

## About Indie Club

Indie Club has over a thousand members made up of those who run independent TV production companies, post-production facility houses and TV service companies in the nations and regions, as well as freelance programme makers based all around the UK. We very much welcome the opportunity to respond to Ofcom's review of Regional TV Production and Programme Guidance and applaud the thorough work done by Ofcom so far.

Indie Club is primarily made up of companies and individuals committed to growing production bases outside London and so we believe Ofcom's guidance in this area needs to be as precise as possible, because it is of crucial importance to both our members' livelihoods and their ability to represent the UK creatively.

We believe British television plays a crucial role in unifying the country and this can only be done effectively if diverse voices from all around the UK have the opportunity to build careers in TV, have their abilities nurtured and are empowered to tell their own stories. Life in Britain's nations and regions should not be persistently captured through a London lens and our stories edited in the capital city's facility houses.

Indie Club thinks the reason British TV has found such success internationally is because since the late 1950s it has drawn on the very best talent from all around the country, operating as a creative meritocracy. In France, you can only work in TV if you are wealthy enough to live in Paris, and we believe this is one reason France does not have a strong television production industry. We believe regulators, broadcasters, the owners of independents, and those running independents based in London and outside, need to come together to work hard to ensure our highly successful industry doesn't end up in a similar situation, because London is not an affordable place to live for the vast majority of British people.

Indie Club therefore applauds Channel 4 opening its new HQ in Leeds as well as two creative hubs in Bristol and Glasgow. C4's initiative to move commissioners out of London will make a huge difference to producers and freelance programme makers based in the nations and regions. We believe the reason 90% of revenues are currently generated by producers with their main HQ in London is a direct consequence of more than 90% of TV commissioners – the holders of the purse strings – also being based in the capital. Indie Club hopes the BBC will soon follow Channel 4's move, by basing more commissioners in the nations and regions.

Indie Club therefore recommends that as Ofcom updates its criteria and guidance as to what constitutes Made Outside London programmes, the regulator also ensures a level playing field for the PSBs, so Channel 4 doesn't end up doing much more than the other public service broadcasters.

Indie Club believes each programme registered as Made Outside London needs to create and/or safeguard as many jobs as possible for freelancers living in the nations and regions, thereby leaving a very real creative and economic legacy. We know this was the intention of the MPs who passed the Communications Act 2003, which is very clear in its requirement for the PSBs to invest in production centres around the UK by commissioning a range of different genres of TV programmes.

Well-crafted legislation and regulation are among the reasons British television producers are world class and able to export their programmes and formats internationally. As Channel 4 prepares to move hundreds of its staff outside London for the first time, we are at a key juncture of television history, and it is vitally important Ofcom gets its criteria and guidance right, so this new era creates opportunities for as many of our diverse citizens as possible.

Indie Club's board is made up of very experienced producers, editors and production managers from right across the UK – see [www.indieclub.tv](http://www.indieclub.tv) and has approved this submission.

### **About Cat Lewis & Charles Lauder**

Cat Lewis has worked continually as an Executive Producer based outside London for the last 17 years, creating hundreds of jobs. She has won two Baftas, two national RTS awards, an International Emmy and lots of other awards. Since 2007 Cat has also been a CEO, running her own company, Nine Lives Media, which is based in MediaCity, Greater Manchester. She currently manages a staff of 54, making a range of programmes for the BBC, Channel 5 and Channel 4 including the weekly series Songs of Praise. 30% of the staff at Nine Lives are from diverse backgrounds and over a thousand young people, mainly from the north, have benefitted from one or two-week work experience placements with the company. Cat is the Chair of Indie Club, which she set up in 2006 to ensure producers in the north worked together to retain and nurture a pool of off-screen freelance talent. For six years, Cat was Chair of PACT's Nations & Regions Committee, so she is very familiar with the Made Outside London regulation. She also served as Vice Chair of PACT for two years and was then Vice Chair of Creative Skillset's TV panel for two years. Cat is a Bafta Judge, Chair of the RTS in the NW and a Global Ambassador for Manchester.

CEO of Indie Club, Charles Lauder, worked as a TV director for many years on programmes including 'Coronation Street'. Whilst working for ITV, he set up the Positive Action Bursary Scheme, one of the industry's first initiatives to promote diversity, which provided funding for post-graduate minority ethnic students.

From 2006 to 2016 Charles was Chair of the Board at Contact Theatre – a multi award winning beacon for innovation, diversity and young people’s talent. In 2013/14, Contact won the North West Business Leadership Team Lever Prize, the UK Theatre Award for the Promotion of Diversity and the Co-op Respect Award for Inclusive Venue of the Year. Charles also secured £3.8m grant from Arts Council England (ACE) as part of a £6.5m project to transform the building and secure the next 20 years of provision for Contact’s young people.

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| <p>1/</p> <p><b>Ofcom’s Annex 7, p1 para 3, proposed form of wording:</b></p> <p><i>The aim of the regional production obligations is to support and strengthen the television production sector and creative economies of the UK’s nations and regions. The regional programming obligations also aim to help strengthen the television production sector in the nations and regions, while also ensuring that audiences have access to programmes which are relevant to them and about their local communities. The broadcasters should keep this in mind when having regard to the Guidance.</i></p> <p>Question</p> <p>1) Do you agree with our proposed change to articulate the intention of the regional production obligations at the start of the Guidance? (See wording at Annex 7).</p> | <p>Confidential? – No</p> <p>Indie Club welcomes Ofcom’s suggestion to articulate the intention of the regional production obligations at the start of its guidance, because there have sadly been many examples of abuse. However, in order to really start to balance Britain’s economy, we strongly believe Ofcom needs to go further. Our suggested additional sentences are highlighted in turquoise.</p> <p><i>The aim of the regional production obligations is to support and strengthen the television production sector and creative economies of the UK’s nations and regions. The regional programming obligations also aim to help strengthen the television production sector in the nations and regions, while also ensuring that audiences have access to programmes which are relevant to them and about their local communities. The broadcasters should therefore aim to commission content from locally based producers, who are committed to employing local talent in a range of senior roles and they should ensure that wherever possible, both pre-production and post production are undertaken outside London. The PSBs should also increase the number of commissioners based outside the capital, with the goal of ensuring producers in the nations and regions create more returning series.</i></p> <p><b><u>EVIDENCE HIGHLIGHTING THE NEED FOR THE FURTHER CHANGE INDIE CLUB RECOMMENDS:</u></b></p> <p><b><u>London’s Increasing Dominance</u></b></p> <p>Since the Communications Act 2003 was passed, London has been allowed to become more and more dominant to the detriment of TV job creation and safeguarding in the nations and regions. Oliver and Ohlbaum’s report of September 2018, commissioned by Ofom, states on page 19, “Nearly 90% of independent sector revenues are generated by producers who are primarily based in London.”</p> |
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### Ofcom's Key Role

Producers in the nations and regions remain reliant on PSBs (see page 1 of O&Os report) which is where the majority of their commissions come from, so it is extremely important that Ofcom ensures its criteria and guidance is effective.

### PSB Spending Outside London is Declining

On page 16 of O&O's report is an important graph which illustrates that overall, PSB spending in recent years has dropped outside London, after a period of growth following the opening of MediaCity in 2011. The BBC and Channel 4's investment in Made Outside London programmes has grown, but the capital city currently benefits from 57% of PSB investment overall.

### Decline in Indies Based in the Nations & Regions

It's therefore not surprising that the report also evidences on page 20, that there has been a serious decline in the number of active production companies in the English regions between 2008 and 2017 - from 90 in 2008 to 60 in 2017. The number of active producers in the Midlands and East has fallen significantly since 2008, from 13 to just 4. This drop in numbers cannot all be put down to consolidation. Indie Club welcomes the fact that in Scotland there's been an increase from 8 to 20, Wales 7 to 13 and in NI from 5 to 6 however overall the number of companies based outside London has shrunk from 110 in 2008 to 99 (see page 29 of the Oliver and Ohlbaum's report).

O&O also reveals evidence that in recent years, the majority of Made Outside London programmes are produced by companies with a London HQ and only a secondary base in the nations or regions. In 2014 - 69% of programmes were made by such companies. In 2015 it was 65%; 2016 - 63% and in 2017 it was 66%.

Indie Club positively welcomes London companies operating production offices in the nations and regions, provided these companies create and safeguard jobs for local people, and to maximise their investment they should commit to always doing their pre and post production outside the capital, other than in exceptional circumstances. This is how the very best production companies with a London HQ, already operate, including Blakeway North.

Ofcom has a crucial role in outlining this best practice through its criteria and guidance, so that a level playing field is created for all those operating in the nations and regions, and registering their programmes as Made Outside London.

An increasing number of indies are owned by international broadcasters and therefore this legislation needs to be detailed and specific in its requirements, otherwise those running these companies will be under pressure to just spend as little money as possible.

#### Lack of Long-term Investment by Indies HQ'd in London

The problems come when London based companies set up a base outside the capital but don't base creative staff there and still insist on doing all their post-production in London. As a general rule of thumb wherever the editing or post production happens is where the senior creative staff including the exec producers are based. If that is in London rather than in the nations and regions, then job creation and safeguarding outside the capital will be seriously limited. The impact of this lack of true investment outside London is huge - off screen freelance talent pools are not nurtured; there is not enough investment in post-production facility houses and other service companies, and so instead of growing, the creative clusters falter and ultimately fail. The London based industry then shouts for a London based solution and bring senior staff out of the capital into the nations and regions for as short a period as possible – employing local people into only junior roles. Indie Club believes this common working practice breaks the intention of the Communications Act 2003, a law which was passed by MPs all over the country, and Ofcom needs to ensure its new criteria and guidance eradicates it.

It is particularly important that the BBC creates jobs all around the country, because people all over the UK are legally required to pay the licence fee, and therefore BBC commissioners are obligated (as is stated in the BBC's Charter) to ensure the public money they spend on Made Outside London productions, results in job creation in the nations and regions, not just in London.

The Indie Club welcomes the BBC's Director General's recent commitment to spend more money outside London and hopes this is done in a strategic way that creates sustainable production bases around the UK and long term benefits for the sector.

### **Ofcom to Lead Industry Working Together**

**Ofcom has always stated that if it becomes apparent London based producers are dominating regional production, it will consider further changes to its regulation. The evidence from the O&O report and many other industry reports in recent years, as well as anecdotal evidence, illustrates the very real need for this to happen.**

**The whole TV industry now needs to commit to working together, led by Ofcom, to create a long term strategy to break London's iron grip on TV's jobs – particularly those at senior level. We need to work together to build sustainable freelance talent pools in production centres around the UK.**

**Ofcom needs to lead the industry, by improving its regulation and guidance, so the situation improves. Commissioners and managers working for PSBs should be clearly tasked with creating more returning series outside London.**

**Everyone who works in TV at a senior level knows returning series are vital, but 86% of current returning series are made by London producers. The way to maximise the chance of creating returning series, is to commission new series from producers based in the nations and regions, however, page 33 of O&O's report reveals 75% of new series in 2017 were commissioned from London based producers.**

**Indie Club salutes Channel 4's decision to create a daily returning live series broadcast from Leeds and is delighted it's been put out to tender. The series offers an amazing opportunity to nurture the next generation of programme makers in the north.**

**In an industry based on relationships, in which London now plays such a dominant role, putting programmes out to tender in the way Channel 4 has done with this new opportunity in Leeds, levels the playing field and should be used much more widely as a way for PSB's to create more returning series in the nations and regions.**

### **More Commissioners in the Nations & Regions**

**As television is an informal business based on relationships, unless more than the current handful of commissioners are based outside London, the situation will not improve. Indie Club applauds Channel 4's moving commissioners outside London and hopes the other PSBs will do the same.**

These out of London commissioners need to be given the long term goal of creating returning series in the nations and regions, which will then underpin the production bases around the country, making them sustainable.

Apart from the economic penalties suffered by people living outside London as a result of current working practices in television, there is also a major, negative impact on representation in the media.

It should not be considered acceptable by Ofcom or the UK's PSBs that people from around the UK continue to be disenfranchised by having their lives routinely filmed through London lenses and edited in the capital city's facility houses. Instead, people living in the nations and regions should be more regularly commissioned to tell their own stories, as they used to for the 4 decades from the late 1950s to the late 1990's, via the excellent pan-UK network of ITV regional franchise companies. Many commentators believe people voted to leave Europe because they feel unrepresented by the London based media. The PSBs have an obligation to do all they can to help unify the UK at this difficult time.

**INDIE CLUB THEREFORE RECOMMENDS OFCOM ADOPTS THIS WORDING FOR ITS GUIDANCE:**

*The aim of the regional production obligations is to support and strengthen the television production sector and creative economies of the UK's nations and regions. The regional programming obligations also aim to help strengthen the television production sector in the nations and regions, while also ensuring that audiences have access to programmes which are relevant to them and are about their local communities. The broadcasters should therefore aim to commission content from locally based producers, who are committed to employing local talent in a range of senior roles and they should ensure that wherever possible, both pre-production and post production are undertaken outside London. The PSBs should also increase the number of commissioners based outside the capital, with the goal of ensuring producers in the nations and regions create more returning series.*

Indie Club also believes that once a year, following the publication of the Made Outside London programme titles register, Ofcom should double check the productions included, to avoid a repeat of a series such as Nightscreen being repeatedly registered.

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|   | <p>We also urge Ofcom to commission a report every three years, like the one produced by O&amp;O in September 2018, to analyse the economic trends the register reveals across the UK and to publish the results.</p>  |
| <p>2/</p> <p><b>Proposed guidance changes</b> (new insertions by Ofcom are highlighted):</p> <p><b>Annex 7, p2 para 6, Ofcom’s proposed form of wording:</b> <i>The production company must have a substantive business and production base in the UK outside the M25. The production in question must be made from that substantive base. The base should already be operational prior to the point of commission and will be taken to be substantive if it is the usual place of employment of:</i></p> <ul style="list-style-type: none"> <li><i>i) executives managing the regional business; and</i></li> <li><i>ii) senior personnel involved in the production in question; and</i></li> <li><i>iii) senior personnel involved in seeking programme commissions.</i></li> </ul> <p>2) Do you agree with our proposed changes to the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</p> | <p>Confidential? – No</p> <p>Indie Club applauds Ofcom’s desire to tighten this key criterion, but believes that in order to achieve the long term investment MPs wanted to happen when they passed the Communications Act 2003, the additional words highlighted in turquoise should be included:</p> <p><i>The production company must have a substantive business and production base in the UK outside the M25. The production in question must be made from that substantive base. The base should already be operational prior to the point of commission and will be taken to be substantive if it is the usual place of employment of:</i></p> <ul style="list-style-type: none"> <li><i>i) senior, operationally independent executives managing the regional business; and</i></li> <li><i>ii) senior, operationally independent editorial executives managing the production in question; and</i></li> <li><i>iii) senior personnel involved in seeking programme commissions.</i></li> </ul> <p>The Indie Club believes it is essential Ofcom’s guidance does change in the proposed way to include the additional words ‘<i>the production in question must be made from that substantive base</i>’ because there are many examples where producers think because they have an office in the nations or regions, they can tick this box and actually make their programme or series in London, employing mainly production staff based in the capital, using the 50% rule. This breaks the Communications Act 2003 and it is important both producers and broadcasters understand this.</p> <p>We also believe Ofcom is right to establish a level playing field when it comes to its definition of the substantive base criterion and therefore it is important that the proposed changes make clear, ‘<i>The base should already be operational prior to the point of commission</i>’. This should clarify that ‘pop up offices’ and/or ‘brass plate offices’ are not acceptable. The wording of the regulation instead needs to encourage long term economic investment.</p> |



The Indie Club is concerned that by not giving more detail regarding the personnel employed in the substantive base, it may still be possible for a company to secure a Made Outside London commission using the new substantive base criteria, without employing key off-screen talent outside London.

If Ofcom does not make it really clear that substantive bases should employ people in senior creative roles who are capable of being operationally independent, then much post production and even pre-production will continue to happen in London and the Production Bases around the UK will not grow and thrive.

It is vital production companies outside London employ experienced senior staff in all key roles, so even if they are owned by a London or American business, they are operationally independent and not overly reliant on senior creatives based elsewhere. By being 'operationally independent', Indie Club means that the substantive base's senior staff are able to oversee pre and post production in the nations and regions, thereby creating many more jobs and ensuring each programme or series leaves a creative and an economic legacy.

This is not a new idea, but one those of us who have been involved in 'out of London' TV production have known works for a long time.

The reason MediaCity is the most successful regeneration project in the whole of Europe, is because whilst she was working at the BBC as Head of Operations, Caroline Thompson insisted on the BBC's new base in Salford being made up of operationally independent departments, with their own commissioning staff.

**EVIDENCE HIGHLIGHTING THE NEED FOR THE FURTHER CHANGE INDIE CLUB RECOMMENDS:**

Production companies which operate year-round in the nations and regions play a vital role in creating long term career opportunities for local production staff, including offering year-round work, training opportunities and career progression. Such production companies usually also offer work experience and nurture new entrants from a far wider range of backgrounds than is possible for a producer based in London. At Nine Lives alone, we have given over one thousand young people in the north work experience placements since setting up the company in 2007. We also usually have a Channel 4 trainee placed with us because they cannot afford to live in London.

The O&O report commissioned by Ofcom comes to the same conclusion:

“The majority of external PSB MoL originations are made by producers who have their main office in London, though most also have a secondary office outside. By meeting MoL criteria, these productions contribute to the industry outside of London, but their impact may not be as permanent as indigenous companies.”

Indie Club believes the long term investment in production bases in the nations and regions required by the Communications Act 2003 is impossible to achieve without producers having operationally independent substantive bases outside the capital, where senior creative staff are employed and where pre and post production routinely happen.

The best way for Ofcom to ensure a level playing field for ALL producers making Made Outside London programmes who want to tick the substantive base box, is to tighten its criterion in relation to both post production and personnel, because we all know that the senior creative staff in television, will usually be based in the same place as where the post production on programmes is happening.

**INDIE CLUB THEREFORE RECOMMENDS OFCOM ADOPTS THIS WORDING FOR THIS CRITERION:**

*Please see Indie Club’s recommended changes below, highlighted in turquoise.*

*The production company must have a substantive business and production based in the UK outside the M25. The production in question must be made from that substantive base. The base should already be operational prior to the point of commission and will be taken to be substantive if it is the usual place of employment of:*

- i) senior, operationally independent executives managing the regional business; and*
- ii) senior, operationally independent editorial executives managing the production in question; and*
- iii) senior personnel involved in seeking programme commissions.*

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|   | <p>Currently the Made Outside London register shows 90% of producers claim to meet all three of Ofcom’s criterion and where they are operating in the way described above, with every stage of production happening in the nations and regions, they will be playing an important role in the creative economies around the UK.</p> <p>It is important Ofcom monitors this figure of 90% to ensure it doesn’t drop once this criterion is tightened.</p> <p>The Indie Club understands that by permitting companies to meet only 2 out of 3 of the criteria, Ofcom is aiming to allow flexibility, so, for example, a smaller London company can make a programme that qualifies as Made Outside London without having to immediately invest in a substantive base.</p> <p>However, we feel it is very important for Ofcom to carefully monitor this situation going forward, to ensure adequate investment in production bases is happening as the law requires.</p> <p>Ofcom needs to commit to thoroughly analysing the register of Made Outside London productions each year. If Ofcom finds the consequence of it tightening the substantive base criteria, is that the percentage of productions meeting all three criterion falls from 90%, then the regulator must seriously consider making it necessary that all three criteria <u>are</u> met for a production to qualify as Made Outside London. We believe it is necessary for Ofcom to state this in its guidance.</p> |
| <p>3/</p> <p><b>Ofcom’s proposed new explanatory note: (Annex 7, p8)</b></p> <p><b>Q: Which jobs can be counted as ‘senior personnel’?</b></p> <p><i>A: The term ‘senior personnel’ is an acknowledgement that job titles vary between employers, by genre and over time. For these reasons, we do not consider it appropriate to provide a list of specific titles which can be counted as ‘senior personnel’. Instead we define ‘senior personnel’ as those individuals who have a significant leadership role and/or are responsible for making executive decisions in relation to the production in question or in relation to seeking programme commissions (as applicable).</i></p> | <p>Confidential? – No</p> <p>Indie Club believes the explanatory note is a helpful start but it doesn’t go far enough to ensure broadcasters and producers stop abusing the regulation.</p> <p>Not enough senior production staff are currently employed in creative jobs in the nations and regions, and if this situation continues, it will be impossible to grow and maintain production centres outside London.</p> <p>We therefore suggest the following guidance is published by Ofcom:</p> <p><i>The objective of this criterion is to support the development of independent, end-to-end TV production and development bases in the nations and regions which have a degree of permanency. We consider that to satisfy this criterion, the company making the Made Outside London title will already have an authentic operationally independent substantive base in the nation or region</i></p>   |

3) Do you agree with the suggested explanatory notes for the substantive base criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.

*where it is going to produce the title. The company should also be developing content from the same substantive base, employing staff at all levels who live locally and contributing to that local area's creative economy on an ongoing basis.*

**In not providing examples of roles that qualify, companies may only include production management jobs (as they have done in the past) and not the truly creative roles, which are key to the production and ensure end-to-end ecologies are built outside the capital.**

**Ofcom's reason is "an acknowledgement that job titles vary between employers". In reality, the roles of Executive Producer, Executive Director, Series Producer, Producer/Director, Writer, Designer and Director of Photography are pretty much universally recognised; or alternatively, the term 'operationally independent executives/programme makers' can be used. Indicative examples of job titles would further clarify the guidance: making it more robust.**

**Not defining these key roles leaves a loophole that will allow senior London companies to insist production staff from the capital continue to dominate, whilst only junior roles are given to production staff based in the nations and regions. This will stifle diverse voices and inhibit any possibility of a return to a creative meritocracy, as well as preventing Made Outside London shows from leaving both a creative and an economic legacy in the nations and regions.**

**If the TV industry continues to employ most people in senior creative roles who can afford to live in London and are from increasingly privileged backgrounds, they will be exacerbating the widening division between programme makers and audiences.**

**Everyone acknowledges the importance of diversity and this is a very real way for Ofcom to clarify that it expects diversity in senior creative roles.**

**INDIE CLUB THEREFORE RECOMMENDS OFCOM ADOPTS THIS WORDING FOR THIS GUIDANCE:**

*The objective of this criterion is to support the development of independent, end-to-end TV production and development bases in the nations and regions which have a degree of permanency. We consider that to satisfy this criterion, the company making the Made Outside London title will already have an authentic operationally independent substantive base in the nation or region*

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|   | <p>where it is going to produce the title. The company should also be developing content from the same substantive base, employing staff at all levels who live locally and contributing to that local area's creative economy on an ongoing basis.</p> <p>In terms of ensuring key production staff in senior creative roles do actually live and work where the substantive base is located, Northern Ireland Screen operates a simple progress reporting system, for which both the home address and tax number of production staff are required as evidence to prove that they are indeed based where they claim to be based. The Indie Club believes such checks – even as part of a spot check system - would help ensure genuine investment and job creation in the nations and regions.</p>   |
| <p>4/</p> <p><b>Annex 7, p2 section 6, Ofcom's proposed form of wording</b> (new insertions are highlighted):</p> <p><i>At least 70% of the production budget (excluding the cost of on-screen talent, archive material, sports rights, competition prize-money, and copyright costs and any production fee) must be spent in the UK outside the M25. For the purposes of this calculation, any funding from third parties should be included as part of the production budget.</i></p> <p><i>Aim: The objective of this criterion is to deliver genuine investment in TV production outside of the M25. We consider that to satisfy this criterion, a supplier should be making a significant financial contribution to the creative economy in the UK's nations and regions - for instance, through the use of local or regional production related facilities.</i></p> <p>4) Do you agree with our proposed changes to the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</p> | <p>Confidential? – No</p> <p>The Indie Club agrees with some but not all of the proposed changes to the production budget criteria.</p> <p>The inclusion of funding from third parties is fine as the figure will then represent the total value of that production.</p> <p>However, the exclusion of the production fee will allow more productions based in London to qualify as Made Outside London, as it reduces the overall value of the production budget against which the 70% figure is calculated.</p> <p><b><u>INDIE CLUB THEREFORE RECOMMENDS OFCOM ADOPTS THIS WORDING FOR THIS CRITERION:</u></b></p> <p><i>Criterion b): Production budget</i><br/> <i>At least 70% of the production budget (excluding the cost of on-screen talent, archive material, sports rights, competition prize-money, and copyright costs and any production fee) must be spent in the UK outside the M25. For the purposes of this calculation, any funding from third parties should be included as part of the production budget.</i></p> <p><b><u>INDIE CLUB ENDORCES THIS PART OF OFCOM'S SUGGESETED NEW WORDING FOR THIS GUIDANCE:</u></b></p> <p><i>Aim: The objective of this criterion is to deliver genuine investment in TV production outside of the M25. We consider that to satisfy this criterion, a supplier should be making a significant financial contribution to the creative economy in the UK's nations and regions - for instance, through the use of local or regional production related</i></p> |

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|   | <p><i>facilities.</i></p> <p><b><u>INDIE CLUB RECOMMENDS OFCOM MAKES THESE FURTHER CHANGES:</u></b></p> <p>Indie Club thinks the wording in the Guidance at 5.38 should be further clarified, so everyone understands overheads in London cannot be included in the 70%.</p> <p>As written above, to ensure key production staff are employed where they are said to be employed on a production, Northern Ireland Screen operates a simple progress reporting system, for which both the home address and tax number of production staff are required as evidence to prove that they are indeed based where they claim to be based. The Indie Club believes such checks – even as part of a spot check system - would help ensure genuine investment and job creation in the nations and regions.</p> |
| <p><b>5/</b></p> <p>5) Do you agree with the suggested explanatory notes for the production budget criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</p> <p><b>Q: How should costs associated with travel be allocated?</b></p> <p><b>A: This depends on factors such as where the travel cost is incurred, the company the expenditure is going to, and what/who is being transported. The policy intent here should be considered; for example, it would not be appropriate to classify regional costs as those spent on transporting talent/equipment from London to and from the nations and regions. It would also not be appropriate to classify regional costs as those spent on transporting talent/equipment to and from countries outside the UK. It would however be appropriate for a production company to assign spend on local travel as regional (as long as it is incurred outside of the M25), for example, spend on local taxis and spend on transporting regionally based staff to a regional filming location.</b></p> <p><b>Q: How should overhead costs be allocated?</b></p> <p><b>A: If a production satisfies the substantive base criterion, it would be appropriate to classify the overhead costs associated with keeping that</b></p> | <p>Confidential? – No</p> <p><b><u>INDIE CLUB ENDORSES OFCOM’S SUGGESTED NEW WORDING FOR THIS GUIDANCE:</u></b></p> <p><b>The Indie Club agrees it is useful to provide additional explanatory notes to give greater clarity as to what should and should not be included in production budgets as regional spend.</b></p> <p><b>It is helpful to make clear what is included and what is not, in relation to travel and overheads.</b></p>  |

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| <p>substantive base operational as regional spend. If the production does not satisfy the substantive base criterion, as the production is made by a London based company, such costs should be classified as London-based expenditure. It may be more difficult to allocate these costs in circumstances where a production qualifies for substantive base, but the production company has multiple offices across the UK, and overhead costs are split between these offices (including possibly in London). In such cases, we would expect the company where possible to pro-rata the costs by location.</p> <p>Q. How should spend abroad be allocated?<br/>A: Spend outside of the UK should be allocated as part of the production budget but not as regional spend (i.e. it does not contribute to meeting the 70% threshold). However, it would be appropriate, for example, to count costs associated with paying regionally-based UK talent while working abroad on the production in question as regional.</p> |  |
| <p>6/</p> <p><b>Annex 7, p3 section 6, Ofcom’s proposed form of wording</b> (new insertions are highlighted):</p> <p><i>Criterion c): Off-screen talent - At least 50% of the production talent (i.e. not on-screen talent) by cost must have their usual place of employment in the UK outside the M25. Freelancers without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25.</i></p> <p><i>Aim: The objective of this criterion is to ensure genuine creative job opportunities in TV production in the nations and regions. Attracting talent to those areas can in turn help to create strong regional production centres.</i></p> <p>6) Do you agree that the off-screen talent criterion should remain the same? If not, please explain why, providing appropriate supporting evidence where possible.</p>  | <p>Confidential? – No</p> <p><b>Indie Club does not believe the wording of the off-screen talent criterion should remain the same.</b></p> <p><b>We strongly recommend Ofcom changes the wording of this criteria to ensure production staff in the nations and regions are given senior creative roles, not just junior positions, as this is the only way production bases around the UK can flourish.</b></p> <p><i>Criterion c): Off-screen talent - At least 50% of the production talent (i.e. not on-screen talent) by cost and seniority of creative role , must have their usual place of employment in the UK outside the M25. If this criterion is being used alongside the substantive base criterion, a minimum of 25% should have their usual place of employment within the macro-region of the claimed substantive base. Freelancers without a usual place of employment outside the M25, will nonetheless count for this purpose if they live outside the M25 and their role on the production is outside of the M25.</i></p> <p><i>Aim: The objective of this criterion is to ensure genuine creative job opportunities in a range of different TV production roles in the nations and regions. Developing talent from within and attracting talent to those areas can turn help to create strong regional production centres.</i></p> |

**EVIDENCE HIGHLIGHTING THE NEED FOR THE FURTHER CHANGES INDIE CLUB RECOMMENDS:**

The 50% figure was introduced in 2004 because London based industry leaders claimed there was not enough off-screen production talent in the nations and regions. The fact there is still considered to be a need to have 50% of roles on Made Outside London productions filled by staff based in the capital, illustrates that the failure of adequate regulation of the Communications Act 2003 has led to a lack of investment in the nations and regions over the last 15 years.

**The Need for Ofcom to Add ‘Seniority of Creative Role’**

Indie Club members have repeatedly reported that the ‘50% cost of production staff’ criterion is being met by employing people from the nations and regions in junior, rather than senior roles. This hampers the development of strong creative clusters around the UK.

**Directors UK has Found the Following Evidence:**

*In the case of directors, our examination of the employment of directors in Scotland, for example, has highlighted a significant lack of employment of locally based directing talent:*

*An analysis of the Creative Scotland list of television drama productions made in Scotland during 2015-17 found there were 30 television drama productions filmed in Scotland over the three-year period, including ongoing series such as River City and Outlander. Of the 121 directors used only 26 were Scottish or Scottish based; 13 of whom were female, and only 4 of the females were Scottish.*

*In addition, having done our own analysis of the list of network productions made in Scotland in 2016-17, from the ‘Made Outside London Programme Titles’ register:*

- x *Only 1 out of 3 factual and factual entertainment productions made out of BBC Scotland were directed by Scottish talent. This is backed up by our anecdotal research.*
  
- x *Only 1 out of 6 of the productions commissioned by BBC Scotland drama were made by a Scottish based director.*

*Our members in the regions reported their experiences of being told that there is not the local talent. As previously stated, we do not believe there is a lack of available*



*talent, but instead a lack of willingness to use the local talent and to develop their skills and experience in order to compete with the London-based talent, which is more often favoured.*

*Directors UK membership consists of directors working across the country and we have regional representatives on the Board from Scotland, Wales, the North West and the South West. If there is no obligation on production companies to use senior level talent on productions then talent will leave the regions and relocate to London in order to progress, which does not serve to develop the local production community.*

**Indie Club Evidence:**

*“From my experience productions in the north still bring a lot of London crews up. The criteria for local crews is anyone who is prepared to not claim travel expenses. All the productions still use London based camera supervisors or HOD’s even though there are skilled local people available.” Anonymous*

**This is typical of the vast amount of anecdotal evidence we’ve received from numerous production staff across the country, some of which was previously outlined in our submission to Ofcom in June 2018.**

**We can provide much more evidence of this type, should Ofcom require it.**

**London based production staff are so often given senior roles that those from outside the M25 cannot compete by gaining the experience needed. It’s a self-perpetuating situation that Indie Club believes is allowed to carry on, because of the lack of clarity in the wording of this criterion.**

**We also believe it is impossible for production bases around the UK to thrive and survive if there is no incentive or requirement for PSBs and producers to employ people based there in senior creative roles.**

**Likely Negative Impact of Ofcom’s Proposal**

**Indie Club is concerned that even with Ofcom’s other proposed changes, a London based producer could still meet the Substantive Base Criteria by employing production management rather than creative staff, and meet the 50% criterion by giving people outside the M25 junior roles, thereby ‘satisfying’ the regulation, whilst still employing people from London in most senior creative roles.**

It would be wonderful if Ofcom can improve its regulation during this review to ensure producers no longer operate in this way, as it doesn't meet the overarching legal requirement for PSBs to invest in production bases around the UK.

**Nations & Regions Based Production Staff Asked Repeatedly to Work in London**

TV industry advertisements (see below) are still regularly appearing, asking specifically for production staff who live outside the M25 (particularly editors) to work in the capital. Those who are members of Indie Club have reported to us that they are often not paid travel or accommodation expenses but instead asked to 'sleep on someone's floor'.

It would be brilliant if Ofcom can articulate in its regulation that asking freelancers based in the nations and regions to work in London so that programmes can qualify as 'Made Outside London' is an abuse of the law and therefore is not an appropriate way to meet the criterion.

Adverts such as the one below still appear on a weekly basis, so PSBs and producers clearly do not understand this method of meeting the criteria is not acceptable, because it does not meet the overarching legal requirement of the Communications Act 2003 to invest in production bases around the UK.



**Additional Note:**

Nations based Indie Club members have informed us that when they are making content for the UK network, this is the only criteria (other than substantive base) that can be met on a UK network commission. The 70% spend criterion is often unachievable if there is filming required in London, as well as filming within the nations and regions and/or internationally. That is why getting the wording of this criterion right is so very important in terms of ensuring job creation and job safeguarding in a range of senior, creative roles in the nations and regions.

**INDIE CLUB APPROVES OFCOM'S SUGGESETED NEW WORDING FOR THIS GUIDANCE:**

We agree Ofcom should add the clarification in the new Aims section.

We also agree with Ofcom's intention to commission research to assess the balance of roles between creatives based in London and those based in the nations and regions.

**INDIE CLUB RECOMMENDS OFCOM ADOPTS THIS WORDING FOR THIS CRITERION:**

Ofcom has always maintained that should London continue to dominate TV production, then it would re-examine this criterion. This has clearly happened, as is evidenced in the O&O report commissioned by Ofcom, and therefore we feel it's important to strengthen this wording so it says:

*Criterion c): Off-screen talent - At least 50% of the production talent (i.e. not on-screen talent) by cost and seniority of creative role, must have their usual place of employment in the UK outside the M25. If this criterion is being used alongside the substantive base criterion, a minimum of 25% should have their usual place of employment within the macro-region of the claimed substantive base. Freelancers without a usual place of employment outside the M25, will nonetheless count for this purpose if they live outside the M25 and their role on the production is outside of the M25.*

*Aim: The objective of this criterion is to ensure genuine creative job opportunities in a range of different TV production roles in the nations and regions. Developing talent from within and attracting talent to those areas can turn help to create strong regional production centres.*

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|  | <p>Indie Club also suggests that in its advice section, Ofcom states its intention to monitor the situation and its desire to increase the percentage of people employed in the nations and regions up from 50% in the future. This will incentivise the PSBs and producers to play their part in building freelance talent pools outside London rather than continuing to rely on paying for talent to travel from London to work in the nations and regions.</p>   |
| <p>7/</p> <p><b>Annex 7, p10, Ofcom’s proposed form of explanatory note wording:</b></p> <p><b>Q: Does ‘production talent’ mean everyone on the payroll?</b></p> <p><i>A: No. We recognise ‘production talent’ does not clearly differentiate between creative talent involved in a production and roles that also exist outside of a TV production e.g. drivers, cleaners, catering staff. We consider the use of the word talent here to denote creative roles. We would therefore expect production companies to only assign as regional spend the costs of talent generally recognised as part of the creative programme making process. In some instances, creative talent and peripheral roles may not always be easy to differentiate between, and so companies should use their judgement, keeping in mind the policy intent.</i></p> <p><b>Q: Would freelance talent hired through a studio or service company based outside of the M25 satisfy the criterion?</b></p> <p><i>A: Regardless of where a studio or service company is based, the criterion specifies that freelance talent must live outside of the M25.</i></p> <p>7) Do you agree with the suggested explanatory notes for the off-screen talent criterion (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</p> | <p>Confidential? – No</p> <p>Indie Club welcomes Ofcom’s expansion of its guidance but believes it needs to go further to ensure broadcasters and producers know they need to employ off screen talent in a range of roles in terms of seniority – as outlined above.</p> <p><b><u>INDIE CLUB RECOMMENDS OFCOM MAKES THESE FURTHER CHANGES:</u></b></p> <p>Indie Club believes this wording needs to be further strengthened to clarify that Ofcom expects production staff from the nations and regions to be employed in a range of senior creative roles across each production, to avoid only large numbers of junior staff from outside the M25 being employed.</p> <p>We also recommend that Ofcom clarifies that it does not expect producers to meet this criterion by employing off-screen talent from outside the M25 to work in London, especially without meeting their expenses.</p> <p>The Indie Club welcomes the clarification that it is not acceptable for a producer to employ London based freelance talent via a studio or service company in the nations and regions as part of the 50% of production staff supposedly from the nations and regions.</p> <p>As mentioned earlier in our response, In Northern Ireland, producers given funding by Northern Ireland Screen have to provide NI and tax information to prove where employees actually live. Indie Club believes this is a better way for Ofcom to ensure this criterion is properly met and that gathering this data would also allow thorough analysis of where freelancers actually live, to ensure staff from immediately outside the M25 are not being repeatedly used.</p> |

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| <p>8) Do you agree with our proposed change to exclude self-promotional content from the calculations? If not, please explain why, providing appropriate supporting evidence where possible.</p> | <p>Confidential? – No</p> <p><b>It is a shocking abuse of the Communications Act 2003 that ITV has claimed the production of Nightscreen represented 560 hours of television production in the nations and regions in 2017 and according to O&amp;O, made similar claims over many preceding years.</b></p> <p><b>“The scale of the decline (of production in the Midlands &amp; East) is masked by ITV’s Nightscreen, a production which consists of a sequence of animated pages which promote ITV’s upcoming programmes using text and stills or programme graphics. The title has constituted most of the hours in the Midlands and East for many years. In 2017 it contributed around 85% of the total MOL hours produced in the region.” O&amp;O Report pg. 25</b></p> <p><b>Indie Club therefore agrees that Ofcom needs to clarify that self-promotional productions no longer qualify. We wonder if it is also necessary to also ensure PSBs understand that such simplistic TV broadcasts, which require minimal effort to make, and therefore create very few jobs, will never qualify for Made Outside London hours.</b></p> |
| <p>9) Do you agree with our proposed changes to the allocation categories (see wording at Annex 7)? If not, please explain why, providing appropriate supporting evidence where possible.</p>    | <p>Confidential? – No</p> <p><b><u>INDIE CLUB RECOMMENDS OFCOM MAKES THESE FURTHER CHANGES:</u></b></p> <p><b>Indie Club understands the flexibility producers need when undertaking and reporting on productions, however we think it’s important Ofcom does not lose the wording relating to its commitment to continue to analyse the balance between production in London and in the nations and regions (12 - point 1 on page 5 of Annex 7).</b></p> <p><b>Indie Club believes it is also important for Ofcom to give guidance to the PSBs so that they invest in a balanced way across the nations and regions. This balance of where investments are made in the country, should be monitored and analysed by Ofcom each year.</b></p> <p><b>Any changes to the regulation should be made because they help ensure investment, job creation and job safeguarding in the nations and regions. How productions are allocated should contribute to delivering this intention.</b></p>  |

10) While we are not obliged to consult on our internal processes, we would welcome stakeholders' views on any adverse consequences we have not identified that may occur as a result of our planned changes in relation to our compliance and enforcement processes namely:

- A) the data gathering and reporting by the broadcasters;
- B) more comprehensive data publications;
- C) proactive monitoring by Ofcom; and
- D) a clear articulation of the complaints process.

Confidential? – No

**INDIE CLUB APPROVES THESE SUGGESTED CHANGES BY OFCOM:**

**Indie Club agrees it is important for the data gathered by Ofcom to be published each year as an expansion to the Made Outside London register. We welcome the idea of it being an interactive report for all industry stakeholders to examine.**

**Indie Club welcomes Ofcom's intention to proactively monitor how its tightened criteria are met.**

**INDIE CLUB RECOMMENDS OFCOM MAKES THESE FURTHER CHANGES:**

**We believe Ofcom should introduce spot checks and fines for those producers and broadcasters who abuse this regulation.**

**The Indie Club believes it is essential that more data is reported by producers and broadcasters. For example, we think Ofcom should demand more information on the roles which make up the 50% of off-screen talent.**

**We believe Ofcom should commit to commissioning independent economic analysis of TV production across the UK at least every 3 years, to assess if the regulation is working and leading to the investment required by the Communications Act 2003.**

**We urge Ofcom to apply methodology that is qualitative as well as quantitative and includes talking to people working in the industry, as well as examining data.**

**Indie Club also strongly suggests Ofcom details clearly how individuals can make complaints directly: offering the option of anonymity and if necessary, whistle-blower protection to complainants.**