

Submission to a new BBC Three channel:
Public Interest Test consultation

pact.

April 2021

Introduction

1. Pact is the UK trade association which represents and promotes the commercial interests of independent feature film, television, digital, children's and animation media companies.
2. The UK independent television sector is one of the biggest in the world. Despite the difficult economic climate, independent television sector revenues have grown to around £3.3 billion in 2019.¹
3. Pact works on behalf of its members to ensure the best legal, regulatory and economic environment for growth in the sector. Pact has around 500 member companies across the UK and the majority of these are SMEs (small and medium sized enterprises) with a turnover of less than £50m a year.
4. In 2019, the BBC spent £561 million on commissions from UK external producers.² BBC Commissions are important for independent producers as they account for 33% of all UK commissions, making the BBC the biggest UK buyer of content made by independent producers in the UK.³
5. Pact recognises the important role that the BBC plays in the UK television marketplace and how it nurtures and adds to the finely balanced TV production ecology in the UK.. Independent production companies and the content commissioned by the BBC helps it be a positive innovator and experimenter in the marketplace.
6. For further information, please contact Pact's Head of Policy, Emily Oyama, at emily@pact.co.uk or on 020 7380 8232

¹ Pact Census 2020

² IBID

³ IBID

Overview

Pact has long argued for a linear offering for younger audiences and when it moved to an online only offering in 2016, we questioned the BBC's intentions and suspected that it was part of a wider cost cutting exercise rather than its proposed strategy to connect with younger audiences. Although how content is delivered is important to audiences Pact considers that the quality of content is what is important and is pleased that a reinstated BBC Three channel will restore the high-quality commissioning that is needed to retain and grow younger audiences.

Ahead of the launch of the channel Pact consider three key things must be outlined:

1. Terms of Trade should apply to any commissioning of the new channel and should be applicable to any commissions that are currently underway. Commissions should be offered a new rights package that allows producers to retain and exploit rights following an initial primary window. As a public service broadcasting channel, it is important that all content published on BBC Three is subject to the Terms of Trade. Without enabling external producers to control the intellectual property rights to the content which they produce, independent producers will not be able to raise the capital to invest in the research and development of ambitious ideas which they can put forward to the BBC to commission.
2. High origination must be outlined in the operating licence. The BBC should outline how it intends to update the operating licence with regards BBC Three origination targets to ensure these are held to account by Ofcom – currently BBC Three comes under BBC Online within the operating licence and lacks clarity. The splits in origination that the BBC has identified in the consultation document need to be formally recognized under the BBC's operating licence so that there is a guarantee that a per centage of hours meet the origination targets.
3. Partnerships with other nations and regions channels should ensure fair commissioning deals and rights packages are agreed within the terms of trade. Commissioning via the nations and then broadcasting on BBC Three could lead to back door commissioning which means the BBC could use a lower tariff range to pay for programming. As part of the BBC's focus on partnering with the nations this must be avoided.

Question 1: What do you think about the potential public value of our proposals for a BBC Three broadcast TV channel, including the extent to which our proposals contribute to the BBC’s mission to serve all audiences through the provision of high quality and distinctive output and services which informs, educates and entertains?

- 1.1 Pact considers the proposal for a broadcast channel has potential public value and will meet the BBC mission to serve all audiences with high quality and distinctive output and services which informs, educates and entertains provided the three points outlined in our overview are met.
- 1.2 Pact has long argued for the return of BBC 3 in linear form and is glad that the BBC has listened. As we have previously outlined Pact considers the decision to close BBC Three was a strategic error for the BBC. Pact is also happy that the BBC acknowledges that it had previously used the wrong decision making process to close down the channel namely that the BBC ‘was driven by financial necessity’ above anything else.⁴ Pact notes that BBC Three has seen its reach halve since moving online in comparison to its last full year of broadcasting,⁵ with only 8% of 16 – 34-year olds using BBC Three each week. ⁶Despite initial core objectives of the Channel being to ‘reach a wide range of 16-34 year olds in the UK each week.’⁷ And predictions of ‘a c21% increase in BBC Three online viewing via BBC iPlayer’⁸ This is despite the fact that younger people still continue to access broadcast content, 76% of 16-34 year olds access broadcast TV weekly.⁹
- 1.3 To ensure the full potential for public value is realised Pact considers that the origination splits that the BBC has identified need to be formally recognized under the BBC’s operating licence so that there continues to be a guarantee that a per centage of hours meet the origination targets. Furthermore, there should be clarity over the differences or origination targets for online only commissions and those for BBC Three linear commissions. It is unclear from the plans is what proportion of the budget will be for online only commissions and what proportion will be for linear commissions. The BBC state in their proposals that the proposal to reinstate the BBC Three linear channel will be in line with their projected budget for BBC Three. The BBC had decided to double the content budget by 2022/23. As the BBC is aware Terms of Trade should apply to the linear commissions and we have long argued for a clearer framework for digital or online only commissions.
- 1.4 Online-only commissions tend to have lower tariffs than content commissioned for linear broadcast. While the budgets for short-form content are usually lower than for long form content; Pact has not seen evidence of online-only commissions being less expensive to produce. This will make it more difficult for the producer to find the necessary finance for a production. If the producer cannot find the funding needed to bridge the gap between the commissioner’s tariff and the full production budget, producers often end up forgoing any revenue, or cutting their research and development budget. Our members experiences with BBC Three commissions in the last four years have been characterized by low tariffs and the BBC demanding additional rights and extensive and usage. If producers do not keep their rights or are not able to fully monetise them after a

⁴ Public Value Assessment of the re-invention of BBC Three online and related proposals, p2

⁵ Ofcom’s Annual Report on the BBC, October 2019, p12

⁶ BBC Annual Report 2018/19, July 2019, p60

⁷ Public Value Assessment of the re-invention of BBC Three online and related proposals, p22

⁸ Public Value Assessment of the re-invention of BBC Three online and related proposals, p67

⁹ Media Nations Report, Ofcom 2020

A new BBC Three Channel: Public Interest Test consultation

period of exclusivity on iPlayer, it is difficult to see how they will be able to sustain a viable business. Commissioning not conducted under the Terms of Trade places producers at a disadvantage when negotiating with the BBC, and usually results in producers being unable to retain all of their rights

Question 2: What do you think about the benefit to audiences who will watch the channel, as well as wider potential social and cultural impacts?

- 2.1 The BBC has acknowledged that there will continue to be a significant section of the population that watches linear broadcasts. 85% of UK audiences continue to watch broadcast content once a week through freeview.¹⁰ As identified above 76% of 16-34 year olds also access broadcast TV weekly, this means that a linear channel with the right original and compelling content will benefit this younger demographic
- 2.2 There is also an opportunity for the BBC to ensure those producers who are commissioned can benefit from a favourable rights position of the back end. As the BBC will understand enabling companies to exploit their secondary rights to increase secondary revenue streams is vital for a business to recoup on investments and build up reserves for R&D purposes.
- 2.3 Onward rights exploitations for indies will mean more incentives to take risks and develop further high-quality content for future commissions for the channel which can in turn benefit audiences with new and original content that reflects their lives. Culturally this could mean more diverse voices being given the opportunity to grow their business and develop ideas to bring to the market and the BBC.

Question 3: What impact (positive or negative) do you think our proposals for a BBC Three broadcast TV channel might have on fair and effective competition?

- 3.1 Pact considers that the proposals could have impact higher up the value chain such as in the market for content rights especially if terms of trade were secured for both BBC three commissions via the channel and under any online only commissions.

Question 4: Are there any steps you think we could take to minimise any potential negative effects on fair and effective competition or to promote potential positive impacts?

- 4.1 Ensuring that Terms of Trade is achieved for all BBC Three commissions will help minimize any negative effects on fair and effective competition. Terms of trade helps to ensure there are regulatory protections for independent production companies and that content being commissioned is under fair terms. Furthermore, we are aware that currently BBC 3 commissions have an onward transmission onto BBC one or two. If this is to be continued Pact considers that an additional uplift to the original commissioning tariff should be applied to avoid back door commissioning as BBC three tariffs tend to be of lower value.

¹⁰ Ofcom, Small Screen: Big Debate Consultation—The Future of Public Service Media (8 December 2020)