

Submission to Ofcom review of proposed  
increased amount of archive content on  
BBC iPlayer

**pact.**

November 2022

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## Introduction

1. Pact is the UK trade association which represents and promotes the commercial interests of independent feature film, television, digital, children's and animation media companies.
2. The UK independent television sector is one of the biggest in the world with sector revenues growing to just over £3 billion in 2021.<sup>1</sup>
3. Pact works on behalf of its members to ensure the best legal, regulatory, and economic environment for growth in the sector. Pact has around 800 member companies across the UK and the majority of these are SMEs (small and medium sized enterprises) with a turnover of less than £50m a year.
4. Pact recognises the important role that the BBC plays in the UK television marketplace and how it nurtures and adds to the finely balanced TV production ecology in the UK. Independent production companies and the content commissioned by the BBC helps it be a positive innovator and experimenter in the marketplace.
5. For further information, please contact Pact's Senior Policy Executive, Susie Heron Halliday, at [susie@pact.co.uk](mailto:susie@pact.co.uk) or on 020 7380 8236

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<sup>1</sup> Pact Census 2021

## Overview

1.1 The BBC plays an important role in the UK broadcasting ecology and as audience expectations and viewing habits change, broadcasters often try to adapt to these changes. As we stated in our original submission to the BBC's PIT, Pact sees little issue with the BBC wanting to increase its library of content on BBC iPlayer so long as this is done in line with the Terms of Trade and producers are able to sell their content in the secondary market to other broadcasters if they so choose. Producers benefit from the mixed ecology in the UK and make commercial decisions based on what is best for their business at the time. Some may choose to sell to the BBC whereas others may decide to sell to other broadcasters. It's important that the BBC, just like other broadcasters, negotiates the price for titles in the open market.

## Consultation Questions

**Question 1: Do you agree with the BBC's assessment in the BBC PIT submission about the market impact of the Proposal? If you disagree, please provide any evidence supporting your reasoning.**

2.1 In our submission to the BBC's Public Interest Test (PIT), we stated that we do not believe the BBC's proposals would have an impact on fair and effective competition so long as deals with producers were done in line with the Terms of Trade. However, we stated that we would be concerned if there were changes made to the BBC's Programme Release Policy which would have an impact on producer's ability to exploit their secondary rights. The secondary market remains an important source of revenue and/or production financing for producers. Often producers deficit finance productions if they cannot find the necessary finance from the commissioner and third party finance sources. We note that this years Pact census showed that distribution advances have increased to 21% of all producers secondary rights revenues.<sup>2</sup> Distribution advances need to be recouped in the secondary market. It's vital that producers ability to monetize these secondary rights is not impacted by the BBC's proposals. We note that a number of other respondents to the BBC's PIT raised concerns in relation to the secondary commercial market and stated that the BBC should assess the impact proposals would have on the secondary commercial market.<sup>3</sup>

2.2 We remain of the view that the BBC's proposals would have a limited impact on fair and effective competition in relation to producers. The BBC clearly state that these proposals are 'subject to our financial and operational constraints and in line with our agreements with producers and underlying rightsholders.'<sup>4</sup> Producers benefit from a mixed ecology of PSBs, commercial broadcasters and SVODs and make commercial decisions based on what is best for their business at the time. It's important that producers continue to benefit from this mixed ecology and programmes are available for broadcasters to licence in the secondary commercial market.

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<sup>2</sup> Pact Census 2022

<sup>3</sup> Both Directors UK and TAC stated that the BBC should assess the impact on the secondary commercial market.

<sup>4</sup> BBC PIT Submission

**Question 2: Do you agree with Ofcom's initial assessment that the Proposal is not material? If you disagree, please provide any evidence supporting your reasoning.**

3.1 Pact does not believe the BBC's proposals will have a significant and adverse impact on fair and effective competition. The BBC has a limited budget and has stressed that all deals will be done in line with the Terms of Trade and deals with other rightsholders, as such it's unlikely that the BBC will be able to acquire all the titles it wishes. However, as we have stated above, we could be concerned if there were constraints on the secondary commercial market which meant producers commercial choices were limited.

**Question 3: If you consider that the Proposal is material, please explain whether you consider Ofcom should undertake a BCA or a Shorter Assessment of the Proposal.**

4.1 Pact does not believe the BBC's proposals represent a material change.