



TELEVISION

IS CHANGING. ARE YOU READY?

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BROADCASTERS & PRODUCERS TERMS OF TRADE

INTRODUCTION

The terms of trade represent the conditions that broadcasters apply to the contracts they sign with independent producers in relation to broadcast rights and the exploitation of the properties.

Traditionally the broadcasters in the UK were in the prime position and would buy out all rights with regard to any programme they commissioned. However changes in intellectual property regulations and new guidance from Ofcom have changed the relationship and independent producers now have more explicit rights in relation to their ability to retain and exploit the properties they create.

Changes to the code of practice introduced by Ofcom in relation to the terms of trade have given producers greater rights to exploit the commercial potential of the work they produce, particularly in relation to new media formats.

However, while these changes have happened within the terms of trade between broadcasters and producers the standard terms of the contracts between employers and artists have not kept pace and that has introduced an urgent need for reform. Equity believes that a new agreement, whether a pan-industry deal or an extension of existing individual deals, should take into account the changed landscape in broadcasting recognised by the new terms of trade.

INSIDE

This document sets out the meaning of terms of trade and the recent changes in the relationships between producers and broadcasters enforced by Ofcom. It then sets out the different expectations of the UK's main commissioning bodies – the broadcasters BBC, ITV, Channel 4 and Five – when they enter into negotiations with independent producers.

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TERMS OF TRADE

Terms of trade are the financial and business arrangements governing the way broadcasters deal with independent producers.

They set out the minimum terms to be included in production contracts, when programmes are commissioned by the major public service broadcasters (BBC, ITV, Channel 4 and Five) with independent producers.

The need for more transparent terms of trade between the broadcasters and independent producers was established following the Communications Act 2003. This act required Ofcom to oversee a code of practice for commissioning, which was designed to provide greater certainty and clearer ownership on intellectual property rights.

The terms of trade are the detailed arrangements that flow from this code of practice and the framework set out by Ofcom. The terms of trade are set in negotiations between the broadcasters and PACT (as representative of the independent producers) in line with the principles determined by the regulator.

The terms agreed in 2004 reflected a shift in thinking about intellectual property in relation to the ownership of material produced by independents. Broadcasters were no longer able to take control of all the rights in an independent production as had previously been the case. Instead independent producers were allowed to retain the majority of rights in their programmes, beyond UK broadcast rights.

This signalled a significant change in the core business of production companies. As a result they were able to become, for the first time on a widespread scale, owners as well as producers of intellectual property.

Prior to the 2004 terms of trade agreement, broadcast commission contracts with independent television production companies

would generally involve broadcasters taking all rights in the production. The independent company would receive only a production budget and production fee.

The broadcaster would retain blanket rights and prevent companies from re-selling or adapting their work. Therefore the only additional income generated from intellectual property was dependent on the broadcaster's subsequent exploitation of the material. In some cases the broadcaster had no interest in utilising the programme beyond a one-off screening in the UK, but the blanket contract would retain all rights in perpetuity regardless of the future potential of the material.

This was seen as too restrictive and Ofcom used the 2004 terms of trade redesign as an opportunity to redress this balance.

A further change occurred in 2006, from that point onwards broadcasters and independent producers were required to negotiate additional terms of trade to reflect arrangements for the exploitation of new media rights.

The challenge Equity, the broadcasters and the independent producers face is that whilst agreement has been reached on the terms of trade at the level of producer/broadcaster relationship, the collective agreements under which members are currently contracted do not reflect the changes since 2004. The current contracts for most equity members are different from (and often in conflict with) the broad delivery requirements of the terms of trade.

There is, therefore, some urgency in the need to negotiate new and robust agreements either on a pan-industry basis or individually in the traditional manner with the BBC, ITV and PACT.

Note: the terms of trade set out below are correct at the time of going to press but are subject to review and change.

BBC

The BBC will expect to acquire the following licence under its deal with the independent producer

- An exclusive licence in the UK television market, and the right to use the programme on its licence funded services, for a 5 year period. The initial fee to the producer would cover a specific number of uses depending on which services the programme is being used:
 - One transmission on BBC 1
 - Two transmissions on BBC2
 - Three transmissions on daytime BBC1 and BBC2 (daytime commissions)
 - Four transmissions on daytime BBC1 and BBC2 (peak time commissions)
 - Nine transmission days on BBC3
 - Nine transmission days on BBC4
 - Children's:
 - Three transmissions on BBC1/BBC2
 - Twenty transmissions days on CBBC

The initial fee would cover all uses of programming in primary schools programming, programmes transmission in the Learning Zone and programmes transmission in the Sign Zone.
- All commercial exploitation rights will be retained by the independent producer. The BBC expects to share in the net revenue arising from exploitation on an agreed basis through individual negotiation with producers on each project.
- The BBC would normally expect BBC Worldwide to be given the opportunity to bid for any commercial distribution rights on an equal footing with other distributors
- An option to renew this exclusive licence for a further period of two years on an agreed basis. To exercise the option a payment would be made to the independent – calculated as a percentage of the licence fee as an advance against further repeats
- The BBC will acquire under its deal with the independent new media rights which include seven-day-media-rights, primary video on demand rights and BBC primary new

media rights which give the broadcaster the right to distribute the programme via new technologies through temporary or streamed download, premiere and preview online up to seven days before the first linear broadcast, plus a floating window of online availability and series stacking availability.

- In respect of its licence fee funded services the BBC requires the rights to simulcast the programme, the right to make the programme available on demand and the right to the use of extracts of the programme on any web sites associated with the programme.

Should the exercise of the above new media rights by the BBC generate any commercial revenue then the producer would receive a share of this net revenue.

The independent producer can sell download to own versions of programme titles through any third party aggregator from the 8th day following the BBC's transmission. The producer shall pass 15% of revenue generated back to the BBC.

Any other commercial new media rights would be owned and exploited by the independent producer.

Tariffs

Low Cost Drama: £50,000-£500,000 per hour

Mid Cost Drama: £500,000-£700,000ph

High Cost Drama: £700,000-£900,000ph

Premium Drama: £900,000+ph

Nations & Regions: £30,000-£450,000ph

Scripted Comedy Network: £110,000-£600,000ph

Scripted Comedy Nations & Regions:

£50,000-£500,000ph

Children's CBeebies: £40,000-£90,000ph

Children's Drama Series: £250,000-£450,000ph

Children's Drama Serial: £350,000-£550,000ph

Children's Comedy: £95,000-£195,000ph

ITV

ITV will normally acquire only the primary rights (defined below). In order to protect the rights it acquires ITV will require certain restrictions upon the exploitation of other rights in the UK, until after exploitation of the primary rights

- Primary rights shall include the transmission or broadcast on ITV1 on all platforms and delivery systems in the UK. ITV may also acquire the right to offer interactive services and applications and support websites around the broadcast of the programme, in return for a share for the producer of ITV's net profits.
- ITV retain exclusive pay per view (PPV), subscription video on demand (SVoD) and free video on demand (VoD) for thirty days. Producers share in income for SVoD and free VoD after thirty days without any extension, there is a five month black-out then for a five year period rights become non-exclusive for ITV and producer to exploit. Producer has exclusive rights to download to own (DTO) with a 85/15 share in favour of producer. During thirty day period ITV can negotiate to acquire DTO rights.
- Primary rights will normally be acquired for no longer than five years with an option to extend for a further two years. Further extensions may be obtained subject to negotiation. ITV shall in most cases acquire

up to three transmission on ITV1 and five transmission in children's programmes.

- The producer shall not, without written approval of ITV, during the licence period exploit any rights in the programme by any means, including but not limited to any television delivered on demand.
- After the broadcast on ITV1 of the programme (for a stand-alone programme) or at the end of a series the producer may exploit merchandising rights (video/DVD, music and publishing rights etc.).
- The producer shall not, without ITV's written approval, exploit any rights in the programme by any means until 72 hours after the first transmission on ITV1.

Tariffs

Peak Time (18.00-23.59)

Drama: £415,000-£800,000 ph

Soaps: £110,000-£150,000ph

Entertainment: £125,000-£500,000ph

Children's

Drama: £65,000-£145,000per ½ hr

Pre-school: £7,500-£35,000 10/20min

Long Animation: £30,000-£60,000 ½ hr

Short Animation: £5,000-£35,000 5/15 min

Entertainment: £35,000-£70,000 25 min

FIVE

Five will always require an exclusive licence of certain primary rights for each commissioned programme.

- Primary rights will cover an exclusive licence to transmit the programme on the Five service however delivered
- The right to web stream and promote the programme on the internet and other digital networks (Five shares any revenue from such services with producers on levels agreed in good faith)
- Five similarly acquire a 30 day new media window from the date of the first 5 transmission.
- Promotional and post transmission clip rights in the UK
- Standard licence of primary rights 3 transmission's over 5 years (children's programmes may require additional transmissions). Option to extend licence by 2 years with 2 transmissions.
- All rights not acquired by 5 under the primary rights licence will be retained by the producer. Five expects to participate in net receipts derived from exploitation of non-primary rights

- On all commissions Five will require holdbacks of all non primary rights in the UK until 5's first transmission and possibly for all or part of the agreed licence period

Tariffs

Drama

Soaps: £45,000-£50,000 30min
Single: £150,000-£600,000 60min
Series: £150,000-£600,000 60min

Entertainment

General: £30,000-£60,000 30min

Documentary

Single: £40,000-£90,000 30/60min

Children's

Drama: £15,000 30min
Animation: £15,000 30min
Entertainment: £12,500 30min
Pre-school: £4,000 10min

CHANNEL 4

Channel 4 licences core rights from the producers for a defined duration on an exclusive basis and returns the rights to the producer at the end of the licence period

- Core rights required by C4 from any programme commissioned from a producer are rights to transmission on the core C4 service in UK /Republic of Ireland however distributed inc C4 catch up service. The licence shall run for a period of 5 years along with an automatic option to extend the licence for core rights for an additional 2 years on payment to the producer of an advance. Any extension beyond the 2 years will be subject to commercial negotiation.
- A 30 day new media rights window. Under the terms of the agreement C4 will have exclusive rights to distribute programmes via its own video-on-demand service for 30 days after the first transmission on C4 on a free, PPV, or subscription package basis. The producer shall receive either a share of pay revenue or royalty payment for a free service. The parties have the option of agreeing rights for a longer period for a further 5 months
- Support services in the UK/ROI extracts, telephony rights, secondary on-line and interactive TV rights and mobile technology rights
- All rights not currently falling within core rights definitions will be seen to form part of secondary rights which include but are not limited to International distribution rights via any media platform and any consumer products e.g. video, publishing, merchandising
- C4 will offer 2 basic deal structures based on the core rights model.

Option 1 C4 licence only: C4 acquire control of core rights for licence period. C4 will retain exclusivity in the UK TV market and no sales will be made to any third party channels in the secondary market during the duration of

the licence period. The producer will retain control of the secondary rights, although it can discuss commercial terms for exploitation of secondary rights with 4Rights on the basis of revenue share

Option 2 C4 licence + exploitation in secondary

UK TV Market: C4 acquire core rights with exploitation in the UK secondary TV market during the licence period undertaken by 4Rights - Channel 4's right's exploitation and distribution arm. C4 will waive its holdback on UK secondary TV, producer will allow 4Rights to distribution rights to any channel in which it has an ownership interest or 3rd party channels with a share between the parties of any revenues accrued. The producer will retain control of the secondary rights, although it can discuss commercial terms for exploitation of secondary rights with 4Rights on the basis of revenue share

Tariffs

(excludes programmes under 30 mins inc long running drama)

Drama

Series	£350,000-£600,000
Serials	£300,000-£900,000*
Drama/Doc	£250,000-£400,000*
Drama(offpeak)	£50,000-£120,000

Entertainment

Archive	£100,000-£190,000
Narr Comedy	£350,000-£560,000
Broken Comedy	£150,000-£450,000

* indicates genres that are most likely to require deficit funding

TELEVISION IS CHANGING

This paper is part of Equity's *TV is Changing* campaign. It is intended as a companion to *The Future of Television Agreements* published by Equity in 2006 and the updated *The Future of Television* published in August 2007. Copies of these publications are available from Equity or can be downloaded from www.tvischanging.com.

Equity has produced a range of briefings designed to update members on recent developments and to provide a deeper insight into the issues at stake as television moves towards its digital future. These briefings illustrate the work Equity has done over the past year and highlight the important issues still to be resolved.

Briefing papers in this range include:

Paying for the Future: Collective Licences

Deductions in a Digital Age: Do they add up?

Broadcasters & Producers: Terms of Trade

Simultaneous Transmissions: TV on Mobile Devices

Working Conditions: Fees and payments

Terms and Definitions: What it all means

Equity has also produced a range of factsheets designed to answer the most frequently asked questions about how all this will affect our members.

This material is available free of charge to any Equity member. If you would like to receive a copy or would like to take part in the debate within Equity regarding the future of television, please do not hesitate to contact us - details are below.



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