

# BBC's Programme Release Policy

## For UK secondary television and subscription video-on-demand services

### 1. Context

- 1.1. Under the BBC's Code of Practice for the BBC's dealings with Independent Producers for Television Programmes Commissioned by the BBC and the associated BBC Terms of Trade, when commissioning a programme from an independent producer, the BBC acquires an exclusive licence in the UK television market for the period of its primary rights licence.
- 1.2. Accordingly, to enable the BBC to protect its investment and rights in the programme, an independent producer must secure the BBC's consent to the exploitation of any secondary television and/or subscription video-on-demand rights in the UK during the BBC's licence period. However, this does not apply to Commercial Download Rights, as defined in the General Terms, which are permanent ownership rights and can be exercised as provided in the General Terms.
- 1.3. The BBC will consent to the release of a programme into the secondary television and /or subscription video-on-demand markets at such point that it considers secondary exploitation of the programme in the UK would not conflict with the rights the BBC has acquired and the investment it has made.
- 1.4. This release policy explains the circumstances where the BBC would be prepared to consent to the exercise of these rights in a programme in the UK during its licence period, in order to enable independent producers to exploit rights in the secondary television market and/or the subscription video-on-demand market in the UK during the BBC's licence period.
- 1.5. The aims of the BBC's release policy are to:
  - Ensure that the BBC maximises full public service use from its programming
  - Support the whole BBC public service portfolio
  - Ensure Value for Money
  - Nurture and protect programme brands and talent, in particular those brands which are core to the BBC's services at the time and those brands that have value across the BBC's public service portfolio
  - Where possible, enable independent production companies to exercise their exploitation rights in the UK secondary market prior to the expiry of the BBC's primary licence
  - Ensure the same principles relating to release apply consistently to all programme rights holders in the BBC commissioned content.

- 1.6. The policy is organic and it may therefore evolve and change over time in response to changes to the channel environment and market conditions. As such, it will be reviewed and updated regularly and published on the BBC commissioning website. The BBC will also keep the operational workings of the policy under review.

## **2. BBC's Release Policy in the UK Secondary Television and Subscription Video-on-Demand Markets**

### **Windowing Policy – Introduction:**

2.1 Where the rights holder in a programme made for the BBC (whether by an independent producer or an in house production department) is interested in exploiting the secondary television or subscription video-on-demand (SVOD) rights in their programme in the UK, in order to protect the BBC's rights and investment in the programme, the following standard policy will apply to the majority of such programmes which will be implemented in the manner outlined in section 3 below.

2.2 The standard policy may vary in certain circumstances such as:

- a) For a small number of channel defining programmes (which will generally be identified as such at the point of commission) where the BBC wants to retain its exclusivity for a period longer than the BBC Standard Exclusive Window set out below.
- b) Where a programme features an artiste or presenter with whom the BBC has an exclusive arrangement or is part of an exclusive rights deal between the BBC and a third party, particular considerations may apply to the release of any programming in the UK to safeguard the BBC's investment. Please contact the relevant Business Affairs Manager to discuss any particular conditions of release in these circumstances.
- c) Where a programme (or the transmitted version of the programme) cannot be rebroadcast, for example due to complaints or the sensitivity of the subject matter.
- d) Where the BBC does not own the rights to the underlying rights in the programming in the UK secondary market (e.g. sports programming).
- e) Where the BBC is the rights holder in the programme and does not wish to exploit the programme commercially.

### **The BBC's Standard Exclusive Windows:**

2.3 The Code of Practice gives the BBC the right to an exclusive 5 year licence in the UK television market, with an option to renew for a further 2 years. The length of the BBC's standard initial window of exclusivity is set out below ('Standard Exclusive Window'):

- All BBC One and BBC Two Series: 18 Months

- All BBC Three and BBC Four titles: 18 Months
- BBC One and BBC Two Singles: 18 Months
- All CBBC & CBeebies titles: 5 years

2.4 These Standard Exclusive Windows are calculated from first exercise of the BBC Public Service Rights of the last episode of the series. However it should be noted that if the BBC agrees to reduce the window of exclusivity to a period of less than 12 months, such period of exclusivity will be calculated from first BBC transmission of the last episode of the series.

2.5 After the Standard Exclusive Window set out above, the programme may be released in accordance with this Policy.

### **3. Obtaining the BBC's Consent to Release**

3.1. In anticipation of an actual programme sale (and in accordance with the applicable window - whether the Standard Exclusive Window or a shorter window agreed under paragraph 4 below) the relevant rights holder in the programme should request the BBC's consent to the sale once the entire programme has transmitted. For the avoidance of doubt, each licence extension / renewal needs re-approval (which would consider each time the overall planned exposure across all UK platforms during the BBC's licence period).

3.2. Any request must be made to the BBC (see contacts below) in writing using [the BBC's template request form \(excel\)](#) and must set out all of the following information:

- a) A the proposed licensee;
- b) the proposed start date of the licence and proposed licence period;
- c) the date of the first BBC availability (and first BBC transmission if different) of the final episode of the programme;
- d) the relevant Holdback window ;
- e) as applicable:
  - i. the proposed number of transmission days and proposed scheduling by the secondary channel (if known);
  - ii. any AVOD exhibition period (including any rest periods) associated with the linear rights in 3.2(e)(i) or under a previous request; or
  - iii. the proposed SVOD exhibition period (including any rest periods);
- f) the number of times that the programme/series has been licensed to the UK secondary market and whether it would form part of a multi-series 'box-set' offer;
- g) the proposed gross licence fee, distributor commission and any anticipated costs of sale; and
- h) any restrictions requested by the licensee that would prevent the BBC from exercising any further public service rights in the programme on BBC services during its licence period.

- 3.3. Any consent which is granted by the BBC must be obtained in writing and will be subject to compliance by the independent producer with:
- a) any scheduling/windowing/marketing/publicity conditions applied to the release;
  - b) the BBC's [Third Party Brand and Design Commercial Guidelines](#), and;
  - c) all other applicable terms and warranties set out in the Programme Production Agreement.
- 3.4. If a Producer requests BBC consent to release a BBC Three programme on expiry of the Standard Exclusive Window and the BBC refuses permission for release because it wishes the initial iPlayer period for that Programme to remain exclusive, the BBC shall pay an additional half of one per cent (0.5%) of the Primary Rights Licence Fee paid for the relevant series or episode.
- 3.5. The relevant BBC contact for these purposes is:
- a) for programmes distributed by BBC Studios Distribution ('BBC SD'): BBC SD will liaise directly with the BBC Content Release team on the Producer's behalf; or
  - b) for all other programmes: the Producer should liaise with the BBC Commercial, Rights & Business Affairs Manager ("CRBA Manager") who dealt with the commission of the programme.
- 3.6. Acceptable licence terms for the UK secondary linear rights are as follows:
- a) Licence period: The BBC would expect the licence period to be tailored according to the number of episodes of a series being licensed, to be typically as follows:
    - For 1 episode: 12-18 months
    - For 2-14 episodes: 2 years
    - For 15-50 episodes: 3 years
    - For > 50 episodes: 4 years
  - b) Number of Transmissions Days (where a Transmission Day is 4 transmissions per calendar 24 hours):
    - Factual programmes: Maximum of 9 Transmission Days
    - Entertainment and Scripted programmes: Maximum of 6 Transmission Days

For clarity, a transmission on a plus one channel does not use up a transmission within the same transmission day, but transmission on a multiplex channel (i.e. a different channel owned by the same broadcaster) would be 2 Transmission Days.
  - c) Permitted catch-up use included in a secondary linear licence is up to 30 days from transmission of the last episode (unless otherwise stipulated as a condition of release) provided that the availability of any one episode:
    - i. is no longer than 3 consecutive months; and
    - ii. does not exceed a total of 6 months in any rolling 12 month period; and
    - iii. to the extent practicable, is spread evenly across any rolling 12 month period.

- d) The relevant rights holder may additionally request the BBC's consent for a licence for advertising video-on-demand (AVOD) rights in excess of the catch-up use in paragraph 3.6(c) above provided that:
  - i. the BBC has not purchased an exclusive VOD window for the programme;
  - ii. the proposed AVOD rights are compatible with any editorial controls which the BBC may wish to exert over the programme or programme brand, including for scheduling reasons, planned exposure across all platforms and as contemplated in paragraph 2.2 above;
  - iii. the AVOD rights are simultaneous with, in support of, and under the same service branding as a licence of UK secondary linear rights; and
  - iv. any individual licence of AVOD rights is no longer than 12 months (but licences are renewable with consent each year).

3.7. When requesting consent to the granting of subscription video-on-demand rights to licensees, the rightsholder must ensure that:

- a) the relevant programme production agreement does not contain any agreed restriction on licensing to certain SVOD platforms in the UK;
- b) the BBC has not purchased an exclusive VOD window for the programme;
- c) any individual licence must not be longer than 12 months; and
- d) the editorial proposition and consumer offer of the proposed licensee of UK SVOD rights in BBC commissioned programmes:
  - i. must not undermine the stated aims of this Policy; and
  - ii. must demonstrate the ability and intention to comply with the BBC's conditions of release as set out in this policy and under the terms of the Programme Production Agreement with the Producer.

3.8. For the avoidance of doubt:

- a) any proposed licence extension or renewal needs to be re-approved under the process above, taking account of the stated aims of the Programme Release Policy outlined in section 1 above, which would include the number of series of that brand currently under licence to the licensee and, the overall planned exposure across all platforms during the licence period; and
- b) any individual SVOD licence must not include the right for advertising to appear against the programme in the UK.

## **4. Release before the Expiry of the BBC Standard Exclusive Windows**

4.1. It may be possible, at the point of contracting as part of the commercial negotiation of that commission in return for upfront investment, to agree a release of a programme or series before the expiry of the BBC Standard Exclusive Window where:

- a) the investment is agreed at the point of commission; and
- b) the investment is applied in full towards the production cost of production; and
- c) a significant element of investment is made against commercial exploitation of distribution rights in the UK; and
- d) the BBC agrees the investment is required to fund the relevant programme.

4.2. Release will not be agreed under paragraph 4.1 above at less than 6 months. It should be noted that if the BBC agrees in accordance with paragraphs 4.1 to reduce the window of exclusivity to a period of less than 12 months, such period of exclusivity will be calculated from first BBC transmission of the last episode of the series.

4.3. Upon de-commission of the programme the production company may apply for consent to a release before the expiry of the BBC Standard Exclusive Window.

4.4. In relation to the release of programmes commissioned by CBBC and CBeebies earlier than the BBC Standard Exclusive Window set out in section 2.3 above, the provisions set out below apply:

- a) The BBC will not consider applications for holdback release into the SVOD market on all titles until around 2 years after the first transmission of the last episode on CBBC or CBeebies Channels or websites.
- b) In reaching a decision, the circumstances taken into consideration for applications for SVOD holdback release are as follows:
  - i. In considering the aims of the Policy as set out in paragraph 1.5 above, the relevant factors include:
    - A. Whether the key talent and/or characters are channel defining and considered intrinsically associated to the CBBC and CBeebies brand;
    - B. Whether the title has a consistent, regular slot on the Channel and considered intrinsically associated with the CBBC and CBeebies brand;
    - C. If the title has a particularly sensitive or public service nature; and
    - D. Whether the series has 30 episodes or less for CBeebies and 15 episodes or less for CBBC.
  - ii. Where CBBC or CBeebies commissions a returning title and considers the existing title to no longer hold as much editorial importance as a returning series. Whether an older series no longer holds equal editorial importance as a later series can usually be determined at point of commission; and
  - iii. There must be no risk of inaccurate association by audiences that the SVOD service is being delivered by the BBC, taking into consideration the proportionate volume of BBC Children's content on the platform.

- c) Any consent granted by the BBC will be subject to the conditions set out in paragraph 3.3 above, which for the avoidance of doubt includes:
- the requirement for the Subscription VOD service to provide warranties that it shall not, whether in or outside the UK, through its acts or omissions, bring the Programme or the BBC into disrepute or infringe the BBC Guidelines; and
  - responsibility for compliance and subsequent withdrawal from the market in the event that an episode or series is considered sensitive; and
  - compliance with the BBC's Third Party Brand and Design Commercial Guidelines; and
  - Compliance with the [Social Media Guidelines](#)
- d) The Producer and/ or Distributor and/or relevant licensee shall be fully responsible for clearing all associated underlying rights (including music) to enable the Subscription VOD service to freely exercise the rights granted to it by the Producer and/ or Distributor.