

Comms Review Series: TV Producers Want More Regulation

In their submissions to the Government's review of the Communications Act, independent production houses are calling for the regulatory model governing PSB funded television content to be extended to new sectors of the economy. The public service broadcasters disagree. They think it's time for deregulation. There is one point of agreement: public funding is essential if British television is to remain financially viable for both independents and PSBs.

The Producers Alliance for Cinema and Television (Pact) is the representative body of the UK independent production industry. Pact argue in their submissions to the communications review that the struggling independent sector owes its existence to two pieces of legislation, the 2003 Communications Act, which ushered in new terms of trade, and the 1990 Broadcasting Act, which outlined independent production quotas for public service broadcasters. They insist that any contraction of those regulations could be disastrous.

The "terms of trade", along with a Code of Practice set out by Ofcom, refers to the agreements that cover interactions between independent production houses and public service broadcasters regarding commissioning and licensing content. Before 2003, negotiations between the two groups were skewed in favour of powerful broadcasters. An opaque bidding process on the part of PSBs, who were and still are the largest funders of UK originated television content, made it difficult for independents to partition rights on a project by seeking other sources of funding. This led to many projects being fully funded by a PSB, in which the broadcaster took full ownership of the intellectual property rights of the content even if the broadcaster had limited or no interest in exploiting the IP beyond domestic broadcasting.

The new terms of trade were an attempt to balance the negotiations between independents and PSBs and create a competitive market for the exploitation of IP rights for UK television and film content in secondary and international markets. Separate negotiations, overseen by Ofcom, between Pact and the PSBs (BBC, Channel 4, Channel 5, ITV) led to four distinct terms of trade, in all of which the production house retains the majority of IP rights.

In addition to the terms of trade, PSBs operate under several programming requirements referred to as the 'Tier 2' quotas. These impose minimum levels on news and current affairs programmes, original programmes, and regionally and independently produced programmes. The independent production quota ensures that, at a minimum, 25% of programming comes from independent production houses.

Submissions by the BBC and Channel 5 advocate reforming both the terms of trade and independent programming quotas, arguing that the independent sector is now robust enough and the market competitive enough that regulation is no longer necessary. Pact counters that argument by suggesting that while the larger independents, the "superindies", may have substantial bargaining power, the terms of trade, coupled with the quota, are vital for new and smaller players.

While there is significant disagreement between the two parties, not all is fraught with discord. There is at least one point on which both parties agree: decreased funding for PSBs is bad for British television. Though funding for public service broadcasting has fallen, the PSBs still represent the largest investment in locally produced television in the UK. Both the PSBs and the independents want that funding to continue. Whether that shared interest will help them resolve their regulatory disputes remains to be seen.

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