**BRITISH FILM INSTITUTE**

**Response to:**

# **Ofcom: Review of the operation of the TV production – terms of reference**

**November 2015**

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| Consultation title:Ofcom: Review of the operation of the TV production – terms of reference |  |
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1. **Executive summary**

# Introduction

# The British Film Institute (BFI) welcomes the opportunity to comment on the scope and the content of **Ofcom’s review of the operation of the TV production sector.**

# The BFI believes that there is a strong symbiotic relationship between the television production sector and other areas of content creation across the creative sector including but not limited to feature film and video games.

# We therefore believe that a healthy television sector is crucial to the long term future of the creative sector in the UK.

Legislative Framework

The BFI supports the existing legislative framework governing the relationship between the independent production sector and the Public Service Broadcasters (PSBs).

# We agree strongly with the list of benefits associated with the government’s interventions in the television production sector, namely ensuring plurality of ideas and cultural diversity, stimulating the growth of SMEs and balancing trends toward vertical integration.

Over the past year the BFI has lead the way in ensuring that the public funds which are invested in film production are explicit in how they represent the diversity of the UK. The ‘3 ticks’ scheme was piloted during this time and proved that there was a need for this area to be highlighted. Now all applications to the BFI Film Fund will have to evidence how they will contribute to the delivery of BFI diversity standards; this is also relevant to all of our funded partners across the UK

On the key issues of the **independent quota** and the **Codes of Practice (terms of trade)** the BFI notes the huge success that both these interventions have been. Nonetheless the BFI is mindful that the arguments are on-going amongst interested parties for and against change. This is a crucial area for the government to consider and the BFI looks forward to playing an active role in the discussions as they progress.

The definition of an **“independent” production** is defined by the Broadcasting Order 1991 is clearly crucial to the long term health of the television production sector. This definition is amended from time to time. Indeed the latest change was made only last year in the Broadcasting (Independent Production) Order 2014.

As such the BFI believes that there is no evidence that the current definition needs to be amended outside the mechanism (statutory instrument) that already exists.

The BFI applauds the Secretary of State for Culture, Media and Sport for raising the possibility of new regulation that might help promote content investment, particularly in the “at risk” PSB genres such as current affairs, and the arts.

1. **About the BFI**

In 2011 the BFI became the lead organisation for film in the UK. It is now a Government arm’s-length body and a distributor of Lottery funds for film.

The BFI is a registered charity governed by Royal Charter. The Royal Charter notes :

*“The objects of the Institute shall be to encourage the development of the arts of film, television and the moving image throughout Our United Kingdom, to promote their use as a record of contemporary life and manners, to promote education about film, television and the moving image generally, and their impact on society, to promote access to and appreciation of the widest possible range of British and world cinema and to establish, care for and develop collections reflecting the moving image history and heritage of Our United Kingdom".*

Our mission is to ensure that film is central to our cultural life, in particular by supporting and nurturing the next generation of filmmakers and audiences. The BFI serves a public role which covers the cultural, creative and economic aspects of film in the UK.

It delivers this role:

* + As the UK-wide organisation for film, a charity core-funded by government;
  + By providing Lottery and government funds for film across the UK;
  + By working with partners to advance the position of film in the UK.

In October 2012, the BFI published ‘Film Forever, Supporting UK Film 2012-2017’, which set out its strategy for the next five years, following an extensive industry consultation. It described the activities underpinning the BFI’s three strategic priorities for:

* + Expanding education and learning opportunities and boosting audience choice across the UK;
  + Supporting the future success of British film; and
  + Unlocking film heritage for everyone in the UK to enjoy.

To that end, the BFI helps ensure that public policy supports film and, in particular, British film.

1. **Context**

The UK independent television sector is one of the biggest in the world. Despite the difficult economic climate, independent television sector revenues have grown from £1.3 billion in 2005 to nearly £3.1 billion in 2013, making a major contribution to the UK creative economy and experts.

The BFI is a strong supporter of the UK public service broadcasting system. Public service broadcasting in the UK is a hugely valuable public asset which delivers economic, social, and cultural and citizen benefits to viewers.

1. **Key issues**

In drafting our response to this consultation paper, the BFI has selected areas of the “focus and scope” of the upcoming review to comment on. As the review gathers pace, we would the opportunity to comment on the key questions the review is tackling.

Legislative framework

As noted in the consultation paper the regulations governing the relationship between independent production and the PSBs is driven by two main interventions introduced in the Communications Act 2003:

* an independent production quota (amending the 1990 Broadcasting Act)
* Codes of Practice (governing terms of trade).

***Independent production quota***

We are aware of the current arguments around possible changes to the independent quota. We believe that the quota system needs to balance the need to produce high quality PSB programming and the need to drive value for money for the delivery of such content.

***Codes of Practice (terms of trade)***

The Codes of Practice is also a vital area of intervention. There is no doubt that the introduction of the terms of trade has been a massive catalyse to the growth of the television production sector and its success. At present, the BFI is not aware of any evidence that the current arrangements need changing.

On both of these interventions, the BFI is mindful that the arguments are on-going amongst interested parties for and against change. This is a crucial area for the government to consider and the BFI looks forward to playing an active role in the discussions as they progress.

***The definition of an “independent” producer***

The consultation paper notes that the definition of what is an independent producer is also “within the scope of this review”.

What qualifies as an “independent” is clearly crucial to the long term health of the television production sector. As such, any amendment to the existing definition needs to be underpinned by strong supporting evidence for change.

The definition of an independent producer as per this legislation is a producer:

a) Who is not employed by a broadcaster;

b) Who does not have a shareholding greater than 25% in a UK broadcaster; or

c) In which any one UK broadcaster has a shareholding greater than 25% or any two or more UK broadcasters have an aggregate shareholding greater than 50%.

The argument for changing the definition of an “independent” producer cites the consolidation of production companies as a reason to examine who qualifies.

The BFI agrees with Ofcom’s statement that “despite the trend of consolidation and increasing concentration in the market, smaller independent producers have actually increased market share.”

This is evidenced by PACT’s 2014 census that shows the distribution of commissioning spend across different sizes of independent producers shifted back in favour of smaller and medium-sized producers in 2013. In particular, Channel 4 and Channel 5 increased their proportion of spend with smaller independent producers.

During this period, the share of the largest independent producers in the market (with a turnover greater than £70m) has gone down. The turnover of mid-tier and small independent producers is rising.

We also note that any consolidation in the market means in many cases that those new production companies no longer qualify for the 25% independent production quota and therefore mean that there is more commissions available to the independent sector as a result of consolidation.

Ultimately of course it is at the discretion of each PSB whether or not they decide to offer the Terms of Trade to producers who do not meet this qualifying criterion as part of commissioning negotiations.

The BFI notes that no convincing arguments were made to Ofcom during the PSB review about the need to amend the definition of an independent producer. As a consequence, and given its critical role within the television production ecosystem, the BFI concludes that there is no compelling evidence at the present time to amend the current definition.

Benefits associated with government intervention in programme production

# We agreed strongly with the list of benefits associated with the government’s interventions in the television production sector, namely ensuring plurality of ideas and cultural diversity, stimulating the growth of SMEs and balancing vertical integration trends.

As the majority of the projects that we invest in and support are developed by independent producers and SMEs, we believe that to ensure that ideas and delivery have plurality at the heart of them there is a need for diversity to be placed at the centre of all decision making. We would therefore ask that the approach that the BFI have taken be used as the foundation for all PSB programme production.

For key work streams

The four key work stream identified by Ofcom for this review seem appropriate. The BFI looks forward to taking part in the debate.