

BBC BOARD POLICY EXCHANGE OF INFORMATION PROTOCOL

PURPOSE

This protocol is for use by the members of the BBC Board, and its sub-committees, the BBC Executive Committee, and BBC Commercial Holdings Board. It provides guidance on the types of information about the BBC's UK Public Services, trading activities or non-service activities which anyone at the BBC (including Board members, Executive Committee members and employees) should not exchange with anyone in the BBC's commercial subsidiaries.

The principles set out in this protocol also apply in general across the BBC group in connection with sharing information held by the BBC with its commercial subsidiaries.

BACKGROUND

The BBC Charter sets out that the BBC must ensure that its commercial activities do not, as a result of their relationship with the UK Public Services, non-service activities or trading activities, distort the market or gain an unfair competitive advantage.

Ofcom's Operating Framework states that the relationship between the UK Public Services, trading activities and non-service activities and the commercial subsidiaries may lead to concerns that the subsidiaries could be privy to information which gives them an unfair competitive advantage.

Ofcom's revised trading and separation rules, published in February 2019 expand on this point by providing examples of the types of information that could result in such an unfair advantage:

- advance notice of plans to commission large amounts of programmes on a particular theme, and changes to genre strategies or specific decisions in relation to recommissioning of existing programmes.
- content distribution and sales, and audience research and performance measures.

Significantly, Ofcom acknowledges that some exchange of information will be necessary and is therefore permitted:

- (1) to ensure the activities of the BBC's commercial subsidiaries fit with the BBC's overall Mission and Public purposes;
- (2) to fulfil a commercial relationship; and/or
- (3) where, if shared, the information would not carry any risk of distorting the market or a commercial subsidiary gaining an unfair competitive advantage

(together the "Permitted Purposes").

Ofcom further stipulates that where information is shared for a permitted purpose, the BBC must have in place appropriate measures, controls and processes to ensure that it is only used for the specific purpose for which it was obtained.

This Protocol provides guidance on what types of information the BBC holds from operating the UK Public Services, trading activities and non-service activities, and which is not available to the wider market, that:

- (1) can be provided to or shared with commercial subsidiaries to be used by them for a Permitted Purpose; and
- (2) should not be provided to or shared with commercial subsidiaries because of the significant risk that this would provide them with an unfair advantage.

For the purposes of this Protocol, “information....provided to or shared” means information whether in document or electronic form (such as Board or Committee papers, investment cases or other documented commercial proposals) and information provided orally at the relevant Board or Executive Committee meeting, or otherwise.

PRINCIPLES

The BBC Group includes:

- the UK Public Services, trading activities and non-service activities;
- the World Service;
- BBC group functions (e.g. Finance, Legal); and
- commercial activities, undertaken through commercial subsidiaries.

All information held by the BBC’s commercial subsidiaries may be shared with the BBC as the sole shareholder in each subsidiary. In general information about BBC Group functions may be shared by the BBC with its commercial subsidiaries. This is necessary to provide Group services, and for the BBC Group to effectively hold its commercial subsidiaries to account.

The BBC takes a risk based approach to the sharing information relating to the UK Public Services, trading activities and non-service activities with the BBC’s commercial subsidiaries. The main risks that the BBC is seeking to mitigate are that:

- BBC commercial subsidiaries may have access to information about commercial processes run by the UK Public Services, trading activities and non-service activities which could provide them with an unfair advantage in the markets in which they operate (e.g. commissioning).
- BBC commercial subsidiaries may have access to information about competitors which the BBC holds through business interactions from carrying out the UK Public Services, trading activities and non-service activities (e.g. information about pricing from independent producers or studio facilities businesses) that could provide the commercial subsidiaries with an unfair advantage.

The BBC has assessed, and will keep under review, the risks associated with sharing different types of information the BBC holds, including specifically information it holds from operating the UK Public Services, trading activities and non-service activities. The output of this risk assessment is summarised in this protocol, which the BBC will also keep under review.

INFORMATION THAT CAN BE SHARED

The following list provides examples of information which can be shared by the BBC with its commercial subsidiaries:

- BBC activity which is already in the public domain
- Overall Group strategy
- The BBC Group's performance against regulatory and market metrics, including divisional performance monitoring
- Group and divisional finances, at a level of detail consistent with the information published in the BBC Annual Report and Accounts each year
- HR reports/developments and group schemes, such as the pension scheme
- Communications with Ofcom, DCMS and other government or regulatory bodies
- Campaigns, initiatives and projects which require input from the commercial subsidiaries, where disclosure or discussion would not provide an advantage to commercial subsidiaries
- New UK Public Services, unless to do so would confer an advantage on the commercial subsidiaries (see further below)
- Partnerships with third parties outside the BBC, unless to do so would provide an advantage to the commercial subsidiaries (see further below)

INFORMATION THAT CAN NOT BE SHARED

The following list provides information which should not be shared (unless it is already in the public domain):

- UK Public Services' commissioning information and information relating to the implementation of the BBC's competition obligations in TV/radio/online supply, e.g.:
 - Identity of titles to be tendered out

- Conditions for tenders (including timing)
- Commissioning's general approach to the appraisal of bids and pitches
- Commissioning's appraisal of specific tenders/bids
- Any other information which could give BBC Studios a commercial advantage in terms of understanding the commissioning requirements of the relevant BBC UK Public Services (including without limitation any information which comprises Proscribed Commissioning Information (the non-exhaustive categories of which are set out in the Annex to this Protocol))
- Supply relationships the UK Public Services has with third party producers, including:
 - Commercially sensitive details of supply relationships with third party producers
 - Overall approach to terms for categories of producers
- UK Public Services' content investment, contestable funding and other forms of UK Public Service production funding, including:
 - Allocation of contestable funding
 - Overall levels of contestable funding
- Specific scheduling decisions on BBC services relating to productions made by independent producers
- Sharing of non-publicly available audience data which might undermine the commissioning level playing field, including:
 - Any measures which relate to an Indie production, and which are not in the public domain – all producers will be able to access information relevant to their productions only
 - Details of specific content to be commissioned for a new UK Public Service
 - Specific details of editorial review of a UK Public Service where editorial information is provided that would confer an advantage on the commercial subsidiaries
- Partnerships or commercial agreements with any competitor of our commercial subsidiaries, if there is discussion of the (potential) partners' commercially sensitive

information or of decisions on particular partnerships or procurement decisions to pursue (e.g. information around a studio facilities contract for BBC News)

ACTION TO BE TAKEN

Where it is determined that the relevant information ought not to be provided to or be shared with the commercial subsidiaries then:

- (a) where such information is contained in document or electronic form then it shall not be provided to or circulated within the relevant commercial subsidiary; and
- (b) where such information is to be presented orally or discussed at a Board or Executive Committee meeting, the relevant commercial subsidiary employees shall recuse themselves from attending that part of the meeting at which such information is to be presented.

CONTACT

If you have any questions about how this guidance applies, please contact Phil Harrold (BBC Company Secretary) or Peter Ranyard (Assistant General Counsel).

Annex- Proscribed Commissioning Information

It has been determined that exchange of information regarding the BBC's UK Public Service commissions and the commissioning process requires additional attention and safeguards in the context of the relationship between the UK Public Services and the commercial subsidiaries. Accordingly, the respective UK Public Service commissioning teams and their counterparts in the commercial subsidiaries have been made aware of the requirements of the BBC Information Sharing Protocol and that, in particular, the following types of information must not be shared ("Proscribed Commissioning Information"):

- Discussions regarding pre-agreeing allocation of slots to BBC Studios
- Advance notification of shows under consideration to be tendered
- Discussions around differential slot prices with independent production companies
- Advance confirmation of any titles in respect of which it has been determined it would not be Value for Money to tender to the market