

1. Northern Ireland Screen is very disappointed by OFCOM's proposal to accept the Channel 4 promoted suggestion to set the 'Out of England' quota at 9% by 2020.
2. With over 60% of the consultation responses promoting variations to the Channel 4 'Out of England' quota above 9% and less than 15% of the consultation responses promoting Channel 4's proposal, it is difficult to see how the consultation process has been integrated into OFCOM's decision making process.
3. Beyond the level of the quota, the responding consultees offered a considerable number of adaptations to the Channel 4 proposal, all of which have, at least at this stage, been rejected. These include:
 - Questioning the need to wait until 2020 to impose the quota when Channel 4's present 'Out of England' commissioning already sat at around 7% in 2013.
 - Proposals to have staggered annual targets.
 - Proposals for an ongoing process beyond 2020.
 - An acknowledgement that the shifting constitutional nature of the UK drives a need for clear commitments to Northern Ireland, Scotland and Wales separately as opposed to treating it as if it were a discrete market.
4. However, Northern Ireland Screen welcomes the opportunity to comment on this matter a second time, and assumes that the unusual step of introducing a second unscheduled consultation is an indication that the information, comments or proposals of the consultees will be valued.
5. **Challenge OFCOM's definition of stakeholders:** OFCOM states that it has taken the main stakeholders to be Channel 4 viewers, C4C and producers. These are critical stakeholders but it is surprising that the devolved Nations and their citizens are not taken as a distinct stakeholder in this decision. This seems to ignore the point that the constitutional nature of the UK has changed dramatically in recent years with implications for all UK wide public bodies. OFCOM states that it has identified the stakeholders from the responses to the consultation but the most prevalent stakeholder theme in the responses is the devolved Nations as represented by government, agencies, private groupings and individuals.
6. **Challenge the commercial risks posited by Channel 4:** C4C acknowledges very clearly that there is no evidence that companies in the Nations are less capable of producing programmes of creative quality or commercial performance in comparison with programmes from other sources but yet C4C goes on to present arguments that infer that this is the risk (See the bottom of page 2 of Channel 4's submission).
7. For example in relation to Northern Ireland,
 - C4C asserts that there are too few companies with which it could work in Northern Ireland, but Northern Ireland Screen can identify at least 6 indigenous companies who are irrefutably capable of delivering for C4C,

mostly evidenced by their having delivered successfully to C4C before. There is also no impediment on any company setting up offices in one of the Nations and competing for work. While Northern Ireland Screen applauds and supports C4C's prioritising of 'indigenous' production companies, it is self-defeating to support this as a rationale to minimize 'Out of England' quotas.

- Northern Ireland Screen disputes C4C's analysis of sectoral abilities in the Nations. If C4C chooses not to commission content from Northern Ireland based producers, it should have to do a little more than present this fact as its evidence that the necessary production base does not exist.
- Northern Ireland Screen has heard this argument many times from London headquartered PSBs. We present our experience of screen content production outside of the control of UK PSBs as counter evidence: for example, in the face of ongoing assertions that Northern Ireland did not have the necessary skills base to produce television drama, Northern Ireland secured the production of HBO's Game of Thrones which has gone on to 4 seasons with huge and multifaceted benefit to Northern Ireland. Each of these seasons would have comfortably passed OFCOM's regional quota test. Similarly, the animation sector in Northern Ireland, which is more dependent on international sales than UK PSB commissions, is also booming. Again the productions within the animation sector would easily pass OFCOM's regional quota test.

8. Challenge the threat to Public Service Remit and in particular innovation, distinctiveness and cultural diversity

While any quota will reduce flexibility, we challenge the repeated assertion that an increased 'Out of England' quota is likely to impact negatively on Channel 4's ability to deliver innovation, distinctiveness and cultural diversity. Companies in the Nations are just as capable of delivering against these priorities as other production companies and there is nothing to stop commissioned content from the Nations delivering against these criteria whilst also being from a Nation. For example, Waddell Media has delivered until recently 4Thought for Channel 4 which was innovative, distinctive, culturally diverse and from Northern Ireland. It also, many years ago, invented a new style of programming that embraced hearing impaired children and young people in a series called The Vibe for Channel 4. Similarly, the production in Northern Ireland of Hunger, the feature film that launched Steve McQueen, was also innovative, distinctive and culturally diverse, as well as proving to be commercially attractive to C4C in the long run. DoubleBand's recent documentary for Channel 4, Queen Victoria and the crippled Kaiser, was also culturally diverse addressing the history of disability in an innovative way, while Flickerpix's recent idents for the Paralympics were also innovative and distinctive. This short list of projects is almost the sum total of Channel 4 commissions in Northern Ireland in recent years. It therefore seems that, rather than content from Northern Ireland being in some way a drain away from the public service obligation to be innovative, distinctive and culturally diverse, it has made a 100% contribution to these ambitions. The same cannot be said for all of Channel 4's commissioned content.

9. Additional voluntary commitments

Northern Ireland Screen acknowledges with considerable regret that the BBC's targets for the Nations are not enforceable. However, we cannot accept that this weakness in the regulation of the BBC should provide a logic and justification to loosen and reduce the regulation of Channel 4. Our experience of voluntary commitments is that they are honoured in the breach, while Channel 4 has a strong track record in complying with obligations that are regulated by OFCOM.

10. Challenging the 2020 implementation date

Northern Ireland Screen is particularly surprised by the proposal to delay the introduction of the quota until 2020. It is our view that this decision hugely overestimates the difficulty that Channel 4 will have in reaching a 9% target and does not appear to fully take into consideration that Channel 4 is presently at 7% by volume and 5.4% by spend.

Annual targets of 6% for 2016, 7% for 2017, 8% for 2018 and 9% for 2019 would ensure that the process is kick started immediately and managed with a clear and constant focus.

To leave the 'Out of England' quota at 3% until 2020 is a disincentive to C4C to address the issue in a constructive and immediate manner. It also fails to provide any sort of call to action for the producers on the supply side of the equation – rather than give producers more time to adapt, leaving a single target at 2020 acts as a disincentive to focus on Channel 4. Without incremental growth, how is the infrastructure needed to produce the Channel 4 programming to be developed? Especially given the premium Channel 4 places on molding its suppliers to Channel 4's distinctive editorial requirements?

11. In Support of Sub Quotas

OFCOM appears to accept that the rationale for the 'Out of England' quota is that it is desirable to increase and strengthen the range of production centres across the UK so as to widen the range of genres and content produced by companies in these centres and, by doing so, contribute to the cultural diversity of the content on Channel 4.

This logic does not seem to be consistent with a refusal to introduce sub quotas for each of the Nations. The Nations provide at the very least 3 different voices and different perspectives, arguably many more, but without sub quotas the policy intervention allows for the possibility that only one stronger and different cultural voice is strengthened, likely to be Scotland.

OFCOM does not appear to take account of the importance of the constitutional shift towards devolution in each of Wales, Scotland and Northern Ireland, and appears to be concerned that any focus on the devolved Nations is shortchanging viewers and citizens in London or the rest of England. This position does not seem to reflect the constitutional reality of our time and is, we would submit, inconsistent with the approach that OFCOM takes in its other areas of regulation – telecoms, spectrum and post.

Northern Ireland Screen supports an equal and proportionate intervention in relation to Wales, Scotland and Northern Ireland. However, we would stress that the extent of the market failure is much more acute in Northern Ireland than in Wales, Scotland or England beyond London. Scotland hosts a permanent Channel 4 presence and has benefited considerably from recent increases in Channel 4 commissioning, while Wales is also seeing an increase in Channel 4 commissioning but more significantly has the benefit of S4C which was until very recently regarded as Wales' opt out alternative to Channel 4. Northern Ireland has experienced extremely limited benefit as already detailed above. And again, as detailed above, this is entirely out of step with a screen industry in Northern Ireland which, outside of the control of UK PSBs is going from strength to strength.

Conclusion

The market failure is most acute in Northern Ireland. All evidence suggests the failure is caused by the flawed commissioning procedures at the public service broadcasters. Every other part of the screen industry in Northern Ireland has flourished significantly in recent years, including Channel 4 debunking the theory that there are insurmountable sectoral weaknesses on the supply side. The failure of Channel 4 and the other PSBs is an ever darker spot in an ever-growing industry. The historic argument, still advocated by Channel 4, that there aren't enough suppliers in Northern Ireland simply isn't true. And OFCOM should challenge that assertion.

In conclusion, Northern Ireland Screen is disappointed by the decision to accept Channel 4's proposal to set the 'Out of England' quota at 9%. In particular, this decision appears to discount the value of the consultation responses received from Scotland, Wales and Northern Ireland.

The decision to set the quota as at 2020 for the rest of the license period seems also to discount the ever changing circumstances around the degree of devolution in Scotland, Wales and Northern Ireland.

Accordingly, Northern Ireland Screen strongly proposes the following adjustments to OFCOM's proposal:

1. That sub quotas are introduced for each of the Nations;
2. That the 9% target is brought forward to 2019;
3. That staggered interim targets are applied immediately;

4. And OFCOM reviews the appropriateness of the arrangements at regular intervals.