

**Response to Ofcom  
consultation on ITV  
Networking Arrangements**

**pact.**

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**May 2009**

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## **Introduction**

- 1) Pact is the trade association that represents the commercial interests of the independent production sector. We have more than 600 member companies across the entire UK, involved in creating and distributing television, film and interactive content.
- 2) The independent production sector creates 49% of all new UK television programmes each year across the BBC, ITV1, Channel 4 and Five.<sup>1</sup>
- 3) The sector has a turnover of more than £2 billion per year<sup>2</sup> and employs 20,950 people – more than the terrestrial broadcasting and the cable and satellite sectors respectively.<sup>3</sup>
- 4) Since the Codes of Practice/Terms of Trade between producers and broadcasters were introduced in the 2003 Communications Act, the independent sector has become an increasingly important source of investment for the creation of UK content. It currently raises around £190m per year for the development and production of television programming, more than the equivalent figure invested by Channel Five or BBC Worldwide.<sup>4</sup>
- 5) For further information, please contact Adam Minns at [adam@pact.co.uk](mailto:adam@pact.co.uk) (020 7380 8232).

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<sup>1</sup> Ofcom, communications market report, 2008.

<sup>2</sup> Independent production census 2007/08, Digital-i for Pact.

<sup>3</sup> Employment Census 2006, Skillset.

<sup>4</sup> Pact survey/O&O census for Pact.

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## **Pact Response to Ofcom Consultation on ITV Networking Arrangements 2008**

### **Compliance**

- 1) Pact's interest is twofold:
  - Ensuring that ITV's compliance arrangements are of a high quality and are provided in a way that avoids unnecessary additional cost; and
  - Ensuring independent producers have a choice of compliance licensee that ensures that they are not obliged to reveal confidential information to a competitor company.
- 2) For some producers, Channel represents a preferred choice as a compliance licensee because it is not a competitor producer. The original purpose of the ITV Tripartite structure was to protect suppliers from having to reveal confidential information to a competitor company. For those independents that are reluctant to reveal confidential or commercially sensitive information to an organisation that is a potential competitor, having an alternative choice is seen as a benefit of the current system. Other independent producers have no such concerns and are happy to work with the ITV team.
- 3) It is notable that over the years since the introduction of ITV's network arrangements producers have forged strong relationships with their preferred compliance licensee in a similar way to other professional advisers. These relationships mean that there is a depth of knowledge and trust that helps improve professional standards and keep costs down.
- 4) If all ITV licensees become liable for sanctions in the case of a breach, the danger is that they will all feel the need to protect themselves by undertaking additional compliance checks on top of those undertaken by the nominated compliance licensee. This is almost bound to increase costs, delay productions and introduce potential conflicts and differences of opinion.
- 5) In our view the existence of alternative compliance providers has helped to keep the quality and efficiency of the service at a high level, and has meant that costs are kept under control. Although compliance fee charges are not billed to producers under the current system, Pact would be concerned if any changes to the current regime meant that ITV were to attempt to recharge some or all of its

costs to producers, especially if those costs were rising in the absence of any competitive pressure to keep them under control.

- 6) As the current system delivers both cost efficiency and choice for the producer, Pact's preference is Option 1: Status Quo. There may be merits to Option 2: Amendment to Indemnity Provisions in providing choice for producers, but this option may also create concerns over cost efficiency. We reject Options 3 and 4 as they either directly or indirectly remove the producers' ability for choice in compliance licensee.

### **New media rights**

- 7) ITV has still not implemented the new Terms of Trade agreed in 2006 that are referred to in the consultation paper. Updating the Codes of Practice to reflect these Terms of Trade will make no difference to market practice until ITV does so.
- 8) We also note that the recent report by Perspective Associates for the Government's Digital Britain review concluded that the policy framework underpinning the Terms of Trade is, and remains, effective. Clearly the market for content and consumers' expectations of how they access that content are developing quickly, and the Perspective report unequivocally found that the current framework has enabled the Terms of Trade to evolve too. The report states: "[B]roadcasters and producers should be able to negotiate effective arrangements which properly reflect this change without the need to change the current policy framework."<sup>5</sup>

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<sup>5</sup> Digital Britain: Assessing the Policy Framework for Public Service Rights, Scoping and Discussion Document, Perspective, April 2009, page 4.