

Pact response to BIS Balance of
Competence Review: Free Movement of
Services (Broadcasting)

pact.

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Executive summary

Telecommunications and broadcasting are exempt from the EU Services Directive but Pact, for the purposes of this review, gives comments on the sector specific legislation which relates to the free movement of services.

As far as the Audio Visual Media Services (AVMS) Directive is concerned, Pact favours the status quo. The current UK legislative framework and AVMS Directive is positive for the fact that it is sufficiently flexible to allow for changes in the market and for individual member states to adapt policy and legislation according to their national requirements.

The retention of rights to introduce tax incentives to support production and culture is important for individual member states. This is due to the nature of the market and fiscal incentives available in competitor countries such as the US and Canada.

Pact would resist any reform to copyright legislation in the EU and in particular any introduction of a single European copyright title. We think that this would unnecessarily restrict the UK and member states and remove flexibility around introducing national initiatives.

On the issue of orphan works, Pact is supportive, provided that adequate protections are in place should the rights holder be identified at a later date. Facilitating the use of orphan works would provide greater opportunities for innovation in the sector, but this must be achieved through a voluntary, industry-led scheme, not through a public body issuing licences.

Pact does not agree that there is a need to introduce extended collective licensing for audio-visual works. Such a move may distort the market value of rights and would not take into account the many reasons why rights may be out of commerce.

In terms of collaboration with countries outside the EU, Pact believes that respect for copyright should be at the heart of every international treaty and that the UK, as a world leader in this field, should look to export its copyright framework to different countries, particularly in developing markets.

Introduction

- 1) Pact is the trade association representing the commercial interests of the independent television, film and digital media production sector in the UK. The sector produces and distributes approximately half of all new UK television programmes¹ as well as content in digital media and feature film.
- 2) Pact works on behalf of its members to ensure the best legal, regulatory and economic environment for growth in the sector.
- 3) The UK independent television sector is one of the biggest in the world with revenues of nearly £2.8 billion in 2012.²
- 4) The British independent TV production sector is extremely successful internationally. The UK is the second largest exporter of TV content in the world (after the USA)³ and at £838m in 2012, international revenues now account for 30% of total sector revenues in independent TV production.⁴
- 5) Pact's address is: 3rd Floor, Fitzrovia House, 153-157 Cleveland Street, London, W1T 6QW.
- 6) For further information about Pact's work in this area please contact Pact's Head of Policy

¹ Ofcom, Communications Market Report 2010: independents produced more than 50% of qualifying network programming by hours and 46% by value

² Pact Census Independent Production Sector Financial Census and Survey 2013, by Oliver & Ohlbaum Associates Limited, July 2013

³ Mediametrie Television Year in the World 2013

⁴ Pact Census 2013

Telecommunications and broadcasting

- 1.1 Telecommunications and broadcasting are exempt from the EU Services Directive but Pact would like to take the opportunity, for the purposes of this review, to comment on the sector specific legislation in this space.
- 1.2 The Audio Media Services Directive establishes minimum standards for broadcast and online services. Its 'country of origin' principle ensures that if a service is licensed in one EU Member State then it is entitled to broadcast in any other Member State. This is positive for independent producers because it allows them to both control and exploit their intellectual property rights across the EU.

Audio Visual Media Services (AVMS) Directive

- 1.3 The consultation poses questions about the advantages and disadvantages of EU action in the area of broadcasting. The current UK legislative framework and AVMS Directive is positive in the sense that it is sufficiently flexible to allow for changes in the market and allows individual member states to adapt policy and legislation according to their national requirements.
- 1.4 Pact would like to see these existing characteristics to the framework retained and does not believe that the AVMS Directive should be revisited at the current time.
- 1.5 In terms of the current status of the TV production sector, despite the fact there has been some consolidation within the independent TV production sector in the UK recent years, the majority of independent producers remain SMEs. Many European programme-makers are SMEs who do not have the same resources to invest in content production and distribution as US companies backed by large studios.
- 1.6 The current UK Terms of Trade regime is both mutually beneficial to producers and broadcasters and flexible enough in its drafting to enable it to evolve as necessary through a process of market negotiation. These ongoing market-led negotiations illustrate the success of the Terms of Trade as an example of light-touch regulation which can respond to the demands of the market.
- 1.7 Where possible, Pact favours a market-led approach to the broadcasting arena and a light-touch regulatory approach which has proved successful in developing a strong independent production sector in the UK. We would reiterate that we do not think it is advisable at this time for the European Commission to open-up a debate on the AVMS Directive.

- 1.8 The current AVMS Directive requirements enable each national Government to establish regulations which promote the creation, distribution and availability of European works within each territory.
- 1.9 We consider that the AVMS Directive is still an effective mechanism for promoting European works, for example with the 10% minimum European independent production quota and by offering flexibility for each Member State to determine how it defines and independent producer within the options outlined in the AVMS Directive.
- 1.10 Pact welcomes the flexibility of the AVMS Directive which enables Member States to take into account criteria such as ownership of the production company, the amount of programmes supplied to the same broadcasters and the ownership of secondary rights, when defining an independent production company in legislation.

EU State Aid/ tax incentives

- 2.1 Due to the nature of the market and tax incentives available in other countries such as the US and Canada, it is important that Member States retain the rights to introduce fiscal incentives to support production of content in their territory which promotes its culture (as with the film, high-end TV and animation tax reliefs in the UK). European member states are not always able to compete with generous tax reliefs available beyond EU borders.
- 2.2 The UK has a thriving film industry. In 2012, UK film production value was £929m.⁵ The UK film tax relief provides important financial assistance to enable film production in the UK by both indigenous producers and by attracting inward investment, from Europe, the USA and around the world.
- 2.3 Pact strongly welcomes the introduction of new tax credits for high-end TV production and animation in 2013, following UK legislation and approval under EU State Aid rules. These reliefs provide invaluable assistance to sectors which would otherwise struggle to compete with international competition.
- 2.4 Pact notes that several European countries offer similar tax incentives to attract film, television and new media production in their territory. However, European reliefs cannot compete on rates with international incentives outside of Europe – such as Canada – where there is no maximum threshold on the total amount of production budget on which the relief can be applied. Within Europe, this is capped at 80%.

⁵ BFI Statistical Yearbook 2013

- 2.5 The current UK and EU legislation is sufficiently flexible so as to enable a greater amount of production and therefore increase the likelihood of this having a wider market and commercial appeal.
- 2.6 Pact was pleased that the Commission decided to further support European production companies by extending the Cinema Communication to include all audiovisual works. This move will enable TV production companies across Europe to more easily access production incentives, including fiscal incentives such as tax reliefs, in different member states.

Copyright in the EU

- 3.1 The UK's audiovisual sector plays an important cultural role in people's lives and makes a significant economic contribution to the UK economy (£13billion per annum). An effective copyright regime is vital to securing future growth in the sector.
- 3.2 Content producers are both rights holders and rights users and therefore have an interest in fair access to available rights, provided that rights holders are adequately compensated for their use.
- 3.3 Pact is engaged in the current debate around potential reform to the EU copyright regime with a view to balancing access to intellectual property vs rights holders and the effective enforcement of rules across Member States.
- 3.4 Pact is against the proposal that has been mooted for some time now for a Single EU Copyright title. Such a measure would seek to harmonise EU copyright law and replace national laws in this sphere. Pact cannot accept this and believes that the Government should oppose this and leave the current market in place.
- 3.5 We have already argued the effectiveness of the existing framework and the benefits to the economy, giving a clear regime but flexibility to individual Member States too. It may be that further, higher level harmonisation is possible in some areas as long as flexibility remains for Member States to engage in their own decision making.

Orphan works

- 3.6 Pact supports the use of orphan works, provided that adequate protections are in place should the rights holder be identified at a later date. This includes the need for the rights user to conduct a diligent search to try to identify the rights owner prior to using the work, and for funds to be placed in escrow for a period of time in order to provide compensation to the rights owner should they emerge once the rights have been used.

- 3.7 Provided that these measures are taken to protect the rights owner, the remedies for the use of orphan works should be civil, not criminal.
- 3.8 It is not possible to set standard criteria for the use of orphan works as this would depend on the type of material and its potential use. The assessment of whether or not a diligent search has been conducted should rest with the Courts.
- 3.9 Facilitating the use of orphan works would provide greater opportunities for innovation in the sector, but this must be achieved through a voluntary, industry-led scheme. It is not appropriate for a public body to issue licences for the use of orphan works.

Extended collective licensing/ Collective Rights Management Directive

- 4.1 Pact does not agree that there is a need to introduce extended collective licensing for audio-visual works. A collective rights management directive for musical works was introduced in 2012.
- 4.2 Rights holders must be able to control access to their rights in order to be able to fully exploit opportunities to generate a return on their investments. A system of extended collective licensing would distort the market value of rights and would not take into account the many reasons why rights may be out of commerce.

Copyright and international frameworks

- 5.1 The UK copyright regime is well respected internationally. For Pact, the strong copyright protections afforded to rights holders in the UK are an important selling-point when attempting to attract inward investment in our content sector.
- 5.2 Pact believes that respect for copyright should be at the heart of every international Treaty and that the UK, as a world leader in this field, should be looking to export its copyright framework to different countries, particularly in developing markets. This is one area where collaboration with countries outside the EU in ensuring effective enforcement of rights is important.
- 5.3 In working on this issue in the international arena, it is important that copyright provisions in European and international Treaties are promoted and respected in the UK.
- 5.4 In general, it is good practice for Government officials and other UK to consult domestic organisations to seek their views before participating in international negotiations on issues which will affect companies and organisations in the UK.

