

Question	Your response
<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? – N We agree with the proposed wording.</p>
<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? – N</p> <p>We do not agree with the proposal that in order to qualify as substantive a base <i>'should already be operational prior to the point of commission'</i>.</p> <p>This approach presents <u>a new barrier to entry</u> for production companies that wish to develop their regional production business, and in turn is likely to cause a decline in the breadth of creative ideas available to be commissioned, the number of companies available to commission from, and the variety of OOL locations in which to produce.</p> <p>Production companies will be dis-incentivised from developing OOL production in a new regional location because, at least for their first production, they will be forced to rely only on criterion (b) and (c) rather than the full flexibility that is offered by all three criteria together.</p> <p>As sections 2.16 and 2.17 note, the three criteria were designed to be flexible enough to accommodate the unique nature of each production and the full range of programme genres; to allow regional productions to be delivered by production companies both from the nations and regions and from London; and to provide flexibility for producers to use some London-based resources without thwarting the policy objective. By definition, therefore, the removal of one of the criteria will make it harder for companies to identify suitable productions.</p>

Ofcom recognises these dangers itself in Sections 5.20 to 5.23 of the consultation, indicating that the proposal may have a '*chilling effect*' on incentivising established companies from seeking to set up new permanent or temporary offices in the regions, and result in a regime that propagates fewer new substantive bases and consolidates more commissions within existing businesses.

Yet though Ofcom identifies these dangers it fails to offer any analysis which quantifies the impact. Indeed, it acknowledges the difficulty of '*ascertaining the level of any potential negative impact as it is impossible to know how many regional productions in the future may have met this criterion by setting up an office at the point of commission, or the scale or value of these commissions*'.

VIMN also questions the assumption that there is no value in the establishment of bases in a region for the duration of a production. Such an approach may in reality suit a company that is looking to develop production in a specific region but which does not have the understanding or resources to make a full commitment. Some initiatives may succeed and develop into long term regional production bases, others may not return – but if companies are prevented from making their first exploratory steps by unrealistic regulatory requirements then far fewer will succeed overall.

We note that in the case of start-up or fledgling companies Ofcom proposes not to apply the 'prior commissions' requirement. We fully support this approach but also believe that the same principle can be applied to more established production companies without a regional base – in both instances it is important to allow the venture to grow as flexibly as possible in order that it stands the best chance of success.

By way of illustration, the programme commissioned by Channel 5 and produced by Spun Gold called *Secrets of the National Trust* may not have qualified as a regional production had Ofcom's proposed changes to this section

of the Guidance been in place at the time. This is because it didn't qualify under the production budget criteria and therefore would have needed to meet the substantive base and production talent criteria. We were aware that Spun Gold were thinking of establishing a regional base and Channel 5 commissioned the Programme on the basis that the programme would be produced regionally (and meet the regional production criteria). The regional office in Bristol was set up subsequently, around the time of (but not necessarily before) commission (depending on what date/trigger 'commission' refers to – initial editorial discussions, or Board approval, subject to contract, or issuing or completion of the production agreement?). We understand that since June 2017, Spun Gold West in Bristol has delivered a large number of programmes including BBC's Garden Rescue series, 2 series for BBC Daytime, Prince Harry's Story for ITV1, as well as 2 further series of Secrets of the National Trust for Channel 5 (now in its 3rd series).

Instead of amending the 'substantive base' VIMN strongly believes that Ofcom should evaluate further the potential impact of its proposal, and explore other less risky alternative solutions. It is possible, for example, that through increased levels of monitoring it will be able to track the development of new regional hubs and establish a better understanding of the causality between an initial commission and a more permanent base.

If in spite of these concerns Ofcom decides to proceed with this amendment then we would strongly prefer the requirement to be that the base is operational at the 'point of commencement of the production of the relevant programme', rather than 'at the point of commission'. This approach would enable production companies to benefit from the substantive base criteria for first-time productions in a particular region by giving them time to establish a 'degree of permanency' between the point of commission and the start of production.

If Ofcom were to maintain its position on substantive base (which we strongly oppose),

	<p>then it should clarify that the point of commission means the date the commission receives Board approval, subject to contract.</p>
<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.</p>	<p>Confidential? – N</p> <p>Further to the above, VIMN believes that it is a substantial new barrier to entry to require that a substantive base be <i>'up and running with executives running the regional business and senior personnel seeking commissions from that base...it is likely that the company will have made programmes from that base previously'</i>. This is likely to be a major disincentive on many production companies that are seeking to develop a regional production base.</p> <p>We would like Ofcom to clarify how it plans to define 'start-up' companies, for which previous productions from the base may not be required. We strongly believe (and are comforted to hear in our recent discussions with Ofcom) that in certain circumstances, Ofcom believes that one person could satisfy the requirement of establishment of a substantive base, even where that base is part of a larger organisation (whether or not London based). It would be helpful if this was clarified in the Guidance.</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? – N</p> <p>Production Fee</p> <p>We do not believe that the production budget should exclude the production fee. In many instances the production fee will be reinvested in the management and operation of the regional base itself.</p> <p>We therefore suggest that where the Programme qualifies on the substantive base criterion, then the production fee is included in the production spend calculation.</p> <p>Third Party Funding</p> <p>We agree that third party funding should be included in the production Budget for the purpose of calculating a % of spend.</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.

Confidential? – N

Travel Costs

We understand that it is important to ensure that the proportion of the production budget spent in the regions is properly classified and accounted for. We believe however that the exclusion of travel costs is unnecessary given that they contribute directly to the operational logistics of making a regional production. Furthermore, their exclusion would present a new, complex bureaucratic burden for the production company, particularly true for the small Indies.

Furthermore, the additional time required for a production team to closely analyse every receipt for any expenditure whatsoever will undoubtedly require further work by the production team and time spent will no doubt be added to a production budget which adds to the programme cost. Given VIMN and other broadcasters have a limited programme Budget, the effect of Ofcom's change is to put more money into administrative tasks undertaken, which means less money goes on screen and less money is available for commissioning of new programmes, which in turn does not assist the Creative Industry as a whole.

Excluding all but local travel costs within the region from being applied as regional spend is very limiting. If Ofcom will not agree VIMN's proposal above to include all travel costs, it should at least include journeys that start in a region or nation as per the Joint PSB Broadcasters Guidance note on Regional Productions.

International Spend

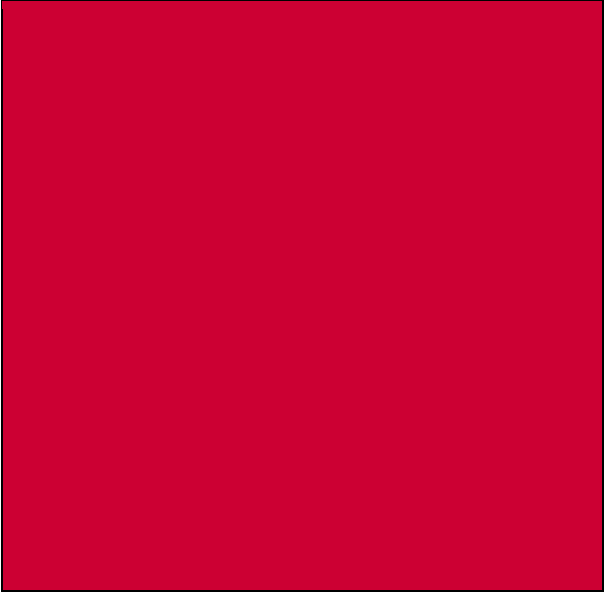
We think it would be helpful to clarify in the Guidance Note Paragraph 12 that non-UK productions cannot qualify as regional and include guidance that a production is non-UK where two of the following three criteria are met, which we understand is the current position:

- Production location (i.e. the location of

	<p>the base actually managing the production) is not in the UK;</p> <ul style="list-style-type: none"> • More than 50% of the budget (excluding on-screen talent, archive material and copyright/sports right costs) is spent outside the UK; and • More than 50% of the talent (excluding on-screen talent) are usually employed outside the UK. <p>Where a UK production exists, we believe the current allocation of international spend to London spend is misleading and believe it would be better to exclude international travel expenditure altogether from the Programme Budget when calculating % regional spend.</p> <p>Overheads</p> <p>We think there could be some benefit of clarifying in the Guidance Note what you mean by allocating Overheads pro-rata by production office where the production qualifies for substantive base but the production company has multiple offices in the UK. Would this be applied equally or if pro-rata, how would this be calculated? Would this rule apply where 2 or more offices existed?</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? – N</p> <p>Yes, except that we think there is a mistake at Criterion c) paragraph 7 of the Guidance which needs to be updated. It currently excludes third party funding but under the Production Budget Criterion b) third party funding is included in the budget.</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? – N</p> <p>VIMN strongly believes that production talent should not just denote ‘creative roles’, but also professional roles which are specific to the production, for example legal, operational management and mobile offsite catering. The definition should be sufficiently broad to include the full range of specialised functions which are particular to content production.</p>
<p>8) Do you agree with our proposed change to exclude self-promotional content from the calculations? If not, please explain why,</p>	<p>Confidential? – N</p> <p>Yes.</p>

<p>providing appropriate supporting evidence where possible.</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? – N</p> <p>Yes.</p>
<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:</p> <ul style="list-style-type: none"> 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. 	<p>Confidential? – N</p> <p>VIMN understands the need for changes to compliance processes, data gathering and enforcement, and plans to make changes to its commissioning processes to ensure that suppliers conform to the spirit as well as the letter of the revised guidelines.</p> <p>We understand that these changes will not require any further data to be provided to Ofcom by broadcasters, and would be grateful for confirmation of this.</p> <p>We note that Ofcom plans to implement more proactive monitoring, and to introduce ad hoc spot checks on titles submitted as regional productions. As such there appears to be a need for further guidance from Ofcom as to the nature of the information that it will be requiring from broadcasters and the likely number, selection and focus of any spot checks.</p> <p>VIMN strongly believes that supporting information should be held by producers as opposed to broadcasters directly. It would not be proportionate, for practical and legal reasons for supporting information to be held by broadcasters, including due to data protection and privacy issues and issues around commercial sensitivities, particularly when some production companies will be producing programmes for their broadcaster competitors.</p> <p>Following guidance from Ofcom as to exactly the type of data Ofcom may require to substantiate the regional reports, we feel Ofcom must recognise that broadcasters would need to rely on producer warranties and a right to request this information from producers, in order to themselves provide such information. If, despite their best efforts, such information is not forthcoming from the producer because</p>

	<p>the producer is unable or unwilling to provide the same (for example, if the producer has gone into liquidation), then Ofcom should take this into consideration when deciding upon appropriate action against broadcasters for not being able to provide the information requested.</p> <p>There should be a limit as to how far back in time Ofcom can go to request information in relation to a production; we suggest 12 months from 1st transmission. This is to bear in mind that the core team working on a production may change and therefore information regarding a particular production may take a while to retrieve particularly for the smaller Indies.</p> <p>Further, given that production company resource is generally focused on the shows in production at the time and to avoid unnecessary adverse impact on those productions, there should be a reasonable lead time for information requested by Ofcom to be provided; we think 90 days would be acceptable and anything shorter could be problematic for the above reasons.</p>
<p>11) Do you agree with our proposal for the new Guidance and majority of changes to take effect from January 2020?</p>	<p>Confidential? – N</p> <p>VIMN believe that the changes and guidance should come into effect for programmes transmitted from January 2021 with a carve out for any shows commissioned before January 2020. With a start date of January 2020 we do not believe that, once these are published, there will be sufficient time to introduce sufficient new processes and procedures.</p> <p>General Comments</p> <p>Explanatory Notes:</p> <p>Rather than having Explanatory Notes to the Guidance, we thought it would be helpful to incorporate the Explanatory Notes into the Guidance itself, for clarity.</p> <p>Survey:</p> <p>Section 5.84 indicates Ofcom’s intention to</p>



commission a survey of producers and PSBs to provide a factual evidence base on the resourcing split between London and the nations and regions. We believe that such a survey is unnecessary and will create an additional burden on PSBs in addition to those resulting from this review and recent changes to information reporting from July 2018. Using existing analysis Ofcom has already established that the production sector is performing well outside of London and has increased its share of PSB programming expenditure over the past decade, and we do not feel that is proportionate or necessary for it to seek additional information at this time.