

**Education and Culture Committee**  
**Scotland's Educational and Cultural Future**  
**PACT**

**Introduction**

- 1) Pact is the trade association which represents the commercial interests of the independent production sector. The sector produces and distributes approximately half of all new UK television programmes<sup>1</sup> as well as content in digital media and feature film.
- 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 from £1.3 billion in 2005 to nearly £2.8 billion in 2012.<sup>2</sup>
- 3) There is a strong independent production sector in Scotland with over 100 companies employing 15,000 people. More broadly, Scottish creative industries support over 60,000 jobs and contribute £5 billion to the Scottish economy.
- 4) Pact has a neutral political stance on the Independence debate given that it is a UK wide organisation with a membership holding a range of views. However, Pact is keen to put forward the key issues of its members with regard to the implications for the independent production sector in Scotland. We also want to communicate the vision that members have for broadcasting in Scotland, whatever the outcome of the September referendum.
- 5) For further information, please contact Pact's Head of Policy, Rosina Robson

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

<sup>2</sup> Pact Census Independent Production Sector Financial Census and Survey 2013, by Oliver & Ohlbaum Associates Limited

## Executive Summary

The creative industries, including independent producers, are important to the Scottish economy. There is a strong independent production sector in Scotland with over 100 companies employing 15,000 people.

Pact has a neutral stance on the Independence debate given that Pact members have a range of views on the potential impact, including Scottish companies in Scotland, UK companies based in Scotland and UK companies in the UK.

The key asks of independent producers are:

- **Scottish Broadcasting Service (SBS):** Members are keen that the proposed Scottish Broadcasting Service (SBS) should be a publisher / broadcaster (apart from the news and current affairs) to ensure an open and competitive market securing diverse and quality programming for all.
- **Terms of Trade/WoCC (Window of Creative Competition):** Members would like a minimum commitment to Scotland maintaining the Terms of Trade agreements, giving continuity and certainty to companies, in addition to keeping the WoCC. The current 25% commissioning quota for independent content should be maintained as a minimum.
- **Tax credits:** the current tax credits for film, high-end TV and animation should be retained. They have been highly successful in maintaining the global competitiveness of the industry and bringing in inward investment. The future potential of fiscal incentives for children's TV should also be investigated.
- **International coproduction treaties:** consideration needs to be given to how existing coproduction treaties e.g. with Brazil, will be renegotiated. These agreements will not just automatically apply, similar to Scotland's membership of the EU.
- **UK network financing:** clarity around whether Scottish companies would qualify as an Independent producer in England if Scotland becomes an independent country. Network commissions generate significantly more revenue than local commissions.

Pact would welcome clarity and more information around how the broadcasting sector would be regulated post Independence either through Ofcom, an independent 'ScotCom' or through the proposed 'combined economic regulator'.

Pact notes current arguments that call into question whether the existing licence fee would remain the same in Scotland given a number of unanswered issues, including available financing for UK network programmes<sup>3</sup>.

We also ask whether Scottish Development International (SDI) will be in a position to retain the same level of support for overseas trade missions and trade exhibitions as has been provided to date by UK Trade and Investment (UKTI).

<sup>3</sup> <http://www.theguardian.com/media/media-blog/2014/mar/02/scottish-independence-bbc-licence-fee>

### Theme 3: Broadcasting and Culture

#### **THEME 3: BROADCASTING AND CULTURE**

Scotland's Future contains proposals to create a new public service broadcaster, the 'Scottish Broadcasting Service' (SBS). It states that the SBS "will start broadcasting when the current BBC charter comes to an end on 31 December 2016".

Scotland's Future also says that "there should be an increase in production opportunities for Scottish producers".

Scotland's Future states that an independent Scotland would have new powers over the economy to encourage Scottish culture and creative sectors. It also states that developing a Scottish overseas diplomatic and trade network would provide an opportunity to promote and share Scottish culture across the world.

#### Scottish Independence White Paper

- 1.1 Pact called a meeting of its membership soon after the White Paper was published in November 2013. It was clear from discussions with independent producers at that early stage that the White Paper raised a number of questions for independent producers. Pact has an ongoing dialogue with the Scottish Government and is keen to help inform and shape the proposals around broadcasting.
- 1.2 Pact, as an organisation, has a neutral stance on the Scottish Independence debate given that there are a range of opinions about the potential impact of this amongst the membership; including Scottish independent companies, UK companies based in Scotland and companies across the UK. Pact wants to ensure that policy makers understand the implications of independence for the independent production sector and more broadly for Scottish broadcasting.
- 1.3 Although Pact will concentrate in this submission on commenting on issues specific to the broadcasting sector, clearly we must consider the potential impact of independence on the Scottish and UK economy more broadly. There are clearly both opportunities and threats; not least through issues around the currency union recently expressed by the Bank of England and Scotland's membership of the EU not being guaranteed without a period of negotiation. These wider issues could create uncertainties for the markets.

### Key issues for independent producers

1.4 The key issues and priorities for independent producers in this debate, as expressed by Pact members are:

- **Scottish Broadcasting Service (SBS):** Members are keen that the proposed Scottish Broadcasting Service (SBS) becomes a publisher/ broadcaster (apart from the news and current affairs) to ensure an open and competitive market, securing diverse and quality programming for all. It is important that this programming should appeal to both the UK network and a global audience.
- **Terms of Trade/ WoCC (Window of Creative Competition):** depending on the timing of the introduction of the SBS as a publisher/broadcaster, as a minimum, the current 25% commissioning quota for independent content should be maintained. Companies would also like a minimum commitment to keeping the WoCC, in addition to maintaining Terms of Trade agreements creating continuity and certainty for independent producers.
- **Tax credits:** the current tax credits for film, high-end TV and animation should be retained. They have been highly successful in maintaining the global competitiveness of the industry and bringing in inward investment<sup>4</sup>. The future potential for a children's TV tax credit should also be investigated. A report by HM Treasury<sup>5</sup> flags up that if the Scottish Government goes ahead with the proposed reduction in corporation tax then savings will need to be found elsewhere.
- **International coproduction treaties:** consideration needs to be given to how existing coproduction treaties e.g. with Brazil, will be renegotiated. These agreements will not automatically apply; similar to Scotland's membership of the EU. International exports are an important source of revenue for independent producers and continue to rise. The estimated total revenue from the international sale of TV programmes and associated activities was £1,224m in 2012, a 4% increase from 2011<sup>6</sup>.
- **UK network financing:** Pact would welcome clarity as to whether Scottish companies will qualify as an Independent producers in England if Scotland becomes an independent country. Network commissions generate significantly more revenue than local commissions and questions are being asked around how the proposed SBS will pay for expensive high end drama and popular shows that Scottish audiences currently enjoy.

<sup>4</sup> <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-film-production-in-the-uk-full-year-2013-2014-01-30.pdf>

<sup>5</sup> Unfunded commitments in Scotland's Future (2014) <https://www.gov.uk/government/news/treasury-analysis-shows-16-billion-funding-gap-in-scottish-independence-white-paper>

<sup>6</sup> Pact/UK Trade & Investment Exports Report (2013)

## Consultation questions

- **The practical, legislative, technical and financial arrangements that would be required to establish an SBS**

2.1 Through the establishment of an SBS, there are opportunities for Scotland to create a publisher/ broadcaster (apart from the news and current affairs) that would open more opportunities to the market including independent producers, arguably improving the quality and diversity of programming in Scotland.

2.2 However, there are a number of questions raised by the White Paper around how the division of assets will work between the BBC and the SBS. The SBS budget will be approximately £345m funded through the licence fee revenue from Scotland (around £320m), a share of BBC's commercial activities (£13-19m) and the funding stream for Gaelic broadcasting (£12m).

2.3 It is not clear, however, given that the BBC invested significant sums into the assets in Scotland, (i.e. £188m into the digital broadcasting centre and HQ at Pacific Quay) how these assets will be divided or paid for. There will be negotiations involved as to how the SBS achieves a proportionate share of BBC Worldwide and not necessarily any guarantee that this will be delivered.

- **The impact on other broadcasters of establishing an SBS**

3.1 The Channel 3 and Channel 5 licences will continue to 2025 so there are limits around any negotiations or change that can be introduced here.

3.2 Channel 4 operates as a UK wide organisation and Pact questions whether they will be persuaded to change their production spend quota for licensing in Scotland without significant additional investment. Channel 4 may not be willing to shift their production in line with population share in Scotland. Other devolved countries are also keen to work constructively with Channel 4 to increase production on their territories too. Pact would be interested in hearing more about the conversations that the Scottish Government has had so far with Channel 4 and the other broadcasters.

- **How broadcasting would be regulated in the event of Scotland becoming an independent country**

4.1 The White Paper is not definitive on the issue of whether the reach of Ofcom would continue in Scotland, whether a separate regulator 'ScotCom' (which has been mooted) would be formed or whether the 'combined economic regulator' discussed would take on responsibilities for communications and broadcasting also.

4.2 Pact would have reservations around a separate regulator for Scotland particularly around whether they would have the appropriate independence from the Scottish Government and whether they would retain effective collaboration and

communications with Ofcom. Pact would ask how such a body would work effectively with Ofcom overseeing a UK wide communications network and we are keen to hear more about what the Scottish Government have planned in this regard.

- **The current capacity of Scottish producers, and whether any planning and investment would be required to increase opportunities for this sector**

5.1 In terms of increasing opportunities for the independent sector, as already expressed, Pact is keen that:

- The proposed SBS becomes a publisher/broadcaster to release more opportunities to the open market increasing innovation and competition. In the meantime, as a minimum, the current Terms of Trade, current commissioning quota and Window of Creative Competition (WoCC) should be retained.
- Tax breaks: the current tax credits for film, high-end TV and animation should be retained. The future potential for appropriate fiscal incentives for children's TV should also be investigated.

5.2 Pact is aware that in an independent Scotland, Scottish producers will not necessarily automatically qualify as independent producers in England and complex negotiations may be necessary. Network commissions generate significantly more revenue than local commissions do as the table below shows.

5.3. Despite claims that the licence fee would not rise under an independent Scotland, independent producers own the underlying rights to their programmes so it is not guaranteed that certain programming would necessarily automatically be available in Scotland. It may be that network services are only available through pay commercial services or through pirated routes.

5.4 Pact appreciates that there is an apparent contradiction between Scottish producers producing more content of cultural and linguistic relevant to Scotland, yet this content is not necessarily appropriate or popular for global sales.

5.5 Pact's vision for an independent sector in Scotland is one that is vibrant, thriving and diverse; leading both Scottish cultural content but also content that is open to the UK and a global audience too. Pact is aware that driving towards more niche programming, amongst other factors, could result in a 'brain drain' from Scotland to London and the South East with producers in search of wider opportunities.

	No. of commissions <sup>7</sup>	Value of commissions	Average value commission
Local	31	£11,112,518	£358,468
UK	47	£42,172,500	£897,287
International	3	£425,000	£141,667

<sup>7</sup> EKOS report for Scottish Enterprise (2012)

- **The benefits that could derive to Scotland if its cultural and creative output were promoted more widely**

6.1 As Pact has already expressed, we see two sides to this story here. There is both value in Scottish producers creating content that is unique to Scotland, however, if this content is too niche then it will not be appropriate for sale overseas.

6.2 Pact recognises the recent FCO paper<sup>8</sup> flagging up that Scottish Development International (SDI) is mutually supported by UKTI and UK Embassies overseas in delivering trade support. There are areas where support for events, market knowledge and use of embassy buildings would not be automatic but may need to be paid for in the future and may affect the level of support that SDI can offer<sup>9</sup>.

6.3 Members also ask how valuable coproduction treaties would apply in Scotland. The UK currently has ten active coproduction treaties (including with key markets such as US, Canada and Morocco). Very much like EU membership, it is not given that these treaties will automatically apply to Scotland in the event of independence and a process of renegotiation will need to take place. These treaties are not straightforward and will require time and resources to renegotiate. There may be potential lost revenue in the sector while this process takes place.

- **How new powers over the economy and an overseas diplomatic and trade network could encourage the Scottish cultural and creative sectors**

7.1 Pact refers to the comments made above and the fact that there are both threats and opportunities here.

- **How Scottish cultural bodies currently work together with their counterpart bodies in the rest of the UK, and whether this relationship may change**
- **The likely future role for UK bodies that have some cultural or creative function in Scotland.**

8.1 It is clear that any new Scottish cultural bodies will need to work closely with the rest of their UK counterparts to maintain positive relations. Organisations like Creative Scotland are a positive force in Scotland however Pact supports funding for the sector being channelled into the open market to produce a competitive and innovative market rather than necessarily being channelled through public sector organisations. Pact would prefer that Scottish production companies are 'cultural gatekeepers' rather than public sector organisations.

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<sup>8</sup> Scotland Analysis: EU and international issues (2014)

<sup>9</sup> Note: By way of an illustration of the level of funding available, UKTI spend is around £130m across the UK compared with the SDI spending around £24m.