



TELEDWYR ANNIBYNNOL CYMRU
WELSH INDEPENDENT PRODUCERS

Response to BBC Trust Consultation on Future of Content Supply

November 2015
www.tac-cymru.co.uk

1 About TAC

- 1.1 Teledwyr Annibynnol Cymru (TAC) is the trade association representing independent television production companies in Wales. There are around 55 Welsh companies producing a wide range of TV and other content in genres that include children's, drama, comedy, factual, documentary, animation, entertainment, music and sport.
- 1.2 TAC members make content for several UK network broadcasters and are involved in selling programmes and formats abroad as well as international co-productions. Members also make content for the Wales-based broadcasters such as BBC Wales and S4C, the latter of which, as a publisher–broadcaster, works particularly closely with our sector.
- 1.3 TAC members' programmes and formats have been sold to territories around the world and they continue to look to new opportunities to build their businesses and find new markets for UK-originated content.

2 BBC Studios and more competition for BBC commissions

- 2.1 TAC welcomes some aspects of Lord Hall's 'Compete or Compare' initiative. The BBC Director General has rightly identified the need for the BBC to ensure it has the right processes and structure in place to make sure it provides both value for money and the best content available to the Licence Fee Payer.
- 2.2 But in terms of the BBC Studios proposal, TAC is uncomfortable with Lord Hall's concept of the BBC's in-house production simply being preserved wholesale and moved into the wider TV production market, where it will be able to compete against the indie sector in gaining commissions from other broadcasters. In our view this approach threatens to undermine his own competitive philosophy. It would mean a large established brand being introduced to the programme-making marketplace, immediately able to leverage large production deals, with the attraction of a link with the corporation's distribution arm, BBC Worldwide. The question is whether this is healthy in terms of ensuring adequate competition for ideas and talent in the wider sector.
- 2.3 'Compete or Compare' needs to go a step further and acknowledge that there is no longer such a strong case for having large, unwieldy production arms stuck in a few locations and with significant overheads. We are not convinced that BBC Studios really addresses the need for genuine competition between producers. With exceptions such as news and perhaps the BBC Natural History Unit, there is no reason why the BBC cannot adapt effectively for the future by becoming far more lean and flexible as an organisation, by reducing the size of its in-house production unit, along with its structure, costs and bureaucracy.
- 2.4 The independent production sector is well-suited to adapt to shifts in commissioning patterns as broadcasters adapt and adjust their strategies to meet audiences' ever-changing expectations. Companies can scale up and down, more easily invest in new technology and use their wider range of contacts with talent and production partners, including partners overseas who can all help to bring a greater mix of content to the BBC's output.
- 2.5 TAC notes the 2014 report produced by Oliver & Ohlbaum for Pact, which calculates that a move from BBC in-house production to the indie production sector through a combination of

four methods 'could provide a value boost to the UK TV creative sector of approaching £600m including a reduction in the net programming costs to the BBC of current output by £35m per year.'¹ This only emphasises that there are significant creative and economic reasons for a much greater BBC focus on commissioning, rather than producing, TV content.

- 2.6 Whilst using a large number of producers from around the UK is primarily about having a better range and diversity of public service content, in addition we believe independent producers are competitive when it comes to price. We question the accuracy of the figures provided by the BBC regarding the respective costs of an in-house and independent production², bearing in mind the difficulty of accurately allocating a proportion of overhead costs to a specific in-house production.
- 2.7 In the independent production sector, budgets are clearly laid out and every penny is accounted for. Whilst the rationale for BBC Studios is that BBC production will have to be more efficient to survive, in reality with an organisation the size of BBC Studios it will be more difficult to ascertain the exact amount of overhead attributable to a particular production. And the need of such a large organisation breeds its own large administrative structure.
- 2.8 We would need to see more detail than has so far been produced on how BBC Studios will operate in a transparent manner that gives independent production companies a level playing field to compete for BBC and indeed other commissions. The BBC Studios document states that to comply with state aid rules and other regulatory process, it would adhere to core principles including:

'Arm's length commissioning, with any commissions offered to BBC Studios by the BBC subject to the same range of tariffs and terms as are available to external producers'³

The Trust needs to see evidence of processes which would ensure this is the case before approving the proposals.

3 Implications for the UK Nations

- 3.1 There are also questions in terms of how the BBC's proposals would address concerns regarding the extent to which the BBC is adequately representing the Nations and regions of the UK. Moving a significant amount of production to Cardiff is clearly of economic benefit to those areas but of limited cultural value or benefit to the Licence Fee payer in terms of delivering a wider range of ideas, stories, perspectives and talent.
- 3.2 So again the shape of the BBC's commissioning process will be crucial going forward in ensuring that creative companies, regardless of their geographical location, have a fair chance to pitch ideas. Equally important is that those making the commissioning decisions are not of a mindset that national / regional accents, stories and even to an extent language are 'off-putting' to UK audiences.
- 3.3 In terms of audiences within the nations, Ofcom figures show that in the period between 2008 and 2013 less than half of those in the UK Nations were satisfied that the main PSBs portray

¹ A new age of UK TV content creation and a new role for the BBC. Oliver & Ohlbaum for Pact, August 2014, p2 The four methods cited are: 'a combination of: winding down some production departments; contracting out some long running strands; transferring some production activities to BBC Worldwide (specifically those most useful to its channels and rights distribution strategy); and, spinning off the remaining departments through a series of management buyouts accompanied by output deals and first look rights arrangements where appropriate to help expand the number of strong medium sized independent production companies in the UK to help counter market consolidation.'

² Submission to the Department for Culture, Media and Sport's Charter Review public consultation. BBC, October 2015, p54

³ BBC Studios: Strengthening the BBC's role in the creative industries. BBC, September 2015, p21

their area fairly to the rest of the UK. Whilst that figure rose in that period from 34% to 40%, the importance attached to such portrayal also rose from 58% to 68%⁴.

- 3.4 Whilst the BBC has devolved some of its production, commissioning in Wales is mainly confined to content that is made specifically for Wales, rather than for the wider UK audience. The big-name shows commissioned from the Roath Lock studios are commissioned from London. There tends to be a lack of clarity regarding the BBC's position on what the Nations and regions of the UK should achieve, namely representing the different parts of the UK to the rest of the country.
- 3.5 In itself, Lord Hall's plan would do nothing to maintain and strengthen competition for commissions coming from every part of the UK. The BBC cannot really hope to genuinely represent all the areas of the UK unless it allows the producers who are embedded in communities around the various Nations to make more of its programmes and other content, and thus bring their own talent, ideas, stories and perspectives to the screen. The need for the BBC to continue to invest, and more widely, in the Nations is therefore more pressing.
- 3.6 In Wales, there is trepidation not only concerning the BBC's announcing it will have to spend less on content (as a result of the recent Licence Fee deal) but also the potential privatisation of Channel 4, which has a more positive attitude towards commissioning in the nations and regions than the other commercial PSBs. There is also the uncertain future of S4C's funding and the implications that if its content budget were further reduced, this would adversely affect the indie TV production sector which is currently based all around Wales. This in turn would mean viewers having less choice in terms of the ideas, talent and perspectives being offered, as Cardiff no more represents the whole of Wales than London does the whole of England.
- 3.7 The BBC Studios document states that in deciding on its commissioning strategy in the Nations;
- 'we need to give careful consideration to the different context in each Nation: the market for local-only content is much smaller than network, with more fragile ecologies of independent producers. In addition, this output plays a unique and important role in the BBC's programming portfolio, meeting the distinctive needs of audiences that may not be well served by other broadcasters. The BBC is keen to ensure that it considers the full range of issues in reaching a final decision in this area.'⁵
- 3.8 However there are no proposals as to how that objective might be achieved in practice. TAC was pleased to see the BBC Trust in its recent Content Supply Review state that:
- 'The Trust will want to ensure that the BBC has developed considered, clear-sighted plans that set out what the right commissioning mix is across the Nations and regions. The Trust will also want to see how the BBC's production centres across the UK intend to work more effectively together with the independent sector based in different parts of the UK to develop creative, sustainable, local ecologies'.⁶
- 3.9 It is crucial that the BBC Trust makes as a concrete condition of its approval of any final proposals the publishing of clear plans of how the BBC will make its commissioners more accessible to producers across Wales and prevent the budget being spent purely in the south and specifically at its own production centre in Roath Lock.

⁴ Ofcom PSB Report 2014: Section 3 – Television. . Figure 3.41: Main PSB Channels combined, PSB viewing, importance vs. satisfaction: 2008-2013

⁵ BBC Studios: Strengthening the BBC's role in the creative industries. BBC, September 2015, p13

⁶ BBC Trust. Review of the Supply arrangements for TV, Radio and Online. June 2015, p17-18

4 Terms of Trade

- 4.1 Since the 2003 Communications Act the UK indie production sector has grown exponentially into a world-leading industry – in the words of Ofcom:

‘The sector now generates revenues of around £3bn a year, and has grown by over 3% a year since 2008 in real terms. As it has grown it has helped to establish the UK’s position as a major global content creator and exporter.’⁷

- 4.2 In Wales, the indie sector, partly fuelled by the investment of S4C, the BBC, Channel 4 and to an extent the other UK PSBs, has similarly grown and we now have a lively mix of companies based around the Nation, to produce a wide range of content for the UK network broadcasters, as well as Wales-specific services such as S4C, BBC Wales, BBC Radio Wales and Radio Cymru. This helps to provide much-needed plurality in Wales. Though there are only two Wales-specific PSBs, the fact that they are able to commission from a wide range of indies creates a greater diversity of content.

- 4.3 Companies range from large players such as Tinopolis, Boom Cymru and Rondo Media through to smaller players who nonetheless provide a vibrant mix of production talent across a range of genres.

- 4.4 We realise that, since 2003 in particular, the rise of a number of ‘super-indies’ has led to a concern that the Communications Act provisions benefit the very large production groups to the detriment of the comparatively smaller UK PSBs.

- 4.5 However, we note the point made by Oliver & Ohlbaum earlier this year in its research on the state of the indie production market:

‘producer consolidation has not resulted in an obvious increase in supplier power – in fact, absent the protections of terms of trade, once a group becomes ‘non-qualifying’ there is evidence that commissioning terms have worsened for producers, suggesting that PSB buyer power is still the dominant characteristic of the market.’⁸

- 4.6 Our members are in no doubt that without the protection offered by the Communications Act in terms of their intellectual property, they would not have been able to grow their businesses in the way that they have. Evidence of this can be seen in research by O&O on the growth in TV exports before and after the Terms of Trade were introduced, with a significant rise in year-on-year growth from 2003-04⁹. The fact that these production companies have been able to sustain themselves and grow over time has allowed the sector in Wales to take its place alongside the rest of the UK.

- 4.7 In the experience of our members, particularly the smaller companies, any watering down of the Communications Act protections would represent a backward step in terms of the development of the UK’s creative sector. We respect the need for broadcasters to make a return on their investment, and for the flexibility of the Terms of Trade to allow them to do so. But ultimately producers’ ownership of IP has meant that they have been able to apply their entrepreneurial abilities and obvious desire for their programmes to be seen by a wider audience to marketing and distributing their own product, and to great effect. The income from indies’ IP is used to research and develop exciting new ideas, enabling the sector to be an important self-funded source of new ideas, formats and innovations from which the UK’s PSBs – and ultimately citizens and consumers - benefit.

⁷ Review of the operation of the TV production sector: Terms of Reference. Ofcom, October 2015, p4

⁸ Consolidation, globalisation and vertical integration – Myths and realities. O&O, March 2015, p6

⁹ A New Age of UK TV Content Creation and a New Role for the BBC. O&O, August 2014, p30, Fig 6

- 4.8 Recent programmes and formats sold abroad by Wales' indie production companies include:
- Swansea-based Telegop's **Wallis Simpson: The Secret Letters** has sold worldwide via the distributor DRG. Territories include Hong Kong, Israel, Denmark, Australia, New Zealand, Canada, Taiwan, Belgium, China, Germany, France and the US
 - Boomerang (Cardiff)'s Channel 4 **Posh Pawn** Documentary Series has been sold into: Australia, Denmark, Finland, Latin America, New Zealand, Norway, and Sweden
 - Cardiff-based Indus Films' documentary series **Mekong River with Sue Perkins** was produced for BBC2 and sold into: Germany, Finland, Denmark, Norway, Sweden, Italy, New Zealand, and Africa
 - Caernarfon-based Cwmni Da's S4C production **Farm Factor is licensed and produced in Denmark, Sweden and China**
 - Rondo Media (based in Cardiff/Caernarfon/Menai Bridge) has sold its award-winning BBC 1 drama series, **The Indian Doctor** to territories including: USA, Canada, Australia, New Zealand, Israel, China, Mexico and many European countries
- 4.9 Production margins being constrained is already a reality for indie producers in Wales as for the rest of the UK, with not only the general decline in PSB spend, but S4C's dramatic decrease in budget as a result of the 2010 Spending Review. As Ofcom's third PSB review report stated, creating new efficiencies is not an everlasting process:
- 'analysis suggests that demand for production staff and studio costs is now increasing, and savings – in terms of producing the same programmes with smaller crews and fewer filming days – have largely been realised'.¹⁰
- 4.10 Ofcom's figures show that in the five year period between 2008 and 2013, spending by the BBC and ITV on non-network first-run originations fell by 33.2% in Wales, more than in any other UK Nation¹¹. This drop demonstrates the receding commitment by the main UK PSBs to Nations, and particularly to Wales.
- 4.11 Producers are also able to use the value of their companies' IP to secure investment, both in the UK and overseas. As figures show, many programmes are no longer fully-funded by the broadcaster - Downton Abbey being one such example, also the Welsh-made drama series Hinterland / Y Gwyll was an S4C-commissioned co-production with several production and distribution companies involved. It was screened in the UK on both S4C and on BBC4. This highly-praised programme, now commissioned for a third series, has enabled S4C to build its profile as not just a Welsh-language service, but a broadcaster of high-quality programmes. But S4C as a publisher broadcaster is reliant on finding a wide range of companies to offer it a diverse mix of programmes, and so the indie sector needs to continue to be able to work with a range of commissioning broadcasters.
- 4.12 So there are many challenges for the indie sector, and the need to be able to make use of IP to build and maintain businesses is as important as ever. There is also a clear matter of principle at stake – if the production company has had the core idea, and found the talent to make the programme, then it is only fair that the company retains the IP. Although Channel 4 and others are stating that there may be a case for improving the Terms of Trade for certain sections of the independent production sector, we feel that any artificial division between companies based simply on turnover would be a disincentive for a producer to grow their businesses and would not allow a free-flowing market to operate. We concur with the findings of O&O that:

¹⁰ Public Service Broadcasting in the Internet Age: third review of PSB. Ofcom, July 2015, p9

¹¹ Public Service Broadcasting in a Connected Society: third review of PSB – consultation paper. Ofcom, December 2014, p61, Fig 34

'A move to create specific improved or more protective terms of trade for smaller groups risks upsetting this balance, by making the minority of suppliers in the market less attractive to broadcasters. This would in turn either lead to fewer commissions to smaller Indies, or a call for a further small Indie quota, which is likely to be ineffective in itself as it would be relatively easy for larger groups to subvert through corporate restructuring.'¹²

- 4.13 Again, the flexibility of the Terms of Trade already allows a producer and PSB to reach a suitable deal if there is more of a joint development of the project. There is therefore no reason why there needs to be any alteration to the legislation. The BBC and other PSB broadcasters gain from having producers invest in new ideas and talent which they then bring to the BBC, which in turn benefits from the audiences and enhancement of its international reputation.
- 4.14 And of course not all producers engage in making the types of programmes and formats that do well internationally and it is precisely this type of content – documentaries, or very UK-specific up-to-the minute topics for example – that are some of the core genres for PSB. It is important for such producers, often running some of the smaller companies, to be able to have fair treatment.

5 Independent Production Quotas

- 5.1 The BBC Trust lists four options for regulating the BBC's sources of content supply going forward. TAC's option is possibly a hybrid of these, with our belief being that it is important to retain the qualifying indie production quota, and do so per channel. In addition to this the BBC should allow as much competition as possible to get the best out of its in-house teams as well as the independent sector.
- 5.2 The independent production quota was first introduced in the 1990 Broadcasting Act. We are aware that the BBC has argued in its recent document on BBC Studios that the channel-specific quotas for BBC1 and BBC2 should be removed, in return for their removing the 50% in-house guarantee. The BBC argues that:
- 'the individual 25% quotas for independent producers on BBC One and Two are already becoming difficult to fulfil without distorting editorial choices'.¹³
- 5.3 However looking at the figures given for indie commissions by the BBC in its 2014-15 annual report, TAC notes that the figures for BBC1 and BBC2 are 30% and 37% respectively¹⁴, i.e. significantly above the 25% required by the quota. Furthermore figures provided for the WoCC show that qualifying indies are again winning commissions when they are competing against in-house and non-qualifying indies¹⁵. This evidence would not seem to suggest that BBC commissioners are struggling to find good ideas delivered to a high standard amongst the qualifying indie sector.
- 5.4 We would therefore argue against any watering down of the current system of independent production quotas. A guaranteed level of commissions available to smaller production companies is, we believe, an important driver for encouraging new entrants to the market and ensuring there is a lively mix of companies to supply the UK's PSB broadcasters. We do not see this as inconsistent with arguing that at the same time the BBC opens up more of its in-house

¹² Consolidation, globalisation and vertical integration – Myths and realities. O&O, March 2015, p7

¹³ BBC Studios: Strengthening the BBC's role in the creative industries. BBC, September 2015, p7

¹⁴ Performance against public commitments 2014/15. BBC, 2015, p07

¹⁵ Performance against public commitments 2014/15. BBC, 2015, p23

production to competition. Our concern is actually that the BBC's own arrangements do not entail as much guaranteed competition for programmes as might appear to be the case.

- 5.5 The BBC Studios document says it will be making around 80% of content in the genres covered available to external competition¹⁶. But as the UK-wide TV trade body Pact, to which many TAC members also subscribe, told the Culture Media & Sport Select Committee recently:

'the claim that 80% of BBC commissioning would be opened up for competition is just patently not true. The proposals are that the BBC currently has a 50% guarantee for in-house production. We estimate about 46% of that will transfer to this new commercial entity on day one, which means they would have 46% of the market. The market accounts for about another 46% of the market. So the bit between what the market currently provides and what the BBC will be guaranteed under their existing proposals—what is really up for competition—is about 10%. It is not 80% because they are not going to put out to the market all the programming that the BBC currently makes in-house.'¹⁷

- 5.6 Thus it would appear that the BBC will be continuing to operate a considerable in-house guarantee of sorts. To maintain – albeit, at 25%, to a lesser extent - a guaranteed level of commissioning for qualifying indies will help to fulfil an objective suggested by the BBC Trust in its own submission to Charter Review:

'We propose that the positive role in contributing to the UK's creative economy that the BBC can play should be recognised explicitly, for the first time, in a new Public Purpose – ensuring training and skills development, partnership with cultural organisations and others, and commissioning from the independent sector to add to this growing and exciting sector.'

- 5.7 TAC would support this suggested new Public Purpose and would argue that maintaining the quotas would be a good way of the BBC showing it is comfortable with such a level of independent commissioning. To water down the quota, as the BBC is asking to do, can only make our sector wonder at the implications if the BBC is no longer required to commission from the qualifying independent companies in Wales and the rest of the UK.

- 5.8 To allow the change in the way the BBC suggest would actually make more likely developments which the BBC itself says would be contrary to ensuring a good level of competition in some key genres. In its 'BBC Studios' document the BBC itself quotes Ofcom as saying:

'there is the potential risk that greater vertical integration between broadcasters and production companies could reduce the number of companies competing for PSB commissions and so limit commissioner choice, particularly in genres which can achieve substantial international revenues.'¹⁸

- 5.9 For the BBC to avoid this scenario it follows that it should be looking to commission from qualifying indies, in order that the supply base remains strong, which the BBC Studios document highlights as being very important to its creative future:

'The priority for the BBC is a supply base that enables it to continue commissioning fantastic content for its audiences and delivering long-term value to licence fee payers. To do that, the BBC needs to keep the benefits of a mixed model of internal and external supply.'¹⁹

¹⁶ BBC Studios: Strengthening the BBC's role in the creative industries. BBC, September 2015, p9

¹⁷ Evidence given on 3rd November 2015 by Pact Chief Executive John McVay to the House of Commons Culture Media & Sport Committee inquiry on BBC Charter Review. Oral Transcript HoC 398, Published 11 November 2015

¹⁸ Public Service Broadcasting in the Internet Age: third review of PSB. Ofcom, July 2015, p10. Quoted in BBC Studios: Strengthening the BBC's role in the creative industries. BBC, September 2015, p6

¹⁹ BBC Studios: Strengthening the BBC's role in the creative industries. BBC, September 2015, p6

6 The Trust's Five Principles

6.1 Principle one - Securing high-quality and creative content across all genres

Making sure that, in line with Compete or Compare, it is competition for ideas, quality, and value for money that is at the heart of the BBC's content supply – as stated above we have concerns that this principle could play second-fiddle to a desire to maintain a large presence in the UK production market, using a scale built through public funding to challenge the many SMEs based all around the UK.

6.2 Principle two - Providing value for money to licence fee payers

The key way to provide value for money is for the BBC to be as small at the centre as possible. We remain unconvinced that the BBC's in-house production can keep pace with modern technology and the ability to be flexible, with a multi-skilled workforce, that is the case with the independent sector. We would dispute any claim that an in-house production is intrinsically more cost-effective and indeed would point to the example shown by indie TV producers in Wales when, faced with the budget cuts at S4C, were able to introduce efficiencies which have to an extent mitigated the effects on the amount of newly-originated content produced by S4C (although this is still in decline).

6.3 Principle three - Using a wide range and diversity of supply with fair access across all genres and from across the UK

As argued above the BBC has not succeeded in fulfilling its public purpose in this area and we are not convinced that by limiting the potential for using indies to as little as an extra 10% (vis-à-vis Pact's estimation as set out above) that it is going to achieve the aims set out by the BBC and BBC Trust of making sure there is a commissioning system that it is better suited to providing regular pitching opportunities to producers.

We believe that any new commissioning system should include a commitment for regular meetings in hubs around the UK, including North Wales as well as South Wales, by BBC commissioners. Producers accept a certain amount of travel but there is always going to be an in-built disadvantage to access to commissioning in the absence of a properly organised approach making sure commissioners make themselves available.

6.4 Principle four - Securing a sustainable production supply in terms of skills and capacity

The initial reasoning both behind setting up Channel 4 and S4C and having the independent production quota of 25%, was to create enough critical mass in commissioning to enable the indie production community to grow through having enough work to allow producers to grow sustainable businesses. These interventions were not enough in themselves however and the sector was merely a cottage industry until the 2003 Communications Act enshrined the principle in the Terms of Trade that indies would own their own intellectual property rights.

It is through these interventions, coupled with a well-funded BBC as a cornerstone of a diverse PSB ecology, that the sector has been able to grow as described earlier in this document.

As far as TAC is concerned, any actions which destabilise this sector would result in a reduction in a sustainable supply base.

6.5 Principle five - Maintaining appropriate separation between publicly funded BBC activity and its commercial services

TAC believes that there could be a risk that, if BBC Studios does not fulfil its immediate targets and objectives once it has become a subsidiary, there may be increasing pressure for it to win commercially beneficial contracts, and that this could possibly distort the market. We would reiterate that it will be very important whatever happens in BBC TV commissioning that the commission team are entirely separate from BBC Studios in order not to be subject to these pressures. They should not be present in the same building as BBC Studios staff, nor be in a situation where they are likely to have regular contact in ways which are not afforded to indie producers, e.g. BBC in-house events.