

Question	Your response
What is your response to this consultation?	<p data-bbox="794 264 1005 297">Confidential? – N</p> <p data-bbox="794 338 1366 584">Directors UK welcomes the opportunity to respond to the consultation on Ofcom’s proposed approach to assessing the BBC’s compliance regarding commissioning. We would like to raise awareness of an issue which we see occurring in our caseload from members at Directors UK.</p> <p data-bbox="794 624 1372 943">In sections 4.2 to 4.10 of the consultation document Ofcom examines what it considers to be the main competition concerns arising from the BBC’s pitching and commissioning process. We would like to raise an additional concern which does not currently feature, but which comes up quite frequently from our members, regarding the knowledge gained about an idea during the pitching process.</p> <p data-bbox="794 983 1372 1476">As outlined, the BBC public service must regularly assess programme pitches and conduct competitive tenders for programme slots. These processes always result in producers and programme-makers supplying the BBC with a wealth of creative ideas, at varying stages of definition and precision, from a fully worked-out treatment or format through to a few rough ideas. When a pitch is rejected, there is a risk that knowledge of some (or even all) of the ideas in that pitch might be passed to another producer, both in-house and indie, who then use those ideas for their own purposes.</p> <p data-bbox="794 1516 1372 2009">Ofcom may feel that this is an area where copyright law ought to provide the safeguard, but our experience is that this is not the case. Firstly, copyright case law is in short supply when it comes to copyright in ideas or formats, and cases that might help define the law more clearly rarely come to court. The APC Code https://directors.uk.com/campaigns/the-apc-code-of-practice (drawn up and agreed in 2009 by PACT, UK broadcasters including the BBC, industry unions and professional bodies such as Director UK) is designed to provide some form of structure and confidentiality around the handling of programme proposals, but this is</p>

rarely used and is not well-known among broadcast executives. We know from our own evidence of complaints from Directors UK members who have had their ideas misappropriated. The issue is often hidden as the pressure not to antagonise a potential business partner or employer means that these complaints are often never articulated or taken forwards and further incidents go unchecked.

In section 6.28 Ofcom expresses interest in using complaints as a means of monitoring and assessing the transparency and fairness of the BBC's commissioning process. Directors UK would ask that Ofcom includes the gathering of information about this issue as part of their assessment. In particular Ofcom should:

- 1 Require the BBC to report to Ofcom on complaints such as this.
- 2 Conduct regular consultations with key stakeholders (e.g. directors, writers, producers) on how their complaints were dealt with by the BBC, and any instances where they have declined to make a complaint, so that Ofcom can assess the issue of parties feeling inhibited from complaining or unsatisfied with the fairness of the BBC's process.

About us: Directors UK is the professional association of UK screen directors. It is a membership organisation representing the creative, economic and contractual interests of over 7,000 members — the majority of working TV and film directors in the UK. Directors UK collects and distributes royalty payments and provides a range of services to members including campaigning, commercial negotiations, legal advice, events, training and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of direction and champions change to the current landscape to create an equal opportunity industry for all.