



Information Policy & Compliance  
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Matt Rogerson  
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23 February 2016

Dear Mr Rogerson,

### **Freedom of Information request - RF120160238**

Thank you for your request to the BBC of 1<sup>st</sup> February 2016, seeking the following information under the Freedom of Information Act:

*I'd be grateful if you could provide details of mechanism used by BBC public service news to determine the transfer price paid by BBC Global News Ltd for content initially paid for by the licence fee. I am not interested in the actual price paid for content, but rather the formula used by BBC public service news to determine what that price should be.*

### **Response to your request -**

#### **Legal and regulatory framework**

The BBC and its commercial subsidiaries are subject to a regulatory framework which derives from European State Aid law and the BBC Charter and Agreement. Specific provisions for commercial activity are set out in the BBC Trust's Fair Trading Framework and then applied in the BBC Executive's Fair Trading Guidelines. Taken together these documents describe both how commercial subsidiaries like BBC Global News Limited ('GNL') can access content and assets initially funded by the Licence Fee, and also how this activity is overseen and monitored for compliance.

The BBC Agreement (specifically Sections 68(2) and 75) makes clear that the BBC Public Service Group cannot carry out any commercial services, nor can the Licence Fee be used to fund commercial activity. Any commercial services must therefore be provided through an organisationally separate commercial subsidiary. There are conditions around how these

commercial services operate e.g. they must be services which promote the BBC's public purposes, be commercially efficient and must not distort the market.

In 2015, following a review and public consultation which included input from the industry, the BBC Trust introduced a new framework for the BBC's commercial services (which includes GNL). These new arrangements set out the requirements, boundaries and expectations for the operation of the BBC's commercial services under four principles governing:

- strategic alignment between licence fee-funded and commercial services;
- how, where, and when commercial business can be conducted;
- how commercial performance will be assessed and how market distortion will be prevented; and
- how the necessary financial and operational separation between the publicly funded and commercial BBC activity will be maintained.

The full detail of this framework can be found here:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our\\_work/commercial/commercial\\_framework/commercial\\_framework.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/our_work/commercial/commercial_framework/commercial_framework.pdf)

## **Transfer pricing**

The charging to commercial subsidiaries for access to BBC Public Service assets or services relies on the application of clear and simple pricing rules based on the principles of the BBC Executive's Fair Trading Guidelines. These principles specifically require that the public service does not cross-subsidise commercial activity.

These pricing guidelines are set out in Chapter 3 of the Fair Trading Guidelines<sup>1</sup>. The key principle of 'fair transfer pricing' is that charges for goods and services supplied by BBC's Public Service Group should be set in line with prevailing market practice as far as possible. This means in those circumstances where it reflects the prevailing market practice, it is acceptable to price assets with reference to incremental costs. In the absence of any verifiable or comparable information/data on prevailing market practice, prices should seek to recover all relevant direct costs involved in providing the good(s) or service(s). The latter direct cost approach also requires an appropriate contribution to the relevant overheads and for reinvestment in the BBC's Public Service Group.

In the specific example in your request, where content has been initially paid for with Licence Fee funds by BBC News and is then re-used by GNL, GNL will be charged the

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<sup>1</sup> The Fair Trading Guidelines are available to view at:

[http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/fairtrading\\_guidelines\\_010812.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/pdf/fairtrading_guidelines_010812.pdf)

incremental price of making that pre-existing content available to them. In these cases the public service has acted as the commissioner of the content for public service use and has full editorial control over that content.

The relationship with GNL (as with all the BBC's commercial services), including the application of transfer pricing, is kept under regular review and is subject to external scrutiny. The application of the Fair Trading Guidelines is subject to an annual audit and the latest report can be found in the 2014/15 Annual Report and Accounts available here: <http://downloads.bbc.co.uk/annualreport/pdf/2014-15/bbc-annualreport-201415.pdf>

### **Ongoing Trust review of transfer pricing**

Alongside the publication of the strategic framework in 2015 the BBC Trust concluded that it should commission an independent review of separation and transfer pricing practices, covering the levels of transparency and compliance when the BBC's commercial services buy rights to BBC content or pay to use BBC premises or services. The review will independently assess whether the necessary controls and procedures are being applied to ensure that fair market rates are being paid.

As set out in the Trust's work plan for 2016 the findings of this review will be published: [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_operate/2016/workplan.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_operate/2016/workplan.pdf)

### **Appeal Rights**

If you are not satisfied that we have complied with the Act in responding to your request, you have the right to an internal review by a BBC senior manager or legal adviser. Please contact us at the address above, explaining what you would like us to review and including your reference number. If you are not satisfied with the internal review, you can appeal to the Information Commissioner. The contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow SK9 5AF. Telephone 01625 545 700 or see <http://www.ico.gov.uk/>

Yours sincerely,

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