UK Coalition for Cultural Diversity

UKCCD Briefing for Frontbench MPs, December 2022

Considerations for inclusion in the Media Bill

Since 2007, The UK Coalition for Cultural Diversity has promoted policy for a strong local base for independent production in all fields of the arts and audio visual sectors.

UKCCD is concerned at the absence of proper mention and/or strategic support for key areas of interest to UK audiences such as children's programming and original British independent film. These require government intervention going forward if this proposed legislation is to deliver its aim to sustain public service broadcasting in the digital era.

1.Future programming for young audiences

The UN Declaration on the Rights of the Child, establishes a child's essential right to access to information and communications. However. Professor Jennette Steemers points out "Without regulation and public funding the market alone is wanting in respect of diverse provision for diverse children."[1]

The Young Audience Content fund (YACF), set up to provide distinctive, high quality TV/online programming (£57m over 3 years), has been closed down. The end of term evaluation report by the British Film Institute found that the model for the distribution of this fund had met all its outcomes in full, that most shows performed above average in reaching their audience and that viewer choice had been significantly expanded through the provision of 221 new projects.[2]
However, the sourcing of the £57million came from a shortfall in the BBC's allocated budget for digital transfer, a temporary solution, and measures are now urgently required to find replacement funding long-term.

We would recommend following the example of the governments of Europe, Canada and Australia which are now addressing the needs for specialist areas of production within the context of imbalance and unfair competition currently in the market place. They are securing necessary funds for domestic production through levies on the significant revenues of the streamers. Lord Vaizey, Conservative peer, has suggested such a solution for the UK as cited in a recent report by the Children's Media Foundation:

---

[1] Our Children's Future, Does Public Service Matter, Children's Media Foundation. 2nd para. Page 13.
[2] https://www.bfi.org.uk/get-funding-support/create-films-tv-or-new-formats-storytelling/young-audiences-content-fund

“Levies are already being applied in France (and elsewhere) and could, at their simplest, be a tax on advertising and subscription revenues on the on-demand providers. Levies or their equivalent get support elsewhere in this report, notably from Lord Vaizey, and in more innovative ways, from Tom Van Waveren.”[3]

2. The future of UK independent film

UK’s film industry has two separate aspects: inward investment production which is thriving, and UK Independent production, specialising in local stories and future talent, which is not.

In a recent report on the UK Independent Sector commissioned by the BFI and published in July 2022, it was recognised that:

- the future of UK independent film production is a vital part of screen industries. It plays a pivotal role in nurturing UK talent and storytelling and contributes both to the growth of the sector and to the UK’s international reputation.
- the production budgets for independent film are being squeezed. This, together with increasing costs for crew, cast and studio space accelerated by the burgeoning, foreign-owned studio business together with the move of major streamers, such as Netflix and Amazon, into production, is jeopardising the production base for the future of UK independent filmmaking
- the estimated cost inflation in UK film and high-end TV production is adding a further 20% to UK independent film budgets

To resolve this situation the BFI report recommends the following four recommendations:

- – an increase in film tax relief for UK independent films
- – an extension of film tax relief to include prints and advertising (P&A) spend on UK independent films
- – the introduction of a new zero rate of VAT on the exhibition of UK film
- - an increase in the financial contribution from large streaming services to UK independent films (including SVoD, AVoD3, and potentially television broadcasters), either through a voluntary commitment or a requirement for large streaming services to make a modest contribution to a pot of funding that they can reclaim for creatively driven UK filmmaking (subject to a budget cap). [4]

With regard to this fourth recommendation, UKCCD notes that many European countries, (with plans also underway in Canada and Australia,) have introduced levies on streaming platforms with the proceeds being invested in national film funds. This redresses the imbalance in the market place, securing necessary funding

[3] IBID. Page 155

[4] “An Economic Review of UK Independent Film” Commissioned by the BFI .BFI press release 22 July 2022

for independent local production, and young people's programming in particular, thereby safeguarding and increasing cultural diversity of audio-visual expression.

Below we give more detail on policies being set up in various countries, tailored to their particular needs but sharing the principle that VOD providers should contribute to the interests of national production.

Denmark has proposed an investment obligation in the form of a levy for VOD providers established in the country and those targeting Danish audiences from other Member States with the Media Agreement 2022-2025. The Agreement was concluded between the government and different political parties. It is expected that the investment obligation will be formally implemented with the Cultural Contribution Act which, at the time of publication, was still in legislative procedure. It is expected that 2023 will be the first full revenue year after the law comes into effect. According to estimates, the levy could bring in between DKK150 and 200 million per year (€20-27 million).

This proposed investment obligation in Denmark is distinctive in that half of the money collected through the levy will be used to increase the subsidies for Danish films, whilst the other half will be distributed to a larger Public Service pool with funds available to broadcasters, streaming services, producers and providers of radio programmes and podcasts.[5]

"In *Germany***,** VOD providers are subject to a film levy that is paid to the German Federal Film Board (FFA). The FFA's funding measures are financed through a levy, which is collected from cinemas, broadcasters, video distributors and VOD providers. Both VOD providers established in Germany and those based in other Member States targeting German audiences have to pay the levy. The tiered levy ranges between 1.8%-2.5%. It is based on the annual turnover from the net sales of cinema films in Germany."[6]

In *Italy* Article 55 of Decreto Legislativo stated that audiovisual media service providers operating under Italian jurisdiction must comply with an obligation to invest in European audiovisual works produced by independent producers. Until end of 2022 this was set at 17%. In January 2023 the percentage increased to 18%, and in 2024 it will reach 20%. It is estimated that this has contributed to over a 30% increase in Italian productions seen around the world.

Canada is planning to introduce an investment obligation for VOD providers with Bill C-11, also known as the Online Streaming Act. Bill C-11 amends the Broadcasting Act which sets out Canada's broadcasting policy, its objectives and the legislative means to achieve them. In June 2022, the House of Commons of the Canadian parliament

[5] "Investment Obligations for VOD providers to contribute to the production of European works. September 2022. Free University of Brussels (VUB).Page 34
[6] IBID Page 35

passed Bill C-11, which will become law once the Senate adopts it and it receives royal assent."[7]

In the UK currently, just to take one example, Netflix declares annual revenues of £1.2 billion. Were a 1% levy to be raised on these revenues, it would amount to £12 million, and could provide a much-needed leveller in the current UK marketplace, whilst boosting independent production. Such a levy could be raised on other equivalent streaming platforms.

UKCCD considers that the Media Bill provides an opportunity to update legislation and make it fit for purpose in the digital era of on-line business models. Levies on streaming platforms, with revenues above a certain amount, would contribute to the UK audio-visual ecology, a reasonable expectation when these players have been given unfettered access to the UK market and skills base, are invariably securing all IP rights from production companies they commission, and are operating in direct competition with national broadcasters which are obliged to invest in local production, children's programming and other much-needed areas of provision.

ANNEX1 – Canadian Bill C11
Relevant provision of Canadian Bill C 11 underway and now in Senate (wording adjusted for UK)

Bill C-11 and the CRTC Power to Impose
Canadian Expenditure Rules on Streamers

November 9, 2022

The text of Bill C-11, as passed by the Canadian House of Commons on June 21, 2022, is here:
https://www.parl.ca/DocumentViewer/en/44-1/bill/C-11/third-reading
The bill is now being considered by the Canadian Senate.
Under Bill C-11, section 2 of the Broadcasting Act would be amended to include a new definition for "online undertakings", as follows:

> "online undertaking" means an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus;

Under Bill C-11, section 3 of the Broadcasting Act would include two new objects, as follows:

> (f.1) each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources, and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, taking into account the linguistic duality of the market they serve;
> (r) online undertakings shall clearly promote and recommend Canadian programming, in both official languages as well as in Indigenous languages,

[7] IBID Page 75

and ensure that any means of control of the programming generates results allowing its discovery;

Under Bill C-11, a new section 9.1 would be added to the Broadcasting Act which would include the following statement:

Conditions

9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1)…

Given the “objects” noted above in paragraphs 3(f.1) and (r), it is clear that under this power, the CRTC could impose Canadian content expenditure requirements on online undertakings, just as it has done for Canadian broadcasting undertakings in the past.

For a study of the factors the CRTC would need to consider in setting these requirements, see the following:

https://cdec-cdce.org/wp-content/uploads/2021/07/PeterSGrant_Cancon.pdf

This study includes references to the current CRTC expenditure rules for conventional broadcasters in Canada and how they may be applied to online undertakings. The study was done in reference to what was then Bill C-10. Bill C-10 fell to the ground with the federal election in October 2021, but it has since been replaced with Bill C-11.

ANNEX2 Australia - New National Cultural Policy

The federal government’s new National Cultural Policy, January 2023, aims to impose local content quotas on streaming platforms such as Netflix and Amazon Prime, as part of a ‘necessary action’ to prevent Australian storytelling from being ‘drowned out’ by overseas programming especially from the United States.

Australians are now watching more content on streaming platforms than via traditional broadcasters and the local subscription video industry grew 50% in 2021 to $1.7 billion in total revenue. The rules would force streaming companies to spend a certain percentage of their revenue to develop Australian content. Australian production companies want that threshold set at 20 per cent, which would ensure hundreds of millions of dollars of investment each year. The major streaming platforms are insisting that any new rules have to be "sustainable" and "equitable", while others are arguing they should be exempt altogether. Altogether, Disney, Amazon, Netflix, Stan and Paramount Plus spent $335 million on Australian content in 2021-22, according to the Australian Communication and Media Authority. The federal government argues that while the spending is welcome, the rules are required to ensure that this level of commitment is maintained in future and preferably grows.

Negotiations will take place with local industry players and streamers. A key factor in the new rules will be the definition of what qualifies as an Australian production. Industry observers expect the policy to include a required share of revenue to be spent on privileged areas such as content for children and and documentaries, as well as provisions for minimum quotas for ‘discoverable’ Australian content on all platforms. The government has given itself six months to decide on this package of changes, which it has committed to implementing from July 2024.