

SECTION 13: RE-USE AND REVERSIONING

13.1 Introduction

13.2 Principles

13.3 Mandatory Referrals

13.4 Practices

General

Accuracy Issues

Fairness, Consent and Privacy Issues

Harm and Offence Issues

Syndication and Distribution on Non-BBC Channels and Spaces

Requests for BBC Material from Third Parties

13.1 INTRODUCTION

The BBC's archive is a great national resource, of huge value to the public. We are committed to making this heritage accessible to the widest possible audience. Similarly reaching and engaging new audiences is the motivation behind syndicating material so that those who may consume little BBC content can discover it for themselves and enjoy more of what we have to offer.

BBC content is made to the standards in the Editorial Guidelines in force at the time of its original production. With the passage of time, those standards may change. This section outlines the additional steps that should be taken when content is re-used, distributed or otherwise made available, in whole or in part, in ways that may not have been contemplated at the time of production.

13.2 PRINCIPLES

13.2.1 Material from the BBC archive must take account of the requirements of the Editorial Guidelines in force at the time it is re-used, reversioned or made available.

13.2.2 Material accessible via on-demand channels should be managed appropriately to ensure that it continues to take account of the requirements of the Editorial Guidelines.

13.2.3 The BBC will only supply third parties with copies of programmes, content or other material gathered during production of our output, for uses that maintain the integrity of the material and the BBC.

13.3 MANDATORY REFERRALS

(Mandatory Referrals are part of the BBC's editorial management system. While they will not, in themselves, meet the Principles in the Editorial Guidelines, they are an essential part of the process to ensure compliance and must be observed.)

Referrals to Director Editorial Policy and Standards

All requests for untransmitted or otherwise unused material, including notes, by the police and/or in connection with court proceedings, possible court

proceedings or other procedures which may regard the material as evidence (such as disciplinary hearings by regulatory bodies), must be referred to Programme Legal Advice and Director, Editorial Policy and Standards.

(See 13.4.27)

Referrals to Editorial Policy

13.3.2 The re-use, reversioning and making available of archive material must take account of any findings of breaches of editorial standards by the Editorial Complaints Unit, the Editorial Standards Committee of the BBC Trust or their predecessors, and of code breaches recorded by Ofcom or previous regulators. Any proposal to re-use such material must be referred to the relevant senior editorial figure or, for independents, to the commissioning editor. Referral must also be made to Editorial Policy.

(See 13.4.1)

13.3.3 All requests for transmitted material in connection with court proceedings, or other procedures which may regard the material as evidence (such as disciplinary hearings by regulatory bodies), must be referred to Programme Legal Advice and Editorial Policy.

(See 13.4.22)

Other Referrals

13.3.4 When our use of the archive may cause distress to the contributors, victims or their relatives or close friends, their views should be sought where possible. If they object to re-use, any proposal to do so must be approved by a senior editorial figure or, for independents, by the commissioning editor.

(See 13.4.7)

13.3.5 Any proposal to re-use archive material of identifiable grieving or distressed people must be referred to a senior editorial figure or, for independents, to the commissioning editor.

(See 13.4.7)

13.3.6 When any proposed re-use of material may not have been covered by the original fee paid to contributors or others involved in the production of content, Talent & Rights Negotiation Group must be contacted as necessary in sufficient time for any legal obligations to be assessed and fulfilled.

(See 13.4.9)

13.3.7 The re-use of secretly recorded archive material must be referred before broadcast to a senior editorial figure or, for independents, to the commissioning editor. A record must be kept of the decision.

(See 13.4.10)

13.3.8 Any plans to re-use, reversion or make available archive material featuring members of the Royal Family or the Royal Palaces (except for news material showing members of the Royal Family carrying out public duties) must be referred to the BBC's Royal Liaison Officer.

(See 13.4.12)

13.4 PRACTICES

General

13.4.1 The re-use, reversioning and making available of archive material must take account of any findings of breaches of editorial standards by the Editorial Complaints Unit, the Editorial Standards Committee of the BBC Trust or their predecessors, and of code breaches recorded by Ofcom or previous regulators. **Any proposal to re-use such material must be referred to the relevant senior editorial figure or, for independents, to the commissioning editor. Referral must also be made to Editorial Policy.**

13.4.2 When re-using television or radio content online or on demand, we should bear in mind that it may be subject to much greater scrutiny than when broadcast originally. For example, it may be replayed repeatedly and, if content is published with searchable meta-data, even fleeting contributions can easily be located.

(See Guidance online: Chapterisation)

Material which may have been appropriate for transmission in the UK may no longer be appropriate when it can be accessed online around the world. For example, images of people suffering in a foreign war or disaster zone may cause unjustifiable distress to survivors in that country, or there may be safety concerns for contributors or reporters.

(See Section 13 Re-use and Reversioning: 13.4.7 and Section 7 Privacy: 7.4.44)

Accuracy Issues

13.4.3 We should be aware that material we plan to re-use or reversion may have become out of date, inaccurate or inappropriate for other reasons. Where necessary to achieve due accuracy, it should be labelled and/or dated.

Care must be taken over the release of content containing information which new research has revealed to be inaccurate, such as medical information or advice which, if followed, may put people's health at risk. Where appropriate, the use of context and content information (including, for example, archive branding and labelling) should be considered.

(See Section 3 Accuracy: 3.4.22 - 3.4.24)

13.4.4 We must check programmes being repeated some time after their original transmission to make sure they have not been overtaken by events, such as the known death of a contributor, the charging of an offender, or

significant life changes. In some cases an on-air announcement will be required, in others, the alteration or removal of some material.

(See Section 3 Accuracy: 3.4.25)

News and Factual Programmes

13.4.5 When archive material is used to illustrate a current issue or event it must be clearly labelled if there is any risk of misleading the audience. We should also be alert to legal issues of, for example, defamation.

We should not use archive material of one event to illustrate another in such a way as to suggest the audience is seeing something it is not.

We should ensure that we do not give a materially misleading impression by illustrating our stories with out of date archive footage, for example of places, people or industrial production processes.

Fairness, Consent and Privacy Issues

13.4.6 The BBC has a continuing responsibility to respect privacy and to act fairly towards contributors when re-using, reversioning and making archive material available. So far as is reasonably practicable and when it was not implicit at the time they gave consent, we should inform contributors of our intention to re-use material.

We must check any relevant available detail of contributor consents and observe any restrictions on the re-use of the material, unless we are able to establish that circumstances have changed since the restrictions were imposed, so that they no longer apply.

(See Section 6 Fairness, Contributors and Consent: 6.4.1)

13.4.7 Archive material involving illness, death, emotional trauma or intimate personal revelation, or individuals as children, when they were unable to give informed consent, may become more sensitive over time. We must consider how to minimise possible distress to surviving contributors, victims and relatives when we re-use, reversion or make available such archive content.

When our use of the archive may cause distress to the contributors, victims or their relatives or close friends, their views should be sought where possible. If they object to re-use, any proposal to do so must be approved by a senior editorial figure or, for independents, by the commissioning editor. Approval will only be given if the objections are outweighed by a public interest.

Any proposal to re-use archive material of identifiable grieving or distressed people must be referred to a senior editorial figure or, for independents, to the commissioning editor.

(See Section 7 Privacy: 7.4.44)

13.4.8 In addition, dramas and drama-documentaries should only use archive material when it can be editorially justified. We must ensure re-use of material does not create unfairness, by, for example, causing unjustified embarrassment, surprise or offence to identifiable people featured in the archive material. We should take particular care when re-using material of past events involving suffering or trauma or contentious material such as images of riots.

13.4.9 Paid contributors or others involved in the production of content may have contractual rights relating to re-use of archive material. **When any proposed re-use may not have been covered by the original fee, Talent & Rights Negotiation Group must be contacted as necessary and in sufficient time for any legal obligations to be assessed and fulfilled.**

Secretly Recorded Material

13.4.10 **The re-use of secretly recorded archive material must be referred before broadcast to a senior editorial figure or, for independents, to the commissioning editor. A record must be kept of the decision.**

(See Section 7 Privacy: 7.4.11 - 7.4.12)

Material Depicting Illegal or Anti-Social Activity

13.4.11 The use of archive material relating to crimes, victims of crime and anti-social activity requires careful editorial judgements. We should:

- avoid using the same incident to illustrate a general theme, for example, the same driver being breathalysed repeatedly may be unfair
- not use archive material of one identifiable crime to illustrate another
- take care when using archive shots of prisoners to illustrate a specific crime or type of crime. Individuals should not be clearly identifiable if they were not involved in the crime in question
- consult Programme Legal Advice about any proposed use of archive material of a crime if court proceedings are pending or in progress.

Royal Archive Material

13.4.12 Material featuring members of the Royal Family or the Royal Palaces is often subject to specific contractual arrangements, especially when the BBC has been given privileged access. **Any plans to re-use, reversion or make available such archive material must be referred to the BBC's Royal Liaison Officer.** This does not apply to news material showing members of the Royal Family carrying out public duties.

Harm and Offence Issues

13.4.13 Archive material that is made available, re-used or reversioned must take account of the requirements of the Editorial Guidelines on Harm and

Offence in force at the time it is made available. Consideration should be given to the following:

- Changes in public attitudes to potentially offensive material, including nudity, language, portrayal, alcohol, illegal drug use and smoking
- Any change in, for example, timeslot or channel, which would have a material effect on audience expectations
- The way that many people browse the internet often by following links from search engines or coming across BBC material that has been embedded on other sites, means that we cannot presume that online users are always prepared for the material they find. They may not immediately realise that the content is archive, possibly increasing the risk of offence.

When archive material would not normally be broadcast by the BBC today because standards or attitudes have changed, there may be reasons to make it available now because, for example, it is of historical or cultural interest. However, the material should be appropriately scheduled and/or signposted and it should be clear to the audience that it is not contemporary.

(See Section 5 Harm and Offence: 5.1 Generally Accepted Standards and 5.4.2 - 5.4.3)

13.4.14 On occasion, current events and circumstances may make it inappropriate to re-use, reversion or make archive material available and, occasionally, may require the removal of on-demand material or links.

(See Section 3 Accuracy: 7.4.22 - 7.4.24)

(See Guidance online: Taking Down Online Material)

13.4.15 We must ensure that the use of traumatic archive material, particularly when it features identifiable people, is editorially justified. It should never be used as “wallpaper” or to illustrate general themes. Any restrictions placed on the re-use of archive material must be observed.

(See Section 13 Re-use and Reversioning: 13.4.6 - 13.4.11)

Syndication and Distribution on Non-BBC Channels and Spaces

13.4.16 Syndication includes the ways in which the BBC makes its content available to audiences via third parties. It may be based on formal contracts, or “self service” (where content is made available for third parties to choose from without any formal contractual requirement). It includes any content, whether as a trailer, clip or full programme, and may be on a variety of platforms.

Online syndication, for example, helps us increase reach by engaging with users beyond BBC Online.

13.4.17 All material syndicated to third parties should be offered on a fair, reasonable and non-discriminatory basis. Unless specific circumstances justify differences, the terms of contract should be materially the same for all syndication arrangements.

13.4.18 Subject to a value for money test, and as technology allows, BBC public service content should be supplied on a platform-neutral basis. However, we may design different syndication products or packages for specific platforms or technologies, where this is justified. We may prioritise specific syndication opportunities based on objective criteria such as compliance, size of audience or audience demographics. Impact on the wider market and value for money of syndication activities should be considered.

13.4.19 Syndication of content must comply with relevant legal, rights and regulatory requirements, including the BBC Trust's Syndication Policy and the BBC On-Demand Syndication Guidelines (such as those in relation to advertising).

13.4.20 There should be a clear distinction between BBC public service content and BBC commercial content.

13.4.21 Appropriate measures should be in place to protect the reputation of the BBC and the integrity of BBC content.

Requests for BBC Material from Third Parties¹

Transmitted Material

(Requests for material that has previously been broadcast or otherwise publicly distributed by the BBC.)

13.4.22 All requests for transmitted material in connection with court proceedings, or other procedures which may regard the material as evidence (such as disciplinary hearings by regulatory bodies), must be referred to Programme Legal Advice and Editorial Policy.

13.4.23 As far as other requests for such material are concerned we will:

- take due account of any copyright, legal, contractual and editorial implications
- normally charge a fee which realistically reflects the cost or practical difficulties of providing the material
- normally require a written agreement that the material will be used for purposes that maintain the integrity of the material and the BBC.

¹ This section of the Editorial Guidelines, 13.4.22 to 13.4.27, does not apply to statutory requirements to produce material, for example to Ofcom.

Untransmitted Material

13.4.24 Requests from third parties for access to unused material, such as notes, unedited video ("rushes") or audio recordings, should normally be referred to Director Editorial Policy and Standards.

(See Section 13 Re-use and Reversioning: 13.4.27)

13.4.25 Any proposal to give a contributor's personal details, comments or other personal information to a third party without the contributor's consent should be referred to a senior editorial figure, or for independents to the commissioning editor, who may wish to consult Information Policy and Compliance and Programme Legal Advice.

(See Section 7 Privacy: 7.4.45 - 7.4.50)

13.4.26 We never voluntarily allow access to unused material:

- when to do so would endanger people who work for the BBC
- when it would make it more difficult to gather such material in the future
- if the requests appear to be "fishing" for evidence
- if the material contains information that identifies a confidential source or contributor
- when it conflicts with our contractual obligations
- when the rights of third parties may be impaired by handing it over.

The BBC's editorial integrity could also be damaged if other organisations and individuals are allowed access to untransmitted material for their own use. For example, we do not normally release untransmitted material to organisations for public relations, marketing or commercial purposes.

13.4.27 All requests for untransmitted or otherwise unused material, including notes, by the police and/or in connection with court proceedings, possible court proceedings or other procedures which may regard the material as evidence (such as disciplinary hearings by regulatory bodies), must be referred to Programme Legal Advice and Director Editorial Policy and Standards.

The BBC will not normally hand over unused material in such circumstances, including to the police, without a court order. Sometimes it is appropriate to accede to such an order, at other times it will be necessary to contest it and appeal it to higher courts.

The police make a significant number of requests for untransmitted material. In England, Wales and Northern Ireland they use PACE Orders (under the Police and Criminal Evidence Act 1984) to require the release of material for use as

evidence. In Scotland, a warrant for material may be granted by a Sheriff, or the Lord Advocate can seek to recover such material by petition or order.

There is no legal obligation for us to keep documents, records or unused material unless and until they are the subject of a request from the police or the courts or there is a realistic threat of litigation.