



Siobhan Walsh  
Interim Group Director for Broadcasting  
Ofcom

11 November 2023

Dear Siobhan,

**BBC Studios review: Update on Secondary Content sales**

I am writing on behalf of the BBC Board's Fair Trading Committee to follow up on the conclusion of our work on Secondary Content sales following the exchange of letters last year regarding Ofcom's Studios Review of the interaction between BBC Studios and the BBC public service.

In its Studio's Review statement, Ofcom noted that:

“for certain categories of content that BBC Studios distributes, where the BBC public service owns the intellectual property, co-production arrangements are in place. Under these arrangements BBC Studios is entitled to the entirety of the profit related to the distribution of the associated secondary content rights. This is a long-established practice and it does not appear to us that the BBC has fully reviewed and updated it in the light of our rules. We have not seen evidence that the public service has undertaken objective tests to ensure that its co-production arrangements with BBC Studios are at arm's length and on commercial terms, and therefore it is not clear to us how the BBC is satisfying itself that it is achieving compliance.”

“In principle, the public service entering into a co-production deal with BBC Studios for a specific programme could be compliant with our rules. However, based on the information we have seen, we are still concerned that there may not be adequate processes in place to determine whether the value the public service receives from BBC Studios as its distributor/co-producer is in line with the value of the rights being traded. We are therefore not clear how the BBC Board is satisfying itself that these arrangements are at arm's length and on commercial terms.”

In November last year, we wrote to Ofcom stating that we planned to establish a formal process for approval by UK public service commissioning on each of the relevant titles on a case-by-case basis at the point of re-commissioning / re-investment. This was to include a clearly articulated and recorded rationale for the deal parameters for each transaction and in particular the basis on which the value the public service receives from BBC Studios as its co-producer is reasonably considered to be in line with the value of the rights being traded, taking into account deal structure, investment level, creative input and qualitative value to the BBC Public Service slate.

We explored this approach, but we found there were considerable implementation difficulties with this approach, including the absence of market benchmarks and Ofcom's

insistence on a quantitative approach to measurement that we considered did not fully capture the respective creative contributions of PS or Studios.

We analysed the 20 relevant titles, i.e. programmes originally produced by BBC in-house production (either before the spinning out of BBC Studios in 2017 or the transfer of Children's in-house production in 2022) and the small number of in-house current affairs programmes in which Studios makes upfront investment.

Following this analysis we have decided that the significant majority of these existing IP titles will be treated as standard distribution investments, i.e. with 100% of net profits (after Studios has recouped investment, costs and industry standard commission) being returned directly to the BBC Public Service. Typically these titles are where there is an investment of less than 30% and/or where there is a small amount of exploitation across multiple lines of business.

We have identified a very small number of titles which we believe unquestionably still merit the longstanding treatment. This is based on the scale of investment into the series, in each case over 50%. This investment has scaled over time, there is a large catalogue of content and the exploitation takes place across multiple formats and lines of business. BBC Studios also deploys material resources in terms of editorial and brand development, including protection. As such BBC Studios will retain 100% of net profits for these programmes.

There is also a small category of transitional titles, i.e. ones that were in development in by BBC Children's Productions before its transfer to Studios. We have decided that for such titles the net profits should be split proportionately on the basis of relative share of programme funding.

Finally, *Strictly Come Dancing* is unique among these programmes as its commercial exploitation is primarily through format sales and international productions, i.e. *Dancing with the Stars*, more than sales of the UK programme. To reflect this entrepreneurial efforts and investment beyond the UK programmes, we have decided that the should be shared between BBC Studios and BBC Public Service.

For all titles the position will be reassessed at the point of reinvestment, which is typically an annual process. If the investment profile of any of these types of shows changed significantly, this would accordingly lead to a reassessment of this position.

We consider that this should fully resolve Ofcom's concerns by establishing an explicit process that includes objective criteria and analysis to determine that the value the public service receives from BBC Studios as its co-producer is in line with the value of the rights being traded.

Yours sincerely,

Muriel Gray

Non-Executive member of the BBC Board and Chair of the Fair Trading Committee