
Small Screen: Big Debate – Public service broadcasters and the UK production sector

Call for evidence

[Call for evidence: Public service broadcasters and the UK production sector](#) – Welsh translation

CALL FOR EVIDENCE:

Publication date: 2 February 2021

Closing date for responses: 16 March 2021

Overview

As part of *Small Screen: Big Debate*, we want to take a closer look at the relationship which exists today between the PSBs and production sector.

The current regulatory rules and guidance were designed when the sector and the way audiences consumed content were very different. Our goal is to understand the impact of regulation on that relationship as it adapts to evolving market conditions. Specifically, we are seeking evidence on whether any rule changes might be needed to further benefit viewers, to better support the financial sustainability of producers and commissioners, and secure the diversity and attractiveness of the sector.

To inform our recommendations to government, we are seeking evidence and information from stakeholders about the effectiveness now and in the future of the core aspects of regulation which apply in this area.

1. Call for evidence

- 1.1 In December, we published *Small Screen: Big Debate*, a consultation looking at how to strengthen and maintain public service media in the UK for the next decade and beyond.¹
- 1.2 The aim of *Small Screen: Big Debate* is to ensure that UK audiences continue to enjoy a mix of high-quality, original public service content in the future. If this is to be sustainable, the regulatory framework which applies to the public service broadcasters ('PSBs') in the UK must be compatible with the increasingly competitive, on-demand environment.
- 1.3 The UK TV production sector is a diverse, competitive and internationally successful part of our creative economy and projects the UK positively across the globe. In our consultation we identified the vital role which public service broadcasting has played in securing its continued strength.
- 1.4 The relationship between PSBs and producers has changed over the years. In 2004, PSBs accounted for around 87% of all UK commissions² and made over half (56%) of all UK content themselves.³
- 1.5 Today, it's a very different picture. An ever broadening range of service providers competing for viewer attention and increasing investment from companies such as Sky, Discovery and Netflix has seen spend on UK productions grow significantly, to a value estimated between £4.5bn and £5bn in 2018.⁴ Nevertheless, despite these changes, PSBs

¹ Ofcom. 2020. [Small Screen: Big Debate Consultation - The Future of Public Service Media](#).

² Ofcom. 2006. [Review of the television production sector consultation](#). Page 48.

³ Ofcom. 2006. [Review of the television production sector – policy statement](#). Page 19.

⁴ Ofcom (2006) estimated first-run commissioning spend on UK productions to be about £2.6bn in 2004. Using Ofcom/broadcasters' spend data on the PSB network, regional, and portfolio channels, Enders Analysis estimates of SVOD spend, and COBA estimates of multichannel spend, we estimate first-run commissioning spend on UK productions was between £4.5bn and £5bn in 2018.

remain the largest commissioners of UK content, spending about £2.8bn each year on new UK programmes.⁵

- 1.6 As we said in our consultation,⁶ we want to take a closer look at the relationship which exists today between the PSBs and production sector. Our goal is to understand the impact of regulation on that relationship as it adapts to evolving market conditions. We also want to consider what implications any potential changes to the rules may have on the UK production sector including what this may mean for audiences, the financial sustainability of producers and commissioners and to the diversity and attractiveness of the sector.

The UK production sector today

The production industry

- 1.7 In the UK, the production industry is based on a mixed ecology of large and small independent producers – ie. companies which are not substantially owned by a UK broadcaster – coexisting with broadcasters’ own in-house production arms and external subsidiaries, often run at arms length. There are approximately 450 production companies,⁷ ranging from small specialists to large multinational operations that in some cases have higher turnover than the broadcasters they make programmes for.
- 1.8 The sector is spread across the UK with independent producers based outside of London winning an increasing share of external commissioning spend – 43% of primary commissioning spend in 2019.⁸ Similar to the workforces of the PSBs, the independent sector continues to move outside the M25 with 37% now based outside the capital, as PSB commissioning continues to play an important role in stimulating production across the UK. According to Pact, PSBs are responsible for 61% of commissions from independent producers outside of London.
- 1.9 In recent years, the UK’s recognised strength as a production hub has helped to support a cycle of growth and programming investment, including revenue from overseas. Between 2008 and 2019, revenues from international commissions grew by an average of 18% year on year, while multichannel spending has more than tripled since 2004. The result is that, while PSBs are still the largest multi-genre commissioners of programmes in the UK, UK-based multichannel groups, international channels and streaming services now play a bigger role than ever before. The 2020 Pact Census showed the UK independent production sector now generates more than half its revenues from these sources, which are expected to continue to grow.

⁵ Ofcom analysis of broadcaster data. The main PSB channels invested £2.5bn in first-run UK originations in 2019.

⁶ [Paragraphs 1.17 and 5.43.](#)

⁷ Mediatique. 2020. [State of the markets in which BBC Studios operates.](#) Page 43.

⁸ [Pact UK Television Production Census 2020, Oliver & Ohlbaum Analysis.](#)

Current regulation

- 1.10 The regulations which affect programme commissioning from independent producers result from legislation that was last substantially updated through the Communications Act 2003. There are two main interventions which apply to the PSBs:
- a) **an independent production quota:** each year, PSB channels commit to commissioning a minimum of 25% of their qualifying programming to a range and diversity of independent productions;⁹ and
 - b) **codes of practice:** the providers of every licensed PSB channel must draw up, and amend when required, a code of practice setting out the principles they will apply when agreeing terms for commissioning independent productions.¹⁰ Broadcasters put in place these codes based on guidance issued by Ofcom.¹¹
- 1.11 These interventions apply only in relation to ‘independent producers’¹² and ‘qualifying programmes’,¹³ both of which are specified in legislation.¹⁴

Issues outside of scope

- 1.12 There are further distinct rules about programming made out-of-London as well as national and regional quotas, which apply to all PSB investment in programmes, including in-house production. We are not seeking evidence on the impact of these rules as our [updated guidance for regional production](#) only came into effect recently, on 1 January 2021.
- 1.13 We are seeking evidence and information exclusively in relation to the TV and on-demand production sector. The UK Government has recently set up a panel to provide it with further advice on future changes and is also conducting a review into the Future of Radio and Audio, to which Ofcom is providing input.

The focus of this call for evidence

- 1.14 The current rules affecting independent productions were designed when the sector and the way audiences consumed content were very different. We last examined the relationship between the PSBs and the independent production sector in 2015.¹⁵

⁹ [Communications Act 2003](#), section 277. Equivalent provisions also apply to the BBC and to S4C.

¹⁰ [Communications Act 2003](#), section 285.

¹¹ See Ofcom’s publication of 21 June 2007, [Guidance for Public Service Broadcasters in drawing up Codes of Practice for commissioning from independent producers](#).

¹² The definition of an ‘independent producer’ is one who is not an employee of a broadcaster; does not have a shareholding greater than 25% in a broadcaster; and is not a body corporate in which a broadcaster has a shareholding greater than 25% (or in which two or more broadcasters have aggregate shareholdings greater than 50%).

¹³ ‘Qualifying programmes’ refers to those programming hours that can be used to count towards production quotas. The definition of qualifying programmes has been drawn relatively widely, so as to capture as much origination as possible (excluding, for example, acquired programmes, repeats and news).

¹⁴ See section 277(2) of the [Communications Act 2003](#) and the [Broadcasting \(Independent Productions\) Order 1991](#) (S.I. 1991/1408), as subsequently amended.

¹⁵ Ofcom’s report to the Secretary of State for Culture, Media & Sport of 23 December 2015, [Review of the operation of the television production sector](#).

- 1.15 To inform our recommendations to government as part of *Small Screen: Big Debate*, we are seeking evidence and information from stakeholders about the effectiveness now and in the future of the core aspects of regulation which apply to independent production.
- 1.16 Specifically, we wish to understand whether they consider that changes to audience consumption patterns and wider market developments mean that it would be appropriate to update our guidance on the commissioning of independent productions, which we could do without new legislation. We are particularly interested to hear views as to how this guidance could be developed to ensure it continues to offer flexibility and benefits for audiences and stakeholders, and allows for timely negotiations to reflect the changing market conditions.
- 1.17 We are also keen to hear from stakeholders as to whether they think we should recommend options for potential changes to either the level of the independent production quota or the definitions of an independent producer and qualifying programming to Government. Unlike our guidance on the commissioning of independent productions, these changes would require legislative reform.
- 1.18 With the developments outlined above in mind, we are seeking evidence and information from stakeholders with particular regard to the impact of regulation in three areas:
- a) **Delivering for UK audiences** – whether, as audiences consumption patterns change, current regulation is effective and flexible in ensuring that as many different audiences as possible continue to have access to a wide range of diverse, high-quality programming.
 - b) **Supporting the financial sustainability of producers, PSBs and other commissioners** – whether, in light of developments in technology and the wider content market, current regulation creates any barriers that impact the ability of producers to develop successful businesses or PSBs to maintain relationships with UK audiences or are likely to do so in future.
 - c) **Securing the dynamism and attractiveness of the UK production sector** – whether the current regulatory framework will continue to play a positive role in ensuring the UK production industry attracts investment and is well placed to take advantage of opportunities for further growth.

Responding to this call for evidence

- 1.19 As part of our wider consultation exercise for our *Small Screen: Big Debate* programme of work, we are inviting interested parties to respond to this call for evidence by 16 March 2021. Annex 1 to this document details the questions that we are seeking evidence and input on. Please refer to annexes 2-4 to our [Small Screen: Big Debate](#) consultation for information on how to respond (Annex 2), Ofcom's consultation principles (Annex 3) and the consultation coversheet (Annex 4).
- 1.20 In the coming weeks and months, we will be carrying out an extensive period of proactive stakeholder engagement in relation to the relationship between PSBs and independent producers. If you want to discuss the issues and questions raised in this call for evidence or

Small Screen: Big Debate, please contact the team by email to smallscreen.bigdebate@ofcom.org.uk.

Next steps

- 1.21 We will use the evidence and information provided by stakeholders, together with any other response to our *Small Screen: Big Debate* consultation, to inform our final recommendations to Government in Summer 2021. It is possible that through responses to our consultation and discussions with interested parties, and as the media landscape develops, this is an area of work we will continue to focus on beyond our summer recommendations to Government, especially if we conclude that it would be appropriate to update our guidance.

A1. Questions

We are seeking evidence and information on the questions below. In answering these questions, please consider the impact of regulation in the areas set out in paragraph 1.18, and provide evidence to support your answer wherever possible.

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?

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?

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?