

Question	Your response
<p>Question 1: Given changes to audience consumption patterns and wider market developments, is there any aspect of Ofcom's Guidance on commissioning of independent productions which Ofcom should update to ensure it remains fit-for-purpose?</p>	<p>This submission draws on research into 'terms of trade' in the UK television production sector. The research is being carried out at CREATE: UK Copyright and Creative Economy Centre, University of Glasgow as part of the AHRC Creative Industries Policy and Evidence Centre (PEC).</p> <p>Drawing on this research, the main recommendation of this submission is that a code of practice that applies to Subscription Video on-Demand (SVoD) commissioners of television content in their dealings with independent producers should be considered by Ofcom.</p> <p>The 'terms of trade' established in the <i>Communications Act 2003</i> ensure producers retain an interest in intellectual property (IP) subsisting in works commissioned by PSBs. This intervention had catalytic effects in transforming the dynamics of the UK television production sector. In practice, 'terms of trade' allows producers to actively exploit secondary rights in content they create. International licensing of content and programme formats is an example of where UK producers have been particularly successful in this. Conversely, SVoDs are not governed by this code of practice, and as such are not required to share control of IP with independent producers (Doyle 2016).</p> <p>However, it is not the contention of this submission that current 'terms of trade' for PSB should simply be transposed onto SVoD services. Instead, a graduated code that adequately and equitably accounts for the differing business-models employed by commissioning entities while functioning in harmony with public service obligations of broadcasters and SVoDs should be considered.</p> <p>Codes of practice offer a nimble and expedient means of achieving a greater degree of regulatory parity between SVoD and PSB commissioners in respect of IP transactions with independent production companies.</p>

	<p>To this end, setting territorial limits to the assignability of rights is unlikely to be practicable in respect of SVoD commissions. Instead, limiting the temporal retention of IP rights in commissions involving independent producers potentially offers reciprocally beneficial advantages for stakeholders that Ofcom should consider.</p>
<p>Question 2: Is there any change to the independent production quota which Ofcom should recommend to Government as part of its 'Small Screen Big Debate' programme?</p>	<p>Any extension to the current 'terms of trade' to SVoDs must ensure adequate checks and balances are in place to ensure UK producers are not less attractive to the inward investment of overseas broadcasters and SVoDs that is increasingly driving growth in the UK sector. This is a valid concern articulated by prominent voices in the independent production industry.</p> <p>In the PSB environment, the quota system compels commissioners to buy from independent suppliers. Applying 'terms of trade' to transactions between SVoDs and independents without a quota could serve as a disincentive for SVoDs to commission from this type of company. This suggests a similar complementary mechanism would be required if the implementation of 'terms of trade' for SVoDs was to be practicable.</p> <p>Without employing the interventions of 'terms of trade' and independent production quotas for SVoD commissioners in tandem, there are convincing rationales for maintaining the 'hands off' approach favoured by policymakers at present.</p>
<p>Question 3: Do you have any recommendations for potential changes to the definitions of 'qualifying programmes' or 'independent production' which Ofcom should recommend to Government as part of its 'Small Screen Big Debate' programme?</p>	<p>This submission draws primarily on research into codes of practice in the TV commissioning market. However, it seems reasonable to assert that, as SVoDs and other transnational media operators increasingly permeate the UK production landscape, provisions should be put in place to ensure a diverse and pluralistic sector is sustained in terms of participation in programme making and in terms of the character of content that is made. It follows that definitions of qualifying programmes and independent production should be examined and revised where necessary.</p> <p>This submission concurs with the government position that the UK should, 'ensure continuity</p>

for provisions governing quotas for European works and the guidelines for European works' ([DCMS 2021](#)). Mechanisms such as BFI [Cultural Test for High End TV](#) content are already in place to incentivise the production of 'local' content by way of tax relief for qualifying productions. However, as SVoDs and other global players become increasingly prominent commissioners of content in the UK, consideration should be given to the extent to which these services are required to participate in the production of content with a public service dimension.

Central to this is the obligation of PSBs to, '... disperse and stimulate investment and job opportunities in the sector' as well as 'ensuring a diverse range of programmes and editorial perspectives' ([Ofcom 2021](#)). With this in mind policymakers should assess how best to achieve these objectives in a market where PSBs are increasingly required to compete with emergent SVoDs. Consideration of amended definitions of qualifying content and qualifying independent production will play a significant role in this process. Crucially, the issue of regulatory parity between PSB and SVoD players must be a central consideration. Of course, preserving the delicate balance of the production ecosystem requires a carefully calibrated combination of measures that do not put independent UK producers at a competitive disadvantage when seeking commissioning opportunities with the new-entrant SVoDs.