



Teledwyr Annibynnol Cymru
Welsh Independent Producers
www.tac.cymru

Response to Ofcom Review of Regional TV Production and Programming Guidance

Spring 2019

Introduction and General Comments

1. TAC (Teledwyr Annibynnol Cymru) is the membership association of independent television production companies in Wales. There are around 45 companies in the sector, ranging from sole traders to some of the leading players in the UK TV production industry. They produce content for the BBC, ITV, Channel 4, Channel 5, in addition to Sky and other commercial TV channels, and are involved in numerous international co-productions. They produce almost all the original programmes broadcast on S4C, and a variety of radio productions for the BBC, including Radio Wales, Radio Cymru and other UK networks.
2. TAC welcomes Ofcom's decision to propose revisions to its Out-of-London guidelines, and also welcomes the opportunity for stakeholders to respond to the suggested amendments. We hope the comments below will help further inform Ofcom's deliberations on this matter which is a crucially important one for production companies in Wales.
3. TAC's membership is comprised of companies set up in Wales, with the intention of growing businesses to use local talent and facilities to deliver authentic original productions to a high standard. The success of these companies relates directly to the intention behind the requirement for PSBs to commission outside London, which is to ensure all of the UK is properly represented on our screens, and to encourage the growth and sustainability of production centres in the nations and regions. This can only be done by making sure that creative businesses in Wales are those designed to be there on a permanent basis rather than a temporary one. However, there remains much work to be done in this regard, as evidenced by the fact that 19 per cent of productions made in Wales between 2015 and 2017 were made by London-based production companies.¹

¹ Regionality trends within the UK production sector: A report for Ofcom by Oliver & Ohlbaum Associates Ltd. September 2018, p62

4. TAC's members have been concerned regarding the definition of a company based in the nations and regions, particularly in the case of companies who have taken advantage of the vagueness of the definition in order to gain commissions through setting up a temporary company and then left, with no discernible legacy to the indigenous production sector or the local economy.
5. On this note, we welcome the fact that Ofcom has accepted some of the arguments put to it by out-of-London companies in response to its earlier consultation. TAC and others made it clear that trusting the broadcasters to act in the spirit of the guidelines results in the minimum requirements being met, and in a short-term manner which fails to result in sustaining and growing the indigenous production base in the nations and regions.
6. While Ofcom has made suggested changes, further development of the requirements is needed to ensure that only production companies with properly established nations and regions production bases are included in those commissioned under the guidelines. It is important that the right level of detail is applied to these additional requirements in order that they are meaningful and will produce the desired outcome of promoting genuine nations and regions TV production.
7. We also hope that Ofcom will monitor wider broadcaster policy on commissioning content from all the UK nations. Channel 4's Nations and Regions policy is an example of where there is potentially cause for concern. In its response to an earlier stage of this Ofcom consultation, Channel 4 stated that: "the production centre in Glasgow has shown significant growth over the last ten years, which is reflected in the fourfold increase in Channel 4's spend in Scotland. In Northern Ireland, the number of companies tripled [between 2010 and 2016]."²
8. In contrast, in Wales in 2016, the number of Channel 4 commissions was just 12, involving only seven production companies. We have concerns that Wales could miss out in terms of Channel 4 commissions over the coming months, during the process of establishing Channel 4's new hubs in England and Scotland, combined with the absence of clarity on a future commissioning commitment in Wales, despite a promise after the hubs were announced of conversations on how Channel 4 would ensure this would happen³.
9. In terms of the capacity of the sector in Wales to take on more commissions, we welcome the fact that Ofcom has acknowledged that, due to demand from S4C, the TV production sector in Wales extends well beyond those companies which currently gain UK network commissions. Those companies, making high-quality content for S4C, represent a ready-made solution to providing more programmes from Wales. Even a single commission from a UK PSB network could be a major assistance to a producer gaining commissions from other UK-wide or indeed international broadcasters, and this is another reason why Ofcom guidelines need to be sufficiently robust and ensure that UK PSBs act in the spirit of the Out-of-London requirements.

² Channel 4's response to Ofcom's Review of Regional Production and Programming Guidance. Channel 4, 2018, p20

³ Communicated in a letter to the Cardiff bid team from Channel 4 CEO Alex Mahon

Answers to Consultation Questions

Q1) 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)

Yes. We welcome the added statement in Annex 7 that: “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.”⁴

Q2) 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.

Q3) 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.

It is encouraging to see the additional wording and in particular the statement that: “to satisfy this criterion, the company making the title will have an authentic presence in the nation or macro-region in which it has its office and will be contributing to that local area’s creative economy on an ongoing basis.”

However there remains a concern among our members that if enough of the production spend is allocated in the other two criteria aside from the substantive base, this pushes the production over the line to qualify, but does not solve the problem of brass-plating, and goes against the spirit of the definition of ‘nations and regions’ commissions. The spend and amount of local talent used is enough for the production to qualify, but the production companies are not based in Wales. We note the statement in Oliver and Ohlbaum’s report, published alongside this consultation, that: “Nearly 90% of independent sector revenues are generated by producers who are primarily based in London.”⁵

The O&O report concludes that: “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.”⁶

TAC would like to see further scrutiny applied to the process of a production company being established ‘prior to the point of commission’. In theory, this could mean that a company is set up a few weeks ahead of a commission being made on the basis of an understanding between the broadcaster and the producer, when there are no plans for a sustainable production presence in the location.

⁴ Annex 7: Proposed new Guidance and explanatory notes. Ofcom, December 2018, p1

⁵ Regionality trends within the UK production sector: A report for Ofcom by Oliver & Ohlbaum Associates Ltd. September 2018, p19

⁶ Regionality trends within the UK production sector: A report for Ofcom by Oliver & Ohlbaum Associates Ltd. September 2018, p82

Ofcom has effectively handed responsibility for correctly executing the guidelines back to the broadcasters. This means the definitions need to be detailed, and allow as little room as possible for misinterpretation.

TAC notes that the PSBs published a joint set of guidelines for producers in December 2018.⁷ We would argue that some of the interpretation by the broadcasters points to an overly light-touch attitude towards meeting some of those criteria.

We note that the document's interpretation of 'New bases', defined in response to Ofcom requirements set out in Paragraph 5.1, states: "It is entirely legitimate for a production company to establish a new base for the purposes of a specific commission with a view to it remaining substantive after the production is finished. However, in the spirit of the definition, broadcasters need to differentiate between genuine long-term intent to maintain a substantive base versus a temporary production office. This should be done through conversations with production companies at the point of commission."

We would question whether such 'conversations' would constitute a sufficient level of scrutiny, and whether instead firm evidence should be required by Ofcom to be given to the broadcaster, e.g. a long-term lease on business premises or permanent staff contracts. In order to facilitate this, we would ask that the explanatory guidance statement that: "There is no minimum period of establishment for a substantive base prior to commission," be reviewed further and amended as per the above.

Similarly, while we welcome the fact that Ofcom's explanatory guidance states that: "It is likely that the company will have made programmes from that base previously", this again is too equivocal and needs firming up.

In addition, when addressing how the three sub-criteria may be met, the broadcasters' document states that: "All three sub-criteria should be met for a production to qualify as a substantive base. However, it is possible for a single individual to meet the requirements for more than one sub-criterion (for example, in smaller companies)."

This gives the appearance of the broadcaster aiming to simply satisfy the letter, rather than the spirit, of the guidelines.

Q4) 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.

Q5) 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.

Yes.

⁷ Joint broadcaster guidance for application of regional production definitions. BBC Channel 4, Channel 5 and ITV. December 2018

Q6) Do you agree that the off-screen talent criterion should remain the same? If not, please explain why, providing appropriate supporting evidence where possible.

Q7) 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.

The sustainability of the production industry outside London should be a prime consideration both at the time of the production and afterwards, for companies and freelancers alike.

In our members' experience, there remains a culture within the major broadcasters that relies on the 'who you know' principle. This leads to an unjustified lack of trust in production talent in the nations, despite the fact that talent may have a demonstrable track record in producing for others, S4C for example. We acknowledge that the consultation document refers to figures we supplied to Ofcom along with our response to the previous consultation last year, which showed there were around 40 production companies in Wales active in 2017/18.⁸

But as stated above, due to a lack of personal contacts within commissioning structures, these companies find it hard to break through to gain UK network commissions, despite having the requisite talent and skills. Until such time as there is genuine broadcaster open-mindedness about using new (to them) production talent more extensively, it will be the case that prejudices exist regarding the ability of a particular sector to make programmes in certain genres. For example, TAC's understanding is that despite many of its members making successful comedy for S4C, there are some in Wales and UK-wide broadcast commissioning teams who do not believe that Wales has the skills to make good comedy, and companies from outside Wales are being commissioned to make such content.

This stifles the ability of Welsh production companies to secure network commissions in some genres. Broadcasters and production companies should seek to jointly identify skills shortages in order to foster skills development in the nations. This will enable local crew to have better access to nations' commissions and ensure an adequate supply of skilled staff.

Q8) 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.

Yes.

Q9) 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.

The criteria relating to production budget and off-screen talent need revising. Ensuring that certain percentages of spend and talent are spent/located outside the M25 means that broadcasters can still commission companies from elsewhere in the UK rather than Wales-based companies. As is the case with commissioning London-based companies, using producers from

⁸ Review of Regional TV Production and Programming Guidance. Ofcom, Dec 2018, p21, para 3.35

outside Wales adversely effects both the growth and the sustainability of the production base in Wales, as well as those productions' ability to accurately portray Welsh life and culture.

Taking the example C listed in the allocation table in Annex 7, and bearing in mind that the off-screen talent roles include the creative ones, this would allow a programme to qualify as a Wales production even if many roles, including most creative ones, are not held by people who are based in the nation. This speaks to a core problem of talent from outside Wales being given major roles, which significantly dilutes the ability of productions to use local knowledge and culture to add to the originality and impact of a production.

Using creative talent from outside the area can result in a lack of understanding of the local culture, to the detriment of the programme concerned. There has been a recent example where *Pitching In*, a comedy drama made by a company from Liverpool, has attracted criticism for using actors and production staff from outside the location, resulting in inaccuracies which undermined the production in the eyes of the audience.⁹ We would therefore like the guidelines to require that when a production is being made in Wales, Scotland or Northern Ireland, all three criteria must be met to be a qualifying production.

We would also like to see Ofcom review whether the 50 per cent threshold on off-screen talent remains sufficient. As stated above, the demand from S4C means there are many established companies in Wales in a position to take on additional commissions from the UK PSB networks. We therefore would like Ofcom to consider whether the 50% threshold could be higher, at least in the nations.

Q10) 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) 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.***

We believe that all these measures are useful and do not foresee any adverse consequences.

Q11) Do you agree with our proposal for the new Guidance and majority of changes to take effect from January 2020?

Yes.

⁹ <https://www.northwaleschronicle.co.uk/news/17442867.the-programme-has-been-criticised-for-its-apparent-lack-of-local-talent-and-accents/> Accessed 25.2.19