

Summary Response:

Screen Scotland is the dedicated partnership for the film and television sectors in Scotland, delivering enhanced support for all aspects of Scotland's film and television sectors.

We are developing and growing Scotland's screen sector by:

- Boosting production by directly investing in development and production to increase the number, quality and diversity of film and television productions from Scotland
- Improving career opportunities in the sector through increased and co-ordinated opportunities for inclusive training and skills development
- Growing and improving Scotland's screen infrastructure including studio facilities
- Creating specialist business and market development provision for film and television businesses in Scotland by ensuring that advice and support is appropriate and easy to access
- Developing audiences by improving access to film and television productions from Scotland at home, across the UK and internationally
- Improving and expanding the provision of film and moving-image education in every context, increasing its reach, depth and inclusivity; and
- Developing Scotland's reputation as a destination for international productions and co-productions, supported by our world-class talent, crews, facilities and unique locations

Our key strategic targets are:

- To achieve a 100% increase in Scottish production spend (from a baseline of £69.4m in 2016/171) and
- To increase Scottish screen company growth such that the number of Scotland-based film or television companies with an annual turnover at least greater or equal to £10m is six or more

Screen Scotland sits within Creative Scotland, with funding from the Scottish Government and the National Lottery.

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?

Screen Scotland agrees that the UK TV production sector is a diverse, competitive and internationally successful part of our creative economy, that it projects the UK positively across the globe and that public service broadcasting has secured its continued strength. It can and should be more diverse: it should map more widely across the whole of the UK and more authentic portrayal/representation could play a greater part in improving our national conversation, without impacting on competitiveness. Terms of Trade, the independent quota, and the OOL/Nations quotas support

those aims. Evolving market conditions, and the political/technological context in which they are evolving, provide Ofcom with a rationale for this consultation, but Screen Scotland would urge that any pressure to alter Terms of Trade in favour of broadcasters, or to alter the independent production quota or the Terms of Trade should be very carefully considered. We have yet to see evidence that would suggest any such alteration is needed.

If there are concerns about the PSBs ability to remain competitive there are other options they should consider first. They could explore how to: (a) be more responsive and supportive to those companies that devise, develop and create the content they need to have in the schedules/carousels to win audiences back; and (b) commission content in as pain free a way as possible – working with indies, being responsive, collaborative and supportive. Those are two under-developed competitive advantages the PSBs could make more of.

Having commissioners on the ground across the UK will also be a competitive advantage. Continuing to pay a fair price for the rights acquired, and helping indies find additional sources of finance – like co-commissioning broadcasters from overseas – would be a competitive advantage Screen Scotland would welcome exploring with the PSBs.

Fundamentally they need to provide an attractive, navigable interface that works for the audience, at a price that works for the audience. Current evidence suggests that paying for content is not the issue it once might have been, provided the content is compelling.

Screen Scotland's view is that whilst market conditions and consumption patterns are changing, neither provides a compelling reason for any fundamental alteration of either the independent production quota or the Codes of Practice/Terms of Trade. Both are essential elements of a UK PSB, both underpin the diversity, competitiveness and creativity that Ofcom values in our production sector, and – more importantly – that audiences continue to value.

The Essential Elements of a PSB/PSM

Ofcom's parallel consultation, "The Future of Public Service Media", could lead to the emergence of public service media, rather than public service broadcasting. The result of this could be that new media platforms and broadcasters could emerge and potentially replace existing PSBs. Concepts such as a contestable fund for public service content could become more of a feature of our ecology. Screen Scotland's view is that these new/alternative PSBs/PSMs – if they are to gain the status and advantages of a PSB – should comply with the essential characteristics of the PSB in the UK:

- Universality (accessible to all, representative of all, serve all interests);
- Prominence (appear on the landing page of every platform, at the top of every EPG);
- Plurality of supply (commission inclusively from across the UK); and
- Editorial integrity (be trusted and valued because they are accurate, impartial, and of high-quality).

And be commissioned in compliance with:

- An independent production quota for 25% of all PSB/M originations.
- Nations quotas for network originations by volume and value that are reflective of each home nation's share of UK population.
- Adherence to Terms of Trade agreed by PACT.

Independent Production Quotas/Codes of Practice/Regional Production Quotas

From the perspective of Screen Scotland, the predominant pattern of behaviour for all of the PSBs across the first two decades of this century has been concentration of both commissioning and production in London, and an increased preference for commissioning production from large London based production companies and groups.

This has diminished audience satisfaction levels, rather than improved them. It has left some audiences across the UK feeling that the PSBs are reflective of another viewpoint, for viewers that are absorbed by concerns they do not share.

Almost all PSB commissioning for the BBC, C4, ITV and Channel 5 is concentrated within their London offices. This started to change when Ofcom altered the Guidelines that support the PSBs' regional production obligations. Recent announcements from both the C4 and the BBC suggest a recognition of the importance of being valued by all parts of the UK. Screen Scotland's hope is that commissioning for the UK PSB networks from across the UK will become the norm, with commissioners present in all major production centres.

Ofcom has stated that these rules about programming made OOL are outside of the scope of this consultation, but their interplay with both independent production quotas and Terms of Trade/codes of practice, requires that they be referenced here. As for the independent production quota, they are an essential element of being a UK PSB: they provide the imperative that drives diverse commissioning, and they are the cornerstone of the creative economy in major cities such as Glasgow, Bristol, Salford and Belfast.

Screen Scotland values all production "in" Scotland, but productions "from" Scotland – from producers owned and operated from within Scotland - deliver more in terms of both representation and the development of our creative economy because producers based in Scotland are much more likely to invest their profits here, to develop staff at all levels and across roles from their Scottish base, to find and nurture talent and ideas from Scotland. They are also more likely to seek non-PSB/non-quota work from their Scottish base, to seek the international commissions from that base. All production in Scotland is welcome, but production from Scotland is valued more highly because it delivers more to our culture and economy.

Enders Analysis recently recognised this, stating in recent paper, "UK's Creative Industries: Boosting the Regional Economy": "A focus on producing repeatable content from the nations and regions will be invaluable in boosting production companies who can then invest more heavily in education, training and development, and generally the creative economy outside of London... these examples highlight the benefit of producing from the nations and regions rather than simply producing in them. Long-lasting repeatable shows brings greater regional investment and ultimately a richer self-sustaining ecosystem."

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?

Ofcom has asked for views on its guidance for the commissioning of independent productions could be updated to ensure it offers continued flexibility and benefits for audiences and stakeholders – the producers and the broadcasters – and allow for timely negotiations to reflect changing market conditions. Ofcom has also asked if the independent production quota should be varied, by altering its definition or level.

The current 25% independent production quota on each of the UK PSBs (save for STV, which utilises ITV's commissioning to meet the independent quota for all Channel 3 licensees, an illogicality that

Ofcom may now choose to address) provides considerable flexibility to stakeholders. Commissioning from independents, non-qualifying independents (strictly not independents at all) and from broadcaster's own in-house studios takes place daily, and in such a way that the audience and its demands are served relatively flexibly. Commissioning patterns across the last 30 years evidence the PSBs' deep preference for London-to-London commissioning, for commissioning from larger London based groups, many of which have now fallen outwith the current definition of an indie. That they have graduated to the 75% of the market not reserved for the independent sector is healthy, it is good for our creative economy, our competitiveness as a nation. It allows room for new businesses to emerge, find a place in the PSBs' schedules, attracted the audiences and investment that their innovation and entrepreneurship deserve.

Arguably the 25% quota for truly independent independents is too low. If diversity of supply, business development, representation/portrayal, and supporting the creative economy of the whole UK are aims Ofcom supports then the truly independent production sector remains the best option. Independents are the most fertile area of the production sector for new starts, diverse voices, regional representation, and creativity that resonates with audiences across the UK. Should they have more than 25% of the PSB market reserved for them? Arguably yes, but what is clear is that 25% should remain the minimum reserved for independents. Further, we have yet to see any evidence that the reason for the independent production quota existence has diminished – broadcaster owned/owning production companies retain the inherent advantage of vertical integration, absent the independent quota broadcasters can reasonably be expected to revert to self-commissioning.

Equally there is an argument that the independent quota is, in part, as much about size as it is ownership by/of broadcasters. The independent quota impacts positively on the PSBs tendency, evidenced over the last 30 years, to prefer to commission from larger companies, particularly to commission larger series and higher value series. With some independents now achieving significant scale, particularly those within aggregated groups, is there now an argument for reserving some or all of the independent quota for companies that are smaller?

Some suggest that this would have unfortunate, unintended consequences, particularly for growing companies. That setting a turnover threshold (one option if scale is the concern) might drive commissioners to larger, non-Terms of Trade companies. How that would work if the 25% indie quota remained in place for those qualifying as independents, on the basis of both their non-broadcaster ownership and turnover, is unclear to Screen Scotland.

Some argue that this would drive those no longer qualifying for the indie quota into the arms of Netflix or Amazon. Maybe, but the UK PSBs have some considerable competitive advantages over those platforms. The PSBs work within Terms of Trade, they fund development, they commission at a range of price-points and they are relatively available to producers, meetings can be secured.

Screen Scotland's aim is to increase the market for content from Scotland. To increase the opportunities available to Scotland-based talent and companies and the value of those opportunities. Focusing the PSBs on delivering content from all parts of the UK, on supporting the creative economy across the UK, on seeking and developing talent in from and behind the camera in all parts of the UK is our aim.

In that context the suggestion of excluding companies of scale (£50m+ aggregate company/group annual turnover) from the definition of an "independent" might improve opportunities and competitiveness for smaller (<£50m) indies, and there are no £50m+ production companies from

Scotland or Northern Ireland (though some subsidiaries of groups of that scale do have offices in both). For regional companies/groups, Tinopolis is the exception that proves the rule.

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?

Screen Scotland believes that any intervention in the current definition, which is clear and well understood, is a risk. Alteration opens the door to further alteration, further down the line.

In 2021 the situation for Scotland-based producers in 2021 is solidly improving. That is largely a result of the interconnected effects of indie and OOL tariffs, and Terms of Trade. Politics plays a part in this too, it is what is fuelling the PSBs' new-found desire to embrace the UK outside of London in a more positive, authentic way, but the current settlement around tariffs and Terms of Trade is delivering improvements for producers OOL. Disadvantaging the independents, especially those based outside of London, will not improve the competitiveness of the PSBs.

Final observations:

1. Ofcom's consultation paper for this consultation notes that, "43% primary spend won by producers outside London but only 37% of companies are based outside the capital." This is based on the PACT 2020 Production Census.

PACT's Census notes that commissioning spend outside of London reached 43% in 2019. There is no evidence in that Census that producers based outside of London won 43% of that spend. Some of that 43% will have been won by indies genuinely based in OOL, some will have been won through "substantive bases" established by London based indies in the N&R, some will have been secured by London based indies who meet only the spend tests set out in Ofcom's Update Guidance for Regional Production. Some by non-qualifying indies, BBC studios or ITV Studios. The actual share of commissioning spend secured by indies owned and operated from outside of London will be less than 43%.

2. Screen Scotland agrees with Enders Analysis' recent conclusion* that, "A focus on producing repeatable content from the nations and regions will be invaluable in boosting production companies who can then invest more heavily in education, training and development, and generally the creative economy outside of London... the benefit of producing from the nations and regions rather than simply producing in them. Long-lasting repeatable shows brings greater regional investment and ultimately a richer self-sustaining ecosystem." The predominance of single and short run series commissioned from independents outside of London is "the longest running blight on the industry". Current outcomes are "asymmetrical": London enjoys scale, OOL endures lack of scale. To change the economics of the UK's screen sector, to unlock training and development for skills and talent across the UK, the PSBs need to look beyond London and beyond the usual suppliers of scale. *Enders Analysis, "UK's Creative Industries: Boosting the Regional Economy", 19th March, 2021.

Quotas should not exist to inconvenience London based producers, they should exist to foster and sustain growth OOL when most other market forces push in PSBs in the other direction, towards the perpetuation of London-to-London commissioning patterns, towards super-indies. On this basis alone altering the definition of "a qualifying independent" to include a measure based on company/group turnover has some merit.