



## **Response to Ofcom call for Input into Review of Broadcasting Regulation**

**January 2026**

### **About TAC**

1. TAC represents independent TV production in Wales. With a value of £460m, TV and film in Wales is a substantial component of the Welsh creative industries, and Cardiff alone has the third largest film and TV cluster in the UK. There are around 50 production companies in Wales, from sole traders to some of the leading players in the UK production industry, all providing economic, social and cultural benefits. Our members produce content for the BBC (including radio), ITV, Channel 4, Channel 5 and Sky as well as other commercial broadcasters and platforms. Our sector is responsible for almost all the content on S4C.

### **Ofcom's Call for Input**

2. TAC engaged with Ofcom's last Public Service Media Review and also provided input into relevant aspects of Ofcom's work to implement the Media Act. Ofcom is right to say that the media landscape is continuing to shift and we understand the need to ensure broadcast regulation remains fit for purpose.
3. The emphasis of the Call for Input is around establishing where Ofcom might review and in particular remove or streamline regulation, and we do make some suggestions in this regard. Elsewhere we are keen to emphasise the importance of some current regulations and the detrimental effect it could have on the production sector if they were to be relaxed.

### **Out of London commissioning regulations - preserving what works**

4. One of the areas Ofcom is looking at is Licensing and within that the programming obligations to which the PSBs are currently subject. Notwithstanding the need to look to streamline regulations in some cases, it is important that as much as possible, regulation remains in place to ensure the public service broadcasters are still fulfilling their remits and delivering on the principle of the PSB system. This is particularly important in terms of addressing audiences across the UK and also working with the creative industries around the nations and regions. It is also important to address issues around portrayal in terms of a mix of voices from around the UK both reflecting audiences and widening familiarity.

5. In respect of both of these objectives, TAC does recognise that there have been efforts by the PSBs to increase their work with production companies around the UK, for example Channel 4's '4 All the UK' initiative and the BBC's 'Across the UK' programme, as well as the BBC's recently merging network and nations commissioning teams to create a more joined-up structure.
6. On the regulatory side, we do also welcome the continued existence of regulatory mechanisms on out of London commissioning, including: quotas for commissioning out of London; the guidance on what is defined as an out-of-London production; and the register of out-of-London productions which is published annually by Ofcom.
7. As Ofcom will be aware TAC has raised concerns about whether the guidance is sufficiently robust to ensure that the spirit, as well as the letter, of legislation on out-of-London commissioning is followed.
8. What we are certain of is that there remains a need for such measures. We were therefore concerned to see in Ofcom's PSM Review Statement that *'it has been suggested that, as budgets decline, commissions and resources risk being too thinly spread which could create some risks to sustaining critical mass in regional production hubs over the longer term. This could ultimately impact on the range of creative ideas and content that represents and portrays audiences from across the UK.'*<sup>1</sup>
9. We have a concern that the suggestions referred to by Ofcom above may be reiterated as part of the broadcast regulation review, in the context of potentially reducing PSB obligations for out-of-London production.
10. We wish to make clear, in advance of any such proposals, that we would be in firm opposition to this. We do not think the concerns, as expressed by Ofcom, would justify any reduction in the obligations. While the quotas do require a certain amount of spend outside London, they are within what the broadcasters have achieved to date and, in the case of Channel 4, significantly exceed, with C4C having its own voluntary target of 50% spend outside London, which it introduced as part of its '4 All the UK' strategy in 2019 and which it met well ahead of its scheduled deadline of 2023.
11. Our sector is very aware of the pressures on commissioning budgets, and we have seen some companies close as a result of there being fewer commissions and constrained spend. However, having to spend a certain amount outside London does not require the commercial licensed PSBs to commission a certain number of programmes, or to commission in a certain genre. As Ofcom is aware, the Media Act did in fact relax specific PSB genre requirements to give the PSBs more flexibility. And with the exception of Channel 4's nations obligations, the commercial licensed PSBs are not required spend a particular amount in any specific part of the UK nations and regions.

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<sup>1</sup> Transmission Critical: the future of public service media. Ofcom, July 2025, p28

12. The out-of-London quotas have helped to grow the range of ideas, talent, stories and perspectives originating around the UK, thus ensuring audiences see greater cross-UK representation. Quotas for BBC, ITV, Channel 4 and Channel 5 all vary according to their commissioning power and level of general PSB obligations, ensuring proportionality in terms of what they are required to commit. Any calls for relaxing out of London quotas could only mean there was a desire on the part of the PSBs to reduce such investment in the companies providing this content, thereby leading to the very decline which some have suggested may take place – this would not serve audiences or the creative sector.

### **Made-out-of-London production guidance and reporting**

13. As stated above, we believe the existing out-of-London quotas need to stay in place. Over and above that, if Ofcom is to make them work as well as possible then it would be of value to examine whether the criteria currently used are ensuring the spirit, as well as the letter of the law is being followed. Also Ofcom might choose to examine the way in which out-of-London productions are reported.

14. Currently a production must meet two out of three criteria<sup>2</sup> to qualify as made out of London:

- The production company must have a substantive business and production base in the UK outside the M25;
- At least 70% of the production budget (excluding some specific costs) must be spent in the UK outside the M25; and
- At least 50% of the production talent by cost must have their usual place of employment in the UK outside the M25. One of these requirements is for a substantive base in the area (for example Wales) to which the production is being attributed.

15. There is no weighting towards any one criterion over another. However if the ‘substantive base’ criterion is met then it effectively means that the production company is not founded and / or headquartered in Wales. Therefore, over and above the short-term spend on the production, there is none of the longer-term benefit which would be provided by a Wales-based company in terms of added GVA through exploitation of IP and investment in training, skills and the workforce.

16. We do not oppose inward investment and welcome companies coming to make shows in Wales, using our crews and facilities. However in the case of the PSBs specifically there are many a case of senior production staff being brought in from outside the nation to make a programme, which means that talent present in the nation is getting fewer opportunities. Wales has senior production talent (executive producers and so on) who work on show for UK network, as well as for S4C and also in some cases the

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<sup>2</sup> As set out in the current Ofcom guidance which has applied from 1 January 2021 (see page 3-5): <https://www.ofcom.org.uk/siteassets/resources/documents/tv-radio-and-on-demand/broadcast-guidance/programme-guidance/broadcast-code-guidance/regional-production-and-regional-programme-guidance-from-2021.pdf?v=323999>

commercial platforms. Given this, our members are concerned that some of these production appointments come down more to the individuals concerned simply being familiar to the commissioner. We therefore see a situation where Welsh production talent is underused, leading to their not always being considered for working on shows which they are in fact capable of making to a high standard.

17. We note that the BBC stated last year that it intended to go beyond the Ofcom guidelines and perhaps this is something which Ofcom could consider in relation to the other PSBs. For example, while ITV Wales has a presence in the nation it is largely news, current affairs and documentary content. This includes very little national portrayal of Wales.

### **Reporting on out-of-London productions**

18. In terms of the information broadcasters are required to supply to Ofcom, we would again argue that the current requirements should be kept in place and modernised.
19. Adequate reporting on out-of-London commissioning is essential to ensuring that there is transparency in terms of how the requirements are met. In our opinion the current Out-of-London programme registers published by Ofcom fall short, in terms of the extent to which they are timely and contain detailed information.
20. We are often asked for evidence of where a programme may not have met the criteria, however this can be difficult to obtain. Evidence around this matter is to some extent anecdotal, given that the out-of-London register is published well after programmes are broadcast, rather than once programmes are commissioned. This means there can be a two-year lead-in time before a programme has been broadcast and so the circumstances around a company's base and operations will have changed in that time.
21. We acknowledge that Ofcom is a post-broadcast regulator, however publishing a report once a year feels to our members like a very 'analogue' solution in a digital era, where surely there could be a more up-to-date interactive online register, either operating in real-time or on, for example, a three-monthly basis. This would not just be of benefit to interested third parties but to Ofcom itself, as it would allow it to keep a much closer eye on the state of out-of-London commissioning and thus make regulation more effective.
22. Over the last two years we have been discussing with some of the PSBs how information they publish on new commissions could better demonstrate how the programmes and companies concerned meet the MoL criteria. We have previously met with the BBC, Channel 4 and ITV and will continue to discuss this with them. However, it would also be useful for Ofcom to look at this and specify what kind of information it would find useful.
23. For example, could the broadcaster publish at the time of commissioning whether a particular show qualifies as an out-of-London programme, giving information on how the company and programme fits at least two out of the three criteria. The broadcasters

have stated to us that sometimes a programme can end up not being classified as an out-of-London commission, due to a change in circumstances, however we do not see this as a barrier to the initial information being published and then being corrected at a later date.

24. In order to streamline this process as much as possible, there could be a database co-ordinated by Ofcom into which broadcasters can easily input their information.

### **Maintaining the current provisions for regulated Terms of Trade**

25. The 2003 Communications Act completely revolutionised the UK TV production industry. Previously independent producers had been engaged by the PSBs on a 'cost-plus' model which meant being paid programme costs plus fee, with all IP rights being taken in perpetuity by the broadcaster. This led to broadcasters 'warehousing' rights, not exploiting them fully and acted as a huge brake on the development of the sector, because production companies were not seen as a viable investment opportunity given they could not monetise their IP.
26. The 2003 Communications Act introduced the regulation of the Terms of Trade between independent producers and PSBs, with the broadcasters required to produce Codes of Practice, to be approved by Ofcom. Protections within the codes included independent production companies retaining all of their IP rights and licensing the programme to the PSBs to use in a specified way, in terms of number of transmissions and length of use.
27. Rights to secondary and international sales were to be separate from primary rights and not to be negotiated at the same time, thus giving the freedom for an independent producer to agree a deal with a PSB to show the programme in the UK, but go to a third-party distributor to sell internationally.
28. With producers in charge of their own IP, the industry was able to monetise its own content much more effectively. It also meant indies had much more potential value to investors, leading to an influx of finance to grow and develop the sector.
29. The Terms of Trade provisions within the 2003 Communications Act therefore led directly to a multi-billion-pound TV production industry we have in the UK today. Any reversion back to the previous regime would reduce investment in the sector and profits flowing back into the UK from international sales. It would lead to company closures and a further loss of skills in the industry.
30. While we understand the PSBs are under pressure, any attempt to roll back the Terms of Trade provisions is not the solution and will only make matters far worse for UK TV production and therefore UK PSM provision. It is therefore crucial that these protections for producers' IP are maintained.

## **Prominence for PSBs on YouTube and other third-party platforms**

31. Ofcom's Public Service Media Review rightly pointed to the need to extend prominence and discoverability for PSBs beyond the terms of the Media Act (which covered prominence on connected TVs and other devices), to cover third-party platforms such as YouTube. Ofcom stated that *'It is critical that the PSBs and YouTube work together to ensure that PSB content is prominent on its service, and on fair commercial terms. This is important for PSM to continue to connect with all audiences, particularly for news, which supports democracy, and for UK children's programming which helps young audiences learn and grow'*.
32. Beyond this Ofcom stated that Government should consider that this needed to be underpinned by legislation. We would urge that any such steps should be sure to include S4C. S4C sits alongside the other PSBs as an important service which, due to its being on iPlayer is being watched by people across the UK, as well as on its own service Clic. We are also seeing Welsh language content having a greater impact internationally, for example Netflix acquiring the series Dal Y Mellt.

## **Rules on commercial investment**

33. We recognise the Call for Input is partly aimed at looking at whether there are any other regulatory restrictions on PSBs which could be streamlined to enable greater flexibility and therefore bring them closer. One option is allowing more freedom to enable commercial investment in programming – for example relaxing the rules on product placement, undue prominence and sponsored content.
34. There is a need to be transparent with audiences, however in the production of factual / factual entertainment / entertainment, a partial adjustment to regulations in this area would bring significant opportunities to bring sponsorship and product placement to bolster PSB production budgets.
35. It could be argued that younger audiences, who will have grown up with content on non-tv platforms which have been partially funded by commercial entities, would expect future content to be of a similar nature.