Channel 4 response to Ofcom's proposals to update the PSB quotas (Media Act implementation)

Overview

As the UK's only publicly-owned and entirely commercially-funded PSB, Channel 4 plays a unique and crucial role in UK society, and as a driver of growth in the creative economy across the UK. We have a broad and varied set of statutory responsibilities (our remit) which we must deliver in an increasingly challenging landscape underpinned by dramatic changes in technology, audience habits and media business models.

We welcome Ofcom's general approach to implementing the changes to PSB quotas required by the Media Act, which seeks to ensure that the level of production secured by the current proportional quotas is broadly maintained. Ofcom's proposed methodology for converting the quotas for independent productions, original productions and production in the nations and regions from proportional to absolute quotas appears sensible. We support the underlying purpose behind the change, which is to enable PSBs to deliver these quotas via VoD services. The majority of UK audiences' TV viewing now takes place online, and hence it is essential that the regulatory framework takes account of PSBs using VoD to meet their quota obligations as well as content on linear.

However, whilst being able to deliver against our quotas via VoD is a positive change, we are concerned that Ofcom's consultation and impact assessment does not fully grasp the risks that absolute quotas pose to the ability of PSBs to sustainably deliver their remits in the long-term. Unlike proportional quotas, absolute quotas become more difficult to deliver if our overall content budget decreases. The first phase of Ofcom's review of Public Service Media highlights serious risks to the financial sustainability of PSM.[1] This strongly indicates that, on current trajectories, absolute quotas will become increasingly difficult for PSBs to sustainably deliver over time. A higher quota burden places restraint on our commercial and creative flexibility, which in turn makes it harder to adapt and transform our operations to drive impact for audiences in an online world.

This dynamic highlights the need for a broad re-balancing of the 'PSM compact' to ensure that PSM receives sufficient regulatory support to maintain its scale and impact, and can continue to support high levels of original, independent and regional production. We have set out our views to Ofcom separately as part of the second phase of its PSM Review, and we await the findings of Ofcom's review with interest.

In addition to our general concern that Ofcom's consultation does not sufficiently acknowledge the risks that absolute quotas pose to the sustainability of PSM delivery, there are some specific aspects of Ofcom's proposals which we believe should be re-considered:

A. **Increasing the Outside London and Outside England absolute spend quotas by 2% each year**. Automatically increasing spend quotas each year in perpetuity is a concerning proposal in a context where existing funding streams (in Channel 4's case, advertising revenue) are increasingly challenged and overall funding for UK PSB has declined significantly in real terms. Doing so creates a high risk of imposing an ever-increasing regulatory burden in a challenging and uncertain market context. *[Redacted for publication - commercially sensitive]*

   A more sensible approach would be for Ofcom to keep the quotas flat for at least the first couple of years of the new quota regime, and then assess whether it is appropriate to establish a multiplier to the quota to account for cost inflation. That assessment should consider the appropriate timing/frequency at which uplifts to the quota might take place:

[1] Ofcom, 2024. Review of Public Service Media (2019 – 23), p.3-5.

whilst an annual increase may be excessive, a less frequent increase to the quotas to help counter the effects of inflation could strike a better balance.

B. **Requirement for a PSB to have contributed more than 25% of funding for a co-production to count towards quotas.** Setting an arbitrary 25% threshold may constrain PSBs from seeking new and innovative approaches to co-financing original productions which may become necessary in a changing market. Instead of a fixed threshold, Ofcom could set descriptive criteria which would define the circumstances under which a co-production can count towards the original productions quota: for example, if a PSB exercises significant editorial control and oversight of the creative process.

C. **Reference to 'content that represents and portrays audiences across the UK' in the guidance on nations and regions productions:** Ofcom's criteria for a production to count as 'made outside London' are focussed on production activity and spending, not the content of programmes – and Ofcom proposes no changes to these criteria in this consultation. It is therefore somewhat confusing that Ofcom proposes to revise the text explaining the aims of the regime to include a reference to representation and portrayal. Whilst Channel 4 recognises the importance of on-screen representation, this revision risks creating uncertainty about whether or not the content or subject of a programme is relevant for defining it as an outside London production (which is not the case).

We expand further on these points in our response to Ofcom's consultation questions below.

Responses to consultation questions

Question 1: Do you have any comments on our proposals and proposed draft Guidance for Original Productions and updates to the Regional Production Guidance?

Views on Ofcom's general approach and conversion methodology

We welcome Ofcom's general approach to implementing the changes to PSB quotas required by the Media Act, which seeks to ensure that the level of production secured by the current proportional quotas is broadly maintained. Given that Channel 4's licence renewal process under the pre-Media Act legislative framework has only very recently concluded, it is right that Ofcom sees this process as a 'translation' of existing agreed quota levels to a different format under the Media Act requirements – i.e. from proportional, to absolute quotas – and not an opportunity to revisit the levels of the quotas themselves.

Ofcom's methodology for converting quotas (calculating the quota value as a percentage of average historical qualifying linear spend/hours from five previous years) appears sensible. Our internal analysis suggests that these remain appropriately challenging but achievable minimum benchmarks, which we will aim to exceed when possible.

Figure 1: Ofcom's proposed conversion of Channel 4 quotas from proportional to absolute

	Do repeats count?	Current proportional quota	New absolute quota
Original productions (hours)	Yes – see below	All day: 45% Peak: 70%	All day: 3160 hours Peak (linear only): 960 hours
Outside London (hours)	No	35%	800 hours
Outside London (spend)	No	35%	£110m-£140m
Outside England (hours)	No	9%*	210 hours*
Outside England (spend)	No	9%*	£20m-£40m
Independent productions (hours)	No	25%**	450 hours**

*to increase to the absolute equivalent of 12% spend/hours outside England from 2030.
**to increase to the absolute equivalent of 35% hours subject to commencement of the relevant Media Act provisions following Channel 4's entry into in-house production

Ofcom understates the inherent risks of switching from proportional to absolute quotas

Whilst Ofcom's proposed methodology and the new quota levels are broadly reasonable, it is crucial that Ofcom remains alive to the fact that absolute quotas inherently carry greater risks in terms of the regulatory burden faced by PSBs.

Switching to absolute quotas removes the inbuilt flex previously provided by the proportional system, whereby the actual volume of hours or level of spend represented by a quota would rise or fall in line with the total qualifying content output and spend. By contrast, an absolute quota will remain at the same level regardless of market conditions and the overall level of our content budget. This means that in a year where our content budget declines, absolute hours and spend quotas become harder to deliver as they would account for a higher proportion of our total output. This has wider impacts on our creative and commercial flexibility, and therefore ultimately on our ability to serve audiences effectively, as it creates a risk that we are forced to prioritise the demands of quotas over editorial considerations when commissioning and scheduling programmes.

For commercial PSBs, content budgets are influenced by the performance of the advertising market – which is highly affected by sentiment in the wider economy. *[Redacted for publication - commercially sensitive*]

Without bold reform to maintain and strengthen PSM, quotas are likely to become more challenging over time for PSBs to deliver

Ofcom's review of PSM during the years 2019-2023 highlights the major challenge of attracting and retaining viewers in a crowded online landscape intermediated by powerful global tech platforms. Whilst PSBs have demonstrated their resilience in adapting and innovating to meet this challenge, they must do so whilst grappling with long-term declines in linear advertising and licence fee revenues, and increasing costs from maintaining distribution over linear and online.

As Ofcom notes in its PSM report, "these challenges risk there being less PSM content in the future".[2] A decline in the overall volume of PSM content would mean that absolute quotas represent a higher regulatory burden for PSBs, giving PSBs less creative and commercial flexibility. In turn, this undermines our ability to evolve and adapt our services to meet changing audience needs in the face of fierce competition from global SVoDs and tech platforms.

In this context Ofcom should reflect on whether it is realistic that current absolute quota levels can be sustained by PSBs throughout full period of the current PSB licences. As we set out in the submission paper that we submitted to Ofcom's PSM Review, there is an urgent need to re-frame the 'PSM compact' – i.e. the balance of formal obligations that PSBs are required to deliver, and the regulatory benefits such as prominence that help to ensure those obligations are financially sustainable for PSBs to deliver.

New legislation and a bold regulatory approach is needed to ensure that the impact that PSBs have today can be sustained into the 2030s. *[Redacted for publication - commercially sensitive*]

[2] Ofcom, 2024. Review of Public Service Media (2019 – 23), p.3-5.

Channel 4's concerns with specific Ofcom proposals

As set out above, we have no fundamental objections to Ofcom's proposed methodology for converting the quotas. However, we also have the following concerns about other aspects of Ofcom's proposals which are not part of the core conversion methodology:

A. Proposal to increase the Nations and Regions absolute spend quotas by 2% each year

Ofcom proposes a 2% annual increase to the outside London and outside England spend quotas, as a proxy for inflation in the cost of production (which would otherwise see the quota represent a diminishing amount of real production activity over time). This is a concerning proposal given the challenges that Ofcom has identified regarding the revenues that support PSM and the costs of maintaining delivery across both linear and online.

It cannot be assumed that an in-built 2% annual increase in the quota to account for cost inflation is realistic or sustainable in perpetuity.

[Redacted for publication - commercially sensitive]

Given year-on-year fluctuations in our content budget and uncertainty over how market conditions will change over time, we do not believe it is realistic to automatically uplift the quota every year. Doing so creates a high risk of imposing an ever-increasing regulatory burden in a challenging and uncertain market context. A more sensible approach would be for Ofcom to keep the quotas flat for at least the first couple of years of the new quota regime and then assess whether it is appropriate to establish a multiplier to the quota to account for cost inflation. That assessment should consider the appropriate timing/frequency at which uplifts to the quota might take place: whilst an annual increase may be excessive, a less frequent increase to the quotas to help counter the effects of inflation could strike a better balance.

Ofcom should also remain open-minded as to whether an inflation multiplier is truly necessary. The fact that spend quotas are accompanied by hours quotas provides a level of protection against the risk of PSB investment in Outside London productions declining over time, as we will still have to deliver the same number of hours even as the price-per-hour of key remit-driving genres (such as scripted programming) increases with time. We agree with Ofcom that, if a multiplier is to be applied to the spend quotas as a proxy for inflation, it should not fluctuate in line with CPI. This would be extremely difficult (if not impossible) to forecast and plan for. We would also urge Ofcom to hold firm against potential arguments from stakeholders for a more aggressive inflation multiplier than 2% annually.

It is already the case that the new absolute quotas are likely to constitute an increasing burden on PSBs over time, unless there is bold intervention to address the fundamental challenges to the future sustainability of PSM that Ofcom has identified in part one of its PSM Review. Increasing this burden still further year-on-year would appear to compound these challenges – undermining the interests of the audiences that PSBs serve, and the independent production companies who rely on sustainable PSB commissioning spend for their own long-term survival.

B. Proposal that for a co-production to count towards the originations quota, a PSB must contribute more than 25% of funding

Ofcom's proposal to set a new 25% PSB spend threshold in order for a programme to count as a PSB origination appears somewhat arbitrary. It also adds an additional element of inflexibility to how the PSB quotas operate, which could prove problematic in a changing market where approaches to financing production continue to develop and evolve.

[Redacted for publication - commercially sensitive] With high-end drama in particular becoming more and more expensive, over time the market could potentially move towards a

model where a larger number of co-funders is the norm. This would be more like the way films are funded. In Film4's case, whilst we will normally contribute only a small proportion of a film's total budget, Film4 often has a significant role on the creative development of a film – and our funding is often pivotal in allowing a film to secure funding from other sources. As such, Ofcom should not underestimate the impact that proportionally smaller PSB investments can have on the viability of a project and should consider whether there could be unintended consequences from disincentivising this type of investment in a challenging production financing landscape.

Instead of a fixed threshold, Ofcom could set descriptive criteria which would define the circumstances under which a co-production can count towards the original productions quota: for example, if PSB exercises significant editorial control and oversight of the creative process.

C. Reference to representation and portrayal in the guidance on nations and regions productions

Ofcom proposes the following edits to paragraph 1.4 of the nations and regions production guidance:

> *~~The aim of~~ The regional production obligations ~~is to support~~ help ensure the commissioning of content that represents and ~~strengthen~~ portrays audiences across the ~~television~~ ~~production sector and~~ UK, while supporting the creative ~~economies of~~ economy across the UK's nations and regions.*

Whilst we recognise the importance of regional representation and portrayal, we are concerned that including a new reference to 'content that represents and portrays audiences' within Ofcom's framing of the purpose of the outside London quotas creates a lack of clarity regarding how the quotas operate in practice. Ofcom's criteria for a production to count as 'made outside London' are focused on production activity and spending, not the content of programmes, and Ofcom is not proposing any changes to these criteria in this consultation.

Ofcom assesses whether PSB output is appropriately representing and portraying communities across the UK via other means; in Channel 4's case, Ofcom does this via its annual report on our Statement of Media Content Policy ("SMCP report"). Including a reference to representation and portrayal in the guidance therefore appears to have no practical bearing on Ofcom's regulatory approach and is at risk of causing uncertainty and confusion to those who read the guidance.

Question 2: Do you have any comments on our impact assessments underpinning our proposals, as set out in Annex 3?

Ofcom's impact assessment finds that the changes to quotas "will not generally result in an increased regulatory burden arising from the quota requirement relative to the current situation". Ofcom acknowledges that absolute quotas "will not adjust to changes in underlying levels of output or spend in the same way as proportional quotas", and anticipates that "in any given year, the regulatory burden could increase or decrease slightly depending on the levels of production or spend".

Ofcom's impact assessment appears to understate the potential negative impacts of shifting to absolute quotas in a wider context of challenges to the long-term sustainability of PSM delivery. As we set out above, in the absence of bold policy action to support PSBs in delivering impact for audiences online and to secure sustainable funding for PSM, we are looking at a world where the volume and spend of PSB output may not be sustained into the 2030s. In this scenario, the regulatory burden of absolute quotas appears far more likely to increase over time. This risk is exacerbated further by Ofcom's proposal to include an annual automatic 2% increase in the Outside London spend quotas, as discussed above.