

The BBC's Fair Trading Guidelines

Preface

The BBC's core purpose is that of public service broadcasting.

We aim to be the world's most creative and trusted broadcaster and programme maker.

We strive to satisfy our audiences with services that inform, educate and entertain, and that enrich their lives in ways that the market alone will not.

Since the launch of *Radio Times* in 1923, the BBC has also engaged in commercial activities, with the explicit aim of supporting our public purposes. If pursued properly, such activities can:

- make sure that the full value of publicly-funded (i.e. licence fee funded and World Service Grant-In-Aid funded) assets is realised;
- help generate income streams to be ploughed back into public service activities; and
- showcase British talent and production flair to a worldwide audience, sustaining our ability to attract the best talent available.

The BBC has a special responsibility to ensure that any commercial activity it undertakes supplements and supports its public purpose. The principles by which the BBC undertakes commercial activity are set out in the Governor's Fair Trading Commitment. This states that our commercial activities must have the values of quality and integrity which characterise our wider work. When we trade in commercial markets, we must ensure at all times that we do not put public funds at risk or use them to support our commercial activities. In addition to ensuring compliance with European and UK Competition Law and European law on State Aid, and in recognition of its special position as a publicly-funded organisation, the BBC voluntarily embraces additional requirements within its framework of Fair Trading.

The BBC's Fair Trading Guidelines (formerly known as the BBC's Commercial Policy Guidelines) provide a detailed operational framework which build on the principles of the Fair Trading Commitment. The Guidelines are designed to ensure that the BBC's commercial activities support its public purpose, that it trades fairly and lives up to the high standards which the BBC has set over the years.

Competition Law

It is especially important that all of us at the BBC seek to conduct our business to the highest ethical and legal standards. This is why the Governors have chosen to produce and publish a Fair Trading Commitment and why the BBC has introduced a rigorous Fair Trading compliance programme. Part of this commitment means that we must ensure that our public service and commercial activities fully comply with UK and European Competition Law. As a publicly-funded organisation, it is vital that we do so. Failure to comply with Competition Law legislation may result in serious consequences for the BBC. These could include heavy fines being imposed on the BBC, important contracts becoming unenforceable, third parties being awarded damages against us, possible imprisonment for the individuals involved and – critically – a loss of credibility and standing with the public.

Chapter 3 of these Guidelines contains a summary of the key aspects of Competition Law.

If your responsibilities are affected by the BBC's Fair Trading Guidelines you must take time to read them and ensure that you attend the Fair Trading and Competition Law training sessions arranged by your division. In the event that you have any questions or doubts as to whether any particular activity could infringe these Guidelines you must seek advice from the Head of Fair Trading. If your enquiry relates to Competition Law you should contact the Regulatory Legal Department in the circumstances mentioned in Part B and/or Part C of Chapter 3.

The Head of Fair Trading has overall responsibility for ensuring that all aspects of the Fair Trading Guidelines are implemented and will report to me on their operation at the regular Fair Trading Compliance Committee meetings (as well as reporting regularly to the Executive).

Chairman of the Fair Trading Compliance Committee.

Chapter 1: The BBC's Fair Trading Guidelines

Introduction

1.1. The BBC's core purpose is public service broadcasting: seeking to satisfy audiences with services that inform, educate and entertain; and that enrich their lives in ways the market alone will not.

1.2. The investment of public funds over many years has produced a critical mass of talent and production capability for the BBC, together with an unparalleled archive of past programming. Some of these assets have a secondary value, over and above their use on public service channels and outlets.

1.3. The BBC has a responsibility to ensure this value is properly developed, and used, to the benefit of its public service activities. The opportunities to do this are increasing all the time. Realising this potential is important because it helps:

- achieve full value from the assets which the BBC has created, generating revenues which can be reinvested into public service activities; and
- build a network of world-wide outlets, sustaining the BBC's ability to attract and retain the talent UK consumers expect, whilst showcasing British talent and production flair to a world-wide audience.

1.4. Since the launch of *Radio Times* in 1923, the BBC's commercial activities have been an important component of the funding of its public services.

1.5. Co-production funds from commercial sources are an essential and growing contribution to programme budgets, without which many landmark BBC programmes would not be made. Sales of BBC programmes to overseas broadcasters have increased steadily over the years, making the BBC Europe's largest exporter of television programmes.

1.6. The BBC's Royal Charter, last renewed in 1996, reflects agreement that the BBC should combine its public service activities with a significant development of their commercial potential. The BBC has established separate companies specifically to develop its commercial activities. These companies, which are wholly owned subsidiaries, include the following:

- BBC Worldwide Ltd (formerly BBC Enterprises, established in 1979) was formed in 1995 with the primary aim of maximising the commercial value of BBC programme assets and other BBC (programme-related) intellectual property in order to generate funds for publicly-funded services, through profits and investments in programmes, and to build assets which can provide a similar return in the future.
- BBC World Ltd was established in 2002 to provide a commercially funded, international 24 hour news and information channel.
- BBC Resources Ltd was established in 1998 to operate as a commercially trading supplier of facilities to BBC public service divisions and external customers in order to be able to optimise the efficient use of assets built with public funds.

1.7. The BBC will remain, nevertheless, substantially a publicly-funded organisation, and it is essential that commercial activities complement, and do not distort, our public purposes. These Guidelines set out the framework within which the BBC conducts commercial activities. They contain important principles which, if followed, will ensure that such activities support and enhance, and are not in conflict with, the BBC's public purposes and values.

1.8. In addition, it should be remembered that Competition Law applies to all of the BBC's purchasing and selling activities, both in the public service divisions and the commercial subsidiaries. Further details are contained in Chapter 3 of these Guidelines.

The BBC's commercial activities

1.9. These Guidelines apply to all commercial activities entered into by the BBC and its subsidiaries, including the Grant-In-Aid funded World Service. Commercial activities include those where:

- the BBC sells products, services or rights it owns, which are not used directly in its public services, to third parties. Such activities will normally be carried out through subsidiaries specifically established for this purpose; and
- public service divisions of the BBC provide services to the BBC's commercial subsidiaries which in turn sell products, services or rights in external markets.

1.10. Any such activity must be supportive of our public purpose, in the ways set out in Chapter 2 of these Guidelines.

Key principles of Fair Trading

1.11. The BBC's Fair Trading policy is based around three key principles:

- Commercial activities must be consistent with, and supportive of, the BBC's purpose as a public service broadcaster.
- The BBC must always trade fairly.
- The reputation of the BBC brand must not be undermined.

Appropriate commercial activities

1.12. To ensure that the BBC's commercial activities are consistent with, and supportive of, its purpose as a public service broadcaster those activities should, therefore:

- offer the prospect of generating significant funds for reinvestment in the BBC's public service activities;
- offer genuine added-value to customers, by being connected to the BBC's public service output;
- ;
- not conflict with the long-term strategies of the BBC, and its position as a public service broadcaster;
- reflect BBC values of quality, integrity, decency and distinctiveness - and avoid bringing the BBC into disrepute or causing offence; and
- offer good value for money to the consumer.

Trading Fairly

1.13. The key principles which govern the BBC's commercial activities to ensure it trades fairly are that:

- there should be clear separation between publicly-funded and commercial activities in terms of their operation and accounting;
- commercial activities must pay fair charges for any goods and services (including rights) received from the BBC's publicly-funded services;

- all of the BBC's commercial activities must charge fair prices for any goods and services (including rights) they supply;
- no public funds must be used, or put at risk, by commercial activities;
- the BBC's publicly-funded services may not be used unfairly to promote the BBC's commercial activities; and
- all of the BBC's activities should comply with European and UK Competition Law, and European Law on State Aid.

Use of BBC brands

1.14. The BBC's brands reflect the product of decades of work in building a reputation for quality, integrity and excellence. Whenever BBC brands are used commercially the respect in which they are held should not be undermined. Accordingly, BBC brands should not be used to:

- endorse or promote particular outside organisations or their activities;
- give rise to an appreciable risk that editorial decisions may be thought to be influenced by commercial considerations; and
- imply that UK consumers need to buy commercial products and services to access public service programming.

Contents of the Guidelines

1.15. These Guidelines are structured to set out the key principles of Fair Trading:

- **Chapter 2 “Appropriate Commercial Activities”** is a guide to assessing whether a commercial activity is consistent with our public purpose.
- **Chapter 3 “Trading Fairly”** summarises how commercial activities should be structured and operated to demonstrate compliance with the BBC's Fair Trading Commitment. This chapter also summarises key aspects of relevant Competition Law and State Aid Law.
- **Chapter 4 “Using BBC Brands”** contains guidance on how to ensure that the integrity of BBC brands is protected.
- **Chapter 5 “Implementation”** sets out methods for evaluating proposed, and current, commercial activities for consistency with these Guidelines, and for reporting regularly on compliance with them.

Key steps when developing commercial activities

1.16. The key steps which should be taken in order to pursue a new commercial activity, either directly or in association with third parties are as follows:

1. Consider whether the proposed activity is consistent with the terms of these Guidelines.

In particular:

- whether the activity is appropriate for your division (Chapter 2);
- whether adequate measures to ensure Fair Trading have been planned (Chapter 3); and
- if the BBC brand or any sub-brands are to be used, whether the proposed uses are consistent with these Guidelines (Chapter 4).

2. Consult your division's Fair Trading Representative, or their nominated representative in your business unit.
3. Obtain approval to proceed in the manner specified by your divisional board as set out in your divisional Fair Trading ISO procedures.
4. During the operation of the activity, report changes in its structure or performance to your division's Fair Trading Representative.
5. In addition, advice is always available from the Head of Fair Trading and in the case of Competition Law, the Head of Regulatory Legal.

Chapter 2: Appropriate Commercial Activities

Core principles

2.1. The BBC's overriding public purpose means that the prime focus of the BBC's public service divisions will be on making and delivering public service programming.

2.2. Secondary commercial activity will be conducted mainly through subsidiaries which have been specifically established for the purpose.

2.3. In our commercial subsidiaries the central focus of activities will be the effective exploitation of BBC intellectual content and the skills and assets created and maintained, consistent with our public purpose.

2.4. The BBC brand, its subsidiary and programme brands, and our privileged access to the airwaves are valuable and powerful assets. There will always be opportunities to associate the BBC and its brands with commercial activities which are prospectively profitable. However, such activities must be appropriate and consistent with the principles set out in this chapter.

2.5. The core motivation behind a commercial activity will typically be that the activity has a clear synergy with existing activities.

2.6. Appropriate commercial activities for the BBC will be typically those which:

- offer the prospect of generating significant funds for reinvestment in the BBC's public service activities;
- offer genuine added-value to customers, by being connected to the BBC's public service output;
- do not conflict with the long-term strategies of the BBC, and its position as a public service broadcaster;
- of their type, reflect BBC core values of quality, integrity, decency and distinctiveness - and avoid bringing the BBC into disrepute or causing offence; and
- offer good value for money to the consumer.

2.7. This Chapter sets out in more detail the kinds of commercial activities which will be considered appropriate for the different divisions of the BBC, whether undertaken directly or via third parties.

Who should carry out commercial activities?

2.8. The BBC has established a number of wholly-owned subsidiaries whose purpose is explicitly commercial:

- BBC Worldwide Ltd;
- BBC World Ltd;
- BBC Resources Ltd;

2.9. They have been structured to permit a clear commercial focus, separate from the BBC's public service activities, and to ensure their dealings with the BBC are transparent. They have separate Board structures and file their own financial report and accounts. Furthermore, as limited liability companies with their own borrowing covenants, they provide assurance that public funds are not put at risk by commercial activities.

2.10. Whether dealing with the BBC's commercial activities or third parties, the BBC's public service divisions must operate on arm's length terms in order to ensure that there is clear separation between public and commercial funds and that terms are fair. Accordingly, while the BBC's commercial subsidiaries will account for the great majority of the BBC's commercial activity, these Guidelines are also relevant to members of the BBC's public service divisions in their dealings both with the BBC's commercial activities and with all other parties outside the BBC.

BBC Worldwide Ltd

2.11. Activities in which BBC Worldwide Ltd engages must be demonstrably supportive of the BBC's purpose as a public service broadcaster, and maintain its reputation for excellence, quality and integrity.

2.12. BBC Worldwide Ltd focuses on creating extra value for audiences from the BBC's intellectual property, supporting and extending the value of the BBC's public services, and raising funds for reinvestment in public service activities. Its activities include:

Investing in other companies

BBC Worldwide Ltd's primary role is to generate funds for investment into public service activities. In order to best generate such funds it will also be considered appropriate commercial activity and consistent with the BBC's purpose for BBC Worldwide Ltd to own shares resulting in an interest in a wide range of media related companies. Such investments would be undertaken in order to drive profit back to the BBC. The invested firm:

- should not typically be BBC branded (unless it falls within paragraph 4.7);
- should not bring the BBC into disrepute; and
- should not compete or conflict with existing BBC activity.

Any equity stake must be consistent with BBC Worldwide Ltd's pre-agreed strategy and subject to the appropriate internal approvals.

Commissioning of, and investment in, television and radio programmes and multimedia services and products

BBC Worldwide Ltd is the BBC's largest co-production partner, providing valuable additional funds for investment in public service programming based on its ability to exploit the secondary commercial value of rights in these programmes in the UK and around the world. In doing so, it creates new outlets for talent and further opportunities for audiences to enjoy BBC content.

Just as BBC Worldwide Ltd is the BBC's preferred partner, so BBC Worldwide Ltd's first choice of co-producer is the BBC in order to ensure that BBC Worldwide Ltd's investments are predominantly in BBC programming. However, BBC Worldwide Ltd may work with others to complement its portfolio. Where BBC Worldwide Ltd commissions from non-BBC producers it must demonstrate that the programmes are consistent with the BBC's brand and the BBC's Editorial Guidelines. Further advice is available from Editorial Policy.

Channel development in the UK and internationally

BBC Worldwide Ltd operates commercial channels, either alone or with appropriate partners, in order to develop the secondary value of BBC programmes; to provide a reliable showcase for BBC material; and to create a channel portfolio of growing value over the years.

The BBC is entitled to expect the value of these assets to be used in the interests of the public service. This is achieved through a BBC 'windowing' policy which balances access to public service programming by the public service, with appropriate exploitation through secondary commercial outlets. In the case of feature films in which the BBC has invested, an industry standards release cycle

is usual in advance of television screening to maximise the impact of the film and its prospective financial return. BBC Worldwide Ltd's ability to manage its programme and film investments over the whole of their life helps ensure that the public service realises the greatest possible value from assets created on its behalf.

Programme sales and distribution

BBC Worldwide Ltd primarily sells secondary rights in programmes in which it has invested, or which it has acquired, to the BBC's joint-venture commercial channels. Subject to the BBC's windowing policy, it also sells to UK commercial channels, programmes commissioned from the BBC by BBC Worldwide Ltd. This is permitted provided that:

- the BBC has first right of refusal;
- the programme is not BBC or BBC Worldwide Ltd branded;
- the programme brand is not readily identifiable with the BBC; and
- the commission was generated for the international marketplace.

BBC Worldwide Ltd sells to other broadcasters and may distribute non-BBC programmes which are compatible with its portfolio. Such programmes should not be BBC-branded, since this could imply that the BBC produced them, but should be consistent with the BBC's overall editorial values. This enables BBC Worldwide Ltd to develop economies of scale in distribution, and allows other UK producers and broadcasters without this resource to take advantage of the scale and experience of BBC Worldwide Ltd's international operations. The BBC is offered a first option on the UK rights to these programmes – subject to the payment of a market rate for such rights.

Publishing and events

BBC Worldwide Ltd's activities include publishing books, magazines, audio, video and DVD recordings and CD-ROMs, and mounting live events which draw on BBC intellectual content and capabilities maintained for our core channels. In so doing, BBC Worldwide Ltd complements and extends audiences' ability to enjoy content of this kind. BBC Worldwide Ltd may distribute the published work of others which complements its core portfolio, and makes optimal use of its resources. These products will not in most cases be BBC branded, in order not to confuse their origin, and will be consistent with overall BBC editorial values.

Merchandising

BBC Worldwide Ltd produces and licenses products arising from, or associated with, BBC programme brands. Please see paragraphs 4.12 to 4.14 for further details.

Retailing

BBC Worldwide Ltd may operate retail outlets whose prime function is to provide and sell products arising from, or associated with, BBC intellectual content, including online shops. In so doing it offers an extra service to our audiences by providing convenient alternative means of accessing BBC output.

BBC World Ltd

2.13. Launched initially as BBC World Service Television across Asia and the Middle East in 1991, BBC World was established as a separate commercial subsidiary of the BBC in 2002, and continues to be the BBC's international 24 hours-a-day news and information channel, broadcast for reception in most parts of the world (excluding the United Kingdom).

2.14. The channel's programming is drawn predominantly from the BBC's news output, tailored specifically for the channel and its international audience. Non-news programming is commissioned or acquired from either BBC News, BBC Worldwide Ltd or third parties.

2.15. BBC World Ltd is the preferred partner for the commercial exploitation of some BBC news programming and - like BBC Worldwide Ltd - may invest in the creation of new BBC programmes.

BBC Resources Ltd

The BBC also has a wholly-owned, commercial, business-to-business subsidiary - Launched in 1998, BBC Resources Ltd engages in activities which arise from its capabilities built initially as the BBC's facilities provider. This includes the provision of:

- studio space and associated equipment;
- outside broadcast services;
- post production services; and
- costumes & wigs.

2.16. This subsidiary has been tasked with realising the commercial value of the BBC's media services, facilities and expertise in order to:

- maximise the use of assets, thereby reducing costs overall; and
- return profits to the BBC.

2.17. Like BBC Worldwide Ltd and BBC World Ltd, it operates on an arm's length basis from the rest of the BBC.

The BBC's public service divisions

2.18. These guidelines apply to all commercial activity undertaken by the BBC's public service divisions. They also apply to situations where the BBC's public service divisions are engaged in public service activity that involves commercial organisations (including the BBC's commercial subsidiaries) such as partnerships or promotional activity where the BBC brand is associated with commercial organisations.

2.19. The following activities are not, strictly speaking, commercial activities, although they involve dealings with commercial organisations, as they enable the BBC to fulfil its public service obligations:

- co-productions with commercial partners to help make public service programming;
- commissioning independent producers to make public service programming, who may retain certain rights for commercial exploitation; and
- mounting events, promotions or publications ancillary to public service programming.

2.20. For the avoidance of doubt, all of the above activities are subject to certain elements of European and UK Competition Law and European Law on State Aid (see paragraphs 3.45 to 3.66 for further details).

2.21. The BBC's commercial activities will be primarily conducted through its commercial subsidiaries which are specifically established to separate commercial trading from the BBC's public service activities, to ensure transparency and to avoid any risk to public funds.

2.22. Commercial opportunities such as inviting co-production funds, exploiting programme assets and other programme-related intellectual property, should be first offered to BBC Worldwide Ltd as the BBC's preferred commercial partner. This partnership allows the BBC to exert editorial control and to ensure that its values are upheld, and that profits generated return to fund public service activities. However, there will be occasions in which BBC Worldwide Ltd:

- may not wish to pursue an opportunity, because it is not consistent with its current investment strategy and priorities; or
- is unable to offer terms comparable to those which could be achieved with an alternative partner.

2.23. In these circumstances, in order to obtain optimum value for the public service, the BBC's public service divisions will exploit intellectual property in conjunction with other third party distributors and co-producers (normally via the Commercial Agency – see paragraph 5.30).

Appropriate commercial activities

2.24. In general, commercial activities appropriate for the BBC's public service divisions are those which enable them to discharge their public service remit. They include:

- licensing and sub-licensing intellectual property rights in programmes for commercial exploitation (normally via the Commercial Agency) through, for example, radio and television programme sales;
- licensing and sub-licensing ancillary rights in BBC programmes for the manufacture and distribution of merchandising, video, audio and publishing products and software licensing;
- producing programmes, subject to certain conditions, commissioned either by BBC Worldwide Ltd or by certain (BBC Worldwide Ltd) joint venture partners;
- performing functions which are ancillary to the operation of appropriate BBC commercial activities e.g. scheduling for BBC Worldwide Ltd's channels;
- using rights available in the BBC Archive to make new and reversioned programmes, the commercial rights for which may be licensed, thereby making the best use of public service assets and returning funds to public service activities;
- the production of programmes and other audio-visual material for non-broadcast use (e.g. educational videos) which showcase the capabilities and creativity of the BBC, supporting its wider public profile; and
- participating in joint research and development exercises with commercial organisations and licensing intellectual property created by the BBC's Research and Development team.

2.25. In each case, the BBC's public service divisions should ensure that:

- the opportunity to participate, at market rates, has been offered to the relevant commercial subsidiary (if designated as the BBC's preferred commercial partner for that particular activity);
- no costs or contingent liabilities are payable from public funds; and
- the other provisions of these Guidelines (specifically Chapter 3 Trading Fairly and Chapter 4 Using BBC Brands) are followed.

2.26. In addition to the types of commercial activities described above, the BBC's public service divisions produce, from time to time, modest goods (such as mugs and T-shirts) for the purposes of promoting a programme or network. These items should be consistent with BBC values and:

- should not conflict with merchandising licenses already issued by the BBC or BBC Worldwide Ltd; and
- should not give the impression of BBC endorsement of external products or organisations.

Sale of spare capacity

2.27. The BBC's public service divisions may occasionally be able to offer spare capacity in BBC facilities, resources (including staff) and other production inputs for other commercial use when they are not required for their primary purpose, whether public service or appropriate commercial activity. This is consistent with making the most efficient use of the BBC's publicly-funded assets.

2.28. However, it is important that spare capacity is not maintained or prolonged as a justification for operating a commercial activity. All of the BBC's public service divisions are expected to adjust capacity to meet anticipated demand for public service activities over a reasonable time period. The level of commercial income generated by each public service division through sales of spare capacity is reported to, and monitored by, the Fair Trading Department on a quarterly basis.

2.29. Capacity is demonstrably 'spare capacity' only if it is not possible to reorganise activity to eliminate that capacity whilst still meeting our public purposes (or where relevant, fulfilling an appropriate commercial activity). Furthermore, such sales by the BBC's public service divisions must:

- be of demonstrably spare capacity, rather than capacity maintained for the purposes of appropriate commercial activities (see paragraph 2.25 above);
- be subordinate to the first claim on all public service assets of the need to service the BBC's own programme-making and broadcasting, and other ancillary needs, assessed over a reasonable period of time;
- be accounted for separately and transparently, including the time of all staff involved; and
- be priced fairly and comply with the other provisions of these Guidelines (specifically Chapter 3 Trading Fairly and Chapter 4 Using BBC Brands).

2.30. Beyond their appropriate commercial activities set out in paragraph 2.25 above, the BBC's public service divisions must not invest in new capacity for commercial use, such as by purchasing assets or engaging staff purely or largely for commercial trading. The exception to this rule is in circumstances in which a limited amount of investment is necessary to enable the spare capacity around a more substantial asset or capability to be exploited commercially. In such circumstances, in order to ensure no risk to public funds, the costs of any such investment must:

- be demonstrably covered by the dependable profits of commercial activities in the division; and
- entail no continuing liability to the public service, such as the risk of accumulated redundancy costs.

BBC World Service

2.31. In many parts of the world there are inadequate local facilities to support BBC World Service's output with the promotions, publishing and retailing available elsewhere. Where it is necessary, therefore, and where BBC Worldwide Ltd (or BBC World Ltd) has been offered the opportunity to deliver such activities first, BBC World Service may carry out such activities directly.

2.32. It is appropriate for BBC World Service to seek to recover, in whole or in part, the costs of broadcast or online distribution. Arrangements may not involve any risk to public (Grant-In-Aid) funds and must be consistent with local Competition Law. It is the responsibility of BBC World Service to satisfy itself as to the consistency of local cost recovery policies with local Competition Law. The BBC's Regulatory Legal Department will be able to provide initial guidance on Competition Law in different countries.

2.33. The BBC's arrangements to ensure that there is transparency between Grant-In-Aid and licence payers' funds for public service activities are overseen by the Head of Fair Trading, from whom separate advice is available (see paragraphs 3.15 and 3.29). In addition, to ensure that there is transparency between Grant-In-Aid and commercial activity, BBC World Service and BBC World Ltd

have agreed between them operational guidelines that complement these Guidelines and provide operational examples of appropriate joint activity.

Further Advice

2.34. Detailed advice on these Guidelines and, in particular, on whether a proposed commercial activity is appropriate is always available from the divisional Fair Trading Representative and from the Head of Fair Trading.

Chapter 3: Trading Fairly

Context

3.1. The BBC's activities - both public service and commercial - are subject to UK and European Competition Law and European Law on State Aid.

3.2. Competition Law provides legal sanction against activities that distort competition such as anti-competitive agreements and the abuse of a dominant market position. A breach of Competition Law can result in substantial financial consequences for the BBC as well as making agreements null and void. In certain circumstances a breach of UK Competition Law can also result in imprisonment for the individuals involved.

3.3. Broadly, European Law on State Aid prevents the granting of aid using State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain firms or the production of certain goods.

3.4. Compliance with the Fair Trading Commitment and these Guidelines is the responsibility of each public service division or commercial subsidiary and is subject to regular reporting to the Governors, through the Fair Trading Compliance Committee. A statement on Fair Trading compliance is included in the BBC's Annual Report along with a Fair Trading opinion by a firm of independent auditors.

3.5. It is clearly of paramount importance that every area of the BBC not only trades fairly, but is able to demonstrate compliance with these Guidelines at all times. For detailed information on compliance procedures please refer to Chapter 5.

3.6. This chapter is structured in three parts: **Part A** covers the key principles of trading fairly; **Part B** provides detailed guidance on Competition Law; and **Part C** provides detailed guidance on European Law on State Aid.

Part A: Key principles of trading fairly

3.7. The key principles which govern the BBC's commercial activities to ensure it trades fairly are that:

- there should be clear separation between publicly-funded and commercial activities in terms of their operation and accounting;
- commercial activities must pay fair charges for any goods and services (including rights) received from the BBC's publicly-funded services;
- all BBC commercial activities must charge fair prices for any goods and services (including rights) they supply;
- no public funds must be used, or put at risk, by commercial activities;
- the BBC's publicly-funded services may not be used unfairly to promote the BBC's commercial activities; and
- all of the BBC's activities must comply with European and UK Competition Law, and European Law on State Aid.

3.8. This chapter considers each of the above principles in greater detail, so that BBC divisions may ensure that all commercial activities comply with the BBC's Fair Trading Commitment.

Separation between publicly-funded and commercial activities

3.9. Clear boundaries should be drawn between the BBC's public services and commercial activities in order to ensure that:

- public funds are not used in the BBC's commercial activities; and

- there is clarity in their respective objectives, strategies and decision-making.

3.10. The principal commercial activities of the BBC should be carried out by separately constituted subsidiaries, normally with limited liability.

3.11. Each commercial subsidiary must maintain separate audited accounts and a clear and separate management structure.

3.12. Where such legal arrangements would be unjustified for reasons of the limited scale or scope of the activity (as is the case when a public service division uses spare capacity in the manner described in paragraphs 2.28 to 2.31) operational and accounting measures must be taken to simulate the disciplines of a commercial subsidiary. These will include:

- maintaining separate trading accounts for commercial work - including records of trading information such as volumes, prices, revenues, costs and profitability; and
- formal, signed contracts or service level agreements (before services are delivered) between the BBC's commercial activities and its suppliers/customers (including other BBC public service divisions and commercial subsidiaries).

The scope of such agreements should reflect the scale and significance of the goods and/or services being delivered.

3.13. The structures chosen should be designed so as to make it demonstrable that public funds are neither used nor put at risk by the commercial activity.

3.14. Ongoing information on the conduct and performance of the BBC's commercial activities should be collected and monitored by each division, as set out in Chapter 5.

Separation between Licence Fee funds and World Service Grant-in-Aid

3.15. BBC World Service is funded principally by a Parliamentary Grant-in-Aid, received from the Foreign and Commonwealth Office (FCO). In recognition of this different funding source, the World Service Trading Protocols have been drawn up to govern the trading relationship between the BBC World Service and the BBC's public service divisions and commercial subsidiaries (hereafter "BBC divisions") that supply the BBC World Service. The protocols aim to ensure that the Licence Fee will not be used to support or subsidise BBC World Service activities and Grant-in-Aid will not be used to support or subsidise Licence Fee funded activities.

Fair prices for goods and services (including rights) supplied by the BBC's public service divisions

3.16. Where it is appropriate (see paragraph 2.19 et seq.) and subject to the existence of clear contracts or service agreements, the BBC's public service divisions may supply goods, services to:

- the BBC's commercial subsidiaries (such as accommodation, programme rights);
- third party organisations (such as production resources, programme rights); and
- the commercial operations of another public service division (such as production resources, accommodation).

In each case, the same principles should be applied to the pricing of goods and services.

3.17. Where the BBC's public service divisions supply goods or services, the prices charged must be 'fair'. Failure to charge a fair price could raise the risk of a successful challenge to the BBC under Competition Law or European Law on State Aid. In particular, it is important that the BBC's public service divisions can demonstrate that they have charged fair prices for any goods or services supplied to the BBC's commercial activities.

Therefore, charges for goods and services supplied by the BBC's public service divisions:

- must always cover the incremental costs of producing and supplying the good(s) or service(s): to fail to do so would indicate a likely cross-subsidy from public funds. The term 'incremental costs' refers to the additional costs of producing the goods, service or increment of output. The concept is akin to the costs that would be avoided if the particular good, service or increment of output was no longer supplied;
- in addition, should normally reflect a reasonable contribution to the relevant overheads incurred by the division and to the long term replacement cost of any shared assets; and
- should not normally be significantly out of line with the market context where there is a comparable external market for the goods or service in question (but compliance must not breach the Competition Law requirements set out in paragraphs 3.47 to 3.49).

3.18. If the proposed price fails to satisfy any of the principles noted in paragraph 3.17 above, reference should be made in advance to the Head of Fair Trading.

3.19. The pricing of goods and services by the BBC's public service divisions must comply with the requirements of Competition Law. For further information, please see paragraphs 3.45 to 3.62.

3.20. For substantial supply contracts with the BBC's commercial subsidiaries or where the risk of regulatory challenge is greatest, evidence of prices prevailing in the external market should be presented from time to time. This should be undertaken either through benchmarking exercises or market testing in order to compare the charges made by the BBC with those prevailing if comparable services were supplied externally. These studies will be subject to review by the Head of Fair Trading.

3.21. Prior to undertaking a benchmarking exercise, the BBC's public service divisions should seek guidance from the Head of Fair Trading.

3.22. It is the responsibility of parties to contracts and service agreements to demonstrate that all charges made are fair.

Fair prices for goods and services (including rights) supplied by the BBC's commercial subsidiaries

3.23. As well as paying fair charges for goods and services received from the BBC, the BBC's commercial subsidiaries must price their goods and services fairly when they are sold.

3.24. While pricing decisions will vary according to the circumstances of particular markets, they should be guided by the following principles:

- in all cases, prices charged should cover the incremental costs (see paragraph 3.17 - first bullet) incurred in producing and supplying the goods or services;
- prices charged should be such as to provide for a rate of return on assets employed which is commensurate with that expected to be earned in the market over the long term; and
- prices charged should be consistent with those prevailing in the relevant market for the type of goods or services being sold (but compliance must not breach the Competition Law requirements set out in paragraphs 3.47 to 3.49). Prices should also reflect the fact that the BBC's goods and services may have value based on excellence which may not be typical in the market.

3.25. If the proposed price fails to satisfy any of the principles noted in paragraph 3.24 above, reference should be made in advance to the Head of Fair Trading.

3.26. The pricing of goods and services by the BBC's commercial subsidiaries must comply with the requirements of Competition Law. For further information, please see paragraphs 3.45 to 3.62.

Furthermore, comparable external customers should not normally be charged dissimilar prices (or be subject to dissimilar terms and conditions) to those available to internal (BBC) customers, for comparable goods or services.

3.27. It is especially important that where the BBC enjoys a relatively high share of the relevant market, pricing decisions are taken with due consideration of the requirements and consequences of Competition Law. See paragraph 3.51 for examples of pricing behaviour that may infringe Competition Law. In addition, advice is always available from both the Head of Regulatory Legal and the Head of Fair Trading.

3.28. Where the threat of regulatory challenge is greatest, benchmarking exercises should be performed from time to time to validate the prices charged. Prior to undertaking such an exercise, BBC divisions should seek guidance from the Head of Fair Trading.

Pricing to World Service under the World Service Trading Protocols

3.29. The World Service Trading Protocols may impact on the pricing of BBC divisions that supply BBC World Service. BBC divisions should, therefore, also refer to the Protocols when supplying the BBC World Service.

No use of, or risk to, public funds

3.30. If rigorously enforced, the requirement for arm's length relationships between the BBC's publicly-funded services and commercial activities, together with that for fair charges made for the supply of goods and services from the BBC to commercial entities, will ensure that public funds are not diverted to commercial activities.

3.31. Sometimes, funds may be required for start-up capital or to cover the initial operating losses of a new commercial venture. In such circumstances they must be supplied by either:

- the reinvestment of commercial profits;
- in the case of the BBC's limited liability commercial subsidiaries such costs may be met from their agreed borrowing limit(s); or
- the investment of capital by an external partner acceptable to the BBC, with no liability to public funds.

In all cases where a public service division requires funds for start-up capital or to cover the initial operating losses of a new commercial venture, prior reference should be made to the Head of Fair Trading.

3.32. The BBC's commercial activities must be seen to serve the proper interests of the BBC's public services and will need to demonstrate, over an appropriate timeframe, a combination of:

- support for programmes or services consistent with the BBC's public purposes;
- a level of return commensurate with activities of external organisations with a similar risk profile;
- investment in the BBC's public service activities; and
- a building the equity value of assets.

3.33. The BBC's commercial activities must not give rise to any contingent liabilities to public funds. In particular, contracts and service agreements should:

- make adequate provision for closure and restructuring costs, without producing a charge on public funds; and
- avoid indemnities which would have to be paid from public funds.

No unfair promotion of the BBC's commercial activities

3.34. The BBC's publicly-funded services may not be used unfairly to promote the BBC's commercial activities, since this would be an inappropriate use of our privileged access to the airwaves, and of public funds.

3.35. There should be no promotion of the BBC's commercial goods and services within BBC programmes on our publicly-funded services. It may, however, be appropriate for the commercial goods and services of the BBC to be featured within programmes where it is editorially justified, in the same way as would apply to products and services of any other provenance. Additional guidance is available from the BBC's Editorial Guidelines.

3.36. Simple, factual information about some commercial publications or services – both BBC and non-BBC – that are directly relevant to a BBC programme may be given in continuity announcements at the end of a programme. These publications or services must be commissioned, licensed or developed directly in conjunction with the relevant BBC programme. In each case, refer to the BBC's Editorial Guidelines and the BBC's detailed document "Guidelines for the trailing of commercial products on BBC public service television channels" (available on bbc.co.uk).

3.37. Together, these Guidelines reflect the letter and spirit of the BBC's undertaking to the Office of Fair Trading (hereafter "OFT") concerning television promotion of BBC magazines. Under this undertaking, the BBC produces information trails for viewers and listeners which are limited in style and duration. The undertaking requires that the content of such trails must be directly relevant to the preceding programme.

3.38. Although the OFT undertaking only covers BBC magazines, the BBC has chosen to go further than the OFT undertaking and to apply the letter and the spirit of the undertaking to all trails of commercial products on all our publicly-funded television services.

Online

Links between the BBC's publicly-funded online services and its commercial online services may be made only where these are editorially justified and serve to extend the service available to audiences. However, such links should clearly indicate to users that they are leaving a public service domain and entering one which is commercially funded. The BBC Online Guidelines: Commercial Services set out how BBC commercial subsidiaries may operate in the online environment.

Off-air activities

3.39. In addition, there should be no unfair promotion of the BBC's commercial goods and services in the off-air activities of the BBC's public services e.g. in public service literature or at public service events. Public funds must not be used to promote the BBC's commercial goods or services under any circumstances.

3.40. In all matters of on-air and online mentions of commercial products, it is essential to consult the BBC's Editorial Guidelines and, where relevant, the BBC's Online Services Guidelines.

Promotion of the BBC's public services

3.41. It is consistent with the BBC's public service obligations and in the interest of the viewers and listeners to be aware of what services are available to them (which they have paid for through public funds). The BBC will, therefore, broadcast information about the full range of its public services across its channels and services.

3.42. The promotion of one BBC commercial service by another is a commercial decision to be made at the discretion of the appropriate management, subject to compliance with Competition Law and any other relevant regulations, such as those imposed by OFCOM on commercial television services uplinked from the UK.

Information resulting from the BBC's public service activities

3.43. Information resulting from the BBC's public service activities may have a commercial value. In circumstances where such information is made available commercially (including to the BBC's commercial subsidiaries) then an appropriate charge must be levied by the public service division. Advice should be sought from the divisional Fair Trading Representative before any such information is made available. Due consideration must also be given to Data Protection Law.

Part B: Competition Law

3.44. The BBC's Fair Trading Commitment sets out the principles which help to ensure that the BBC does not act in breach of Competition Law. In practice, adherence to these Guidelines will normally ensure that the BBC's broad legal obligations under Competition Law are discharged. Nonetheless, paragraphs 3.47 to 3.51 provide examples of activities which will infringe Competition Law and issues where specific advice should be sought from the Head of Regulatory Legal. The Head of Fair Trading and the Head of Regulatory Legal will meet on a regular basis to keep each other updated on issues where specific advice on Competition Law has been sought.

3.45. The BBC's activities may be scrutinised under either European or UK Competition Law. With the introduction of the Competition Act 1998, UK Competition Law is now closely aligned with that of the European Union and most of its member states. Both European and UK Competition Law prohibit:

- anti-competitive agreements or arrangements; and
- the abuse of a dominant market position.

Anti-competitive agreements or arrangements

3.46. There is no requirement under either European or UK Competition Law for there to be a formal agreement in order for Competition Law principles to apply. Accordingly, any agreement (for example, oral or "gentlemen's agreements") will infringe the law, if found to be anti-competitive in its object or effect.

3.47. The following are examples of anti-competitive agreements and cartel arrangements. It should be noted that this not an exhaustive list, and the Head of Regulatory Legal should be contacted in the event that you have any concerns.

- Price fixing: agreements which directly or indirectly fix the price, or a resale price, of a product or service e.g. requiring a retailer to adhere to a published price list, or agreeing with a competitor the price at which the product or service will be supplied.
- Market sharing: agreements between companies/organisations to share markets e.g. by territory, type or size of customer or in any other way.
- Limits on production or investment: such agreements are likely to impact on the price at which the product or service is acquired and may therefore be anti-competitive.
- Collusive tendering (bid rigging).
- Information sharing: the exchange of confidential information, particularly pricing information.
- Fixing trading arrangements: agreements that attempt to fix the terms and conditions on which parties offer products or services to the market.

3.48. In addition to the above prohibited activities, Competition Law advice from both the Head of Fair Trading and the Head of Regulatory Legal is essential if a proposed agreement or commercial activity involves any of the following:

- agreements or collaboration with third parties who could be construed as actual or potential competitors of the BBC (for example, joint selling/purchasing, joint advertising and promotion, or joint research and development);
- placing restrictions on the behaviour of our customers, contractors or partners which could affect competition in the market place (for example, non-compete obligations);
- agreements which affect markets where the BBC's market share may be significant (based on the most narrow definition of the market); or
- creates a degree of exclusivity in a relationship between the BBC and a third party.

Abuse of a dominant position

3.49. Where a company is active in a market where it holds a dominant position, it has an additional responsibility under UK and European Competition Law. For advice on whether the BBC or one of its commercial subsidiaries holds (or is likely to hold) a dominant position in any market, please contact either the Head of Fair Trading or the Head of Regulatory Legal.

3.50. Where a dominant position is held, the following examples of behaviour are often prohibited. It should be noted that this is not an exhaustive list of potential abuses, and the Head of Regulatory Legal should be contacted in the event that you have any concerns.

Potential pricing abuses which could be deemed 'exploitative' include:

- Charging excessively high prices: charging prices that bear no reasonable relation to the economic value of the product supplied.
- Discriminatory prices or terms/conditions: this includes the charging of different prices to comparable customers, or categories of customers, for the same product, without an objective and proportionate reason (e.g. an objective reason includes where price differences are due to genuine cost differentials from supplying different customers).

Potential pricing abuses which could be deemed 'exclusionary' include:

- Charging excessively low ('predatory') prices to customers: charging prices below the incremental costs of production is likely to constitute an abuse. Indeed, in certain circumstances, consistently not fully recovering a fair proportion of overheads or not charging a reasonable profit margin can constitute an infringement if the intention of the behaviour is to eliminate a competitor.
- Anti-competitive discounting policies: these can include discounts which are conditional on customers buying all or a large proportion of their purchases from a dominant company, or where they are conditional on the purchase of another product from the dominant company.

Potential non-pricing abuses include:

- Refusal to supply: it may be an abuse to refuse to supply an existing or new customer without an objective justification for doing so.
- Tying: making supply of one product conditional on the customer accepting another product it does not want.

It is important to note that many of the above 'abuses' are also applicable to the purchasing activities of a dominant company. For example, if a dominant company imposes unfair contract terms on a

supplier or insists on paying excessively low prices for a particular good, service or right, these may constitute infringements of the law.

The competition authorities and their powers

3.51. Investigation and regulation of Competition Law is overseen by a number of bodies. At the European level, the European Commission is the responsible body. In the UK, the OFT is the primary body entrusted with the enforcement of UK competition rules. In addition, OFCOM has concurrent powers which give it almost identical powers to those of the OFT to enforce UK competition rules within the sectors it regulates.

3.52. Both the OFT and OFCOM have the power to enter and search premises either with or without notice when they have reasonable grounds for suspecting that there has been a breach of Competition Law. They may require any person on the premises to produce documents which may be relevant to an investigation (including information held on computer); to provide explanations of such documents; and to take copies away with them. The European Commission has similar powers.

3.53. The OFT has powers of surveillance, such as watching an individual's office and the ability to use informants with regard to investigations concerning possible breaches of Competition Law.

3.54. In addition, where the OFT is investigating possible criminal cartel activity, it has intrusive surveillance powers, including the ability to use surveillance devices and to access communications data (for example, obtaining records of telephone numbers called). The Serious Fraud Office has similar powers to those of the OFT with regard to the investigation of criminal cartel activity.

3.55. The consequences to the BBC of any breach of Competition Law are severe, since they include:

- fines of up to 10% of worldwide turnover, in any one year;
- contracts and agreements with third parties being void and unenforceable;
- damages payable to third parties;
- damage to the BBC's reputation; and
- substantial costs and disruption associated with regulatory investigation.

3.56. The consequences for an individual found to have breached the competition rules are also severe, since they include:

- imprisonment for a maximum of 5 years and/or unlimited fine for dishonest participation in criminal cartel activity (price fixing, limitation of supply or production, market sharing and bid rigging); and
- disqualification as a director of a UK company for up to 15 years for breach of either UK or European competition rules.

3.57. In addition, it is a criminal offence under UK Competition Law for any individual to: deliberately obstruct the regulator's inspectors in the exercise of their powers; to fail to comply with a lawful requirement imposed by the inspectors to produce a document or explanation; to intentionally or recklessly make a false or misleading statement; or destroy or falsify documents covered by any investigation.

What should you do?

3.58. You should contact the Head of Regulatory Legal in the event that you have any concerns as to whether an activity could breach any aspect of UK or European Competition Law.

3.59. You should contact both the Head of Fair Trading and the Head of Regulatory Legal in the event that you:

- are contacted by a competition authority; and/or receive a letter of complaint alleging a breach of Fair Trading
- are raided by a competition authority as part of an investigation (see the procedures contained in “Box 1 - What to do in the event of a Dawn Raid”)

3.60. BBC divisions must ensure that all staff involved in commercial activities or dealings with commercial organisations are adequately briefed on Chapter 3 of these Guidelines. BBC divisions should also establish procedures for what to do in the event of an investigation under Competition Law with which all staff should be familiar.

3.61. Competition Law training is provided by the Regulatory Legal Department and the Fair Trading Department. Additional detailed guidance on Competition Law is available from the Head of Regulatory Legal.

Box 1 – What to do in the event of a ‘Dawn Raid’

When the officials arrive:

- Note the identities of officials.
- Contact the General Counsel’s Office (Nicholas Eldred 020 8008 1886), the Regulatory Legal Department (Mark Burgess 020 8008 1892, Sally Mills 020 8008 1896, Hugo Lindsay 020 8008 1893 or Kim Walsh 020 8008 1894) and the Fair Trading Department (Balbir Binning 020 8008 1871 or Shaun Day 020 8008 1872) **immediately**.
- Do not sign any document shown to you by the officials.
- Show officials into a room free of documents and computers.
- Ask to be allowed a reasonable time for the BBC’s legal advisers to arrive before the investigation begins.
- Contact those staff members the officials ask to meet so that they are ready to attend the investigation.
- **Do not destroy or alter any relevant documentation during or after the inspection.**

Meeting the officials

- The BBC’s lawyers will check the validity and nature of authorisation and supporting documents.
- An appropriate staff member will be designated team leader to assist the officials during the visit. The team leader introduces the team, including administrative assistants.

During the investigation

- You have a legal obligation to cooperate actively.
- Do not volunteer information outside the ambit of the questions.
- The BBC’s lawyers will advise on privilege against self-incrimination.
- If you don’t know the answer to a question, explain this to the officials and offer to provide a written answer later.
- You may consult the BBC’s lawyers or your colleagues in private where necessary.
- Officials may work in several places at once. Try to ensure that each official is “shadowed” by a BBC lawyer or a member of the team responding to the inspection.
- Take notes of all questions/answers, every file examined and copies of all documents copied.
- Officials may access computer files as well as paper files.
- The BBC’s lawyers will advise on documents protected by legal privilege (confidential legal advice), which officials may not copy.

Before the officials leave

- Keep a complete copy of all documents/material copied and taken by the officials.

- Ask the official(s) to sign a note acknowledging the documents copied.
- Inform the officials that you are claiming confidentiality over information supplied to them.
- Keep a record of the name of the officials you dealt with and the OFT/European Commission Competition Case Handler.
- Officials may ask you to sign a note minuting the investigation - check this carefully and consult a BBC lawyer first.

After the officials have left

- Ensure notes are typed up that day, if possible.
- Alert a BBC lawyer if you think that any documents copied were irrelevant/privileged.
- Provide (in consultation with the Fair Trading Department) written answers to any questions you were not able to answer.
- The Head of Regulatory Legal and the Head of Fair Trading will review the investigation, assess the likelihood of infringement and the strength of defence.

Part C: European State Aid Law

3.62. The BBC must also comply with European Law on State Aid. In practice, adherence to the principles outlined in Paragraphs 3.16 to 3.22 (“Fair prices for goods and services supplied by the BBC’s public service divisions”) will normally ensure that the BBC’s legal obligations under European Law on State Aid are also discharged.

3.63. Broadly, the EC Treaty prohibits any aid granted through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain firms or the production of certain goods. The aid in question can take a variety of forms as, for instance:

- state grants;
- interest relief;
- tax relief;
- state guarantee or holding; and
- provision of goods and services on preferential terms (e.g. pricing below cost).

3.64. The consequences to the BBC of any breach of European Law on State Aid are severe, since they include:

- the immediate full repayment of the aid by the recipients to the public body;
- damage to the BBC’s reputation; and
- substantial costs and disruption associated with regulatory investigation.

What should you do?

3.65. If you are considering undertaking any activity that may raise State Aid issues you must contact the Head of Regulatory Legal in advance.

Chapter 4: Using BBC Brands

Core principles

4.1. The BBC's brands form an invaluable set of assets, reflecting decades of work in building the BBC's reputation for quality, integrity and excellence. Whenever BBC brands are used commercially it is essential that they are used in ways which support, and could not diminish, the respect in which the BBC is held.

4.2. In these Guidelines, "BBC brands" refers to anything which could suggest that a product or service has originated from, or is associated with, the BBC. Chiefly, it applies to:

- the BBC's name, its initials and its logo;
- sub-brands such as the names, initials or logos of networks, channels, services, programmes e.g. BBC RADIO 4, 'EastEnders', 'Match of the Day';
- characters, themes and formats of programmes, e.g. Doctor Who, Albert Square, The Weakest Link;

sounds and visual images e.g. Top of the Pops theme tune, BBC TWO ident; and names of certain other products and services e.g. iPlayer, BBC Jam.

4.3. In practice, any commercial activity in which the BBC is involved, whether or not it makes use of the letters "BBC" will reflect on the Corporation and so should proceed in accordance with these Guidelines.

4.4. The association of BBC brands with any commercial products or services - whether BBC or those of third parties - should respect the following core principles:

BBC brands should not be used to:

- endorse or promote any particular outside organisation or its activities;
- give rise to an appreciable risk that editorial decisions may be thought to be influenced by commercial considerations; nor
- imply that UK consumers need to buy commercial products and services in order to access public service programming.

In addition, any use of BBC brands in commercial activities must:

- be properly and formally licensed by the BBC under legally binding agreements which are in a form approved by the Corporate Legal and Intellectual Property Department;
- reserve for the BBC full approval over anything which carries BBC brands, including any associated promotional literature;
- include an appropriate system of payment for licensing of the brands;
- make clear to consumers that they are in a commercial, rather than publicly-funded, environment; and
- conform to BBC standards in relation to the artwork for logos and the ways in which BBC brands are used

4.5. This Chapter sets out BBC policy on the appropriate use of BBC brands in the following categories of circumstance:

- The use of BBC brands in names of commercial business units.
- The use of BBC brands by the BBC's commercial activities, such as BBC operated or joint venture commercial activities, merchandising and licensing third parties.
- The use of BBC brands by other companies and organisations, such as testimonials and point of sale promotions.
- Sponsorship, advertising and promotions in the BBC's activities.

4.6. In addition to complying with these Guidelines, the use of BBC brands should be consistent with the values outlined by Marketing, Communications & Audiences. Any on-air use of third parties' brands, especially in the case of broadcast coverage of sponsored events, should be consistent with the detailed advice contained in the BBC's Editorial Guidelines.

Using BBC brands in names of commercial business units

4.7. Subsidiaries of the BBC and joint ventures may incorporate the BBC initials and logo in their company name or use them in their trading names provided the BBC has a controlling interest in the company. Whether the BBC has a controlling interest in a company will be determined by a number of factors including whether the BBC holds a majority of the voting rights and whether it has the right to appoint or remove a majority of its board of directors. Contracts should provide for the company and/or trading names to be changed if the BBC ceases to have control.

4.8. The BBC brand should never be combined with third party brands in company names since to do so would risk the BBC being perceived to endorse such brands and could adversely affect the legal standing of the BBC brand. The reputation in the third party brand could also affect that of the BBC brand.

4.9. Where the BBC does not have a controlling interest in a company, that entity should not use BBC initials or the logo as part of its company name or trading name since it would pose a risk that the BBC could lose control of the use of its name. However, it may be allowed to make some other reference to the BBC such as a factual statement on marketing literature e.g. "a joint venture company between the BBC and X Ltd" and it may be licensed to use the logo on such literature as an illustration of the relationship. All such references must be approved by Marketing Communications & Audiences, and licensed by the Corporate Legal and Intellectual Property Department, reserving for the BBC the right of approval over all material bearing the BBC logo.

Use of BBC brands by the BBC's commercial activities

BBC operated or joint-venture commercial activities

4.10. Commercial activities, products and services, produced or operated by the BBC or a subsidiary controlled by the BBC, will normally make use of BBC brands. If, as required, the activities in question are consistent with these Guidelines (see Chapter 2), the use of BBC brands will be a valuable and legitimate means of signalling to consumers that the BBC has produced the goods or services.

4.11. Similarly, the products and services of BBC joint ventures may be permitted to use BBC brands. However, this permission will only be given when the BBC can demonstrate that it exercises sufficient management and editorial control within the joint venture to ensure compliance with these Guidelines, the BBC's Editorial Guidelines and any other relevant BBC policy or guidelines, thereby signalling BBC standards to audiences and protecting the BBC's reputation.

Merchandising

4.12. The manufacture and sale of merchandise can generate revenues and, if managed properly, enhance BBC brands. Merchandise associated with BBC programmes can be produced by either BBC Worldwide Ltd, under license through the BBC's Commercial Agency by third parties, or by commissioned independents who may retain secondary rights in programming.

4.13. All merchandising associated with BBC programme brands must either be:

- genuine added-value, created explicitly from the intellectual content of the BBC programme; or
- of a novelty nature, serving to promote the programme itself.

In addition to the conditions noted above, non-novelty merchandise aimed at adults may also be acceptable as long as it is relevant to and consistent with the core brand values of the programme brand, and consistent with the editorial theme of the programme.

4.14. Guidance on the use of BBC brands on merchandise and commercial products produced by both BBC Worldwide Ltd and third party licensees is available from Marketing Communications & Audiences.

Licensed third parties

4.15. In many cases, it will be appropriate for the BBC or its subsidiaries to license the rights to produce products or services rather than manage the production themselves, since others may have specific expertise in the activities in question.

4.16. Third parties licensed by the BBC (including its commercial subsidiaries) are subject to these Guidelines. Licensing departments will need to maintain procedures in order to ensure compliance and that adequate quality control processes are in place.

4.17. When third parties have been licensed to produce BBC products, licence agreements should require that it is clear to consumers that the BBC has not manufactured the product.

4.18. The use of BBC brands on licensed products should follow consultation with Marketing, Communications & Audiences.

4.19. In licensed products and services, the licensee may be credited in a factual way, but there should be clear separation between BBC and licensee brands.

4.20. Only the licensee's logo, and not those of retailers, should appear on a BBC-licensed product. In the case of own-brand products, the retailer's brand may appear in lieu of that of a manufacturer.

4.21. Except for specific designs for own-brand products, third parties licensed to produce products and services using BBC brands should not intend to sell or distribute exclusively through a particular retailer.

Quality approval

4.22. When BBC brands are used by BBC subsidiaries and joint ventures, or licensed to commissioned independents or third parties (for the production of products and services), the BBC must always be able to ensure that its values and standards are being upheld and that BBC brands are not being used for purposes inconsistent with its guidelines. Accordingly, the BBC should always retain the right of prior approval of:

- products and services which are intended to carry BBC brands, or making use of BBC owned or produced copyright material; and
- publicity and promotional material associated with these products and services.

This right should be exercised by the relevant BBC division or the licensing department.

4.23. BBC divisions are required to maintain and operate an effective quality approval process, with regular checks, to ensure that appropriate use of BBC brands is being made, and to allow monitoring of approvals given, including where brands are licensed to third parties.

Licensing

4.24. The BBC seeks to protect its brands from the possibility of infringement, both in the UK and internationally. Any use of BBC brands by subsidiaries, joint ventures or licensed third parties, should be:

- properly and formally licensed by the BBC under legally binding agreements which contain the necessary provisions to ensure that the brand is protected; and
- under a licence which is in a form approved by the Corporate Legal and Intellectual Property Department.

Payment for licensing

4.25. Licensing of permitted BBC brands, whether to BBC subsidiaries, joint ventures or to third parties, should normally be based on competitive financial terms, and include an interest for the BBC in the proceeds of the sale of the product or service. The financial arrangements should reflect any restrictions placed on the exercise of the use of the brand which may have been imposed by the BBC.

Use of BBC brands by other companies and organisations

4.26. External organisations may be very eager to associate themselves, or their products and services, with the BBC and its brands, in order to better promote themselves and their products. This will rarely be acceptable, since it would imply BBC endorsement of their goods and services.

4.27. The limited exceptions which are permissible are detailed below.

Testimonials

4.28. It may be acceptable for third party organisations (including the BBC's commercial subsidiaries) to refer to any part of the BBC in their promotional literature as long as:

- the BBC is a major and satisfied customer of their goods or services;
- the BBC has agreed (in writing) in advance to, and retains editorial control over, such use;
- any references to the BBC are short, factual and objective; and
- it does not normally incorporate any BBC logo, footage or still.

4.29. Promotional literature includes case studies, brochures and press releases (including where such material is included on the third party's corporate website). More detailed guidance is available from the Head of Fair Trading.

4.30. BBC permission for testimonials must be sought, in the first instance, from the relevant divisional Fair Trading Representatives and, in the case of press releases, also from the Duty Editor, BBC Central Press Office. Contracts with third party organisations should, therefore, require BBC permissions for testimonials.

Point of sale promotions

4.31. Certain BBC programmes and BBC commercial products, such as magazines, will contain reviews of products and services. The manufacturers of products which have been reviewed may wish to quote from the review either at the point of sale, or in promotional material. Such displays can be beneficial to the BBC, by promoting the programme or BBC commercial product which contained the review. Accordingly, a short summary of a review may be permitted to be quoted, but only if properly licensed and subject to the head of the relevant production division or magazine editor

agreeing that the reference would be appropriate and that the proposed quotation is accurate and reflects the context of the whole item. To avoid the impression of BBC endorsement, the BBC logo and programme logos should not normally be used (but if they are an appropriate licence must be granted).

BBC products as prizes

4.32. BBC branded goods may be offered as prizes by commercial companies, although care must be taken to ensure that there is no implied BBC endorsement of the organisation involved, or its products and services.

4.33. It would not normally be appropriate however for commercial companies (including the BBC's commercial subsidiaries) to offer prizes (such as tickets to BBC shows) that would usually be supplied free by the public service.

Joint promotions, advertising and sponsorship

4.34. The BBC's commercial activities will sometimes, in the course of their normal activities, engage in marketing initiatives around their products and services with other commercial organisations. Examples include sponsorship of BBC events, advertisements on BBC commercial channels or in BBC magazines and joint promotions.

4.35. It is essential that in such activities there is absolute clarity that:

- these associations do not imply BBC endorsement of the products of third parties;
- BBC commercial products, services and events are operated separately from the BBC's public service on-air programmes and services; and
- commercial arrangements (such as advertising, sponsorship and joint promotions) around the BBC's commercial products, services and events cannot be used to achieve on-air promotion or publicity for commercial partners.

4.36. Organisations selected for association with the BBC's commercial products and services should be carefully selected and be consistent with the overall values and reputation of the BBC. Any use of BBC brands must be consistent with the BBC's current brand strategy, available from BBC Brand Strategy and Planning.

Joint promotions

4.37. A joint promotion is a marketing tool, used by BBC Worldwide Ltd and other BBC divisions and licensed third parties, to publicise BBC programmes and BBC products. They often involve a special offer for a BBC video or book, or the giving away of a novelty item associated with the BBC programme.

4.38. Joint promotions with other commercial companies are acceptable provided they are organised so as to avoid the appearance of endorsement of the third party, or their product or service and are consistent with protection of the brand. Guidance on, and approval for, joint promotions must be sought from Marketing, Communications & Audiences and Editorial Policy before proceeding.

Advertising

4.39. The BBC's commercial activities, such as BBC commercial channels, magazines and events, which take advertising as a source of income must ensure that the integrity of any editorial content is not influenced by advertisers.

4.40. Advertisement features are acceptable but must be clearly recognisable as such and care must be taken to ensure that advertisement features do not suggest that the BBC, or its broadcast programmes, have endorsed the products concerned.

4.41. All advertisements, including advertisement features, must comply with the requisite codes regulated by the Advertising Standards Authority (published advertisements) and OFCOM (on-air advertisements).

4.42. Furthermore, all on-air advertisements for BBC commercial products and services in the UK must be referred, in advance, to Marketing, Communications & Audiences.

Sponsorship

4.43. It may be acceptable for some BBC activities to be supported by sponsors. Examples of such activities can include commercial publications, pages of commercial websites and BBC events (both commercial and public service events). All sponsorship activities must be referred to Editorial Policy.

4.44. Particular care must be taken to ensure that the public should never have reason to suspect that the BBC's integrity and editorial standards have been compromised by the influence of other organisations. Accordingly:

- BBC activities which are organised with other bodies should never provide a back door for sponsors. Those arranging the activity should make sure they are aware of any funding or sponsorship agreements with third parties (see the BBC's Editorial Guidelines);
- no activity associated with consumer or lifestyle programmes or magazines should accept as a sponsor an organisation or product likely to be among those reviewed or otherwise covered, in order to avoid the risk that the fact of sponsorship could be perceived as having influenced editorial selection or opinion (e.g. Top Gear Live should not be sponsored by a particular car manufacturer; a Good Food magazine supplement should not be sponsored by a food manufacturer); and
- further requirements must be fulfilled if a sponsored event is to be broadcast (see the BBC's Editorial Guidelines). These include the requirement that any sponsorship should be for mounting the event, and no sponsorship money may go into any production budget or be used for any broadcasting cost. Separate accounting procedures should be established to ensure that there is a clear separation between events costs and programme costs.

4.45. Whenever BBC activities involve sponsorship, it is essential to ensure that:

- there is always clear separation between the sponsor's brand and any BBC brands used;
- the sponsor's name is not incorporated into the name of the product, service or event;
- sponsorship credits clearly indicate the nature of the commercial relationship. Any proposed references in broadcast coverage must fulfil the requirements of the BBC's Editorial Guidelines;
- product placement - using or mentioning a product in return for payment - is prohibited; and
- the use of BBC brands and logos is consistent with the BBC's guidance on branding.

4.46. All proposals for third party sponsorship of BBC activities must be referred in the first instance to the divisional Fair Trading Representative.

Chapter 5: Implementation

Core principles

5.1. It is essential that all BBC divisions exercise proper responsibility for ensuring that any commercial activity is conducted in ways which demonstrate consistency with the BBC's Fair Trading Commitment and these Guidelines. Consumers, business customers and the BBC's competitors have the right to be assured that when they engage in commercial activities, the BBC and its subsidiaries trade fairly.

5.2. Each divisional board is responsible for ensuring compliance with these Guidelines, and this responsibility must be exercised through a structured system of advice, referral and approval.

5.3. As part of the Licence Fee Review in 1999, the Secretary of State announced requirements for independent scrutiny of the BBC's Fair Trading systems. One specific element is a requirement for the BBC to gain and retain ISO 9001:2000 accreditation for its Fair Trading processes and procedures.

5.4. ISO 9001:2000 is an International Standard for quality management systems. The systems and processes put in place by the BBC under this standard aim to demonstrate that the BBC is adhering to its Fair Trading Commitment.

5.5. The requirements of the Standard include documented procedures outlining the processes in place across each BBC division with regard to Fair Trading compliance. Divisions' procedures for ensuring compliance will be subject to regular testing, by the BBC's internal and external auditors, the British Standards Institute and by the Head of Fair Trading, addressing:

- the functioning of the system;
- the familiarity with, and use of, the system by relevant staff;
- the consistency of the advice and approvals given with these Guidelines; and
- the compliance of individual activities with these Guidelines in general, and with the Fair Trading Commitment in particular.

5.6. Advice is always available to divisions from the Head of Fair Trading on issues concerning the interpretation of the Fair Trading Guidelines; and on issues of the design and operation of compliance procedures within the division.

Division responsibilities

5.7. The Board of each division is required to appoint a Fair Trading Representative who is a member of the division's main Board and will be the focal point for advice and approvals for all commercial activities within the division.

5.8. Each divisional board should establish and maintain its own procedures to ensure compliance with these Guidelines and to ensure the maintenance of the ISO 9001:2000 accreditation.

5.9. These procedures should be agreed with the Head of Fair Trading, and should provide for:

- training and dissemination so that all relevant staff are familiar with their responsibilities under Fair Trading;
- a clear means of obtaining advice on Fair Trading within the division for individuals considering commercial activities;
- the referral process to be followed to obtain advice and guidance from the Fair Trading Department;

- an approvals process so that the Board is satisfied that each commercial activity is consistent with these Guidelines and proceeds with its authority;
- reference to the Head of Fair Trading on issues of interpretation of these Guidelines;
- clearly articulated procedures to be followed in the event of regulatory investigation; and
- a written record of all advice and approvals given by, or on behalf of, the divisional Board e.g. by the Board level representatives or anyone else responsible for giving advice or approvals, in relation to any matters arising under these Guidelines. The record shall contain sufficient detail to enable it to be monitored to provide assurance that appropriate and consistent advice or approvals are being given. For the avoidance of doubt, all issues referred by a BBC division to the Fair Trading Department will be recorded by the Fair Trading Department.

5.10. In the event that the Head of Fair Trading, the Executive Committee, or the Governors determine that advice and/or approvals being given by a division's Board is inconsistent with these Guidelines, the Head of Fair Trading will advise the Fair Trading Representative of the division. The divisional Fair Trading Representative will be responsible for ensuring that this advice is issued to anyone in the division concerned and is reflected in future advice on, and approvals of, commercial activity within the division.

5.11. Each divisional Board must submit a Quarterly Return to the Head of Fair Trading, which, with similar information from all other divisions, will be reported to the Governors' Fair Trading Compliance Committee.

5.12. The Quarterly Return will normally be prepared by the Division's Fair Trading Representative and approved and signed off by the divisional Director or equivalent.

5.13. All BBC divisions are required to provide the following information in their Quarterly Return:

- a summary of new and significant commercial activities entered into since the last Quarterly Return, highlighting any unusual features and confirming that in the Board's opinion they:
 - are consistent with the commercial activities deemed appropriate for the division;
 - are appropriately structured to demonstrate transparency of accounting and no recourse to public funds;
 - comply with the Fair Trading Commitment, whose principles are reflected in these Guidelines; and
 - make appropriate use of BBC brands and avoid implying the BBC's endorsement of third parties.
- a record of any significant changes in these matters for existing commercial activities;
- any significant new agreements between a public service division and a commercial subsidiary;
- a breakdown of the number of Fair Trading enquiries received over the last quarter, along with details of those referred up to the Fair Trading Department for further guidance;
- any Fair Trading challenges received from external parties, or new intelligence of possible challenges (these should be communicated immediately to the Head of Fair Trading);
- the status of outstanding Fair Trading issues recorded in previous Quarterly Returns, and action being taken to resolve them; and
- the status of divisional audit actions raised in Fair Trading audit reports by the BBC's external auditors.

In addition to the above information, the BBC's public service divisions are also required to provide a financial summary of reportable income received during the quarter which is reconciled to the respective division's financial records.

5.14. Each division's Board-level Fair Trading Representative will meet with the Head of Fair Trading at least once every six months to discuss the contents of the latest Quarterly Return, and any other relevant issues arising over the past six months.

5.15. Each Division's Fair Trading Representative or their nominated contact will meet on a quarterly basis with a member of the Fair Trading Department to discuss the contents of the latest Quarterly Return, and other relevant issues raised in the previous quarter.

Fair Trading Training

5.16. The Head of Fair Trading is responsible for providing training for the divisional Fair Trading Representatives and their divisional staff (see paragraph 5.21 below).

5.17. There are three 'Tiers' of Fair Trading training, i.e.

- Tier 1 – This provides an overview of the BBC and its unique position as a licence fee funded public service broadcaster. It is undertaken by all BBC staff attending the corporate induction programme.

Tier 2 – This takes the form of an online training module, providing staff with a detailed exploration of the principles of the Fair Trading Guidelines and the Fair Trading Commitment. Staff selected to undertake this level of training are required to complete the module on a triennial basis.

- Tier 3 – This takes the form of bespoke workshops examining the application of the Fair Trading Guidelines to divisional-specific issues. It is undertaken, on a triennial basis, by nominated key staff members (e.g. Fair Trading Representatives, Sales/Marketing/Contract Managers) who have a high-level of involvement in commercial activities or dealings with commercial organisations.

Independent Producers and Licensees

5.18. Third parties contracted by the BBC, such as independent producers and licensees, who are subject to these Guidelines, should refer to the BBC division which has commissioned or licensed them for further advice on the interpretation of these Guidelines.

Head of Fair Trading

5.19. The Head of Fair Trading manages the BBC's compliance with the Fair Trading Commitment and these Guidelines and reports to the BBC's General Counsel, who has oversight of the Fair Trading function and compliance.

5.20. The Head of Fair Trading and his team are always available for advice on the interpretation of these Guidelines and issues related to the appropriate structure and conduct of commercial activities.

5.21. In addition, the Head of Fair Trading:

- advises on how best to ensure that commercial activities conform to the BBC's statutory and Charter responsibilities (in conjunction with the Head of Regulatory Legal);
- maintains and keeps up-to-date these Guidelines, advising divisions of changes and revisions which might be made from time to time;

- provides training for the divisional Fair Trading Representatives, and their divisional staff;
- assesses the adequacy of Fair Trading compliance systems established and operated by each division, including monitoring advice and approvals given by divisional Boards;
- assists the work of internal and external auditors of Fair Trading (see paragraphs 5.22 to 5.24 below);
- reports to the Executive Board and to the Governors on the BBC's compliance with the Fair Trading Commitment and these Guidelines; and
- liaises with external regulatory bodies, including OFCOM and the OFT.

Fair Trading Auditors

5.22. In addition to the ongoing scrutiny by the Head of Fair Trading, the Governors' Fair Trading Compliance Committee charges the BBC's Internal Audit Department and directly employs a firm of independent external auditors to monitor and scrutinise compliance with the Fair Trading Commitment by divisions.

5.23. Typically, this will involve reviewing:

- the division's Fair Trading systems and controls;
- a sample of material transactions; and
- major new and existing contracts.

5.24. The BBC's Internal Audit Department and the appointed external auditor, as well as the Head of Fair Trading and the BBC's General Counsel, advise the Fair Trading Compliance Committee on the terms of the Governors' Annual Statement in the BBC's Annual Report and Accounts on compliance with Fair Trading. The external auditor issues a separate opinion for inclusion in the BBC's Annual Report and Accounts.

Other sources of advice

Editorial Policy

5.25. The BBC's Producers' Guidelines offer advice on commercial references in programmes and broadcast coverage of commercial events. The BBC's Editorial Guidelines set out referral procedures for matters such as:

- editorial safeguards on independent productions and other external commissions;
- advertising;
- sponsored programmes;
- OFCOM Programme Code, governing UK commercial channels;
- coverage of sponsored events;
- on-air promotions of commercial products; and
- off-air promotions of BBC programmes.

5.26. Advice on these matters may also be sought from the Editorial Policy Department in the Deputy Director General's Office.

Legal Advice

5.27. The BBC's lawyers can advise on general contracting and licensing issues and on the legal aspects of any joint ventures with third parties. Specific functions important for proposed commercial activities are:

- Regulatory Legal Department - provides expert advice on UK and European Competition Law, European Law on State Aid and the consistency of commercial activities with other statutory requirements such as the BBC's Charter and Agreement and the Broadcasting Acts.
- Corporate Legal and Intellectual Property Department - provides expert advice on the legal aspects of protecting the BBC's trade marks, particularly trade mark licensing and registration.

Marketing, Communications & Audiences

5.28. The division can advise on what constitutes a BBC brand, on design issues and on how the BBC should deploy its brands to protect BBC brand equity.

5.29. The division also maintains the BBC's brand strategy and can be contacted via email at central.marketing@bbc.co.uk.

Commercial Agency

5.30. The Commercial Agency's core remit is to work with the BBC's public service divisions to maximise the commercial value the BBC obtains from the rights in its intellectual property. It advises and negotiates on behalf of the BBC's public service divisions to achieve optimal value from the commercial exploitation of BBC-controlled programme rights and events. The Department is also charged with maximising commercial returns from the BBC's archive of non-invested programme rights.

Reference

5.31. These Guidelines summarise BBC policy on the conduct of commercial activities, as determined by the Executive Board and the Board of Governors.

5.32. These Guidelines will be kept under constant review, and amendments may be brought forward from time to time under these procedures to reflect changes in the context in which the BBC operates.

5.33. In the event of disagreement on the interpretation of the Fair Trading Guidelines, the Head of Fair Trading will be the final arbiter.

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