital Day 2014 report, available at http://stakeholders.ofcom.org.uk/market-data-research/other/cross-media/digital-day/2014/?a=0

\(^{20}\) Tony Hall, speech to the RTS Cambridge Conference, September 2015

for distribution, discovery and usage of all its content, and to reflect the different ways licence fee payers choose to access content.

The BBC’s own interests should be protected, but it should face close regulatory scrutiny in fulfilling this obligation

4.37 While the presumption should be one of supply, with only essential conditions attached, it is clear that core principles would need to be enshrined in this new obligation in order to protect the interests of the BBC and licence fee payers. These might include:

4.37.1 Requirements that ensure any BBC content is afforded clear brand attribution.

4.37.2 Stipulating that BBC content cannot be exploited inappropriately by distributors (e.g. used to support commercial advertising) and must be free at the point of use.

4.37.3 Ensuring that the BBC is not required to bear significant development or configuration costs.

4.38 Beyond this, however, any requirement that operates as an unnecessary pre-condition to supply, making it harder for third parties to access BBC content, operates to the detriment of the licence fee payer. To the extent that any further ‘conditions’ ought to be applied, these should be restricted to the minimum necessary and must be applied in a way that does not undermine the overriding presumption in favour of supply.

4.39 Robust mechanisms of accountability should be in place to ensure the BBC acts in keeping with this principle. The regulatory framework should allow clear redress if the BBC is not fulfilling its obligation to distribute its content as widely as possible (or indeed any of its other obligations). This should include the power to direct the BBC to change its course of action, as well as enforcement mechanisms such as withholding of funding in instances of non-compliance.

5. Sharpening the output: increased scrutiny and transparency to ensure BBC content is distinctive and focused on the areas that matter

5.1 The consultation asks a range of questions about the scale and scope of the BBC, examining what services the BBC should deliver and the audiences it should be seeking to serve.

5.2 As outlined above, Sky considers that technological developments over the past ten years have changed the needs of licence fee payers and challenged aspects of the underlying rationale for the BBC. As a consequence the BBC should seek to move away from platform provision and refocus itself as a provider of distinctive, high quality content.

5.3 Below we give consideration to how the BBC should amend its output in light of this change and other developments in the market. We also seek to address the changes in the governance and regulation of the BBC that are necessary in order to ensure this delivery over the period of the next Charter.

The greatest growth in UK content is being driven by non-PSBs, with Sky making a significant contribution

5.4 As with technological developments and platform provision, the last decade has seen significant changes in the volume and range of content available to UK viewers. In particular, non-PSBs are providing an increasing array and diversity of content. Sky has played a significant role in this growth.

5.5 Overall investment in UK production by members of the Commercial Broadcasters Association (COBA) has grown by 5.5% per annum since 2011, reaching £725m by 2013.
Investment in first-run UK production grew at an even higher rate of 7% a year to £597m in 2013.\(^2\)

5.6 Sky’s own investment has been substantial. In the past ten years we increased the quality and range of programming across our portfolio, making particular progress in our strategy to increase the volume and quality of our home-grown content. In 2011 we outlined a commitment to invest £600 million specifically in home-grown British programming by 2014 (excluding our additional investments in sports rights), a 50% increase over three years.

5.7 Our drive to increase investment in original British commissions has been particularly targeted on areas where we can provide high-quality, distinctive programming that is recognisably different from the PSBs’ offerings. Recently our focus has been on original drama. For example, in January our crime drama *Fortitude* became the first of our home-grown dramas to launch simultaneously across all five of the territories in which Sky operates. Reaching an audience of 3.7 million, *Fortitude* was Sky Atlantic’s most successful original drama to date in the UK. This success underlines the potential that we have to operate at a greater scale, with more than 130 hours of original drama now in production across the group. This activity, in turn, follows on from a series of UK comedy commissions from 2010 onwards, an area where the PSBs had notably reduced their investment.

5.8 Investment in UK content by non-PSBs is therefore an increasingly crucial component of the UK television sector. This sector is often described as a ‘mixed ecology’, with a diverse range of funding sources (from the licence fee, to advertising, to subscription and export revenues) supporting a high level of investment in original content, creative competition between broadcasters, and a diverse range of programming. Viewers are well served by a combination of mainstream and specialist channels, and free-to-air and subscription services, all of which are seeking to appeal to audiences in distinctive ways.

**The BBC needs to be more distinctive, less concerned with maximising share and more responsive to changes in market provision**

5.9 In the face of this changing market provision, the BBC can best deliver value to licence fee payers by ensuring that its output remains recognisably unique. The BBC holds a dominant position by virtue of its guaranteed funding arrangements and the prominence it is afforded on linear platforms. The potential for its activities to crowd out alternative provision is therefore significant, and the BBC must be mindful of the need to minimise any negative competitive impacts of its activities on the wider market.

5.10 While the current Charter seeks to achieve this,\(^2\) in Sky’s experience the BBC has not been rigorous enough in ensuring that its output is sufficiently distinct from that of commercial broadcasters. Addressing this issue would both enhance the BBC’s public service broadcasting output while also providing greater certainty for commercial operators.

5.11 This is not to suggest that the BBC cannot or should not produce programming that has popular, mainstream appeal. Clearly the BBC should be able to commission a range of original programmes to meet a breadth of interests on behalf of licence fee payers. But in order to deliver more distinctive output, the BBC should seek to prioritise its resources in areas where viewers’ needs are not being adequately met and move away from particular activities where it is merely replicating what is already available to licence fee payers via the commercial sector.

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\(^{23}\) Under the Charter the Trust must also have regard to the competitive impact of the BBC’s activities on the wider market (Article 23(b)).
Some activities the BBC currently undertakes are clearly beyond its remit and not justifiable given private provision. For example, the BBC still spends almost £100m on acquired content. This serves both to diminish the positive impact the BBC has on the UK production sector, as well as raising questions over the distinctiveness of its output. Moreover, where the BBC enters the market for popular international shows and pre-existing formats, this increases costs for commercial broadcasters and potentially denies them commercially viable acquisitions, whilst adding nothing new to the creative richness of the UK.

Similarly, news remains an area where the BBC's huge presence makes it difficult for commercial providers to compete. Policymakers and regulators have frequently emphasised the need for plurality in news and current affairs. Yet Ofcom's figures show that the BBC commands 43% of cross-platform news consumption, four times as much as its nearest competitor Sky News. Furthermore, the BBC's news and current affairs budget dwarfs that of its rivals at more than £350m.

Despite the scale of the BBC's news operation, it is more than matched in terms of innovation and quality by its competitors. Sky News, for example, was the first 24-hour rolling news channel to launch in Britain, eight years before the BBC followed suit. Similarly, the channel's quality of coverage and editorial integrity, have resulted in Sky News becoming the European news channel of choice and in 2015 being named the News Channel of the Year by the Royal Television Society for a record-making ninth time. It is clear that commercial providers are able to deliver a high quality, innovative news service at a fraction of the cost of the BBC.

News and acquired programming are just two of the areas where the BBC is closely imitating the provision of commercial rivals and therefore not acting in the best interests of licence fee payers. As the consultation notes, the BBC has also faced accusations of ‘chasing ratings’, scheduling programming which closely mirrors that of its commercial competitors at peak viewing times, rather than seeking to maximise the public value it delivers to licence fee payers.

The BBC also needs to be mindful of the pace of market developments, and the impact this has on the distinctiveness of its services and programming. For example, a wide remit for BBC Online may well have been appropriate in 1997 given the relative paucity of private provision at the time. But the availability of high quality news and entertainment content on the web, for free, is now enormous. Despite this, the size of the BBC’s online offering continues to grow. The BBC needs to be quicker in identifying and responding to changes in the market – even if this means reducing its scope in areas where licence fee payers are well served by alternatives.

Licence fee payers are not best served by BBC services which are indistinguishable from those of commercial operators. The BBC must, therefore, ensure that each of its programmes, and its channels and services taken as a whole, is distinctive from those provided by the commercial sector. The challenge in drawing up a new Charter is to put in place a robust framework that ensures distinctiveness and public service broadcasting are core to all of the BBC’s services and activities.

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26. Estimate taken from James Harding and News Group Board presentation to BBC news staff, July 2014, which states that £69m savings in spend on News amounted to “16% of its budget”. This would give a pre-savings budget of £431m. Other adjustments announced in the presentation were £14m in new investments and a further £27m of savings, giving a final estimated total of £349m. Presentation available at: http://www.bbc.co.uk/mediacentre/speeches/2014/james-harding-news-plans.

The BBC’s distinctiveness would be enhanced by fundamental changes to governance – in particular, more effective and regular market impact assessment

5.18 In order to ensure that the BBC’s output remains distinctive and its negative impact on the market is minimised, fundamental changes to the system of regulation and governance are needed. These changes will serve to not only ensure a better appreciation of market impact, but also address other flaws in the existing governance arrangements.

There are significant shortcomings in the existing regulatory and governance framework

5.19 As the consultation notes, the structure of the BBC’s governance has come under sustained criticism throughout this Charter period. The current governance arrangements, with responsibilities shared between the Trust, the Executive, and Ofcom, create confusion and result in a lack of clear accountability. This has manifested itself in poor outcomes in terms of governance, regulation and the competitive impact of the BBC’s activities.

5.20 In assessing how these arrangements might be reformed, Government should recognise that governance and regulation are not synonyms. In its First Review of Public Sector Broadcasting, Ofcom drew the following distinction:

“External, cross sector, regulation – for example, the rules, codes and regulations which would normally apply, in varying degrees, to all players in the industry – for example, competition rules, environmental laws and – in this case – programme codes;

Accountability – the arrangements which may need to be in place to secure, for example, effective use of public funds or to approve major public resource allocation decisions; and

Internal – or corporate – governance: the arrangements which any large organisation should have established to ensure it is effectively managed and governed on behalf of its key stakeholders – including that it has access to high quality advice and expertise, and that it complies with all relevant laws and regulations.”

5.21 Many of the criticisms have focused on the lack of separation between these functions in the current BBC Trust model. As the CMS Committee has argued:

“granting the BBC Trust both an oversight and regulatory role has led to it being too close to the BBC Executive and it being seen on many occasions as being far too protective of the BBC as an institution, rather than acting as an effective and objective regulator and advocate of the licence fee payer and wider public interest.”

5.22 It is also notable that the chair of the BBC Trust herself has observed that oversight of the BBC requires greater independence, and that this is best achieved through an external body:

“[T]he strongest case for more significant change is in this area of oversight, where a fault line continues to lie in the blurred accountabilities between the Trust and the Executive board.”

5.23 This lack of clarity over roles and responsibilities has been highlighted by a number of high profile incidents, including the costly Digital Media Initiative, serious editorial failings and


excessive severance packages. To avoid similar failures in future, the new Charter must ensure there is clear division between roles so that responsibility can be assigned and both the governing body and management can be held to account.

**Both the public value test and service licence reviews are ineffective**

5.24 The current division of responsibilities between the BBC Trust and Ofcom results in a lack of clarity and certainty for market operators. This is most evident in relation to approval and oversight of the BBC's activities and, in particular, how their impact on the market is assessed. Sky's biggest concerns with existing BBC governance arrangements are that the current Public Value Test ("PVT") is a blunt and, at times, opaque mechanism that is inconsistently applied and that the processes for assessing non-service activities are inadequate and unclear.

5.25 Presently, assessing the impact of some BBC services on the market is the responsibility of Ofcom, while the assessment of whether public value is delivered lies with the BBC Trust. However, it is the responsibility of the BBC Executive in the first instance to determine whether its plans are “potentially significant” and to submit a proposal to the Trust for its consideration, meaning that the Trust is dependent on the Executive to make an initial assessment and to bring proposals before it. If the Trust considers that the change is significant, it is then tasked with balancing public value with market impact. Since 2007, the BBC Trust has only carried out four PVTs.

5.26 Given that PVTs are only carried out by the Trust where there is a significant change to a UK Public Service, there are a significant number of BBC activities which are not subject to the PVT process at all, even though they have the potential to have huge ramifications on the industry. For example, 'Project Canvas' escaped scrutiny through the PVT process, despite the fact that a subsequent market impact assessment conducted by the Trust recognised that Canvas may have a specific negative impact on Sky and Virgin totalling between £127 million to £427 million (as a base estimate). The Trust also stated that "Canvas is expected to have a negative impact on Freeview and Freesat".

5.27 Sky is also concerned that when the Trust considers any BBC proposal which is not subject to the PVT process – either because it is not deemed "significant", or because it forms part of the BBC's commercial activities – there is little clarity about the processes that will be followed by the BBC Trust and often no formal mechanism for taking into account the views of industry. BBC Store, for example, was approved without any formal consultation with industry, despite both Ofcom and the BBC Executive acknowledging the potential for market impact in their respective assessments. While the BBC Trust sought external economic advice on some narrow aspects of the proposal, the views of competitors that may be impacted were not sought at all and therefore played no part in the decision to approve the new service.

5.28 As highlighted, Sky also remains concerned that the BBC is not sufficiently reactive to changes in market provision over time. PVTs are only conducted where there is a change to a service, rather than to the market, meaning that the assessments of both public value and commercial impact are never updated despite the fact that the market in which the BBC service operates may have changed significantly.

5.29 Similarly, service licence reviews are only undertaken once every five years, and even then have limited scope to significantly alter the remit of a service or scale it back. Moreover, there is no enforcement mechanism associated with service licences – the BBC Executive faces no punitive measure if it has not been delivering in line with its remit.

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31 As defined in section 100 of the BBC Framework Agreement.
In summary, therefore, Sky considers that the existing governance arrangements fall short in a number of areas, namely: the division of governance and regulatory responsibilities between bodies; the processes for ensuring that market impact of the BBC’s activities is fully taken into account; and the lack of any mechanism which compels the BBC to dynamically alter its output in the face of market provision.

The BBC Trust should be abolished, and a new unitary board established

The consultation acknowledges the urgent need for improvement in this area, and presents three “strategic options” for reform – a model based on the Trust, a new standalone regulatory organisation, and an enhanced role for Ofcom.

Sky does not consider that it would be viable to continue with the Trust model, even with clarification of roles and enhanced powers of enforcement. There remains an inherent tension in a regulatory structure that requires the same body to act as both a cheerleader for the BBC and as an objective assessor of its performance. Moreover, the numerous failings of the Trust since its creation mean it is held in relatively low standing by industry and the public. Sky has little confidence that reform of this model will deliver the significant changes needed to hold the BBC properly to account on behalf of licence fee payers.

The other options proposed in the consultation both envisage the creation of a unitary board for the BBC. Sky would cautiously welcome such a step, on the proviso that it did not repeat the mistakes which were made in the establishment of the BBC Trust – particularly in relation to conflicting roles and responsibilities. A new board would require clearly defined functions, with its primary role as the body accountable for the BBC’s management and delivery of the BBC’s strategic aims. It would effectively have responsibility for the governance of the BBC – but the regulation of the BBC would clearly need to take place elsewhere.

Sky broadly concurs with the proposed remit for a unitary board put forward in the CMS Committee’s report. Under this proposal, the new board would be responsible for:

- Promoting the success of the BBC by directing and supervising its affairs.
- Determining and setting the BBC’s strategic aims, ensuring that the necessary financial and human resources were in place for the BBC to meet its objectives and reviewing management performance.
- Deciding and delivering the BBC output in line with its funding allocation and borrowing limits and public purposes.
- Defining adequate systems to define and maintain editorial standards, ensuring value for money and dealing with complaints in the first instance.
- Defining the BBC values and standards and ensuring they were met.
- Maintaining the BBC’s editorial independence.

A unitary board would by definition lack the independence required to hold the BBC ultimately to account in terms of its public service provision and market impact. Sky would, for example, be deeply concerned if such board were to have oversight of PVTs. Regulatory functions would need to be carried out by an alternative body or bodies.

The regulatory functions of the BBC Trust should be transferred to Ofcom

Sky can see no sound reason why Ofcom should not be given responsibility for all BBC regulation. This should include market impact assessments, regulation of the BBC’s commercial activities in respect of competition and fair trading (including approving and enforcing the BBC’s Fair Trading commitments), content standards regulation (including
accuracy and impartiality), quota enforcement, service licence reviews and enforcement. It should also be given powers enabling it to conduct its own initiative investigations and make active enquiries of BBC management.

5.37 Sky considers that Ofcom regulation of the BBC would have a number of benefits. In the first instance such a move would bring all media regulation within a single body with the necessary expertise and understanding of the sector as a whole. Ofcom has wide information gathering powers, which would give it access to the information needed for it to discharge its regulatory functions. Both transitional and ongoing costs would likely be lower under this option than alternatives, given Ofcom’s existing resources. As the consultation notes, this model clearly divides governance and regulation, removing a conflict of interest. Meanwhile, content regulation need in no way compromise the BBC’s impartiality or independence, just as it does not for rival broadcasters.

**Ofcom’s regulation of the BBC should come with a “triple guarantee”**

5.38 Adopting the model outlined above would allow for a reform of the processes for assessing the impact of BBC services and non-service activities. We have highlighted how the market impact of BBC activities has been given insufficient weighting in previous decisions by the Trust. In part, this has been because “public value” is largely subjective and incapable of proper measurement.

5.39 Sky considers that Ofcom’s regulation of the BBC should come with a “triple guarantee” – a trio of mechanisms which together ensure that all BBC activities are distinctive, deliver public value and come with minimal market impact.

*Reformed Public Value Tests*

5.40 In relation to the PVT process, our preferred approach, which was discussed during debate over the current Charter but ultimately not adopted, would be a “gating mechanism” whereby the new Charter specifies a threshold beyond which the market impact of a service would be deemed completely unacceptable. This would be far simpler and more effective than the current balancing exercise undertaken by the Trust.

5.41 Sky would therefore propose that proposals for both new services and material extensions or amendments to services should be, in the first instance, decided on by the unitary board, on the basis of whether the proposals meets the BBC’s public purposes, can be operated within budget and would be sufficiently distinctive from commercial offerings. If the new board was satisfied that this is the case, the proposal would be passed to Ofcom to conduct an independent market impact assessment. Should Ofcom find that the proposed service risks foreclosing a market or significantly lessening competition, then the proposal should not go ahead, irrespective of any claimed “public value”.

*More frequent service licence reviews*

5.42 Ofcom should also be tasked with the regular review of existing BBC service licences, in much the same way that it examines the delivery of Channel 4’s public service remit. As noted, there is a need for regulatory mechanisms that ensure the BBC is more reactive to changes in the market. These could include more frequent service licence reviews (e.g. on a three-year cycle rather than a five-year one) and the incorporation of rigorous market impact tests as part of this regular review, rather than just at the launch of a service.

5.43 Greater enforcement powers should also be available, including withholding of funding and the ability to recommend reducing or closing services if market provision has increased – a mechanism which does not currently exist.

*Own initiative investigations*
5.44 Ofcom should also be given powers that enable it to conduct its own initiative investigations where it has concerns either about the public value delivery or competitive impact of an activity. This could be applied to any aspect of a service that that falls outside of the first two tests, with Ofcom making active enquiries of the BBC Executive. Ofcom should have the power to direct the BBC unitary board in respect of its findings.

5.45 A reform of the governance and regulatory framework that provided more robust scrutiny of the BBC’s activities via this “triple guarantee” would, in turn, lead to a greater distinctiveness in the BBC’s services. This would strengthen its contribution to public service broadcasting and delivery for licence fee payers.

**An increase in transparency would make the BBC more accountable to the licence fee payer**

5.46 Along with greater regulatory scrutiny, an increase in transparency would help the BBC to be more accountable to licence fee payers, and ensure that the decisions it makes deliver greater value for money and distinctiveness.

5.47 Sky agrees with the CMS Committee that the National Audit Office (“NAO”) should have an expanded role in order to support BBC accountability. At a minimum, this should involve statutory (rather than voluntary) access to the BBC accounts, and the ability to report independently to Parliament and the public, rather than through the BBC Trust or its replacement body. Granting the NAO this unfettered access will increase the effectiveness of value for money investigations.\(^{33}\)

5.48 The BBC could also do more itself to increase transparency and accountability. For example, the BBC currently only provides a spending breakdown for each service in the broad categories of ‘content’, ‘distribution’ and ‘support’. Far greater granularity could be provided in this area, with the BBC publishing (say) genre spend, acquired programme spend, talent salaries and so on. Requiring the BBC to make this information available would ensure greater accountability for licence fee expenditure, and the scrutiny of these figures would likely drive better value for money.

6. **Supporting the UK media sector: ensuring the BBC’s activities contribute to a thriving broadcasting ecology**

6.1 The best outcome for licence fee payers and the BBC itself is a strong overall broadcasting ecology with significant choice and innovation above and beyond BBC services. The new Charter needs to ensure that the BBC’s public purposes require it to actively support this outcome in its activities and behaviours.

**Licence fee payers benefit from a BBC that is part of a strong media sector**

6.2 As this response has highlighted, the BBC now operates in a market alongside a wide range of other providers, and the sector is delivering in terms of consumer outcomes. Audience satisfaction remains high, the number of hours of original UK content being broadcast in peak time has risen, and viewer choice is increasing substantially thanks to alternative investment. The availability and plurality of high quality content is likely to continue to grow overall as the impact of new platforms and technologies dramatically lowers the costs of both content creation and distribution.

6.3 While the BBC’s own programming output can make a significant contribution to the benefits delivered to UK audiences, it is also clearly in the interests of licence fee payers for the BBC to support the continued health and growth of this sector as a whole. Ensuring a wide variety of choice in content provision will deliver the greatest value to UK viewers in the long-term.

\(^{33}\) Sky would also advocate for the NAO playing a role in public value assessments and transfer pricing analysis under the Fair Trading Framework.
6.4 The proposals Sky has outlined in the sections above would clearly contribute to the aim of further supporting and strengthening the sector. For example, by reforming the governance and regulatory framework so that the market impact of the BBC can be properly assessed on a more dynamic basis, commercial providers are likely to be able to provide more compelling services without being crowded out by BBC content.

6.5 However, there is a need for the BBC to go beyond this to ensure that it considers the impact of its actions on other market players in everything that it does, even if such activities are not scrutinised by Ofcom under its regulatory mechanisms.

**The BBC should position itself as a partner to platforms and content providers**

6.6 At the heart of this approach should be a positive requirement for the BBC to create opportunities for others in the sector on a fair, reasonable and non-discriminatory basis when carrying out its activities. The BBC should, for example, position itself as a partner to platforms and content providers. A commitment to creative partnership could be included as one of the BBC values, which the consultation proposes might be introduced. This would hopefully manifest itself in positive decisions taken at a working level that could nevertheless contribute to a stronger overall broadcasting sector.

6.7 For instance, it might encourage the BBC to seek to share its coverage of national events with other news providers without charging them production access fees, bringing the benefit of such coverage to a wider section of licence fee payers. Similarly in sport, the BBC might look to strike up partnerships with other broadcasters to provide better coverage or even cross promotion of popular sporting events. The BBC could open up its archive programming for use by the public and creative companies alike. These, and other steps the BBC could seek to take from a programming perspective, would enhance the wider market and create opportunities for others.

6.8 The BBC could also support the sector in its approach to content distribution, beyond the obligation suggested in section 4. This could involve, for example, working collaboratively with platform providers who are seeking to develop new and innovative methods of content discoverability, or making its programming available to operators who are experimenting with new methods of content delivery.

**Greater competition in the BBC’s own activities would better serve licence fee payers and the market as a whole**

6.9 The consultation asks for views on whether greater competition should be promoted in a number of the BBC’s activities. Sky considers that it would be in licence fee payers’ interests for these opportunities to be embraced. Not only would competition drive efficiency, value for money and better on screen outcomes, it would also serve to strengthen the wider UK content sector by providing further growth opportunities for other market players.

6.10 For example, there is a clear case for abolishing the in-house protection for content production. As the consultation notes, independent production companies already receive the majority of contested commissions (between 70% and 87%), indicating that they compare well on both price and quality. There is strong reason to believe that opening up the entirety of the BBC’s commissioning budget to competition would drive further efficiency and support the UK’s creative sector.

6.11 Similarly, a competitive market for the international distribution of BBC shows would better maximise the return to licence fee payers. Export revenues are an increasingly important source of revenue for UK content providers, and the competitive distribution market is driving growth in this area. The Charter review process should examine how the BBC’s content can best be further utilised. At a minimum, this should mean removing the ‘first look’ arrangements which gives BBC Worldwide uncontested international distribution rights for BBC shows.
Neither licence fee payers nor the wider sector would benefit from the BBC being provided on a subscription basis

6.12 The sector would not, however, benefit from parts of the BBC being provided on a subscription basis. Such a move would, over time, inexorably and fundamentally change the nature of the BBC. In particular, it would skew the BBC’s approach to content creation, incentivising a greater focus on programming that could attract commercial returns rather than distinctive content which delivered public value. Subscription would also be at odds with the core BBC remit of providing universally available public service content – limiting the availability of BBC content through subscription could not be said to be in licence fee payers’ interests.

6.13 The consultation asks for views on how the BBC should be funded in future, presenting three options – the continuation of the licence fee, the introduction of a household levy, or a new hybrid model which includes subscription revenue. While Sky does not have a particular view on whether a licence fee or household levy would be most appropriate, we consider that the interests of licence fee payers and the sector at large would be damaged by the introduction of subscription into any of the BBC’s activities. Such a move would, over time, inexorably and fundamentally change the nature of the BBC.

6.14 Firstly, a move to subscription would skew the BBC’s incentives on content creation. A BBC that was reliant on growing its subscription base in order to attract revenue would be incentivised to take editorial decisions in pursuit of this by, for example, prioritising mainstream “commercial” programming that will attract subscribers over more public service focused output. This would be at odds with the underlying rationale of the BBC, and detract from the unique value it can deliver to licence fee payers.

6.15 Secondly, such an approach would be at odds with a BBC that should be focused on providing universally available public service content. Limiting the availability of BBC content could not be said to be in licence fee payers’ interests.

6.16 Finally, moving some of the BBC’s activities to a subscription model would create a significant new publicly funded competitor in an area where private provision is currently serving audiences well. Subscription-funded BBC services would likely encroach on the wider broadcasting market, damaging revenues of other providers and weakening the sector as a whole.

7. Conclusion

7.1 The BBC remains a vital institution in the context of the UK content market, but exists today in a changed world. The needs of licence fee payers have changed in light of the significant developments in the market. Given its size, position, and the advantages it is afforded, the BBC has a responsibility to adapt so it can deliver in line with expectations of licence fee payers.

7.2 Sky has outlined in this response the three key principles that the BBC Charter should seek to secure in order better reflect the needs and expectations of all licence fee payers. Firstly, their interests are best served by the BBC making its content widely available on all platforms used by licence fee payers to watch TV. Secondly, BBC content needs to be more distinctive and focused on what the market does not and cannot produce. Thirdly licence fee payers benefit from a thriving UK media sector and the BBC has a responsibility to ensure its actions support that.

7.3 Changes to the way the BBC is governed and regulated will be needed to underpin these principles, including giving Ofcom the primary regulatory role in place of the BBC Trust. In particular, Ofcom’s regulation of the BBC should come with a “triple guarantee” – a trio of regulatory mechanisms which together ensure that BBC activities are distinctive, deliver public value and come with minimal market impact.
7.4 Sky looks forward to contributing further to the Charter review process as it progresses.
ANNEX A

SELECTED FIGURES FROM IOS SKY GO APP AND IOS SKY+ APP ON IPHONE

Figure 1: Sky Go listings page showing availability of content from other PSBs and prominence afforded to those listings

Figure 2: Sky Go homepage
Figure 3: Top Level Catch Up TV menu on Sky+ app highlighting lack of availability of information relating to BBC content

Figure 4: Sky+ app FAQs extract

Why can’t I access programmes from BBC iPlayer via the app?

Our aim is to ensure the On Demand listings on the Sky+ app are in line with what is available on the Sky+HD box. We are currently in discussion with the BBC and hope to be able to include BBC iPlayer listings to the Sky+ app in the future.

Can I access/manage my planner if I’m not connected?

No, your device has to be on the same WiFi network as your Sky+HD box to access and manage your planner. Once the app is disconnected from the Sky+HD box, you won’t be able to access your Planner or the TV Remote Control but you will still be able to send Remote Records and Remote Downloads.
Figure 5: Sky+ app screen grab illustrating programme information and download to set top box functionality