

Submission to the Industrial Strategy:
Intellectual Property Call for Views

pact.

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Introduction

- 1) Pact is the trade association that represents the commercial interests of the independent production sector.
- 2) The UK independent television sector is one of the biggest in the world, with revenues of £2.5 billion in 2016.¹
- 3) The copyright licensing framework underpins growth in this sector. It enables rights holders to exploit their intellectual property by controlling access to their content which they use to generate revenues to invest in future productions.
- 4) The UK copyright framework is considered to be one of the best in the world. It has been effective in enabling competition and growth in the television production sector, and as a result:
 - The UK is now the second-largest exporter of television programmes in the world.
 - Audiences in the UK and across the globe have had access to high-quality, thought provoking and entertaining content in a range of different genres, much of which is provided free-of-charge via television broadcasting.
 - The flexibility of the copyright licensing regime has allowed independent producers, including many SMEs, to adapt to changes in market conditions and find new business opportunities in the UK and overseas.
 - There are now many examples of audio-visual content producers working with non-linear digital content providers to create new, innovative content and services for consumers in the UK and elsewhere.
- 5) Any disruption to the ecology of this complex market would have a significant impact on UK original content production.
- 6) Secondary sales rights are vital to the continued growth of the UK creative industries. Any changes to the existing IP regime must take into account the value of these rights and the potential impact which changes would have on content producers in this sector.
- 7) For further information on this issue please contact Pact's Head of Policy, [REDACTED] at [REDACTED]@pact.co.uk or on 020 7380 [REDACTED]

¹ Pact Census Independent Production Sector Financial Census and Survey 2017, by Oliver & Ohlbaum Associates Limited, July 2017

Overview

Pact has been working closely with the Creative Industries Council on the Creative Industries role within the government's industrial strategy and the associated Sector Deals that are currently being negotiated between business and the government. Part of this sector deal will include looking at the role of IP and how this will be further bolstered in the coming years. The creative industries generated £87bn worth of GVA last year and continues to employ more people within the industry compared to other sectors.²

As a growth industry the government has recognised the importance of the creative industries within any industrial strategy and has seen the potential benefits of further investing in the industry. TV and Film will play a vital part in this and as part of the sector deals we have been looking at ways in which the TV and Film sector can grow even more and provide the added productivity that the UK needs. In particular we have been supportive of the need to protect our strong regulatory environment and the current framework of IP that exists in this country especially as we begin to leave the EU. As the UK begins to plan trade deals with different countries it is vital that the strong regulatory environment we have created within the TV/Film industry is maintained this includes the IP framework.

It is more important than ever to ensure that any non regulatory interventions are not considered to be a replacement for action on other IP issues that Pact has highlighted in the past this includes the need to act now to oppose the current attack on territoriality in the EC's Digital Single Market (DSM) proposals. The current IP framework underpins our sector's success – non regulatory interventions will not be a substitute for the maintenance of a strong regulatory environment.

We would also like to bring to the IPO's attention the recent publication of a government commissioned review by Sir Peter Bazalgette. This review into the Creative Industries set out the opportunity within the sector to grow and provide more jobs and economic value in the future with some targeted policy recommendations. This included a number on IP issues for example:

- Government should increase the support offered to businesses to protect and exploit intangible IP. As part of this the intellectual property office should digitalise its IP finance toolkit work with industry to publicise;
- Government and industry to conduct a comprehensive joint work programme on IP valuation;

² DCMS Economics Estimates, DCMS, 2016

- Government and industry should develop a joint strategy to improve data transparency – government to provide innovation funding to support this.

In relation to the specific proposals that the IPO has set out some views on the most relevant suggestions:

IP Trading Platforms

- We are not convinced that significant resources should be devoted to setting up new IP trading platforms. For example in the copyright area, the Copyright Hub been established, but its impact and has been disappointing. Industry, which provided much of the investment needed to take that idea forward will not be willing to spend more on a duplicate system. Market based solutions such as the TRX are providing privately funded solutions that may be more suitable for our sector. Pact also currently help members to examine their export strategy by looking at how best to exploit their content and secure the best IP rights around the world using our Export Accelerator . This is now looking to be made available online for our members and we are working closely with DIT to manage this next stage of development.

B2B model IP agreements

- In the production sector terms of trade already help us negotiate the right deal for producers to ensure they are fairly remunerated for their content. This is a light touch regulatory framework enshrined in the Communications Act 2003 which allows set standards to help negotiations between broadcasters and producers. The flexibility of the legislation allows for standards to be renegotiated taking into account new business models.

Voluntary IP register

- We reject the idea of a voluntary register because it would be unfeasible or unfair to make it a requirement to register copyright that already exists. There is a risk that this would eventually become mandatory and become overly bureaucratic. Pact calls for encouraging voluntary, industry-led approaches, facilitating ever better use of metadata and exploring how to support other practical initiatives as identified by BSAC.

New financial products

- We recognise that mainstream UK lending has not properly acknowledged the opportunity for investing in IP assets particularly within the creative sector. And this is also identified in the recommendations of the Bazalgette Review. We would again urge IPO to look at the Balzalgette review and speak to the Creative Industries Council to also hear the work that has been developed by the working groups set up under the Council to help realise better access to finance for creative sectors.

Consultation Questions

1. Are you responding as an individual, business, intermediary, representative body?

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.

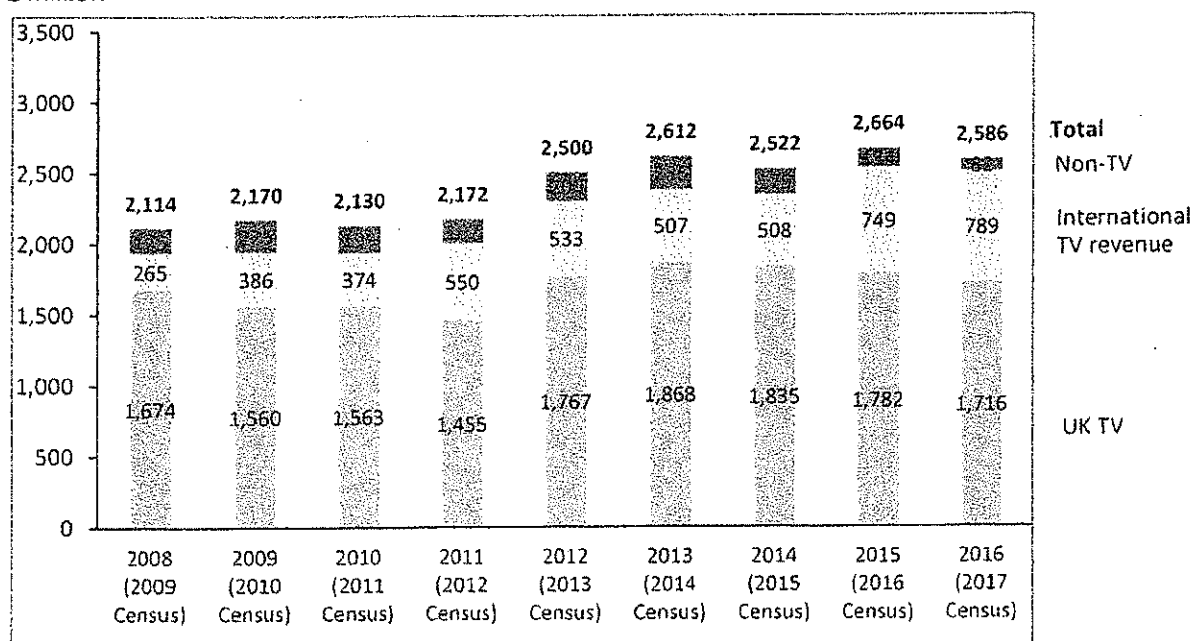
2. What does your business do / in what sectors do you operate?

Pact represent the British Film, TV and digital content producers we have over 500 members across the UK, members are aware of the need to exploit IP rights and use a mixture of business models to maximise their revenues from different rights options available to them. For smaller companies it is vital that business model options are open to them and explained as many will be too small to necessarily have a legal arm to help understand the jargon or the different ways to exploit their rights.

3. How large is your business, and what proportion of your assets are IP-based?

The businesses of all our members are IP-based and we have seen considerable success over the last ten years as members have maintained their revenue over a particularly difficult time financially. This has primarily been achieved through an ever increasing ability to exploit IP internationally and sell to directly to different buyers.

Total Producer revenues (incl. non-TV activities)
£ million



Source: Pact Census 2016, Oliver and Ohlbaum Associates,

4. In what UK regions do you operate?

Our members operate across the UK with centres primarily in London, Belfast Manchester, Glasgow, Cardiff and Bristol.

5. In what international territories do you operate?

Members can operate anywhere in the world but on the whole the more international a company the more likely for them to operate in different territories. Pact along with BBC Worldwide and ITV Studios annually publish a UK TV Exports report and identified that TV exports had risen by an impressive 10% to £1.3 billion over the last year.

North America represented 41% of total export revenue in 2015/16, with Europe contributing 31% and Rest of World contributing 29%. As in previous years, sales of finished programming (explain about what this means in North America made up a smaller proportion of total revenue than both Europe and Rest of World.³ There has also been strong growth over the last year to countries such as China, India, Japan and other parts of Asia.

Unchanged from last year, North America was the UK's strongest export market for coproductions, the production of new commissions, sales of digital rights, DVDs and licensing/miscellaneous. Europe is the biggest market for sales of formats.⁴

6. Is there more the IPO could do to help UK companies operating overseas?

- The IPO could do more to assess whether their services duplicate others within the market and where they might duplicate stop the activity and use this money to invest in other processes that are already in existence. This might involve working with the DIT more closely. We have previously advocated for the government to establish longer term funding and a cross Whitehall international export strategy. And through the CIC we have proposed the following:
 - There is an opportunity to re-evaluate and reset the structures and institutions that currently exist to support exports and investment both within the EU and beyond. We have consistently argued that DIT resources could be better streamlined and trade bodies have more direct influence into how funding and services are delivered to support businesses.
 - TAP funds have been reduced over recent years particularly to important emerging markets such as Brazil and Latin America. This has resulted in a large degree of uncertainty around TAP funding which Pact can

³ UKTV Export 2016, TRP 2016

⁴ IBID

demonstrate delivers a strong return for a relatively small investment per company. The number of TAP grants allocated per company were recently halved from 12 to 6 with immediate effect and without consultation; this has already had a negative impact on companies that are unable to access grants.

- Evaluation and feedback from producers after each international market, tells us that return on investment from DIT TAP funding is very strong and a fantastic £232 for every pound sterling invested. A Sponsors Alliance survey published in 2014 also showed that additional TAP support to SMEs over the last three years had generated up to £1billion in additional turnover from a £31m investment⁵.

7. What do you spend on IP?

Producers spend a considerable amount of finances protecting their rights using lawyers and the services provided by Pact to make sure they are fairly remunerated for their content. Depending on how large the production company will determine the capacity for assessing their IP rights – most larger production companies will have an in-house capacity and legal team to assess the rights but smaller companies may struggle because of the costs involved – if the IPO could administer grants towards companies carrying out a budget audit this could help the smaller companies in our membership.

8. Which aspects of the IP system do you use?

The Terms of Trade are a set of principles enshrined in the Communications Act 2003 which helps producers keep their rights and guides broadcasters and producers in their commercial negotiations for the retention of rights. As a business model it helps producers to raise capital for a project by providing deficit financing for the budget of a programme. Knowing that there is a capacity to presell the programme based on the rights retention helps producers to raise the capital. Once the programme is made and transmitted it is then also sold to other countries and then producers can exploit the rights through the secondary rights revenue.

This has helped producers considerably over the last 10 years. As you can see below the revenues of producers exploiting international markets has risen by 3 times over the last decade and this directly links to the ability for producers to exploit those rights. It has undergone intense scrutiny over the last few years as the broadcasting and TV landscape has changed but given its flexibility it was still found

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<http://www.sponsorsalliance.net/images/downloads/Sponsors%20Alliance%20survey%20of%20SME%20exporters%20using%20TAP%20March%202014%20results%20V1%2021.03.14.pdf>

to be fit for purpose and this current government also confirmed in January of this year that it continues to see the need for a term of trade.

Pact is developing a campaign at the moment for a fairer deal for online production as the Terms of Trade framework does not currently apply in the online space e.g. to commissions for BBC3 or All4. Pact believes that the value of online and short form content will grow in international value as broadcasters and online platforms commission more in line with consumer demand. We believe that as has been demonstrated through the value of the Terms of Trade framework that companies, and particularly new entrants in the digital economy, will be able to control and reinvest their IP to develop sustainable businesses and continually invest in research and development.

9. What do you particularly value about the UK's IP system?

Producers value the flexible nature of the UK's IP framework within the broadcasting industry.

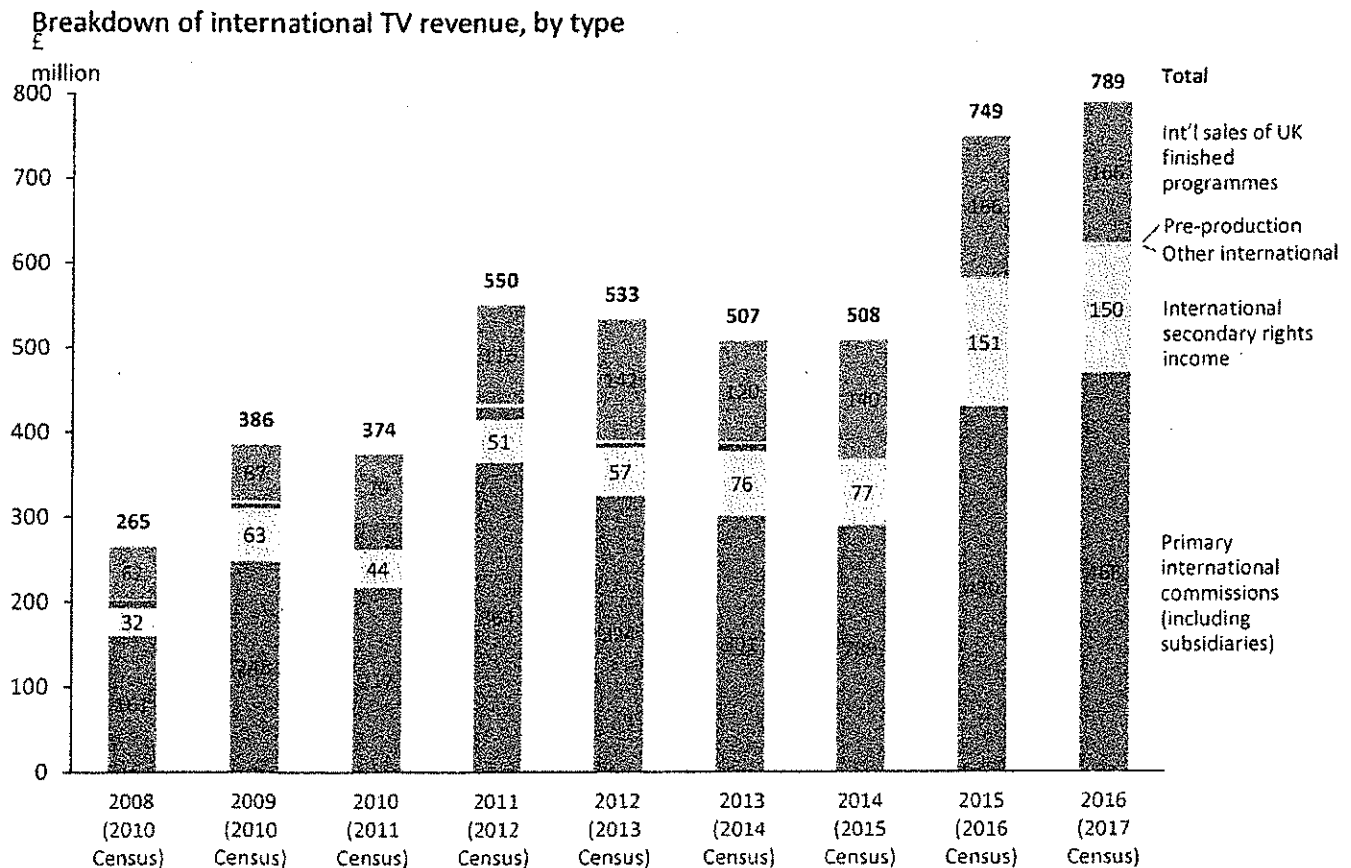
This is primarily administered through legislation within the Communications Act 2003 which sets out broad principles for the public service broadcasters to follow when engaging with producers. This framework has enabled an ability to adapt to new technology and for producers to negotiate with broadcasters easily. Further more it is also easy for Broadcasters to make use of the principles to update and negotiate freely with producers.

Terms of trade' protections for producers that allow them to trade on fair terms with large PSB groups and to own the IP resulting from PSB commissions – something that provides incentives to invest in UK production.

By generating most of their work through PSBs it means that PSBs are a testbed for producers and can create content which can then be exploited through secondary rights. By knowing that they have the ability to exploit rights producers are able to raise deficit financing for projects involving the PSBS and this can help elevate the quality of a programming through ways which might not had been possible previously as broadcasters were then expected to raise the entire budget for a project. Given the nature of advertising projected to narrow in the coming years it is also increasingly likely that commercial PSB channels also begin to rely heavily on the ability of producers to deficit finance a project. This means that the ability for producers to retain their rights is ever more important. A variety of business models to survive in the market is also vital for production companies as barriers to failure are incredibly low in such a competitive and high risk business.

10. Do you face barriers when using the UK IP system?

Without the wider context it is difficult to understand what this is in reference to – if it is in reference to those who use the UK IP system to register rights that does not apply to our sector. There are no barriers to the acquisition of automatic rights like copyright. Within this context the current UK copyright framework works well and we would not want this to be damaged or altered. The system incentivises producers to seek work abroad and exploit their rights – as you can see below the UK has done well to increase its secondary rights income and sell directly into new markets via primary commissions and this continues to be a growth area it will need to maintain a strong regulatory environment to help contribute towards this growth. All kinds of companies exploit this opportunity and Pact is currently further developing its offerings to our members via the Pact Export Accelerator which the Department of Industry and Trade have funded the next online phase. This online tool will help producers with an IP audit with potentially export advisors to help with the export strategy. Regular audits of rights such as this could help producers considerably exploit those rights in different territories and to rethink business options when initially negotiating with a broadcaster or platform.



Note: International revenue numbers from past years have been restated to reflect recent changes in methodology; this has affected the reporting of revenues from international subsidiaries of UK producers

'Other international' – international TV revenue not attributable to pre-production, primary rights, secondary rights or distribution

Source: Pact UK Television Production Census 2017, Oliver & Ohlbaum analysis