



About us

1. Directors UK is the professional association of UK screen directors. It is a membership organisation representing the creative, economic and contractual interests of over 7,500 members — the majority of working TV and film directors in the UK.
2. Directors UK collects and distributes royalty payments and provides a range of services to members including campaigning, commercial negotiations, legal advice, events, training and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of direction and champions change to the current landscape to create an equal opportunity industry for all.
3. Directors UK welcomes the opportunity to respond to Ofcom's Call for Evidence regarding the interaction between BBC Studios and the BBC Public Service.

Question 1: Please provide any views or comments on the issues raised in our call for evidence, and any other issues relating to the boundary between the Public Service and BBC Studios. We also invite views on whether Mediatique's report represents a reasonable basis for us to consider the market context for this review.

4. Directors UK's core priority is ensuring that the relationship between BBC Studios and the BBC Public Service does not cause distortion in the market to the detriment of our members. Directors UK members are freelance TV and film directors who interact with the BBC both as freelance employees of BBC Studios working on commissioned content, and as underlying rights holders who are compensated for the secondary exploitation of their work through the onward sales and distribution of programmes and content. They are also engaged as freelancers by non-BBC channels, platforms and production companies in the wider marketplace.
5. Directors UK is therefore concerned to ensure that the relationship between the BBC's Public Service and BBC Studios does not distort or affect the market in which our members are employed or the commercial value and return of the works they create.
6. We recognise that the BBC has a balancing act between the BBC as a Public Service Broadcaster, providing access to a rich offering of content and delivering value through the licence fee, and BBC Studios producing and distributing content to create profit to reinvest in programmes and to supplement income from the licence fee.
7. Given the changes that BBC Studios has implemented to its structure in the last two years, and the concerns that have been raised relating to the overlap in governance responsibilities and personnel on both the BBC Board and the Commercial Holdings Board, it is right that Ofcom now undertakes a review of how the operational separation between the BBC Public Service and BBC Studios is being implemented, and whether this is working in practice. With members of both Boards involved in either the operational running of both the BBC Studios and the Public Service, or in their Governance, it is important to understand how knowledge regarding the operational

strategy of one entity is not carried across into decision making in the other, and whether there are appropriate and effective safeguards and processes in place. It is also beneficial for the BBC to ensure its governance is in order so that it can compete in the market fairly without being unnecessarily queried or curtailed due to concerns over lack of separation and transparency.

8. Regarding the supply and pricing of goods and services between BBC Studios and the Public Service, Directors UK supports the principles that these should be provided at arms' length and on commercial terms, and that there should be transparency in reporting. From our particular area of interest, where there is a transaction between the Public Service and BBC Studios relating to the production or distribution of content directed by freelance directors, they, along with other rights holders, should be compensated at commercial rates.
9. We therefore agree with Ofcom's commercial and trading requirements guidance¹ that the supply of content/IP for secondary exploitation should be priced using market prices or benchmarks, so that *"the opportunity cost to the Public Service of supplying content / IP to its Commercial Subsidiaries would be the revenue the Public Service could have earned if the good or service had been sold to a third party"*. This is of particular concern to us in relation to the extended window of use of content on the iPlayer.
10. In August 2019² the BBC was allowed to extend the iPlayer content window from 30 days to 12 months (5 years for children's content), and at the same time to add a number of back catalogue content (boxsets, archive materials etc), many of which have been originally created under the Public Service. This extended use on the iPlayer reduces the commercial opportunities for that content. For example, if back catalogue series of *Doctor Who* were not on the iPlayer, BBC Studios could be selling these to other content providers. These sales would then also generate income for underlying rights holders eg writers, directors, actors, musicians etc. Whilst we support change and innovation in the market, it is important to ensure that rights holders are appropriately compensated for the additional/extended use of their work on the iPlayer just as they would for a commercial transaction with a third party.
11. In response to concerns raised during the iPlayer consultation on the impact on secondary markets, Ofcom stated in its final determination that, *"as the Proposals represent a significant change in the way the BBC proposes to use producers' and other rights holders' content on BBC iPlayer, we would expect the BBC to negotiate updates to its Terms of Trade with Pact. We would also expect the BBC to reach new agreements with other producers and rights holders not covered by the Terms of Trade."*
12. As this is the first year of the extended iPlayer use, we have yet to see the full impact of these changes. However, we are monitoring this as it is important that our members, and other rights holders, are adequately compensated for this additional use.
13. We are also closely following the impact this change has more generally on the wider markets and onward sales. A more compelling iPlayer service may take 'eyeballs' away from other com-

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0018/136071/BBC-commercial-trading-updated-requirements.pdf, para B15

² https://www.ofcom.org.uk/data/assets/pdf_file/0029/159725/statement-bbc-iplayer-final-determination.pdf, para 3.103

mercial services and this may have an impact on what our members could earn from those services - either through their employment in creating content for the wider market or from the restrictions on the use of their BBC-originated work by other providers in the market. We are keen to ensure that directors are not adversely affected by any impacts of these changes or that the market is being distorted to the detriment of our members. However, we do also believe it is in the UK production industry's interest to have a strong and viable BBC, able to compete in a fast-moving global market.

14. We note that the BBC has also made known its intentions to move towards commissioning more content directly for the iPlayer³. It is important that discussions of such changes in commissioning and distribution practice are being handled with the appropriate commercial separation between the relevant commercial subsidiaries and the Public Service. In addition, if this constitutes a material change with regards to how access to content is being commissioned and provided to viewers, via the iPlayer as opposed to the Public Service's linear channels, that appropriate stakeholder consultation via Ofcom is undertaken as necessary.
15. With regards BritBox UK, as a distinct commercial entity, it is again important that there is appropriate operational separation and safeguards in place. When buying or licensing content from the BBC Public Service or BBC Studios, BritBox must go through a proper commercial bidding process, paying true commercial rates, to ensure that the BBC is maximising value for its content on this service. We note that BritBox has also made known its intentions to do more commissioning directly for BritBox UK⁴. It is important that information about this commissioning and distribution activity remains entirely separate from the Public Service and BBC Studios production arm, and that it competes independently in the market for content and use of content, and compensates creators accordingly.
16. With regards Mediatique's report, their analysis seems to offer a thorough assessment of the market context. However, we believe Ofcom should also understand the role of, and impacts on, underlying rights holders within the market context. Underlying rights holders eg the writers, directors, composers and performers who generate the works, are critical to the creation of the content that is produced and distributed. How underlying rights holders are compensated for this work is inextricably tied into the structure and model of the production rights market. As the Mediatique report highlights, the broadcaster and SVOD services are only as good as the content available on them in terms of attracting audiences and monetising content. This is dependent on having a talented creative workforce to draw on. However, with changes to the ways in which content is being commissioned and created, along with changes to exploitation windows and use, these underlying rights holders increasingly have less control over how their content is used and exploited and how they are compensated, putting them in a position of vulnerability. It is important that the impacts of this market dynamic are also considered and understood when examining the market context.

³ <https://www.broadcastnow.co.uk/bbc/davie-sets-out-iplayer-focused-commissioning-plans/5153617.article>

⁴ <https://www.broadcastnow.co.uk/broadcasters/britbox-origins-wishlist/5154446.article>