# Proposed Annual Plan 2016/17

## Response from the Commercial Broadcasters Association to Ofcom

## February 2016

CoBA

A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

# Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for multichannel broadcasters in the digital, cable and satellite television sector.

2. COBA members are critical to the global success of the UK broadcasting sector and its "mixed ecology" of public and private investors. As arguably the fastest growing part of the UK television industry, they are increasing their investment in jobs, content and infrastructure:

   - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK as a leading global television hub.[1]

   - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.[2]

   - UK production: In addition, the sector has increased investment in UK television content to a record £725m per annum, up nearly 50% on 2009 levels.[3] Ofcom's 2014 review of public service broadcasting found that new commissions by the sector were up 43% since 1998 and were the only source of growth in investment in UK television production over this period.[4]

3. For further information please contact Anna Missouri, COBA's Policy and Communications Executive

[1] Ofcom International Broadcasting Market Report 2013
[2] Skillset, Television Sector – Labour Market Intelligence Profile
[3] COBA 2014 Census, Oliver & Ohlbaum Associates for COBA
[4] Public Service Content in a Connected Society, Ofcom's Third Review of Public Service Broadcasting, December 2014

# Response to consultation

## Review of the AVMS Directive

1. We welcome Ofcom's commitment to include the European Commission's ongoing review of the Audiovisual Media Services (AVMS) Directive as part of its work stream for 2016/17. We ask Ofcom to make one of its priorities defending the Country of Origin principle, which is under pressure in a number of different ways from various Member States. As Ofcom is aware, the Country of Origin principle – for both linear and non-linear services – remains a cornerstone of the Directive, underpinning the principle of the single market. The UK benefits greatly from the Country of Origin principle, which enables many multinational broadcasters to base their European operations in the UK licensing their UK and overseas channels through Ofcom. Therefore, any erosion of the Country of Origin principle risks having a significant negative impact on the UK broadcasting sector and the wider UK economy.

2. Indeed, DCMS has highlighted the importance of the Country of Origin principle in its submission to the European Commission's public consultation on the AVMS Directive, arguing that it is "a fundamental and critical precondition for the generation of a Digital Single Market in content" and that as an alternative, the country of destination principle could lead to "regulatory insecurity and financial burdens for the industry."[5] Other Member States such as Germany[6], the Netherlands[7] and Luxembourg[8] have also acknowledged the Country of Origin's crucial role in supporting the single market.

3. Nevertheless, the Country of Origin principle has come under pressure from Member States including Poland, Italy, Belgium, France and Latvia, for a number of different reasons. We are particularly concerned that a number of Member States are aiming to weaken the principle for on-demand services. For example, France has publicly raised concerns about Netflix posing a threat to locally produced content. Even Germany, which is otherwise supportive of

[5] UK Government response to the European Commission consultation on the review of the Audiovisual Media Services Directive (AVMSD), BIS and DCMS, January 2016, pg. 1
[6] Position paper of the Federal Republic of Germany on the revision of the Audiovisual Media Services Directive (AVMSD), November 2015, pg. 1, point 3
[7] Response of the Government of the Netherlands to the consultation on Directive 2010/13/EU on Audiovisual Media Services, September 2015, pg.3 point 5
[8] Ministère d'Etat, page 18-20, point 5

the Country of Origin principle, is considering the application of local tax rules to services licensed in other markets.

4. The on-demand market is growing fast and should not be undermined. A recent study by the European Audiovisual Observatory put the number of on-demand audiovisual services established in Europe at 2,563, with revenues growing strongly (admittedly from a low base) from Euros 248m in 2009 to Euros 1.9 billion in 2013.[9] However, the margins on non-linear services are tighter and therefore these services may be particularly vulnerable. Without the Country of Origin principle, it is highly likely in our view that there would be fewer on-demand services available across Europe, therefore reducing diversity, innovation and choice for consumers.

5. Furthermore, we stress that problems may arise if the linear service of a channel were subject to a Country of Origin principle but the catch-up service regulated by another Member State under a country of destination principle. Operating from a centralised hub allows channels to benefit from the same economies of scale and creates various synergies and efficiencies, which in turn fuels a virtuous circle of investment, skills, infrastructure, capacity, reputation and demand. As DCMS highlighted in its response to the AVMS Directive consultation, "... establishing a Country of Origin principle for linear content and in parallel a country of destination principle for on-demand content is [im]possible from a practical point of view."[10]

6. We therefore ask Ofcom to ensure that it pro-actively and robustly defends the Country of Origin principle within the AVMS Directive – both for linear and non-linear services – to guarantee greater innovation and choice for consumers. We will be publishing independent research on the value of the Country of Origin principle shortly.

## Considering watershed rules

7. We welcome Ofcom's commitment to consider rules in the Broadcasting Code that would offer broadcasters greater flexibility to schedule post-watershed content on linear channels before 9pm, providing it is pin protected. Currently, this is an option available for premium film channels and pay-per-view only and we welcome extending the rules to other genres.

[9] The Development of the European Market for On-Demand Audiovisual Services, European Audiovisual Observatory, March 2015

[10] UK Government response to the European Commission consultation on the review of the Audiovisual Media Services Directive (AVMSD), BIS and DCMS, January 2016, pg. 31, point 5

8. As convergence gathers pace, the lines between linear and non-linear services become increasingly blurred. COBA has, for example, recently launched a Statement of Practice for Video-on-Demand under which on-demand catch-up services commit to provide protection, information and standards that are comparable to linear channels. Enabling linear channels to make content available with pin protection – on a similar basis to that applied on non-linear services or premium film channels – will help create a modernised protection framework that will provide more choice and control for audiences, encourage innovation and offer secure protection processes.

9. The system of pin protection is already well established in on-demand and for premium films on linear across different platforms. It is now used on a range of services from Sky, Virgin Media and BT Vision, through to the BBC iPlayer's password protection system. It has proven to be effective technically and is something with which audiences are familiar. In parallel, industry is supporting a number of media literacy initiatives such as Media Smart, while ParentPort enables consumers to complain about a range of services.

10. Therefore, we believe there are strong merits in extending such a regime to other linear broadcast services.

**The UK Communications Market Report and content investment**

11. Funding for television programme production is more fragmented than ever before, with investment flowing from a wide range of sources including non PSBs, producer, tax reliefs and video-on-demand services. Beyond PSBs' spending, hundreds of millions of pounds is being invested in UK content by other sources.

12. Ofcom's 2015 PSB Review was a significant step forward in understanding the different factors driving growth in the UK broadcasting sector, but in our view it did not make clear the full extent of non PSB investment. For example, ITV majority funded Downton Abbey, but NBCUniversal, through the producer, provided around 20% of the budget. And, in the latest series, up to 25% of production costs came from the new tax relief. None of this additional investment is reflected in Ofcom's figures for broadcaster spending, either PSB or non PSB.

13. This is important in a genuinely informed policy debate and we ask Ofcom to consider making the following points more prominently in any future reviews or reports, including its upcoming Communications Market report.

Investment by non PSB broadcasters

14. Although we agree with Ofcom's figures in its PSB review, we ask the regulator to be mindful of the fact that its headline figure of £343m for annual investment in first-run content by non PSB broadcasters does not include:

    a. Investment in sports production (as opposed to rights): This supports independent producers, production infrastructure and crews, and creates a range of content including women's and disabled people's sports.

    b. Investment by smaller channels: Ofcom's sample excluded many smaller channels that are significant investors in UK content – CNN produces 20 hours of news in the UK a week, for example.

    c. Investment by overseas channels: More than a third of UK commissions by COBA members involve part funding from sister channels within the same corporate group.[11] Although these will be overseas channels, they will often be regulated by Ofcom via non domestic licences, and so subject to UK rules.

15. Adding these factors, and COBA's 2014 census estimates that investment by non PSBs in first-run UK content is nearly £600m a year (and this excludes investment by the portfolio channels of PSBs), rising to £725m if repeats are included.[12]

Investment from other sources

16. However, this is just the start of additional funding for UK content beyond the PSBs. Other significant sources of investment for UK content (also not included in Ofcom's figures) now include:

    a. Producer equity: investment by the production company itself is worth more than £200m a year, according to producers body Pact.

    b. Production incentives: The recently introduced tax breaks for children's, animation and high end television are helping fund PSB and non PSB commissions. Recent productions – notably dramas – to benefit include Wolf Hall, Sherlock, and Downton Abbey.

    c. Video-on-demand funding: Amazon and Netflix are investing 10s – perhaps 100s - of millions of pounds in UK commissions such as The

[11] Building A Global TV Hub, Communications Chambers for COBA, page 7
[12] COBA 2014 Census: Multichannel investment in TV production, O&O for COBA

Crown, The Collection and Ripper Street. This is largely in drama but also includes entertainment (Top Gear) and factual (Our Planet).

Taken together, it is in our view highly likely that these sources amount to nearly £1 billion in annual investment, if not more.