



## **Submission to DCMS Select Committee: Pre-legislative Scrutiny on the Draft Media Bill**

**May 2023**

### **About TAC's response**

1. TAC (Teledwyr Annibynnol Cymru) represents the independent television production sector in Wales. Our sector is a substantial component of the creative industries, in Wales and in the UK overall, with Cardiff alone having the third largest film and TV cluster in the UK<sup>1</sup>. Our sector provides economic, social and cultural benefits through supplying creative content. There are around 50 companies in the sector in Wales, ranging from sole traders to some of the leading players in the UK production industry. They produce content for the BBC, ITV, Channel 4, Channel 5 and Sky as well as other commercial broadcasters and platforms. Our member companies produce almost all the original television and online media content for Welsh-language broadcaster S4C, and a variety of radio productions for the BBC.
2. TAC is positioned to answer selected questions put by the Committee in its call for views and we have correspondingly restricted our comments below to those key areas.

### **Public Service Broadcasting**

#### **Q: Should the Media Bill provide a clear definition of what prominence in online services looks like?**

3. There is significant public investment and/or support invested in our public service broadcasters, which correspondingly are tasked with providing a large range of PSB content reflecting the lives of people all around the UK, including in Wales. The Government's 'Up Next' White Paper stated that the aim of including prominence in the Bill was:

“ensuring that PSB on-demand services are available to view by as many members of their intended audiences as practicable”.<sup>2</sup>

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<sup>1</sup> <https://www.cardiff.ac.uk/news/view/2510538-cardiff-has-third-largest-film-and-tv-cluster-in-uk,-study-shows>

<sup>2</sup> Up Next: The Government's vision for the broadcasting sector. DCMS, 28 April 2022, p24

This should be reflected in the degree of prominence required by the Media Bill to be given to these services.

4. We therefore draw the Committee's attention to the Draft Media Bill's use of the wording 'appropriate degree of prominence' in Clause 23(2): Sections 362AI(5)(a); 362AI(6); 362AL(1); and 362AL(3).
5. The word 'appropriate' is too open to interpretation and does not in our view sufficiently capture the importance of having UK PSB services prominent on platforms. The Committee will know that the need to strengthen rules around prominence has been one of the main focusses of the industry's efforts to encourage the Government to proceed with this legislation as soon as possible.
6. We therefore support the BBC and others' stance<sup>3</sup> that the Government should move to strengthen the wording in the above Sections by replacing 'appropriate' with 'significant'. We note that the BBC also calls in general for clearer detail on prominence in the Draft Media Bill and would certainly support the Committee scrutinising this area closely.
7. Finally on prominence, we note that 362AL(2) of the Draft Media Bill allows for regional variations between the degree of prominence provided. We understand that this is in order to ensure that services such as S4C get higher prominence in Wales and again we therefore welcome it.

**Q: Are proposals allowing a Public Service Broadcaster to meet its remit by online programming as well as linear appropriate?**

8. Audiences are consuming content in different ways and so the requirements for PSBs need to keep pace. We welcome the inclusion, in Clause 1(5)(d) of the Draft Media Bill, of commissioning for audio-visual services in the requirements on commitments to independent production and to productions from outside the M25.
9. It is important that meaningful quotas remain for the amount of independent productions required, which in real terms are on a level with the percentage of hours applied previously. We note that the Secretary of State will be determining PSB's independent production quota (Draft Media Bill Clause 8) and regional quotas (Draft Media Bill Clause 14) by means of a number of hours rather than the previously applied percentage of broadcast hours. We realise this is because of the inclusion of on-demand content, which is of course welcome. However clearly close attention will need to be paid to how this number of hours is calculated. DCMS has told us that this has not been finalised although it may possibly be a system where a figure is produced by averaging out the number of hours over the last five years. Our question is whether this will

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<sup>3</sup> [BBC's Clare Sumner calls for clarity around prominence in media bill. Broadcast, 28 April](#)

produce a figure which keeps pace with any increase in the volume of commissions by PSBs, and how quickly the adjustment would be made. We note that DCMS intends to publish regulations in draft during passage of the Bill specifying the proposed quotas for each PSB and these will need close examination.

10. In particular it should be ensured that the amount of commissioning does not fall below present proportionate levels in terms of the commissioning hours and spend which we have seen under the current legislation.
11. Elsewhere we welcome the retention of the legislation which protects independent producers' intellectual property rights in their negotiations with the UK PSBs and extends this legislation to include PSBs' on-demand services. This is extremely important – as the Committee will know, the regulated Terms of Trade between independent producers and the PSBs have been a key factor in growing the UK independent production sector, including in Wales, making it one of the world's leading sectors. Extending the Terms of Trade provisions will help to ensure this continues to be the case.

**Q: Are the proposals in the draft Bill adequate for securing the future of Channel 4 and supporting independent content producers?**

12. TAC supported the calls for Channel 4 to remain in public ownership on the basis that a privatisation would affect its skills and training programmes, its spend around the UK and also cause the publisher broadcaster model to be removed. All of these outcomes would be detrimental to the independent sector, not least in the UK nations and regions. While we are pleased the Government has reversed its decision on privatisation and we welcome additional requirements for Channel 4's spend on skills, we remain concerned about the removal of the publisher-broadcaster model and the impact it could have on independent content producers.
13. We have discussed with DCMS the nature of the protections needed for the independent sector. These include having a much increased independent production quota for Channel 4 as well as limit on the amount of in-house production it can be involved in.
14. Removing Channel 4's publisher-broadcaster remit carries with it the danger of reducing opportunities to new entrants to the market. This in turn would have a direct impact on the vibrancy and competitive nature of the sector which makes it so strong and successful. We note that EY's report on the potential impact of privatisation, stated that 66% of the content on ITV's main channel is sourced in-house<sup>4</sup>. If removal of Channel 4's publisher-broadcaster model resulted in a similar proportion of production lost to the independent sector, the results would be profound, with EY estimating that

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<sup>4</sup> [Assessing the impact of a change of ownership of Channel 4: An economic, social and cultural impact assessment of the impact of privatisation. EY, Sep 2021](#)

the present value of Channel 4's supply chain contribution to GVA over a ten-year period could be 29% (or £2.1bn) lower than Channel 4's current model.

15. While the Government has stated it will be looking at a higher independent production quota for Channel 4, we believe a stronger protection of Channel 4's commissioning of external production needs to remain within the legislation.
16. Rather than simply remove Section 295 of the Communications Act 2003, which restricts Channel 4's involvement in programme-making, we believe it should be replaced with a requirement for it to continue to source a 'significant' amount of its content externally (or conversely, that it can be involved in a 'limited' amount of programme-making). This would provide an element of future-proofing to any change in Channel 4's commissioning strategy and prevent any large change from taking place, which could have a destabilising effect within the sector.
17. This would be separate from any additional requirement set by the Secretary of State for its independent production quota, which applies only to qualifying production companies.

**Q: Do the proposals for S4C meet the legislative changes required by the independent S4C review in 2018, and are these changes still relevant and appropriate today?**

18. The proposals for S4C appear to be in accordance with the requirements of the 2018 review and these are still relevant and appropriate.
19. In particular, it is important for S4C to be able to have a presence on digital platforms and not simply operate a linear TV service. Since the Independent Review of 2018 we have seen increased migration of audiences to online and catch-up viewing. Ofcom reported in 2022 that

“In line with the long-term decline in viewing of broadcast TV, PSBs have seen both audiences and levels of viewing continue to fall. The weekly reach of PSB channels fell to 76% of all individuals in 2021, down from 80% in 2019, with less than half (47%) of 16-24-year-olds watching at least 15 consecutive minutes of the PSB channels in an average week.”

S4C needs to be able to adapt its content for different platforms and have its content easily accessible to those audiences.

**Q: Are there any issues missing from the draft Bill within the scope of public service broadcasting, video-on-demand or radio?**

**Q: Do you have any recommendations for additional or amended drafting to the draft Bill?**

**Recommendation 1: protection of requirements on PSB specific genres**

20. The changes to public service remits in the Draft Bill has removed any requirements for the PSBs to provide content in specific genres.

21. The replacement of section 264(6) of the Communications Act 2003 with the new wording in Clause 1(2) will mean there is no longer a reference to specific genres which PSBs must make available and on which Ofcom must report in order to demonstrate that the PSBs are providing a range of content.

22. For example, Section 264(6)(b) of the Communications Act 2003 states:

(6)A manner of fulfilling the purposes of public service television broadcasting in the United Kingdom is compatible with this subsection if it ensures—

“... (b)that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts;”

The nearest equivalent in the new Draft Media Bill is Clause 1(5)(b)(i). This does contain a requirement for programming which reflects the lives of people from around the UK, which we welcome, however it makes no reference to such specific genres in terms of fulfilling cultural objectives. The Communications Act 2003 also specifies for output in genres such as education, science, social issues, international matters and regions and similar beliefs, but again these are absent in the Draft Media Bill.

23. If each individual PSB is relieved of its duty to provide content in a wide range of specific different genres, this could cause a decrease in the opportunity for producers of such genres to take a different ideas to a wide range of broadcasters, as exists at present, impacting on the competitive process and disincentivising producers to put forward ideas in some less-popular genres. This could lead to a smaller amount of culturally and /or educationally beneficial content being made, in turn leading to a less beneficial PSB system in terms of addressing all audiences’ needs and commissioning in already underserved genres.

24. We have already seen this problem arise in the genre of children’s television, where the lack of opportunity to provide advertising has led to under-investment by most PSBs. In recent years this led to the creation, using a small amount of TV Licence Fee funding of the Young Audiences Content Fund. Given that further funding has not been made available for the YACF, despite the BFI reporting on its success earlier this year<sup>5</sup>, there is concern that this will depress the amount of UK original production in children’s TV, compounded by a decision by Ofcom to allow the BBC to reduce its original commissioning on CBBC.

25. Without the protections for specific genres, we could see an increased tendency by the PSBs to gravitate towards commissioning only in those genres delivering larger audiences, leading to a reduction in range and diversity of content provided to UK

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<sup>5</sup> See <https://www.bfi.org.uk/get-funding-support/create-films-tv-or-new-formats-storytelling/young-audiences-content-fund>. Accessed 9 May 2023

audiences. A report for Ofcom by Mediatique in 2020, commissioned to inform the regulator's fourth PSB review, stated:

“as revenues decline, and broadcasters seek to shave costs in line, they will continue to be incentivised to spend disproportionately on popular genres (drama; entertainment; factual entertainment) to maintain audiences, reducing to a bare regulatory minimum their expenditure on specialist genres, regions programming and local/regional news – in the aggregate and on a per hour basis. There will be no incentive to make more than the regulatorily imposed number of hours in ‘pure’ PSB genres (where quotas exist) or to spend more than the bare minimum per hour.”<sup>6</sup>

26. While Ofcom will continue to be charged with overseeing the PSB's commitment to providing public service content, the Draft Media Bill removes the requirement for them to monitor PSBs' output in these specific genres. It is therefore not clear how Ofcom will continue to monitor this and correspondingly how they can inform the Secretary of State, who will have the power to impose new quotas, of whether there is an issue around the levels of provision of public service content in specific genres.
27. Ofcom is generally – and understandably - reluctant to move beyond what it is required to do. It has also sanctioned further reductions in PSB requirements. For example, in terms of the BBC it has, in its latest Ofcom-BBC Operating Licence and associated work, allowed a reduction in BBC requirements to provide programming in some genres both in television and radio including in the areas of nations content and, in a separate consultation preceding the Operating Licence Review, children's content.
28. We therefore question the wisdom of removing the requirements on providing content in specific genres and ask the Committee to scrutinise this issue closely.

### **Recommendation 2: Rules on productions fulfilling out-of-London quota requirements**

29. Ofcom currently sets out-of-London PSB TV production quota requirements. It draws up guidelines which identify which productions can qualify as ‘made outside the M25 area’, in order to meet the requirements in Sections 286 and 288 of the Communications Act 2003. It last consulted on these guidelines in 2018-19 and at the time TAC expressed concerns that the guidelines may not be strict enough.
30. Wales has many ‘home-grown’ independent production companies which are set up by local production and business talent, with their HQ in the nation and which employ locally and spend in their communities.
31. However there are also productions qualifying as outside the M25 which are made by often-temporary subsidiaries of London-based companies. These businesses tend to employ a lot of talent from outside Wales to work on productions made in the nation.

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<sup>6</sup> [Future models for the delivery of public service broadcasting: a review for Ofcom in support of its review of the future of PSB. Mediatique, December 2020, p35 para 4.23](#)

They are also more likely to spend on post-production and other services outside Wales. Profits are returned back to London-based companies rather than adding to the economy in Wales.

32. TAC regularly discusses this issue with Ofcom and the Draft Media Bill is an opportunity to examine whether there is a way of tightening up the legislation to ensure that productions listed as being made in Wales are from 'homegrown' companies which invest in Wales and its creative industries.

### **Recommendation 3: BBC contribution to S4C**

33. Clause 29(2) of the Draft Media Bill allows greater flexibility in the relationship between the BBC and S4C, on the matter of it providing content to S4C. Currently, the BBC supplies 10 hours of TV content in the Welsh language to S4C each week, the cost of which equivalent to around £20m.
34. The new Clause amends this to allow an alternative arrangement to exist between the BBC and S4C. In the absence of any such arrangement being agreed to 10 hours must continue.
35. We would like to see an additional requirement that the value of the content by the BBC to S4C in any alternative arrangement under this requirement remains at least at its current levels, plus inflation.