

Submission to Department for Digital,  
Culture, Media and Sport consultation on  
Audiovisual Media Services Directive

**pact.**

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August 2019

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## Introduction

1. Pact is the trade association which represents the commercial interests of the independent television, film and digital media production sector in the UK.
2. The UK independent television sector is one of the biggest in the world. UK independent television sector revenues have grown from £1.3 billion in 2005 to over £2.7 billion in 2017 largely driven by a growth in international sales.<sup>1</sup>
3. The British independent TV production sector is extremely successful internationally and is in a strong position to compete in the global marketplace. UK TV Export revenues were £902m in 2016/17 including the US (largest market), Europe (32% of revenues), other established English-speaking markets (e.g. Canada, Australia) and growing emerging markets in Asia and Latin America.
4. SVOD services have played a key role in the growth in international sales, revenues from overseas on-demand services increased by 19% year-on-year to £150 million and this revenue accounted for nearly one-third of international commissioning revenue in 2018.<sup>2</sup>
5. Pact welcomes this opportunity to comment on the Government's approach to the implementation of the Audiovisual Media Services Directive (AVMSD) and how this may affect the UK independent production sector.
6. For further information, please contact Pact's Acting Head of Policy, Niall Stewart at [niall@pact.co.uk](mailto:niall@pact.co.uk) or Susie Heron-Halliday, Policy Assistant at [susie@pact.co.uk](mailto:susie@pact.co.uk)

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<sup>1</sup> Pact Census Independent Production Sector Financial Census and Survey 2018, by Oliver & Ohlbaum Associates Limited

<sup>2</sup> *ibid*

## Overview

- 1.1 Pact has written the response to this consultation around the most relevant section of the AVMSD to the UK independent production sector; the implementation of European Works and prominence.
- 1.2 The current EU broadcasting regime is underpinned by the AVMSD framework, which has had a positive impact on the success of UK TV exports across Europe. UK content is popular in Europe due to its high quality. Europe represents £293m or just under a third (32%) of international revenues for British producers.<sup>3</sup>
- 1.3 The Government has confirmed that content originating in the UK will remain classified as European Works due to the UK's inclusion in the Council of Europe Convention on Transfrontier Television.<sup>4</sup> This convention does not apply in some EU member states so there are gaps to its application, however Pact believes that UK content will continue to sell well because of its reputation for quality.
- 1.4 Pact welcomes the further clarity on the AVMSD offered by the Government through this consultation. However, Pact believes that the 30% European Works quota is unnecessary and the current quota of 10% is more appropriate. There is a possibility that the 30% quota could have unintended consequences, namely SVODs choosing to simply meet the quota rather than go beyond. Currently the majority of SVODs, including Netflix, go beyond the 30% threshold in terms of its commissions with UK independent production companies.
- 1.5 In light of recent sector growth and the success of UK-produced SVOD shows such as *The Crown* and *Sex Education*, Pact believes that no additional regulation is needed to encourage the production of more SVOD content in the UK.

## Questions on Implementation – European Works

- 12) We propose that government amends the Communications Act 2003 to ensure that Ofcom produces a report every two years on the European Works quotas and prominence obligations, via copy-out. Do you agree?**
- a. Yes**
  - b. No**
  - c. If no, please explain why**
- 13) We propose that Government amends the Communications Act 2003 to ensure that Ofcom has to produce guidance on prominence of European works in video-on-demand catalogues. Do you agree?**
- a. Yes**
  - b. No**
  - c. If no, please explain why**

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<sup>3</sup> Pact TV Export Report

<sup>4</sup> The Future Relationship between the UK and the EU, HM Government, July 2018

**14) Are there core framework elements that should be included in this requirement to produce guidance?**

- 2.1 Pact believes that a 30% quota for European works is unnecessary. British content sells well internationally due to its high quality, and the popularity of British content looks set to continue. In March 2019, there were 736 UK-produced distinct titles available on Netflix UK, an increase of 76% since March 2016.<sup>5</sup> *The Grand Tour*, *Luther*, *Peaky Blinders*, *Sex Education*, and *The Last Kingdom*, all UK-produced shows, made it into the top twenty SVOD programmes in the UK in Q1 2019.<sup>6</sup>
- 2.2 Pact is also concerned that the imposition of a 30% quota could lead to SVODs simply meeting the 30% threshold, rather than go beyond. This may also lead to a reduction of SVOD content budgets in the UK. The UK independent production sector benefits from a mixed ecology of Public Service Broadcasters (PSBs), commercial broadcasters, international broadcasters and SVODs. The industry is in a strong position currently and Pact wants to see this continue.
- 2.3 Because of the popularity of British content, it is often already in a prominent position and easy to find on SVODs. For example, Netflix UK has British specific genres and micro-genres featured on its landing page. It is unnecessary for Ofcom to produce guidance on prominence of European works, as SVODs are already featuring British content prominently.

**15) Noting that prominence in on-line catalogues could encompass a wide range of practices (e.g. separate section, dedicated search, information on home page), please indicate which would consider appropriate:**

- a. separate section
- b. dedicated search
- c. information on home page
- d. Other (please specify)

**16) What would be your preferred way of introducing a new prominence requirement for European works content on video-on-demand catalogues?**

- 3.1 The British independent TV production sector is extremely successful internationally, and is in a strong position to compete in the global market place. UK independent television sector revenues have grown from £1.3 billion in 2005 to over £2.7 billion in 2017 largely driven by a growth in international sales.<sup>7</sup> SVODs play a key part in the growth in international sales, revenues from overseas on-demand services increased by 19% year-on-year to £150 million and this revenue accounted for nearly one-third of international commissioning revenue in 2017.<sup>8</sup>

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<sup>5</sup> Ofcom Media Nations Report 2019

<sup>6</sup> *ibid*

<sup>7</sup> Pact Census Independent Production Sector Financial Census and Survey 2018, by Oliver & Ohlbaum Associates Limited

<sup>8</sup> *ibid*

3.2 The reason the British independent sector has done so well internationally is because of the high quality of UK content. British content is often already in a prominent position on many SVODs without any legal requirements in place. Netflix has a number of genres and micro-genres which prominently feature British content, for example for Netflix users in the UK the genre 'British' is prominently featured on a drop-down menu. There are also categories such as 'BAFTA award-winning British TV programmes' and 'critically-acclaimed British TV dramas'.<sup>9</sup>

3.3 Prominence is not defined in Recital 35 of the 2018 Directive, instead there are examples about how prominence could be achieved for European Works in practice. One of the examples given is for European Works to have a dedicated section which is accessible from the service homepage, something which Netflix already does.

3.4 Any kind of new, enforced prominence regime may also become outdated quickly. Although the AVMSD could be flexible enough to accommodate some new technological developments, it is unclear how prominence of European works would work on devices that are voice controlled for example.

3.5 Pact is confident that UK produced content will remain in a prominent position on SVODs because of its success internationally and the high quality of content.

**17) Nothing that the Commission is due to publish guidance in relation to low turnover and low audience, do you agree with the proposed approach that we allow exemptions for quota and prominence obligations by amendment to section 368C(3) and 368Q (3) for the Welsh Authority of the Communications Act 2003**

**a. Yes**

**b. No**

**c. If no, please explain why**

4.1 Pact has no comments to make here.

**18) Do you consider that the current level of funding for European Works in the UK is sufficient? Please provide evidence**

5.1 TV and film production in the UK is booming and this growth looks set to continue, partially because of new opportunities provided by SVODs and international, but also because the UK production sector has a good reputation for quality, strong infrastructure, facilities, availability of skills and creative talent.

5.2 The PSBs remain the most important commissioners of original UK content. The combined spend by the five main PSB channels and BBC portfolio channels (such as BBC Four) on first-run UK originated content<sup>10</sup> totalled £2.568 billion in

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<sup>9</sup> Netflix submission to the House of Lords Communications Committee, 2019.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/communications-committee/public-service-broadcasting-in-the-age-of-video-on-demand/written/101280.pdf>

<sup>10</sup> Content that is not a repeat and has not been shown before

2018. The PSBs spend on content has been in decline; in 2004 the PSBs spent £3.502 billion on content and in 2017 this spend totalled £2.508 billion, one of the lowest ever levels. This decline in spend has been mitigated by an increase in third-party funding<sup>11</sup> from co-production arrangements, tax credits and deficit funding from production companies.

5.3 Gaps between the actual cost of the programme and the tariff provided by the PSBs means that producers are often required to deficit finance series. In order to secure UK and international sales to bridge the gap in the financing and/or enable the producer to make a profit from the series, producers are incentivised to make the series as high quality as possible. They can then sell these high quality series globally or to other UK buyers.

5.4 The creative industry tax credits have played an integral role in the success of the UK independent production sector. Since the tax reliefs were introduced 2,955 films and 485 TV productions have benefited. In 2016, the screen sector contributed almost £8 billion to the UK economy; the film sector alone contributed over £1.71 billion of UK exports.<sup>12</sup>

5.5 To qualify for these tax reliefs productions must pass the British Cultural Test. This test is flexible enough to allow non-UK production companies to qualify. Inward investment has had a huge impact on the film and TV industry in the UK, and its infrastructure and skills. On a combined basis all five screen sectors attracted over £2 billion of inward investment from the US, EU and other markets in 2016, 66% of the total spend in 2016.<sup>13</sup> Inward investment also helps to support job growth across the UK; each £1 million spent on the production of inward investment films in the UK in 2016 led to 11.2 direct FTEs being hired.<sup>14</sup>

5.6 Pact believes that although there is always room for more funding models and additional funding for British content; currently UK independent producers are in a strong position financially.

**19) The Government currently has no plans to introduce a levy, however, do you think a levy scheme to fund European Works could be an effective way to provide funding? Please explain why.**

6.1 As previously mentioned, Pact believes the current level of funding for European Works in the UK is sufficient. The introduction of a levy could be problematic for independent production in the UK.

6.2 Pact would cite the example of the Canadian Government imposing a 'levy' on Netflix in Canada. Netflix agreed to a \$500m deal with the Canadian Government; Netflix have to invest the money in English and French language programming, and Canadian produced shows also gain prominence on the Netflix landing page as part of the deal. However, this money essentially went to

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<sup>11</sup> In 2018, third-party funding by the PSBs contributed a record figure of £455 according to Ofcom's Media Nations 2019 report.

<sup>12</sup> <https://www.gov.uk/government/news/government-provides-11-billion-cash-boost-to-creative-sectors>

<sup>13</sup> Screen Business: how screen sector tax reliefs power economic growth across the UK, BFI, October 2018

<sup>14</sup> *ibid*

the Canadian Government, rather than to independent production companies. Pact would be wary of a similar situation happening in the UK if a levy were introduced.

6.3 The SVODs are already heavily investing in UK content, and the UK production industry. Earlier this year, Netflix struck a deal with Shepperton Studios to set up a permanent production base there, with the aim of spending an increasing amount of their annual production budget in the UK. Large scale productions can also boost local production economies and jobs. For example, the Netflix UK-produced programme *Sex Education* was filmed in various locations across Wales and the majority of the crew and extras were Welsh. Netflix also set up a dedicated training programme on set, where students could learn production skills on the job. Amazon are also investing in training in the UK. They currently operate a writers' workshop, where they partner new writers with a more experienced one to improve skills and gain experience.<sup>15</sup>

6.4 Pact cannot comment on how effective a levy would be at funding European Works as there is very little information on how, and what exactly, this levy would fund. There has been no convincing argument for a levy, and Pact would be wary of a levy on SVODs which could dampen their incentive to invest in the UK production ecology.

**20) Are there alternative methods of funding European Works that you wish to provide views on?**

7.1 Pact has no comments to make here.

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<sup>15</sup> Jay Hunt, Apple and Georgia Brown, Amazon, oral evidence to the House of Lords Communications Committee, 25/06/19