

Consultation on revised Guidance for Public Service Broadcasters on
Commissioning Codes of Practice

Welsh Government – Creative Wales response

General Comments

The Welsh Government has engaged with key stakeholders and Independent Wales-based production companies on the content of the proposals of the *revised Guidance for Public Service Broadcasting on their Commissioning codes of Practice* and would like to highlight the following issues and points of concern:

Consultation questions

Question 1: Do you have any comments on our approach and proposed draft Guidance?

Welsh Government acknowledges the need of making revisions to the PSB Commissioning Codes of Practice to align with the implementation of the Media Act 2024. While the value in a clearer monitoring process and changes to the language of the Commissioning Code which better reflect the changing commissioning landscape are recognised, Welsh Government would like to highlight the following points of concern:

The Proposal of bundling Secondary and Primary Rights

The current principles of the Commissioning Code of Practice specify the need to negotiate each set of rights separately, thus maximising independent production companies' potential for further exploitation of rights and to maximise profits and contributing to the growth and sustainability of the independent sector here in Wales.

Welsh Government would like to highlight concerns that removing the current restrictions to the bundling of primary and secondary rights will place independent companies in a vulnerable position, particularly at a time when we are seeing reductions in the level of commissions and increased competition across the board. Removing these restrictions has the potential of enabling PSBs to secure increased rights at lower costs than should the rights be available to exploit separately, thus weakening the potential value and profitability of independent productions.

Of particular concern is the reference to "As a result of changes made by the Media Act, the importance of meeting the needs and satisfying the interests of different audiences across the UK is now clearly at the heart of the PSBs' remits". Welsh Government would like it noted that these are also the audiences that independent production companies serve, and that removing the restrictions on bundling rights strengthens the PSBs position in obtaining rights at lower cost to the detriment of independent producers who will have little option than to give up increased rights to secure much needed commissions.

Matching Rights

Industry concerns have been raised in regard to the Matching Rights position, highlighting that this may hamper private investment in productions given the resulting lack of confidentiality in securing deals when another platform is in competition with a PSB.

Conclusion

In general these proposals represent a consolidation of the PSB's negotiating position, which given the increased competition is an understandable request, however we are concerned that these changes could lead to increased difficulties for the indie sector and affect investment prospects when securing the best possible budgets for new indie productions.

Question 2: Do you have any comments on our impact assessments in relation to our proposals, as set out in Annex 2?

Impact assessment

There appears to be an acknowledgement of the imbalance in the potential impact of the proposed changes which show little regard to the current state of the independent sector 'We expect there may be some potential for PSB gains and corresponding losses for producers in some instances'.

Welsh Government urges that the Consultation takes into consideration the fragile state of the independent tv sector, that has seen company closures due to the inability to be profitable during the current challenging climate, and looks to ensure that the proposed changes to the Commissioning Code of Practice do not further hinder the growth of the independent sector that is a vital part of Wales' Creative economy. We request that a more detailed impact assessment be undertaken that considers the impact to the independent production sector ahead of implementing the proposed changes as referenced in the consultation document.

Welsh Language

The Welsh Language Impact Assessment states that 'our proposals are likely to have positive effects or increased positive effects on opportunities to use Welsh and treating Welsh no less favourably than English'. Welsh Government challenges this statement and emphasises that a significant proportion of the independent production sector in Wales operates through the Welsh language and delivers content through the Welsh language for S4C, consequently any negative impact of these proposed changes to the sustainability of the UK independent production sector, will directly hamper the ability for Welsh independent production companies to deliver Welsh language content.

Additionally, the Welsh Language Impact Assessment states that in publishing their Commissioning Codes of Practice, that the Channel 3 licensee in Wales, C4C,

Channel 5 and S4C may do so in Welsh and English. The Welsh Government challenges the use of 'may' and that in the instances of channels commissioning Welsh language content that the wording of the consultation reflects the need for the Code of Practice to be made available through the Welsh language.