



Cristina Nicolotti Squires
Group Director for Broadcasting and Media
OFCOM
Content Policy Team
Riverside House
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London SE1 9HA

10th March 2025

Dear Ms Nicolotti Squires,

Objections to Proposals in Ofcom's Consultation on Revised PSB Commissioning Codes of Practice

We are writing to express our deep concern regarding the proposals outlined in Ofcom's current consultation on the Revised Guidance for Public Service Broadcasters (PSBs) on Commissioning Codes of Practice.

We agree with PACT that:

- (ii) allowing PSBs to seek bundling of primary and secondary rights with the Producer's express consent, and,
- (ii) removing the prohibitions on 'matching rights' in commissioning contracts, will significantly threaten the financial health and sustainability of the UK's independent production sector.

Arrow Media is a leading UK factual production company, which has developed and produced acclaimed television series such as Bafta and RTS winning Live from Space. Arrow Media is currently developing projects for the BBC, Channel 4, Channel 5 and various streaming platforms.

As experienced factual producers, we are well-positioned to provide an informed perspective on the significant risks posed by Ofcom's proposals. These changes will drastically shift the balance of negotiating power in favour of PSBs, limiting independent producers' ability to retain and exploit intellectual property (IP) and threatening the overall sustainability of our sector.

Growing production deficits

PSB licence fees are not increasing in line with inflation, and broadcasters are now relying more heavily on producers to secure their own deficit financing. Over the last 5–10 years, deficit funding requirements have increased dramatically across all genres. We must be able to leverage secondary and international rights to plug production deficits.

Bundling

The market for commissions is highly competitive, with an increasing number of independent producers competing for a limited number of slots. Currently, producers already face pressure to grant additional UK rights to broadcasters, as it is often implied that licence fees—or even securing the commission itself—depend on these concessions.

While independent producers recognize the need for PSBs to compete with streaming platforms and have already granted broad UK rights across multiple platforms, extending this to international rights as the guidance indicates would be deeply damaging. If allowed, PSBs would be able to secure both primary and secondary rights (including rights ex UK) for nearly the same price as primary rights alone. This would:

- Undercut producers' bargaining power, as we would have little ability to negotiate for fair value.
- Reduce producers' ability to raise deficit finance, as secondary and international markets provide critical funding sources.
- Threaten the survival of independent production companies, as secondary sales are a key revenue stream.

We agree with PACT that prohibiting PSBs from using their dominant position in negotiations would be nearly impossible in practice. Most independent producers will feel obliged to accept bundled rights out of fear of losing the commission, further diminishing our already modest bargaining power.

In the past two years, the industry has faced a downturn, making financing more precarious than ever. If Ofcom allows commissioning deals to be conditional on the acceptance of bundled rights, we will be left with no option but to accept unfavourable deal terms to secure commissions and sustain our business.

Last Matching Rights

We are particularly concerned about the proposed introduction of last matching rights in favour of PSBs. If these proposals go forward, PSBs would have the right to acquire UK secondary and international rights for the same price offered either by our in-house distributor or a third-party.

This creates a significant deterrent for both in-house and third-party distributors, as they would be required to invest time and resources into valuing rights, only for PSBs to cherry-pick the most commercially viable projects. As a result:

- Distributors would be left with less profitable and riskier projects, disrupting the balance required for a sustainable investment strategy.
- Independent producers would struggle to obtain deficit funding, as distributors would be hesitant to engage in negotiations if their commercially sensitive terms were automatically disclosed to PSBs.
- Multichannel commissioners, streamers, and other third-party buyers could be discouraged from engaging in negotiations, fearing that PSBs would ultimately claim de facto exclusivity.

The ability to freely exploit UK secondary and international rights is fundamental to independent producers' ability to finance productions. By granting PSBs last matching rights, Ofcom would be creating an anti-competitive environment that restricts financing opportunities, limits market growth, and harms the overall industry.

Urging Ofcom to Maintain Existing Protections

We strongly urge Ofcom to maintain the existing safeguards that protect independent producers. Without these protections, the proposed changes will significantly weaken independent producers' financial stability; and limit the diversity and quality of content available to UK audiences.

A strong and vibrant independent production sector is essential to sustaining the UK's reputation as a global leader in television content. We urge Ofcom to reconsider these proposals and ensure that independent producers can continue to create, finance, and exploit their own content in a fair and competitive marketplace.

We appreciate Ofcom's attention to these concerns and hope that the independent production sector's perspective will be fully considered before any changes are implemented.

Yours sincerely,



James McGregor Head of Legal & Commercial Affairs Arrow International Media Limited