



TAC submission to Ofcom Review of the TV Production Sector

About TAC

1. Teledwyr Annibynnol Cymru (TAC) is the trade association representing independent TV production companies in Wales. There are around 55 Welsh companies producing a wide range of television and other content in many genres, including children's, drama, comedy, factual, documentary, animation, entertainment, music and sport.
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 very closely with our sector.
3. Many of our members are also members of Pact, and as an organisation we endorse the representations Pact is also making to Ofcom on this issue. We are aware that Pact is devoting considerable resources to this issue on an ongoing basis and therefore wish simply to add some brief supporting views of our own on this matter, specifically in relation to the impact of any changes to the TV production regulations on the Welsh indie TV sector.

Introduction

4. Since the 2003 Communications Act the UK indie production sector has grown exponentially into a world-leading industry. Ofcom's own Terms of Reference for this review state that:

'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.'

5. In Wales, the indie sector, partly fuelled by the investment of Welsh-language Broadcaster S4C as well as to a lesser or greater extent the other UK PSBs, has similarly grown and we now have a lively mix of companies based around the Nation. 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.
6. Ofcom cites two interventions which it is examining: the independent production quota¹; and the Codes of Practice requirements relating to the Terms of Trade between independent broadcasters and PSBs². Given the benefits these interventions have brought to the UK's creative broadcasting ecology, not to mention the UK economy, there would need to be a very compelling case to justify any significant alteration to the current regulations relating to the Terms of Trade between PSBs and the independent sector. Below we offer our own brief views on why there is no such compelling case.

Independent Production Quota

7. The independent production quota was first introduced in the 1990 Broadcasting Act. We realise that since this time, and in particular since 2003, 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.
8. 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.'

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9. We are aware that the BBC has argued in its recent document on BBC Studios that the specific quotas for BBC1 and BBC2 should be removed in favour of a pan-BBC TV quota, 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'.

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10. 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% respectively⁵, i.e. significantly above the 25% required by the quota. Furthermore

¹ Communications Act. Section 285: Programming quotas for independent productions

² Communications Act. Section 285: Code relating to programme commissioning

³ Consolidation, globalisation and vertical integration – Myths and realities. O&O, March 2015, p6

⁴ BBC Studios: Strengthening the BBC's role in the creative industries. BBC, September 2015, p7

⁵ Performance against public commitments 2014/15. BBC, 2015, p07

figures provided for the WoCC show that qualifying indies are again winning commissions when they are competing against in-house and non-qualifying indies⁶. 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.

11. We would therefore argue very strongly against any suggested 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.

Terms of Trade

12. In Wales specifically, the Act's provisions relating to the Terms of Trade has enabled a sector to develop which is able 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, as while there are only two Wales-specific PSBs, the fact that they are able to commission from a wide range of indies adds greater diversity of content.
13. 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 2003-04 ⁷. 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.
14. 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, but 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.

⁶ Performance against public commitments 2014/15. BBC, 2015, p23

⁷ A New Age of UK TV Content Creation and a New Role for the BBC. O&O, August 2014, p30, Fig 6

15. 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.
16. 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.
17. 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'.⁸
18. 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 Nation⁹. This drop demonstrates the receding commitment by the main UK PSBs to Nations, and particularly to Wales.
19. 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 it is the production company that has had the core idea, and found the talent to make the programme, then it is only fair it retains the IP.
20. 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:

'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

⁸ Public Service Broadcasting in the Internet Age: third review of PSB. Ofcom, July 2015, p9

⁹ Public Service Broadcasting in a Connected Society: third review of PSB – consultation paper. Ofcom, December 2014, p61, Fig 34

itself as it would be relatively easy for larger groups to subvert through corporate restructuring.’¹⁰

21. 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.

Teledwyr Annibynol Cymru - 2015

¹⁰ Consolidation, globalisation and vertical integration – Myths and realities. O&O, March 2015, p7