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Ofcom Advisory Committee for England

What additional details do you want to keep confidential?:

No

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Additional comments:

Question 1: Do you agree with our assessment of the context in which the PSB system operates, and how the trends identified might affect the PSB system? In particular, do you agree with our analysis of the independent production sector:

The Consultation Document clearly describes the success of the UK independent production sector since the last PSB review in 2008, driven by increased international sales and a more recent recovery in UK primary commissions.

However, as the consultation document recognises this period has also been one of dramatic change within the sector, particularly in the most recent years when a larger proportion of the sector is by definition no longer ‘independent’.

The Advisory Committee for England (ACE) feels that the report identifies many of the

relevant dynamics within the sector but that timing, definitional and presentational issues conspire to present a picture of the UK independent sector as healthier and more resilient than actually may be the case. In addition there is an absence of data and analysis on the creative and economic contribution of the sector to the PSB ecology across the UK which would help form a policy framework for the future of the sector and any protections to be offered to it - whether on an old fashioned 'indie' or contemporary international production company basis.

Consolidation and dynamics of the sector

The consultation document identifies as a major factor the consolidation that has occurred in the independent sector since the last PSB review. This is, correctly in the view of ACE, largely attributed to the influx of investment into the sector as a consequence of the 2003 Communications Act and associated Terms of Trade with PSBs and the ongoing opportunities offered by structural support of the sector through the operation of independent quotas and, more latterly, the BBC WOCC.

The influx of investment into the sector, the revenue growth generated by rights exploitation and increasing penetration of international markets has in turn driven a consolidation of the sector largely through merger and acquisition activities, with a series of large 'super indie groups' emerging prior to 2010, each of these super-indies containing a diversified portfolio of companies across major genres and with turnovers now >£200m per annum rather than the >£75m that was previously considered to define the superindie category.

By and large the picture of the independent sector presented in the Consultation Document is that it is in rude health, with a robust and dynamic ecology of small, medium and large companies, In effect a sector that that was kick started by and continues to enjoy beneficial public policy interventions but one that makes a huge contribution to our PSB ecology, not only creatively but economically.

ACE believes that this may be true as a snapshot but that there are sufficient concerns around the dynamics of the sector to demand a more detailed exploration before either retaining or adjusting the policy framework.

This exploration needs to address the following questions:

Q1: At what rate are new entrant independent production companies being formed in the UK and what is their potential growth trajectory?

Much value is placed on the continued presence of a large number of small production companies but is this alone an indicator of health (or indeed desirable at all) if the companies cannot grow to become sustainable creative businesses and employers?

Q2: Is there a sustainable business model for mid sized independent producers (ie with a turnover of £10-25m)?

The data presented appears on one level to show that such businesses exist but industry surveys suggest that consolidation is continuing with fewer and fewer independents with a turnover of >£20m retaining their independence. Is there an emerging bipolar ecosystem with sustainable business models only at the upper and lower ends with continued consolidation being the only route for growing companies to achieve scale? If so what does this mean for existing policy interventions (Terms of Trade, quotas) or broadcaster supply-chain management programmes such as those initiated by Channel 4.

Q3: What are the national and regional dynamics of the sector?

To truly understand the appropriate policy framework for the independent sector we need to understand the economic geography of the sector. ACE's question, put crudely, is do we know if there is a thriving independent production sector in the English Regions?

The Nations will of course be asking similar questions, but whereas increased PSB production commitments agreed for the Nations may serve to support the independent sector

no such intervention apply to the English Regions. Since the last PSB review the data presented shows that production has declined significantly across the Midlands and east of England. The relative 'success' of the North of England is largely focused on the BBC's expansion of its own activities in Salford rather than on the independent sector. Some may say geography does not matter but without the data no debate can be articulated.

The PSB system is the UK's largest policy intervention in the Creative Industries, themselves seen as a target sector for long term economic growth. In ACE's opinion it probably does matter that this intervention does not benefit creative businesses across large swathes of England; only better data can tell us by how much.

Definitional issues and 'Non-Qualifying Indies'; Public policy interventions around the production sector have been directed to supporting independent producers, independence meaning in this context independence from broadcasters. Thus whether these were owner managed businesses or part of larger diversified groups, UK or internationally owned was not the salient point; the production quota and terms of trade were intended to support suppliers in providing market access and IPR protection in a sector dominated by vertically integrated businesses.

The most recent evolution of the independent sector has blurred this clear definition. All of the large consolidated independent groups (super indies) are now controlled by international groups that contain broadcast assets. As a consequence they have lost their independent status, being commonly referred to (despite the non sequiter) as 'non-qualifying indies'. PSB's cannot count any commissions from these suppliers as part of their statutory independent quota.

ACE believes that the consequences of this largely recent transition have not been given sufficient regard in the consultation document. Partly this is a timing and data issue – many of the deals that have resulted in loss of indie status have occurred recently and companies have a 2 year transitional period; we feel that it is likely that this significantly skews the data presented.

More significantly the accommodation of these non-qualifying indies is driving significant change within the PSB ecology. For example it seems likely that the BBC's proposal to reduce the proportion of programming guaranteed to its in house production departments is at least in part driven by its need to have continued access to programmes supplied by no-longer qualifying independent groups such as All3Media and Shine/Endemol whilst still accommodating the statutory independent quota and the contestable WOCC.

Conclusion

ACE believes that only with a greater understanding of the economic geography, dynamics and prevailing business models of the non-broadcast production sector (both independent and non-qualifying producers) can the right policy framework be addressed. We believe the sector is in a state of significantly more rapid flux that may quickly diverge from the relatively stable, diverse and thriving sector presented in this consultation document.

Achieving this greater understanding within the timescale of the current PSB review will support a more rigorous framing of the public policy objectives of continued intervention and the balance between targeting economic growth, creative success or wider social objectives.

Question 2: Have we identified the key differences in Northern Ireland, Scotland and Wales?:

The Advisory Committee for England has no response to this question.

Question 3: Do you agree with our assessment that the PSB system remains strong overall?:

The Advisory Committee for England (ACE) is of the view that the data presented supports the premise that the PSB system remains strong. The Committee recognises that, given the market and competitive environment changes since the last review, the relatively marginal decline in PSB channels share supports this assessment. However, the real terms decrease of 17.3% in new content is a cause for concern and ACE thinks that overall spending by PSBs should be examined. This should include the costs of operating complex platforms for portfolio channel delivery, which has become an expected feature of PSBs. The Committee believes that the variety of available channels offered by PSBs may be contributing to the high levels of audience satisfaction noted in the data and if so, the costs of operating these channels should be factored into the 5 year comparison data.

ACE recognises that the scale of the data gathering task, and the mandated period, necessitates comparative figures to the end of 2013. However, the Committee is of the opinion that there is significant anecdotal evidence to suggest that a tipping point in consumption patterns may have occurred in 2014. It believes this was driven in large part by the emergence of original programming on internet based services (Netflix and Amazon) and the growth in smart TV ownership.

ACE would like to see this assumption tested as soon as is practicable following completion of the current PSB review.

There is clear evidence presented that shows PSB share of viewing is lower in households with satellite and cable services than those with DTT. It is unclear whether the DTT figure includes non-pay DSat platforms and ACE would welcome a clarification of this point.

Question 4: Given the resources available, to what extent is the system meeting the needs of as wide a range of audiences as practicable?:

The Advisory Committee for England (ACE) is concerned that the consultation process is potentially missing a swathe of our viewers and listeners in England.

Public Service Broadcasters have a duty to educate all sections of society. ACE feels it is important the PSBs recognise this and do not pass up their responsibilities because they feel these minority audiences are too small or too specialist to cater for and should be served by others.

The 2014 Policy Exchange report into future ethnicity demographics should provide food for thought for Public Service Broadcasting in the UK. The lack of Black Asian Minority Ethnic (BAME) in the media also provides insights into why Public Service Broadcasters (PSBs) may be under serving BAME audiences. Over a six-year period the numbers in the Creative Industries fell two percent, from a low base of 7.4% to an even lower 5.4%. Since the last census - now four years old - revealed that 14% of the UK is non-white, the 5.4% figure demonstrates how much the industry lags behind in representation. The figure is even worse for those in senior roles who influence actual outcomes, such as the commissioning of programmes.

Ofcom has correctly recognised diversity as an issue. Its granting of licences to community radio stations to serve minority communities is to be commended. Of course, the disadvantage is that it could be unwittingly seen as a way of absolving PSBs' responsibilities to serve certain sections of English audiences.

Media is not the only place facing these difficult challenges. In education, for example, many universities and schools cater for as many as 120 different countries and, have among their cohorts, people whose first language is not English. The difficulty is probably reflected in

wider British society. Little research has been carried out into how PSBs serve those who cannot speak English.

Anecdotal evidence suggests these communities seek their education, information and entertainment elsewhere, using other platforms and technological means, such as satellite dishes tuned to other countries. The danger is that they do not engage in British culture, simply because they cannot speak English, creating segregated towns and cities.

This exercise is an ideal opportunity to find evidence that supports or rejects the thesis that PSBs fail to appropriately serve minority audiences, especially those who cannot speak English.

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<http://www.policyexchange.org.uk/publications/category/item/a-portrait-of-modern-britain>

ii

http://creativeskillset.org/assets/0000/5070/2012_Employment_Census_of_the_Creative_Media_Industries.pdf

iii

<http://media.ofcom.org.uk/news/2015/3-cr-licences-midlands/>

Question 5: Given the resources available, does the PSB system deliver the right balance of spend and output on programming specifically for audiences in Wales, Scotland and Northern Ireland and programmes reflecting those nations to a UK-wide audience?:

The Advisory Committee for England (ACE) considers that this question does not correctly approach the very changed political situation in the United Kingdom since the last review of PSB. The relatively closeness of the referendum vote in Scotland, and the promises before and after of even greater autonomy for Scotland, have radically altered both the overall political climate and the expectations of the population of England. English voters want a greater say for purely English national and regional affairs. The question, or answers to the question, needs to include the idea of England reflecting itself as a nation to itself, and the rest of the UK.

This apparent growing popular attitude in England is in at least two parts. The first would seem to be a sense of “it’s not fair” for Scottish MPs in the UK parliament to have a vote on matters purely concerning England. The second is for a measure of the subsidiarity available to Scotland to be applied to the English regions. There is a debate to be had over the difference between Scotland, and to a lesser extent Wales and Northern Ireland, with already highly developed separate religious, legal and educational systems and the relatively vague notion of an English region. Where do we draw the English boundaries? Is it around a powerful social and economic entity such as Yorkshire, or the more amorphous East of England?

Whichever entity might be adopted it would seem clear that public perception in England may be moving towards a need for greater decision making at a sub-national level. Arguably this brings with it a greater sense of local and regional cohesion and identity. And we feel this needs to be represented in a shift in the balance of spend and output in PSB programming. The Committee has argued before that the regions of England have been increasingly marginalised by reductions in spend and commitment to PSB programming and the allocation of non-metropolitan programme spend.

If the move towards a delegation of powers and authority to some new regional political structure in England occurs, then that should be reflected in a re-drawing of PSB requirements. This may fall most heavily on the regional BBC, but it is not impossible to create a form of re-defined, but not necessarily increased, requirement on the non-BBC

Public Service Broadcasters.

The need for PSB programming to reflect changing political situations is quite a narrow definition of PSB. If England develops more devolved political and economic structures, then the sense of separate regional cultural and social identity will develop too. As an example, this clearly happens in the deeply de-centralised political structure of Germany. ACE feels that the current quota arrangements for non-metropolitan programme production would not be adequate to represent the voice of empowered English regions. The Committee's view is that England's ability to be able to represent itself to England as a nation, and to the other nations, by new, strong regional voices will be fundamentally important to maintain the unity of the UK.

Question 6: Is declining investment affecting the quality of PSB and is it a cause for concern?:

The Advisory Committee for England (ACE) feels that there has been inadequate research into the notion of declining investment. The quality of PSB is, in any case, highly subjective. ACE feels that there was no evidence that, in its view, PSB quality had noticeably declined. But there needs to be more investigation into the commissioning structure, the creative economy of production and the impact of new technology before there could be any clear statement on whether, in terms of say production values, one measure of quality, there had been any decline. And Ofcom needs to question the reality of an actual decline in investment. Some examples:

- The commissioning process for independents has changed significantly in recent years. Commissioning spend, which is only one measure of investment, is now often reduced by the independent producers retaining increasing rights for on-line and other reformatting of their material. This may, in the long term, mean that PSB created content is not available for re-use in a PSB context.

- Technological advances have changed both the nature and cost of kit and the way it is used, reducing both production and post-production time and expense.

- The cost of entry to the independent sector, and the growth of a multi-platform approach to almost all commissions, has meant greater competition and perhaps lower budget expectations across the commissioning process as new, non-traditional, players enter the market.

- Because of the continuing attractiveness of working in the production sector, salaries continue to be held down. The use of non-paid or poorly paid interns and juniors is still prevalent, despite campaigns to reduce this.

In short, the nature of production and commissioning needs to be further examined before we can have a clear view of the validity of this question.

Question 7: Do you agree with Ofcom's provisional findings in the Review of C4C's delivery of its media content duties?:

The Advisory Committee for England (ACE) broadly supports Ofcom's provisional findings of C4C's delivery of duties and would applaud many of the steps taken to broaden the diversity of output

However, ACE feels that C4C's extensive and complex set of portfolio channels may be generating delivery costs that are leading to reduced investment in the areas noted as lacking. This is particularly the case in international programming and content for older children. Given that there was a decline in share and reach of the main channel, it may be that

portfolio channels are ‘cannibalising’ the main channel while incurring unnecessary delivery cost. The Committee believes this is worthy of further study.

Question 8: To what extent do you agree with our assessment of the degree to which the non-PSB services play a role in helping to deliver the public service objectives? In doing so please set out your views on the delivery by the PSB portfolio channels, other non-PSB channels, on-demand and internet services and also radio services separately.:

The Advisory Committee for England (ACE) agrees with Ofcom’s assessment that non-PSB Services are delivering public service objectives.

PSB Portfolio Channels

The PSB Portfolio channels are clearly helping the PSBs to maintain share of audience viewing. Although the level of original programming is relatively low, the channels satisfy a number of objectives. For example:

1. As an outlet for archival content
2. As a means of attracting a targeted segment of audience to satisfy advertising income objectives
3. Different channel aggregation of recently produced content and catch-up (+1).

Each of these objectives ensure continued and extended access to PSB content.

Non-PSB/Subscription Channels

ACE holds the view that market forces, rather than obligation, are the leading driver of PSB type content on subscription channels. This is a clear demonstration of the UK audience appetite for home grown, high quality television. The significant increase in investment on original UK programming (non-sport) between 2008 and 2013 is clear evidence that non-PSB channels understand that audiences are not subscribing purely for sport or first run movies. This is illustrated by how disproportionate the increase in spending is when compared with the increase in audience share over the same period. For this level of investment to be made, there is clearly a strong commercial case for continuing to satisfy this audience segment.

On-Demand and Internet Services

ACE supports the premise that on-demand services are an important component of the delivery of public service objectives.

Perhaps the most important of the on-demand services are the on-media players from each of the PSBs. The Committee feels that these merit significant attention. As we have mentioned elsewhere in our response, we believe that on-demand access to existing and growing archives should be an important component of the public service remit and the on-line players are ideal mechanisms. While we applaud the extension of the viewing window on the BBC iPlayer service, ACE is of the opinion that removing the ability to ‘series stack’ from the service is counter to the principles of public service. This leaves the Corporation exposed to such offerings from pay broadcasters and others, while at the same time, limiting access only to those able to afford subscriptions to other services e.g. BSkyB, Amazon and Netflix.

There is evidence of a rapidly growing shift away from television news to on-line services for news access. The Committee particularly notes the success of the BBC on-line services, including BBC News on-line. It is our view that this and other on-line news services should be the subject of continuing review to ensure that due prominence is given to the nations and regions of the UK. ACE believes particular attention should be paid to diversity and equality of coverage.

The emergence of on-line content delivered by museums and other cultural institutions is a

welcome addition to the UK public service landscape. Although penetration is currently low, ACE is certain that, with the right PSB partnerships, there will be considerable growth in this area as those institutions seek to extend their reach beyond the boundaries of their physical presence.

Question 9: How likely are we to see steady evolution and have we identified all of the potential alternative scenarios and risks to the system?:

The Advisory Committee for England (ACE) supports the view that there is a possibility of on-demand consumption reaching a tipping point over the next 5-10 years. Tipping points in device use are hard to predict by projecting current trends. However, the Committee suspects that smart TVs may well enjoy the same spike in adoption as did smartphones in the past 5-10 years and indeed, may eventually become the only form of TV available. Such a spike could be expected to lead to a more rapid shift to on-demand viewing that could pose real questions for the PSB system as it stands. However, ACE also feels that it is important to appreciate that this only represents a change in the technology of the delivery platform. PSB content still retains its relevance, albeit on a platform with greater competition.

ACE notes that Ofcom was asked to look at the period 2008-2013 as part of this review. Already, figures for 2014 released by BARB, as well as Ofcom's own Media Lives project, suggest that on-demand viewing is forming a greater part of audiences' viewing lives than 2008-2013 trends might have predicted. The Committee believes that continuing to effectively ignore on-demand viewing when evaluating the performance of PSBs, carries significant risks for the system as a whole.

Question 10: How might incentives to invest change over time?:

The Advisory Committee for England (ACE) has concluded from the available data that advertising revenues are currently strong and would appear to be strong enough to support investment by commercial PSBs for some time. Television advertising still delivers the best impact in display advertising. Given that the PSBs have an approximate 75% share of viewing, with only marginal decline over the last 5 years, it is fair to assume that there will be no short term tipping point that forces commercial PSBs to rein in investment suddenly. Competition from the BBC is the incentive for commercial PSBs to invest. A reduction in the licence fee will lead to lower investment. Declining audiences for the BBC may lead to reduced investment in content to satisfy a PSB remit by, in particular, ITV.

Increased competition from OTT providers such as Netflix in high quality programming, could apply hitherto unforeseen pressure on commercial PSBs. They may be forced to develop costly new formats if audiences were to move away from the stable of traditional genres currently enjoyed. However, the Mediatique report would suggest that there is unlikely to be a rapid shift in audience behaviour and content commissioning.

ITV has indicated a growing appetite for original content production through its continuing strategy of acquiring production companies, both UK based and international. This suggests to ACE that the company sees its future success based on high end, traditional TV programming that supports the PSB remit and attracts advertisers, as well as being commercially viable in a global market.

One area of concern for the Committee is the potential increased cost of delivery technology. Cost across linear digital platforms have been relatively stable for several years now. However, if there were a growing consumer demand for higher resolution services (UHD TV and beyond), the costs of platform upgrade could have an adverse effect on programme budgets. This will be dependent on the competitive nature of higher definition services. But

the Committee felt in no doubt that investment in HDTV by BSkyB forced both BBC and commercial PSBs to divert available budget to the introduction of their own services.

Question 11: Have we identified all the relevant ways in which the PSB system might be maintained and strengthened?:

The Advisory Committee for England (ACE) agreed that the document had given thorough consideration to the majority of ways in which the PSB system could be maintained. However, the Committee is of the opinion that the following three areas need to be considered to strengthen further the PSB proposition:

- • Real time data considerations
- • BBC Archive
- • Non English speaking audiences

Real Time Data Considerations

ACE felt that there was not enough consideration for real time research or the ability to get data/information based on what is happening right now. Audiences are using a greater range of platforms and devices. Social media is playing a key role and the main PSB channels are integrating both as part of their overall strategies. Delivering real time data can help give a better understanding of many aspects, especially trends and opinions on many topics as they happen. As we enter a "real time world" where PSBs need to become more flexible on how our content is delivered, based on the "Now

Economy", we believe that adding something based on real time research and measurement should be considered. Overall, ACE considers this area to be of such importance that reference should be made to the use of data, particularly in the context of social media engagement.

Archival Content

Archival content is only mentioned briefly (paragraph 5.30). ACE anticipates that stewardship and packaging of archive programming will become an increasingly important part of delivering the PSB purpose in the future. It believes this will be case as the anticipated move to an on-demand consumption takes place.

All Public Service Broadcasters have extensive archives and the BBC, in particular, has initiated several projects to enable public access to this content over the past decade. ACE is of the view that the British public should expect to be able to access archives that are a repository of PSB content. Further, PSBs should recognise that an enhanced capability in managing archives has the potential to transform their abilities to deliver on-demand content that meets the needs of the different audiences of all UK nations & amp; regions.

ACE recognises the barriers of an archival content. These include intellectual property rights issues and a perception within the PSBs that a focus on the production of new content is paramount to its mission. The Committee believes that addressing both these barriers should be part of the PSB review process.

Non¬-English Speaking Audiences

ACE feels that Public Service Broadcasters (PSBs) have a duty to educate all sections of society. Little research has been carried out into how PSBs serve people who cannot speak English. Anecdotal evidence suggests they look elsewhere using other means and do not engage in British culture because they cannot speak English. ACE feels it is important the PSBs recognise this and do not pass on their responsibilities because they feel these minority audiences are too small or too specialist to cater for. ACE feels that it would strengthen the argument for greater PSB funding if broadcasters were able to point to the need to become even more inclusive, relevant and reflect the changing face of Britain in their broadcasting.

(See also ACE response to Q4)

Question 12: Does universal availability and the easy discoverability of PSB remain important and how might it be secured in future?:

ACE is strongly in favour of ensuring that PSB services remain universally available. It is highly likely that the consumption model will, over the next five years, evolve. ACE believes it will move away from one where content is aggregated and delivered by channels, to a model that is closer to personal curation of available content, regardless of how it is delivered. For this reason, the Committee does not feel that option 3 is disproportionate and would support the adoption of this model as a target for all PSBs.

Question 13: Should we explore the possibility of giving greater flexibility to PSB institutions in how they deliver public service content, including examining the scope (in some or all cases) for regulating by institution, not by channel?:

ACE supports the identification by the consultation documents of the shift from a broadcast model to an on-demand model of AV viewing will bring with it significant future challenges to the provision of public service content. It also opens up the market, as per the examples in the consultation document, to other institutions with a public service remit, such as museums, which would otherwise be confined to delivering the needs of physical visitors. The Committee feels flexibility would seem to be the right approach and should be extended to include examination of partnership working between public sector institutions and public sector broadcasters. This view is based on the positive performance in on-demand in the UK by PSB institutions so far. So ACE thinks that there is some justification, therefore, in considering regulation by institution.

Question 14: Do the current interventions in relation to the independent production sector need to change in light of industry developments?:

The Advisory Committee for England (ACE) is strongly of the opinion that the definition of an ‘independent’ needs to be examined before interventions are reviewed.

Since the concept of a ring-fenced area of commissioning reserved for independent producers was conceived, the structure of the industry has changed radically. The United Kingdom’s seven largest ‘super indies’ are now foreign owned. This ownership is largely American, with NBC, Universal, Warner Brothers and 21 Century Fox all having a share. This means that the majority of leading UK indies are in foreign hands.

Does this matter? PACT, the trade organisation for independent producers, would say not, and that the dangers of this change in ownership have been overstated. PACT points out that there are more than 450 British indies and that UK creativity is thriving and not endangered. While that may be true, there is a difference between ‘creativity’ and ‘voice’. ACE is concerned that a foreign-owned company may have its world-view and perspective altered to fit an essentially alien set of values. This may in turn lead to an inadequate reflection of contemporary society, which is one of the important roles of broadcast television, particularly in a PSB context.

Ofcom might like to consider a sub-set of the quota, which ring-fences some volume of production for indies who are majority British-owned. This will protect diversity of output and ensure a British voice prevails without undue or perceived foreign influence.

In addition, the review should consider that there may be unfair pressure on commercial broadcasters to commission programming from powerful indies. For example those financed by major agency groups, such as Group M which now controls around 30% of all UK TV advertising spend.

Question 15: Have we identified the right options when considering potential new sources of funding, are there other sources of funding which should be considered, and which are most preferable?:

The Advisory Committee for England can offer no further funding options, however, the committee would wish to ensure that, where retransmission fees or other funding options are introduced that result in a net increase in income for commercial PSBs, those organisations are fully audited on a regular basis to ensure that all incremental revenue is applied to the production of content that satisfies the needs of public services.