

Submission to Ofcom's consultation on assessing
the impact of proposed changes to the BBC's
public service activities

pact.

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Introduction

1. Pact is the UK trade association which represents and promotes the commercial interests of independent feature film, television, digital, children's and animation media companies.
2. The UK independent television sector is one of the biggest in the world. Despite the difficult economic climate, independent television sector revenues have grown to around £3 billion in 2015.¹
3. In 2015, the BBC spent £443 million on commissions from UK external producers. Last year, the BBC commissioned 46% of eligible television content from external producers².
4. BBC Commissions are important for independent producers as they account for 29% of all UK commissions, making the BBC the biggest buyer of content made by independent producers in the UK.³
5. Pact recognises the important role that the BBC plays in the UK television marketplace and how it nurtures and adds to the finely balanced TV production ecology in the UK. We are pleased by the positive trajectory of the recent draft charter whereby the license fee looks to be secured for another 11 years. The BBC is a positive innovator and experimenter in the marketplace and this is often driven by the content which it commissions from independent production companies.

¹ Pact Census 2016

² BBC Annual Report 2015/16

³ Pact Census 2015

1. Overview

1.1 We welcome Ofcom's consultation which sets out the procedure and guidance on how it will assess proposed changes to public service activities published by the BBC.

1.2 This is a particularly important piece of guidance for the external production sector as it will give a framework with which to over see any changes to the BBC public service – this is of major interest to Pact as the BBC is one of the largest procurers of original UK content and material changes are therefore likely to have significant implications for our members.

1.3 Overall we think the process and parameters which Ofcom has set out are reasonable and appropriate and we would want to make sure this is not watered down. We are particularly happy to see a clear expectation that the BBC will engage with third parties in developing and assessing its proposals, and in identifying which proposals might constitute material changes. This is the best way to ensure that material impacts can be identified and dealt with from the outset.

We welcome Ofcom's recommendation that the BBC consult with third parties on proposed changes to any public service activity.

1.4 We agree that sufficient detail should be provided during the BBC's consultation period to allow third parties to understand the proposal fully and to be able to make comments. We also agree that pilots and trials should also be given a materiality test to see if they require a consultation and assessment process. That said we would like Ofcom to require the BBC to consult with third parties on how they intend to implement these procedures in practice.

1.5 We acknowledge and welcome that the publication of the BBC's annual plan, combined with the power that Ofcom has to direct the BBC to freeze proposed material changes which have not been published, should give significant comfort to the market. However setting out exactly how the BBC will consult on upcoming plans would help with the transparency of procedures and eliminate any doubts we might have on the BBC's own policy on consultation.

1.6 In the event that the BBC has not engaged adequately with third parties prior to publishing a proposal, we would like Ofcom to clarify that it will extend the consultation period for third parties to comment on whether the BBC's published proposal to be material and and/or require the BBC to conduct further consultations and resubmit its proposal. If an opportunity to comment has been made available then 2 weeks would be sufficient.

1.7 Furthermore we welcome Ofcom's proposal to offer third parties the opportunity to comment on provisional views Ofcom arrives at after completing a competition assessment proposal. However we note that in the analytical approaches it is unclear how third party comments will be taken into account. We would like

Ofcom to clarify how third party views will be factored into its analytical approach and be integral to the assessment of assessing the impact of proposed changes to the BBC's public service activities.

We welcome Ofcom's recognition that it may direct the BBC to change the content of its policy should it appear to them that the BBC's policies risks failing to ensure that material changes are brought to the attention of Ofcom and enables a proper assessment.

1.8 It is important to Pact that third parties have an opportunity to comment on any changes the BBC are proposing and that enough time is given for third parties to comment. Ofcom should set a clearer expectation that the BBC's policy will include appropriate timescales for consultation with third parties and that Ofcom may direct the BBC to change its policy if the consultation provisions are inadequate. We would also like Ofcom to make clear that the BBC should consult on its policy in draft.

1.9 We would also like clarification that Ofcom will consider the impact of certain 'everyday activity' if it is deemed to be part of a series of changes. The impact of a series of proposed changes which may be actioned at different times but be part of a wider strategy might be overlooked. For example if the BBC will be 'innovating in the digital space' as Tony Hall described in January 2017 this means incremental proposed changes will be small at the outset but could be part of a wider programme and this could consequently have considerably impacts on services taken as a whole.

We welcome Ofcom's confirmation that, as part of the public interest test, the BBC will need to seek to understand and assess the scale of market impacts associated with the proposal.

1.10 In addition we also welcome that Ofcom has required that third parties will need to be consulted at this stage. We also welcome that Ofcom has signaled that the BBC needs to give enough time for third parties to actually have an influence on plans and that these should be detailed enough for third parties to make a judgement.

1.11 We note that the BBC needs to be satisfied that at a minimum it has sought out to understand and assess the scale of market impacts associated with its proposal. We would welcome Ofcom's confirmation that, in conducting its own assessments, it will also consider whether the market impact of a proposal has been minimized, as one of the criteria in determining whether a change is justified.

1.12 We agree that if the proposal satisfies the public interest test and is material this should be published.

Pact supports the initial materiality assessment outlined by Ofcom

1.13 We welcome the initial list of factors Ofcom may take into account when assessing any proposed changes to public service activities especially to help consider whether an activity is having an adverse impact on fair and effective competition and whether a change is material.

1.14 We welcome Ofcom outlining what further procedure will be necessary where a change is considered material by Ofcom. However, we believe that if a shorter competition assessment was actioned it would need to also include a consultation period so that third parties can respond to the proposal – especially if the BBC has failed to consult ahead of sending its proposals to Ofcom. Currently within the guidance it isn't clear whether consultation will always be included as part of a shorter assessment: we would welcome confirmation that this will be the case.