Submission to BBC’s consultation on the BBC’s draft Distribution Policy

April 2018
Introduction

1. Pact is the UK trade association which represents and promotes the commercial interests of independent feature film, television, digital, children’s and animation media companies.

2. The UK independent television sector is one of the biggest in the world. Despite the difficult economic climate, independent television sector revenues have grown to around £2.5 billion in 2016.¹

3. In 2016, the BBC spent £433 million on commissions from UK external producers.² In our recent census we found the BBC spent the highest proportion of its external commissioning budget on smaller producers with a turnover of less than £10m.³

4. BBC Commissions are important for independent producers as they account for 29% of all UK commissions, making the BBC the biggest buyer of content made by independent producers in the UK.⁴

5. Pact recognises the important role that the BBC plays in the UK television marketplace and how it nurtures and adds to the finely balanced TV production ecology in the UK. We are pleased by the recently renewed charter whereby the license fee has been secured for another 11 years. Independent production companies and the content commissioned by the BBC helps it be a positive innovator and experimenter in the marketplace. 

6. For further information, please contact Pact’s Head of Policy, Emily Oyama, at emily@pact.co.uk or on 020 7380 8232

¹ Pact Census 2017
² BBC Annual Report 2016/17
³ Pact Census 2017
⁴ Pact Census 2017
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Overview

As the BBC prepares to deliver all its services over the internet there is an opportunity to grow and support new business models for producers. We want the BBC to consider the impact of their distribution arrangements on intellectual property rights.

Although the Policy in itself does not currently infringe third party intellectual property rights it will have an indirect impact.

Pact does not want the experimentation of the BBC to be the detriment of the UK audio visual economy. New producers starting out in their careers and being commissioned by the BBC are required by the BBC to forge their intellectual property rights for relatively low fees. This has the effect of limiting their potential business models and their ability to generate secondary revenues. With a restricted source of revenue this will impact on a company’s ability to hire talent and grow their businesses. This can become a disincentive for a company to work with the BBC.

We also remind the BBC that Ofcom expect the BBC to have a distribution policy that is fair, reasonable, and non-discriminatory. This means the licence fee payer can access the services in a cost effective way. The majority of people in the UK access the BBC through broadcast services. We acknowledge that the BBC want to accommodate early adopters of new technology but this shouldn’t be at the expense of the majority who continue to access BBC public Services through broadcast TV. Any new projects to accommodate these early adopters should be closely monitored using the principles outlined in the BBC Charter especially under the stewardship of public money. The BBC must cover regularity, propriety, value for money and feasibility for any new project or experimentation.

Consultation questions

1. Has the BBC identified reasonable conditions in relation to the distribution of its public services?

1.1. Pact agrees with the conditions identified by the BBC to manage how BBC Public Services are distributed. We particularly agree for the need to meet value for money conditions and to think about the proposed market impacts in relation to any distribution strategy both direct and indirect.

1.2. We have some reservations in relation to branding and whether this is entirely appropriate and relevant to the key requirement of ensuring access to the BBC public Services is easy as possible. A careful balance needs to be struck between ensuring the ease of access without impeding competition. We have commented on each of the conditions below:

Prominence

1.3. Pact understands that all BBC content is defined as PSB. It is therefore appropriate that it should receive reasonable due prominence as a PSB benefit which it is entitled to in return for delivering many public service
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benefits.

Pact therefore supports the inclusion in the policy conditions outlined of a requirement for BBC content to be guaranteed due prominence on Electronic Programme Guides.

**Editorial Control**

1.4. We support this condition in order to comply with the legal requirements set by Ofcom and the BBC editorial guidelines. We agree that any platform whose activities may bring the BBC into disrepute or where there is doubt over the legality or editorial policy of an aspect of a platform then the BBC should have the ability to remove content.

**Branding and Attribution**

1.5. We accept and respect that the BBC should have a reasonable opportunity to present branding alongside its content and services to help easily identify the content coming from the BBC. But this should not be at the expense of the branding of independent producers or affect their ability to properly exploit their own intellectual properties as they see fit.

**Quality**

1.6. We agree with the conditions set out under quality but would caution the BBC to consider the economic impact of providing quality services at any cost. The BBC will have a range of distribution choices to make sure anyone can access the BBC’s services we hope that following this policy it does not inadvertently exclude those with limited economic means from enjoying BBC content. The majority of people in the UK continue to watch and access the BBC through broadcast TV. In the last Ofcom PSB Annual research report it confirmed that overall viewing on the TV set is resilient; each week 85% of people in the UK who have a TV in their household watch PSB channels. The BBC must remember this. There is a risk that with a focus on providing the highest quality services it could miss out those who need access to the service for as low a cost as possible. This would be in contravention to the charter requirement of having a policy that is fair, reasonable and non-discriminatory.

**Data**

1.7. If the data refers to content made by indies it should also be shared with indies and not just platforms.

**Free Access**


1.8. We agree that there should be no incremental cost attached to accessing the BBC’s content and services and that there should be no advertising or sponsorship placed in adjacent to any BBC content.

**Value for Money**

1.9. Pact agrees that there should be rigorous stewardship of public money in accordance with the principles as set out in the BBC Charter: those being regularity, propriety, value for money and feasibility. We want to make sure that procurement, projects and process are systematically evaluated and assessed to provide confidence about the value within any project. It is in the wider public interest for the BBC to focus on these elements and not only focus on incremental audience value. It is our understanding that ‘generally’ applying value for money would go against the BBC Charter which has the stewardship of public money at the forefront of its policy intentions – the wider public interest is something to be taken into account and not an end in itself.

1.10. This is especially important as the BBC experiments with new ways to deliver content – they need to think about all audiences and not just those users who access BBC content through an internet connection only – this appears to be 4.5% of homes according to the BARB establishment survey 2016. 95.5% of the UK population have a TV and most access via digital terrestrial TV (11 million homes). The new services which require experimentation should not be at the detriment of those who have lower incomes or difficulty accessing more expensive and newer services that require higher quality tech or subscriptions.

2. **Are the conditions appropriate to ensure that the distribution of the UK public services enables the delivery of the BBC’s public purposes and the fulfilment of the BBC’s mission in the interests of its audiences across the UK?**

2.1. We note that the scope of the consultation is only in reference to the distribution of services in the UK but this ignores the reality of who will access content through platforms especially through internet platforms. We have taken a wider perspective because content that is distributed through internet platforms inevitably raises questions about who will have the ability to access – given that this policy is for the UK Pact would welcome that UK specific content is geo-blocked for IP purposes to ensure only those in the UK are able to access.

2.2. The strategy and policy adopted by the BBC will inevitably mean content which has been licensed to the BBC will lose its value if this is delivered via internet services like Facebook, Snapchat and Twitter which can be seen by those outside of the UK. It will mean that content is effectively given away for free. At a time when many producers starting out are struggling to get established. In the short term producers may be willing to give up their content for relatively small payments and no “uplift” for global distribution
and loss of secondary revenues. Pact contends that this amounts to unfair exploitation of their content.

2.3. We also question the contention that this is an experimental approach and requires a case by case negotiation. This generally leaves suppliers in a poor negotiating position and undermines the principles of the terms of trade that were previously enforced on BBC3.

2.4. Pact also would like to reiterate the need to ensure anyone can access its services and to not restrict distribution to only internet delivery services to avoid exclusion of particular groups within the UK population.

2.5. The BBC’s Mission is to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain. To achieve the ability to serve all audiences in the UK it should remember that it must ensure that it takes into account the costs it will incur in making the public services available on different platforms and devices. Making access as inclusive as possible is also important.

3. **Are the conditions proportionate and targeted given the BBC’s duty under Article 11 of the Charter to have particular regard to the effect of its activities on competition?**

3.1. There should be more focus on the impact of the distribution strategy on both the direct and indirect market impacts of the BBC’s actions through its distribution strategy. Currently there is a lack of analysis especially in relation to digital content.

3.2. For example the BBC should acknowledge that indirectly there are competition issues when they decide to unilaterally take the rights of short form content produced by independent producers. By concentrating on this it impacts indirectly on smaller producers’ revenues, capacity, scale and approach to the market.

3.3. Furthermore the strategy and policy recognise the difficulty in regulating and encouraging competition but offer no specific solutions to this. We question the policy on digital distribution. Digital content suppliers should retain the IP rights to the content which they produce in the same manner as TV producers.

3.4. The BBC could play an important role as a catalyst for growth in the digital economy by opening out more opportunities to the digital sector. This should include flexibility in IP rights ownership to enable different business models to develop. This is more important than ever given that the government’s policy to open up competition for digital content.
3.5. Currently however the BBC is exacerbating a trend that is happening online when it comes to remunerating content creators. Through BBC 3 they are paying minimum rates for short form content which is then shared with millions of users who are not license fee payers. This means producers can not geo-block their content and the subsequent value of their content is lost. As it currently stand the distribution arrangements could increase this.