



BBC Code of Practice

This Code of Practice has been drawn up in compliance with Schedule 2 paragraph 8 of the Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation (the 'BBC Agreement') and sets out the principles which are to be applied when the BBC is, for a purpose connected with the provision of the UK Public Television services, agreeing terms for the commissioning of independent productions.

The Code recognises that the BBC has a role as the nation's principal public service broadcaster to help stimulate and support the development of the independent production sector. The intention of the Code is to ensure that relations between the BBC and independent producers are conducted on a fair and transparent basis. The Code has to be approved by Ofcom as provided for in Schedule 3 paragraph 8(4) of the BBC Agreement.

The effective operation of this Code depends upon both the BBC and independent producers which it commissions being reasonable in their dealings with one another, with both parties abiding by the principles contained in the Code and undertaking to operate them in good faith.

The Code sets out how the provisions as laid out in Schedule 3 paragraph 8(3) of the BBC Agreement will be met, by reference to the categories of specific issues listed below [(as also contained in "*Ofcom's Guidance for Public Service Broadcasters in drawing up Codes of Practice for commissioning from independent producers*")]:

- a) a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
- b) that there is sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of
- c) that there is sufficient transparency about the amounts to be paid in respect of each category of rights
- d) that satisfactory arrangements are made about the duration and exclusivity of those rights
- e) that procedures exist for reviewing the arrangements adopted in accordance with the code and demonstrating compliance with it
- f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to Ofcom
- g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to Ofcom to be appropriate.

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1. Commissioning Guidelines

- 1.1 The BBC will publish (and periodically update) commissioning information that will set out the procedure and timescales by which the BBC will commission programmes. The commissioning information will be available on [its comprehensive website](#) which will provide further information about the commissioning process for each individual genre together with contact details.
- 1.2 Where commissioned programmes are to be made within the BBC Public Service, the BBC will maintain operational separation between decision making in the commissioning and production functions.
- 1.3 The BBC is a signatory to the [APC Code \(Alliance for the Protection of Copyright\) \(pdf\)](#) and all producers commissioned to make programmes for the BBC need to abide by the principles set out in that code for as long as the BBC remains a signatory.

2. Editorial Standards, Control and Compliance

- 2.1 The BBC will have final editorial control over all BBC versions of programmes including all associated online and interactive elements commissioned alongside the programme.
- 2.2 All programmes including online and interactive elements commissioned by the BBC will be subject to all relevant BBC guidelines and published compliance procedures including without limitation the BBC's Editorial Guidelines and Fair Trading Guidelines.
- 2.3 The BBC is entitled to satisfy itself prior to commission that the independent producer is able to comply with all current legislation applicable and relevant to the television production industry including but not limited to Health and Safety, Data Protection, Bribery, Discrimination, and Equality.

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3. Rights

- 3.1 The BBC will acquire a licence as follows:
 - a. A five year licence of public service rights (also known as 'primary rights' for the purposes of this Code)
 - b. 'Public service rights' shall be defined as the irrevocable and royalty-free right to use, sub-license or otherwise authorise the use of the commissioned programme (or any part thereof) in any present or future medium in connection with any BBC Public Service

'BBC Public Service' shall be defined as any service or activity now existing or developed in the future which is provided or carried out in the delivery of the BBC's obligations and responsibilities as set out under the BBC's

Royal Charter and the BBC Agreement with the Secretary of State for Culture, Media and Sport (and any successor to or variations of such Charter & Agreement) and in accordance with the BBC's Regulatory Framework

"BBC's Regulatory Framework" means the Operating Framework, Operating Licence and related requirements governing the BBC (as may be updated or replaced by the BBC's regulator from time to time)

- c. An option to renew this licence from an independent producer for a further period of two years on an agreed basis. To exercise the option a payment would be made to the independent producer - calculated as a percentage of the primary rights licence fee.
- d. The five year period will run from the full delivery of the programme. In the case of returning series, the BBC will have the option to renew the licence for all previous series while the programme is still being commissioned.
- e. Producers will have to secure the BBC's consent to any exploitation of the programming in the television and/or online market in the UK during the BBC's licence period (except to the extent that any such uses are permitted up front without further need for consent under the individual commissioning agreement between the BBC and the producer).
- f. The principles which the BBC will apply when considering requests for the BBC's consent to allow such early exploitation shall be published by the BBC in a programme release policy which may be updated from time to time. This programme release policy shall reflect that exploitation will only be permitted in circumstances where the BBC considers further exploitation of the programme in the UK programme market would not conflict with or undermine the BBC's public value offer to audiences.
- g. The initial licence fee to the independent producer would cover initial package(s) of use. Beyond such initial use package(s), an independent producer would receive a further use fee. Subject to the trigger for such further use fee, there would be no limitation on the use that could be made of the programme (or part thereof) in connection with the delivery of any BBC Public Service during the BBC's licence period.
- h. The detail of the above arrangements including the payment terms on which options and further uses would be exercised, will be agreed in the Terms of Trade as referred to in paragraph 6 below ('Terms of Trade').
- i. The above arrangements do not preclude the BBC and an individual independent producer from concluding an agreement covering a broader or different range of provisions to those outlined above, should they both wish to do so.

3.2 All commercial exploitation rights will be retained by the independent producer (subject always to the provisos set out in this Code).

3.3 There may be occasions where in order to make an attractive and competitive commissioning offer to an independent producer, the BBC and a funding partner may choose to make aligned funding offers, which would set out the BBC's public service rights and the funding partners' secondary rights, respectively. Any such offers will be operated in accordance with the BBC's applicable Trading and Separation requirements. In these instances, the independent producer would be invited to negotiate with the funding partner direct and these types of offers would be made on fair market terms and would be entirely within the independent producer's discretion to accept or decline. The independent producer may decline to negotiate with the BBC proposed funding partner and propose funding arrangements as part of the programme funding plan, provided the terms of such funding are acceptable to the BBC in line with this Code of Practice and its Terms of Trade. In using this approach to facilitate third-party funding of programmes, the BBC will not seek to extend the scope of control of how rights are exploited.

3.4 The BBC shall be entitled to share in the net revenue arising from programme exploitation on an agreed basis either as set out in the Terms of Trade, or through individual negotiation.

3.5 The above arrangements may not apply to commissions of programmes where:

- Rights are purchased by the BBC from a different entity than the independent producer who is contracted to produce the programme. (e.g. Sports programming, certain live event shows etc.)
- An independent producer secures a commission by the BBC based on a BBC created or acquired format/programme/idea.
- Where a programme is commissioned from an independent producer to be a part of a 'strand' of programming under a BBC owned brand, where the strand may be co-produced/part funded by BBC Studios.

"that there is sufficient transparency about the amounts to be paid in respect of each category of rights"

4. Programme Prices and Payment

- 4.1 The price the BBC is prepared to pay for a programme will be determined by reference to a number of key factors including:
 - i. The editorial brief for the programme as set out in the published commissioning information and brief
 - ii. The expected budget of the programme, as against such guidelines and brief
 - iii. The value of the programme to the BBC's audience promiseThe level of up-front third party investment, if any, that the programme (including any restrictions on its commercial exploitation agreed in good faith discussions between the producer and the BBC in relation to licensing to certain platforms in the UK) could reasonably expect to attract in the marketplace.
- 4.2 The price offered will recognise that the programme budget will include a reasonable and industry standard level of production fee in favour of the independent producer.
- 4.3 The price will be inclusive of any development funding paid by the BBC on a programme.
- 4.4 The BBC may offer to underwrite the potential third party investment referred to in 4.1(iv) above on terms to be negotiated and agreed in good faith between the BBC and the individual producer, which may include agreeing for the BBC to control all rights in the UK.
- 4.5 Where agreed development costs have been paid by the BBC, these shall be treated as included in the agreed programme price and as an advance against such price.
- 4.6 Where appropriate, the BBC will either be prepared to finance its contribution to the programme by a method of staged payments made at defined points in the production process or to provide a bankable letter where practicable.

5. Indicative Tariffs

- 5.1 The BBC will publish [a tariff of indicative prices](#) for a particular programme genre or category within that genre. The tariff will set out the range within which the BBC would expect the individual prices, described in paragraph 4 above, for specific programmes within that genre or

category within that genre to fall. This is to enable independent producers to be clear about the BBC's funding commitment for each genre and category within that genre of programmes.

- 5.2 The indicative tariff ranges will be reviewed from time to time as required, and will take into account any relevant factors which might impact on the prices paid for programmes.

"that procedures exist for reviewing the arrangements adopted in accordance with the code and demonstrating compliance with it"

6. Terms of Trade

- 6.1 The BBC will publish a '[Business Framework](#)' containing the Terms of Trade for Independent Productions which will set out the standard terms of business offered to all independent producers from whom the BBC commissions programmes.
- 6.2 The BBC's Business Framework will be agreed with PACT prior to publication and provide for periodic reviews as may be required in light of relevant market and/or strategic developments.

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7. Dispute Resolution

- 7.1 In the event of a dispute arising between the BBC and the independent producer, about the application of the Code itself, rather than the terms of a specific negotiation, the independent producer shall refer the dispute to a Director of the relevant Division in which the dispute arises. Both parties shall negotiate in good faith to resolve any such dispute.
- 7.2 If bi-lateral negotiations under 7.1 above cannot resolve the dispute within 28 days then both parties will agree to put the dispute to mediation through the Centre for Effective Disputes Resolution. Both parties will pay their own costs.

"that those procedures include requirements for the monitoring of the application of the code and for the making of reports to Ofcom"

8. Annual Review

- 8.1 The BBC will provide Ofcom with an annual report which will review the operation of the Code and will include:
 - The number and value of programme commissions from independent producers by the licence fee deal and genre.
 - The average length of the licence period for licence fee deals and the number of transmissions covered in the licence fee deals.

- The number of occasions on which the tariff for a licence fee commission has been outside the indicative tariff range
- The number of occasions on which the BBC has funded the commission above the primary rights licence fee
- The number of instances in which options to renew have been exercised
- The number of complaints, the nature of those complaints (in broad categories), and how they have been resolved.
- The operation of its programme release policy

This will be in addition to the BBC's obligations on independent quota reporting.

- 8.2 An annual meeting will take place with Ofcom to review the report and any other issues associated with the operation of the Code.
- 8.3 The BBC acknowledges that Ofcom expects to receive each such annual report by the end of the first quarter of the following calendar year