



Response to Ofcom Call for evidence: Public service broadcasters and the UK production sector

1. TAC (Teledwyr Annibynnol Cymru) is the industry body for the independent television production sector in Wales. The sector is a highly important element of the creative industries in Wales and the UK overall, providing economic, social and cultural benefits through supplying creative content. There are around 50 companies in the sector, ranging from sole traders to some of the leading players in the UK production industry. TAC members produce content for the BBC, ITV, Channel 4, Channel 5 and Sky as well as other commercial broadcasters. They produce almost all the original television and online media content for the Welsh-language broadcaster S4C, and a variety of radio productions for UK-wide networks.
2. In recent years, Wales' reputation as a centre of first-class drama production has grown significantly with productions such as *35 Diwrnod / 15 Days*, *Un Bore Mercher / Keeping Faith*, *Bang*, *Pili Pala* and *Craith / Hidden*. Our sector also offers a great deal of expertise in genres such as factual documentary, children's programmes, sport and entertainment. Overseas programme and format sales have increased, and our members are also experienced in international co-productions.

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?

3. It is crucial to maintain the regulated terms of trade between UK PSB and the independent production sector. Since the Communications Act in 2003, these terms of trade have allowed the companies creating TV content for BBC, ITV, Channel 4 and Channel 5 to retain their intellectual property (IP) and maximise the audiences for their ideas by ensuring they are distributed as widely as possible in the secondary and international markets. The value created has flowed back into the UK economy and led to the huge increase in sector value. The independent TV production sector's total revenue was £3.3 billion in 2020. This included £988 million in international revenue¹.
4. While our members welcome the growing number of commissions from commercial companies such as Sky and Netflix, these are normally 'all-rights' deals which mean the commissioner of the content takes all the IP rights, with the producer perhaps having a small share in future revenue or often simply a production fee. This fee may be greater than a fee from a PSB, but the producer has no control over the rights to the programme and thus loses out on the freedom to seek further exploitation and revenue and grow their businesses further. We have provided in an appendix some examples of how production companies in Wales have exploited their intellectual property.

¹ [UK Television Production Survey: Financial Census 2020. Oliver & Ohlbaum / Pact 2020, p3](#)

5. Any future PSB system must therefore preserve the protection for production companies' IP rights. Failure to do so would cause severe harm in an industry whose potential for success is proven, but whose vulnerability to economic downturn can cause significant negative impact, as we are seeing in the Covid-19 crisis with the largely freelance workforce already struggling to make ends meet.
6. The PSB's Codes of Practice, which need to be approved by Ofcom, provide protection to the producer in relation to their negotiations with the broadcasters. This is where transparency is provided around the rights being acquired and the price paid for them, duration of exclusivity and other core elements of the terms of trade. These codes of practice need to be flexible enough to respond to advances in technology and market developments and should continue to be revised regularly to be fit for purpose for the rapidly evolving digital age.
7. Any change to Terms of Trade legislation which resulted in producers retaining fewer rights would depress the market value of UK independent production and reduce their ability to research and develop new ideas. Currently, the international market is depressed due to the Covid-19 pandemic and any suggestion of a change to rights legislation would damage the sector's ability to recover and invest in new ideas and talent. Our members are already finding that broadcasters are pushing harder deals at a time when producers cannot do pre-sales in the same way as pre-Covid. This is an example of the type of behaviour that could be exhibited by the PSBs if Terms of Trade are relaxed. As an example, Motion Content Group last year became a sponsor in Channel 4's Contestable Fund pot and as a result the terms offered were not ones which producers found attractive, leading to doubts as to how many would seek to apply for the funds.² If such partnerships become widespread without extended terms of trade protections, this would be of great concern to independent producers.
8. Elsewhere Channel 4 runs the Global Format Fund in which it invests in production companies' ideas to create formats with worldwide appeal. There is a 50/50 split of revenue share for deals done as part of this Fund and this is again a type of arrangement that may grow as the market develops though given the importance of development funding it is arguably more equitable.
9. Currently, some independently produced programmes are commissioned for a portfolio channel and then moved to the PSM's core channels. The PSBs' portfolio channels (often their digital services) have fewer Terms of Trade regulation, and this results in fewer rights being retained by producers. Whilst broadcasters will occasionally provide an 'uplift' payment for exploiting the content on their core channels, this does not equate to the value producers would otherwise be able to realise had the content been commissioned under the Terms of Trade currently applicable to the commissioning of content by PSM for their core channels. Given Ofcom's recommending a more platform-neutral approach going forward, we would therefore like Ofcom to extend the regulated Terms of Trade to all of the PSM services.
10. There are two areas where Ofcom might consider extending the PSB/PSM services covered by the statutory protections. First, as PSM content viewing moves increasingly online, the advantages currently in place for the core channels will be diminished to some extent. To ensure protection going forward, it is TAC's opinion that the ability of independent producers to retain their IP rights should be extended across all PSM portfolio channels and services. On this basis,

² [Farber, Alex. Indies cool on C4 Motion Content money. Broadcast 26 June 2020. Accessed 7 March, 2021](#)

we believe all the PSMs' channels should be treated as 'public service' for the purpose of regulation and covered by the same Terms of Trade legislation to which the core channels are subject.

11. Secondly, some of our members also make audio content such as radio programmes and podcasts for the BBC and others. The audio production market is growing rapidly, and with it the importance of IP. Currently, there are no statutory protections for radio and podcast commissions from the PSM and we would like to see these introduced.

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?

12. The independent production quota's guarantee of a certain percentage of hours to qualifying programmes gives new entrants more opportunity to gain their first commissions with the PSBs and to grow their businesses. If our sector is to remain vibrant, it is important to have that guaranteed level of commissioning allotted to such programmes and productions for all content commissioned by PSM companies.
13. Having a range of companies in the sector, from large to small and from new to long-established, helps maintain creative competition at an optimal level, from which the PSBs gain in terms of having a wider pool of ideas, stories, talent and perspectives on which to draw.
14. With large commercial studios and SVoDs impacting on the PSBs' audience share, there is an increasing environment of competition and consolidation. Some of the PSBs' reaction to this is to use their own commercially-driven production arms to push for an ever greater number of commissions, using their resources to fund R&D on new programmes and formats. This represents a threat to the independent production community, in terms of their being squeezed out by these larger broadcaster-backed players. The quotas provide the guarantee that at least a percentage of production commissioned by the PSBs remain open only to genuinely independent suppliers as defined in statute, who contribute to the diversity and plurality of voices and perspectives.

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?

15. By the same token, we believe the definition of a qualifying programme or production remains valid, for the reasons given above, to ensure a pathway for new entrants and to promote creative competition. While some of our members are part-owned by a broadcaster and therefore do not meet the definition, they benefit from strong commissioning relationships with that broadcaster and the level of investment the broadcaster can apply to developing new ideas.
16. Whilst the majority of television content is commissioned by PSM companies for linear broadcasting we do not see any compelling reason why this should currently be changed.

Appendix – Rights exploitation

We are providing here some examples of Welsh production companies’ exploitation of rights in 2020, including programme sales, licensing and formats

Boom Cymru																								
<p>35 Diwrnod /15 Days</p> <p>Sold to:</p> <ul style="list-style-type: none"> - Britbox USA - Britbox Canada - Poland - New Zealand - Malaysia - Spain - Romania - Asia (various territories) - Eastern Europe (various territories) - Africa (various territories) <p>Boom Group’s BBC English-language back catalogue has had a very successful sales year with a lot of that being VoD/SVoD sales in North America which is we believe directly pandemic related, i.e. shortfall of original content.</p> <p>Also, <i>15 Days</i> (C5) and <i>Project Z</i> (CITV) are examples of S4C-originated formats which have been remade by Boom in the English language to the benefit of S4C bringing added expenditure to the Welsh economy.</p>																								
Rondo Media																								
<p>Y Wal (6 x 60’)</p> <p>A co-production between Rondo Media, S4C, JTV Korea, TG4 and Cineflix with the support of Welsh Government.</p> <p>Discovery Comms South America</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 20%;">SBS</td> <td>South Korea</td> </tr> <tr> <td>Discovery US</td> <td>USA</td> </tr> <tr> <td>Acorn Media</td> <td>Central Europe/ Budapest</td> </tr> <tr> <td>Telefonica</td> <td>Spain</td> </tr> <tr> <td>Film Ideas</td> <td>USA</td> </tr> <tr> <td>Histoire France</td> <td></td> </tr> <tr> <td>La7</td> <td>Italy</td> </tr> <tr> <td>NHK</td> <td>Japan</td> </tr> <tr> <td>NRK</td> <td>Norway</td> </tr> <tr> <td>PBS</td> <td>UK</td> </tr> <tr> <td>S H Channel</td> <td>Israel</td> </tr> <tr> <td>SU AB</td> <td>Sweden</td> </tr> </table>	SBS	South Korea	Discovery US	USA	Acorn Media	Central Europe/ Budapest	Telefonica	Spain	Film Ideas	USA	Histoire France		La7	Italy	NHK	Japan	NRK	Norway	PBS	UK	S H Channel	Israel	SU AB	Sweden
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SU AB	Sweden																							

Bulgarian Telecoms Bulgaria

YLE

Finland

Philip Jones Griffiths (1 x 60')

A co-production between Rondo Media, JTV and S4C distributed by BBC Studios.

Telepool Germany

RAI Italy

DiscoveryUS USA

Vox Pictures

Un Bore Mercher / Keeping Faith

Series sold among others to:

Fox Germany

Globosat Brazil

TG4 Ireland

Elisa Viihde Finland

UPC Switzerland

Green Narae South Korea

Amazon Prime France

MTVA Hungary

Antena TV Group Romania

ERR Estonia

VRT Dutch-speaking Belgium

Yes-DBS Israel

CANAL+ and Ale Kino+ Poland

RTP Portugal

TV4 Media SVoD rights to all three seasons for Denmark, Norway and Sweden

TV4 Sweden

In addition, APC has extended its co-production deal with Acorn Media Enterprises for all rights to the third season of the across the US, Canada, Australia and New Zealand for AMC Networks' streaming service Acorn TV, plus home entertainment in the UK and Ireland.

Cwmni Da

Deian a Loli – multi award-winning children's series. Sold in to Brittany.

Men who Sing with Backflip Media – obtained S4C Originals funding based on an earlier programme in the *Drych* series, with Ffilm Cymru Wales the main financier and additional money from Swedish TV.