



Response to the Open Letter on the Communications Review

June 2011

Introduction

1. The Radio Independents Group (RIG) was formed in 2004 to provide a voice for independent production companies supplying the BBC and commercial radio. It has over 100 member companies, representing around 95% of the total turnover for the industry. This includes: the major suppliers for Radios 1, 2 3 and 5; the majority of those on the Radio 4 Registered Suppliers list; suppliers to the World Service; BBC digital networks and other services; and a range of content to commercial networks and corporate organisations.
2. The Indie audio/radio sector is an important part of UK creative industries, and as such can contribute to the Government's ambitions to grow the economy and ensure that the UK is increasingly seen as the leading country in the world for creative content.
3. RIG supports the current mixed economy in broadcasting with both commercially funded and publicly funded organisation providing services across radio, TV and online. In terms of Television in particular this has led to a healthy plurality in programme-making, causing the UK to have one of the most successful TV production industries in the world.
4. In radio the story is rather different - lower revenues in the commercial sector means that it has not commissioned independent radio production on anything like the scale of TV broadcasters. This has put an extra obligation on the BBC to support independent radio production by opening up a substantial proportion of its output to competition, but so far it has not responded to that challenge in a sufficiently forward-thinking manner. The BBC needs more than ever in the age of caution regarding public spending, to make sure every pound it spends will be spent wisely. And as far as the BBC is concerned, at present there is not enough competition between programme makers working in-house and those working independently.

Q10: Are there disproportionate regulatory barriers to investment in content? If so, what are they and how can increased investment in UK content production be encouraged?

5. For the indie radio sector to grow it needs to become a stable and reliable investment opportunity. This, as has been proved in TV, can only happen when two things are in place: one is a guarantee of intellectual property rights, the other is a sufficient level of

6. RIG is very pleased to have been invited to take part in the DCMS Creative Industries Council sub-group on Access to Finance, and we very much hope it will lead to a greater understanding of the particular needs and aspects of the industry so that confidence in investment will to some extent be increased.
7. But it will always be difficult to increase that confidence without sufficient commissioning power being utilised to boost the sector to its full potential.

The Commercial Radio Sector

8. As demonstrated by RIG's conference on 'Monetising Audio Content', held at DCMS at the end of 2009, there is potential for greater revenue-raising via monetising audio content, but to do so it is imperative that indie producers are allowed to develop the UK market for ground-breaking and entertaining audio content which will strengthen and grow relationships with audiences.
9. Given the limited income within the commercial sector, it is unlikely in the current circumstances that it will be able to increase its investment in independent production in the near future. However it can provide a useful commercially-funded public service plurality if it were able to obtain access to independently-produced BBC productions within a reasonable timescale. This would help to create a secondary market for indie producers and also enable licence fee payers to have access to content a second time around. The example of UKTV in Television has shown the popularity of access to BBC-commissioned programming archives, and there is no reason why this cannot be applied to radio, as commercial radio is free-to-air and the independent sector and commercial networks both benefit whilst enabling the licence fee-payer to access archive material at no further cost.
10. In addition to the UK market, the large increase in ways in which people can obtain and listen to audio content provides a promising future in terms of sales of programmes and formats to international markets. It is difficult at this early stage to put a precise figure on this, but RIG would like the UK Government to include independent radio/audio production in any future plans to review UK creative industries' international potential and to promote the UK creative industries abroad.

The BBC

11. The current regulatory structure is not disproportionate, but it is uneven. Licensed public service Television broadcasters, including the BBC currently have a statutory 25% quota for commissioning independent TV productions, plus the BBC is committed in the Charter to making a further 25% open to bidding from indies via the Window of Creative Competition (WoCC). Indie TV producers' IP rights are also protected by the Communications Act and BBC Agreement. The regulatory system for independent

12. Quotas, whilst appearing to some to be a barrier to free market activity, do in actual fact provide an engine for more competition. This is the reason for the TV quota and it is also the reason why, following the recommendations of Phillip Graf in his report of 2006¹, BBC Online also now currently operates a voluntary 25% independent production quota.
13. In the BBC Agreement online and radio share the same clause requiring the BBC to commission 'a suitable proportion' of producers from outside the BBC². Although online as stated above has a 25% quota, as a result of the BBC being left to determine the level of a 'suitable proportion', there has been until now just a 10% voluntary independent production quota for radio, comprised of 'eligible hours' which, according to RIG's calculations, means it only in reality commissions around 8.4% of total network radio hours from independents³.
14. This quota, due to its not being statutory, is under no real pressure to be met and certainly not exceeded. However the figure of 10% is clearly too low to create the type of critical mass needed.
15. The need for more competition for ideas clearly influenced the recent BBC Trust decision to introduce a 10% Window of Creative Competition⁴, which the BBC is working towards. RIG welcomed the move, but the Trust's rationale has not been met sufficiently by its actions, which will fail to provide the decisive additional stimulus to truly kick-start the sector as was achieved when the 25% TV quota was introduced. The real increase provided by the WoCC, even if indies won 100% of it, will be less than 10% of eligible output.
16. This is due to the fact, confirmed to RIG both by the BBC and BBC Trust, that any excess in the 10% quota (the BBC currently commissions around 13% in eligible hours) being in the future counted as WoCC commissions.
17. Indie radio producers' intellectual property rights are also not protected by statute, again in contrast to Television, where a requirement for a Code of Practice regulated by Ofcom is written into the current Communications Act.
18. Related to the above point and those made in the 'Commercial Radio Sector' section, we would propose reducing the licence term on independently-produced programmes. The BBC has previously reviewed its contribution to the creative industries but it could further contribute to the radio industry by allowing the sector to regain the rights to its programming earlier, sell them on where possible to the commercial radio sector.

¹ Graf, Phillip. Report of the Independent Review of BBC Online. DCMS, 2006, p13

² HM Government. BBC Agreement. The Stationery Office, Jul 2006 pp30-31, Clause 58

³ Figure based on calculation included in RIG Response to BBC Trust Review, May 2010.

http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/radio_supply/rig_submission.pdf

⁴ BBC Trust. Review of Radio Network Supply. August 2010.

http://www.bbc.co.uk/bbctrust/assets/files/pdf/our_work/radio_supply/trust_conclusions.pdf

Although the BBC is building a radio archive online, there is still undoubtedly an appetite for the broadcast of archive programming, and this can be of great benefit to the licence fee payer.

19. The BBC has so far not acknowledged the full ability of audio content to recoup on investment, instead choosing to make radio content freely available whilst maximising revenue from TV content via DVD sales, and secondary and international sales. RIG believes that the growing availability of mobile listening devices represents a huge opportunity for the further monetisation of audio content for the benefit of commercial networks, the BBC and the licence fee payer alike.

20. Also in terms of value for money, whilst indie radio producers predominantly believe more competition brings the opportunity to improve the level of quality, innovation and diversity, there can also be financial advantages to competition for programming. John Myers gives an example of this in his recent report produced for BBC Audio & Music on possible efficiencies to be made in some of the BBC's radio networks, in which he states:

'Radio 1 broadcasts programmes two hours a week on its network that is produced by the Nations. This programme is expensive in cost per hour terms and management should explore the opportunities that exist for savings by reducing in-house costs; placing this within the WoCC and allowing the Independent sector to bid for the output.'⁵

Recommendations

21. RIG proposes:

- a. That the Government continues to take steps to ensure the radio/audio content production sector is considered in policymaking terms alongside the other UK creative sectors, including promoting the industry to overseas markets
- b. That the regulation of competition of radio content production at the BBC is made statutory
- c. On this basis, the quota to be made statutory, alongside the TV quota, to be monitored by Ofcom
- d. In the process there should be a re-examination of the appropriate level of that quota, with a view to determining whether it is adequate to create the critical mass of indie production that can provide the optimum circumstances for creative competition from which the BBC and other radio networks can benefit
- e. Also the WoCC, both for TV and radio, should be made statutory, to ensure that the principle is enshrined in legislation that there needs to be sufficient competition for ideas in the BBC, both in TV and radio for the UK TV and radio sectors

⁵ Myers, John. Synergies within BBC Radio 1, Radio 2, 1Xtra and 6 Music. May 2011, pp11-12, para 3.26

- f. There should be a statutory provision to protect indie radio producers' rights via the Terms of Trade, similar to those provisions contained within the TV terms of trade, to balance up the protection given to independent producers from being exploited by the BBC, which very much has a dominant market position in radio production. This should again be monitored by Ofcom
- g. As part of (f), licensing restrictions should be revised down from the current 10 years (with a possible cessation after 5 years, at the sole discretion of the BBC), to allow the potential resale of independently-produced programmes to the commercial sector in the UK after between 1 - 2 years

Q11: Should the core focus of public service broadcasting be on original UK content?

- 22. The core focus of PSB should very much be UK content. UK audiences have the right to expect that their public service broadcasting system provides content which reflects their lives, experiences and communities, as well as giving them insight into the people's lives within their own nation and beyond.
- 23. Independent producers, based around the UK and coming from a range of backgrounds, are in a particularly strong position to provide such content. They also bring contacts, specialist knowledge, new talent and regional and UK nations perspectives which are not replicable in-house.
- 24. In audio specifically, UK indies bring experience of creating multi-platform content and working with commercial stations and corporate and public organisations, which gives them a broader perspective, knowledge of the most efficient methods of making audio content, and can act as an interface between the BBC and the outside world.
- 25. RIG recognises that the BBC and indeed all other PSBs are under pressure to maximise their content spend under difficult financial circumstances. In order to maximise the use of their current income we would like to see the Government consider regulating to prevent any pay-TV platforms from being able to charge retransmission fees. Further to this, regulation could be introduced to require that payments be made to the PSBs for their services to be broadcast on such pay-TV platforms. These two measures would raise a significant amount of money which could be spent on content by all PSBs.
- 26. RIG therefore proposes:
 - a. That the Government continues to ensure that UK PSBs are concentrating on commissioning and producing UK-made content
 - b. That the Government takes steps to ensure that all UK content commissioned is as diverse and wide-ranging as possible, from a diverse industry of content creators based all around the UK

Why Act Now?

27. The BBC Charter Review will follow the Communications Act, however the sector is reaching a critical point where key investments need to be made and in the next few years, therefore a delay is not useful also the BBC needs to know for its own future planning what size of in-house production base to account for in its calculations. The BBC Trust has accepted the principle of having more competition for ideas, but has not done enough in practice to ensure that it takes place.
28. There is a precedent for altering the BBC's obligations outside the Charter process. In 2003 the Communications Act contained a requirement for Codes of Practice to be drawn up for indie TV producers – this was mirrored in an alteration to the BBC Agreement made at the time the Act was passed, in order that the requirement to draw up Codes were in place for all PSBs simultaneously.