

GUIDELINES FOR INDEPENDENT PRODUCERS ON ACQUIRING RIGHTS IN PROGRAMME CONTRIBUTIONS FOR USE OF THE PROGRAMME ON BBC PUBLIC SERVICES.

NB: Throughout this document:

(a) reference to the BBC's public services means the BBC's publicly funded services, on whatever platform they are delivered in accordance with its Charter

(b) * means that such terms are as defined in the BBC's General Terms for the Production of Television Programmes by Independent Producers as published at: www.bbc.co.uk/commissioning/tv/business/general_terms.pdf

This document only refers to clearances required by the BBC. The independent may of course need to contract additional clearances for its own or its distributors/co-producers purposes.

1. CONTRIBUTION TYPES WHERE THE RIGHTS ARE ALREADY ACQUIRED UNDER EXISTING PROVISIONS OR COVERED BY BLANKET AGREEMENTS

Contribution Type	Current position / Action (if required)	Suggested wording to be inserted
<p>Equity Artists</p>	<p>The BBC has agreed a blanket licence with Equity to cover certain uses on the BBC's public services for originations and repeats for a one year period: 1/07/06 – 30/06/07. The blanket licence also covers independent producers supplying programmes to the BBC. No further action is required by producers. Pact is currently negotiating with Equity for changes to the Pact Equity TV agreement to achieve a similar result.</p> <p>[For information, Artists or Agents who require information about the how and when payment will be made should contact the British Equity Collecting Society (telephone 020 7242 8082 – e-mail becs@equity.org.uk - www.equitycollecting.org.uk)</p>	<p>Equity Special Stips wording to be added: "BBC Public Service Video On Demand use will be covered either by the BBC's trial agreement with Equity or by any future PACT/Equity Television Agreement."</p>

Contribution Type	Current position / Action (if required)	Suggested wording to be inserted
	Equity Extracts – see below	N/A
Presenters	Contracts should be negotiated on basis of acquiring All Rights, including repeats on all BBC services. If not All Rights, unrestricted use on the BBC's public services must be acquired within the fee for at least the Licence Period* (as may be extended). Uses beyond the Licence Period* must be clearable.	<p>If not All Rights:</p> <p>In consideration of the Fee paid, the Presenter hereby grants an exclusive licence of the right to use the products of the Presenters services pursuant to their engagement under this agreement (“Contribution”) on any BBC Public Service [in perpetuity] for the period of 5 years from first publication by the BBC, subject to renewal conditional only upon payment of a renewal fee to be agreed by good faith negotiation].</p> <p>“BBC Public Service” as used above shall mean any service now existing or developed in the future primarily funded as a public service by the Licence Revenue (as defined in the Royal Charter for the continuance of the BBC from time to time). This shall include without limitation communication to the public (as defined in the Copyright, Designs & Patents Act 1988) by broadcast and on-demand services accessed by satellite, terrestrial and cable means (including without limitation the BBC’s services made available by internet transmission) and both on television and non-television platforms. Such services may include by way of example only internet streaming of a programme and video on demand “catch-up” services and for some services a copy of the Contribution may be transferred for temporary or permanent use by members of the public.</p>
WGGB	Writers are currently contracted under WGGB / PACT Agreement for TV Production. Clause 26 (i) provides for the Producer to acquire rights for all BBC public services on payment of an additional 15% of the Script Fee, so producers should always acquire this right and make the appropriate payment within the Primary Rights Licence Fee	N/A - as current WGGB/PACT Agreement - however it has been noted that changes are required to deal with commissions for primary TX on BBC3 and/or 4, in relation to which the 100% subsequent use advance is not payable if and until the Programme gets a Network TX.

Contribution Type	Current position / Action (if required)	Suggested wording to be inserted
Directors	Covered under DPRS deal ("Directors' Rights Agreement"). No further action required.	N/A
PRS/MCPS	BBC Blanket Licence is being negotiated to cover Independent programmes for use on the BBC's public services. No further action required.	N/A
PPL/VPL	BBC Blanket Licence is being negotiated to cover Independent programmes for use on the BBC's public services. No further action required.	N/A

2. CONTRIBUTION TYPES WHERE ACTION IS REQUIRED BY THE PRODUCER TO CLEAR FOR ALL USE ON THE BBC'S PUBLIC SERVICES

Contribution	Further action (if required)	
Equity Artists appearing in Extracts	When clearing the artist's appearance in an extract, you should pay the 100% UK domestic uses buy out provision as per clause (T24) of PACT / Equity TV Production Agreement.-	N/A – existing provision

Contribution	Further action (if required)	
<p>MU</p>	<p>PACT will seek the agreement of the MU to the inclusion in the PACT/MU agreement of a provision equivalent to that in the existing BBC/MU Agreement as follows: 10% payment to buy out all necessary rights for all use on the BBC's public services * in perpetuity (excluding repeats on BBC1, BBC2 & BBC Radio)</p> <p>Until PACT / MU have reached agreement on this, the BBC has negotiated a blanket agreement with the MU which covers indie programmes (including repeats) used in its VOD services.</p>	<p>N/A</p>
<p>WGGB</p> <p>(i) Written sketch material</p> <p>ii) Use of Script Extracts from BBC produced Drama / Comedy programmes where writer was contracted before November 2002 (i.e. date of introduction of</p>	<p>(i) Sketch script material: The BBC has agreed with the Writers Guild/ PMA a similar model to the main drama script commissioning agreement – i.e. to acquire rights for all BBC public services for 5 years (renewable) on payment of an additional 15% of the Script Fee, payable on acceptance of the Script.</p> <p>Independently produced programmes are not automatically covered by this agreement but these rights need to be acquired at point of contract.</p> <p>(ii) Excerpts which include Script Extracts used in new programmes The BBC has agreed with the Writers Guild/ PMA a similar model to the main drama script commissioning agreement – i.e. to acquire rights for all BBC public services for 5 years (renewable) on payment of an additional 15% of the extract fee, payable on broadcast. N.B. The Writer's consent will usually be required, so it is advisable for the Independent producer to contact their respective BBC Business Affairs Manager for further guidance in this area.</p> <p>Independently produced programmes are not automatically covered by</p>	<p>In addition to the [Initial Fee/fee] and at the time of payment of such fee, the BBC shall make a further payment of 15% of the [Initial Fee/fee] ("the New Public Service Fee"). In consideration of such additional New Public Services Fee the Contributor hereby grants to the BBC an exclusive licence of the right to use the Work on any Public Service other than conventional free television broadcasts on BBC1 and BBC2 as set out below. The licence shall be for the term of copyright in the Work provided that the New Public Service Fee shall constitute full remuneration for the licence for an initial period limited to five years from the date of first transmission of the programme including the Work licensed under this Agreement. Payment for licensed use thereafter shall be subject to good faith negotiation between the Contributor and the BBC [or failing/until such agreement to payment as determined by the writers' Forum between the BBC, the Personal Managers' Association and the Writers' Guild of Great Britain].</p> <p>"Public Service" as used above shall mean any service now existing or developed in the future primarily funded as a public service by the Licence Revenue (as defined in the Royal Charter for the continuance of the BBC from time to time). This shall include without limitation communication to the public (as defined in the Copyright, Designs & Patents Act 1988) by broadcast and on-demand services accessed by satellite, terrestrial and cable means (including without limitation the BBC's services made available by internet</p>

Contribution	Further action (if required)	
<p>BBC/WGGB/PMA TV Script Agreement)</p>	<p>this agreement but these rights need to be acquired at point of contract.</p>	<p>transmission) and both on television and non-television platforms.</p> <p>Such services may include by way of example only internet streaming of a programme simultaneously with the conventional wireless television broadcast and video on demand “catch-up” services and for some services a copy of the Work may be transferred for temporary or permanent use by members of the public. But the rights granted in return for the New Public Service Fee exclude all services such as conventional wireless television broadcasts on BBC1 and BBC2 or commercial services for which payments are separately provided in this or other BBC agreements made with the Contributor in respect of the Work.</p>
<p>Extracts of Published Literary Material</p>	<p>The BBC has an agreement with the Publishers Association/Society of Authors which provides that for all clearances of existing Literary Material extracts:</p> <p>(i) for commissions for <u>BBC1 / BBC2</u> An additional 15% of the extract fee (payable on broadcast) buys out all necessary rights for use on all the BBC’s public services (excluding repeats on BBC1 and BBC2) for the duration of copyright</p> <p>(ii) for commissions for <u>BBC Digital Services</u></p> <p>All public service uses are acquired as part of the initial extract fee (excluding repeats on BBC1 and BBC2)</p> <p>Independently produced programmes are not automatically covered by this agreement but these rights need to be acquired at point of contract.</p>	<p><u>Wording from BBC/ PA / SoA Agreement is as follows:</u></p> <p>“Public Service” means any service provided by the BBC which is funded by the BBC’s Licence Fee or BBC World Service Grant in Aid and a “BBC Public Service Channel” means a BBC television channel which is so funded</p> <p>“Public Service Rights” means the right to use the Work in any medium now known or which may become known in or in connection with any Public Service provided by the BBC including but not limited to any BBC Digital Service and any BBC Public Service website intended to complement the BBC television Programme in which the Work was originally Broadcast</p> <p><u>(i) First Network Broadcast on BBC 1/ BBC 2 or Full BBC Digital Service Rights</u></p> <p><u>1. Network Commissions for First Broadcast on BBC 1 or BBC 2</u></p> <p>If a Network Service is specified above as the Initial Service, the right (provided this is first exercised within three years of signature of this Agreement) in return for the Initial Fee:-</p> <p>to include the Work in the Programme and to give the First Broadcast once only in the BBC’s services (or any part of them) simultaneously or non-simultaneously in BBC 1 (including BBC Wales) or in BBC 2 or in the case of Welsh language programmes for the Fourth</p>

Contribution	Further action (if required)	
		<p>Channel in Wales in that service (or any part of it); and</p> <p>to give further Broadcasts in BBC Digital Services and to exercise the Public Service Rights other than for a Network Service subject to an additional payment of a Public Service Rights payment (payable upon First Broadcast) of 15% of the Initial Fee</p> <p><u>(ii) Commissions for BBC Digital Service Channels</u></p> <p>If a BBC Digital Service is specified above as the Initial Service, the BBC will have the right (provided this is first exercised within three years of signature of this Agreement) in return for the Initial Fee:-</p> <p>to include the Work in the Programme and to give the First Broadcast in that service; and</p> <p>to exercise the Public Service Rights other than Broadcasts on BBC 1 or BBC 2</p>
<p>Source Works (Complete Literary Works)</p>	<p>All licensing agreements for existing full sourceworks should provide for the acquisition of rights for the unlimited use on the BBC's public services in perpetuity (or minimum of 10 years, renewable) (excluding repeats on BBC1 / BBC2) as part of TV rights acquired and within the agreed fee.</p>	<p>In consideration of the [Initial Fee/fee] the Contributor hereby grants to the BBC an exclusive licence of the right to use the Work on any Public Service other than conventional free television broadcasts on BBC1 and BBC2 as set out below for the term of copyright in the Work [N.B. minimum of 10 years - licensed use thereafter shall be subject to good faith negotiation between the Contributor and the BBC]</p> <p>"Public Service" as used above shall mean any service now existing or developed in the future primarily funded as a public service by the Licence Revenue (as defined in the Royal Charter for the continuance of the BBC from time to time). This shall include without limitation communication to the public (as defined in the Copyright, Designs & Patents Act 1988) by broadcast and on-demand services accessed by satellite, terrestrial and cable means (including without limitation the BBC's services made available by internet transmission) and both on television and non-television platforms.</p> <p>Such services may include by way of example only internet streaming of a programme simultaneously with the conventional</p>

Contribution	Further action (if required)	
		<p>wireless television broadcast and video on demand “catch-up” services and for some services a copy of the Work may be transferred for temporary or permanent use by members of the public. But the rights granted exclude all services such as conventional wireless television broadcasts on BBC1 and BBC2 or commercial services for which payments are separately provided in this or other BBC agreements made with the Contributor in respect of the Work.</p>
<p>Third Party Acquired Footage</p>	<p>The BBC is negotiating buy-out rates/terms for a 5 year licence to cover unlimited use on all BBC public services (including, without limitation, preview/premiere, simulcasting, repeats on BBC1, BBC2, BBC3 and BBC4; and catch-up services on any platform, etc.) with all footage suppliers and film libraries anticipating that these BBC public services clearances should also apply to independents making programmes for BBC (Independent Producers may also negotiate their own rates, of course, particularly if using significant quantity and indeed will need to do so if they wish to exploit the programme commercially. Any clearance rates negotiated by the Independent Producer that would be separately payable by the BBC would need to be approved by the relevant BBC Business Affairs Manager and recorded on the Schedule or Residuals). Upon expiry of the initial 5 year licence, licensors are required to make the material clearable for all BBC public service uses for the remainder of the term of copyright in the footage.</p> <p>In the interim, Independent Producers should seek to make all necessary rights for BBC public services cleared for 5 years (renewable), <u>subject to any over-arching agreement the BBC enters into with the archive provider.</u></p> <p>For the avoidance of doubt, any material not pre-paid at the point of contract, must be contracted as clearable subject only to the payment of the approved clearance rates, and identified on the Schedule of Residuals.</p> <p>(Further advice: Relevant BBC Business Affairs Manager, or</p>	<p>See Appendix 1 – BBC Sequence Licence Agreement pro forma</p>

Contribution	Further action (if required)	
	BBC Programme Acquisitions (Sequences) - Ralph Holmes (0208 743 8000 x56299) - for the current status of BBC licence arrangements	
Photo Stills - BAPLA Members /Other Photo Agencies	<p><u>(i) BAPLA Members:</u> BBC has agreement with BAPLA (British Association of Photo Libraries and Archives) to acquire all BBC public service uses, excluding repeats on BBC 1-4, at point of contract for payment of additional 50% of initial fee.</p> <p>This agreement/ provision may only be used by independently made programmes being made for the BBC provided that the BBC notifies BAPLA of the use by the independent and the extent of the use of terms from the Agreement (BAPLA are uncomfortable with independents relying on commercial terms, and prefer negotiation on a case by case basis). Therefore the independent should contact the Business Affairs Manager to notify them if relying on the above.</p> <p><u>(ii) Non-BAPLA Members</u> Producer to acquire full UK buy out in all media for initial fee</p>	See Appendix 2
Artworks - DACS	<p>BBC has agreement with DACS for artistic works for public service uses on the following model – i.e. acquire unlimited use on the BBC's public services, excluding repeats on BBC1-4, at point of contract for 50% of initial fee.</p> <p>Independently produced programmes are not automatically covered by this agreement but these rights need to be acquired at point of contract.</p>	See Appendix 3

Contribution	Further action (if required)	
<p>Performances by artists under exclusive recording contracts</p>	<p>Unlimited use of these contribution types on the BBC's public services for the Licence Period* (as may be extended) will need to be acquired on a case by case basis with advice if necessary in the first instance from PACT /PRA and in the second instance from the relevant BBC Business Affairs Manager.</p>	<p>(As advised by PRA / BBC on case by case basis)</p>
<p>Use of Grand Rights works (e.g. Stage musicals, Opera, Ballets)</p>	<p>Unlimited use of these contribution types on the BBC's public services for the Licence Period* (as may be extended) will need to be acquired on a case by case basis. Contact BBC Music Copyright Department for clearance advice.</p>	<p>As above</p>
<p>Locations</p>	<p>Contract on basis of All Rights. If not All Rights, unlimited use on the BBC's public services for the Licence Period* (as may be extended) must be acquired, and use beyond the Licence Period* must be clearable. (PRA Locations Agreement)</p>	

Additional Points of clarification/ process:

The BBC accepts that in some circumstances there will be some additional legitimate cost and that the BBC is prepared to fund that cost if reasonable and agreed in advance with the BBC. This should form part of the independent's discussions with their respective BBC Business Affairs Manager

The following seeks to clarify further detail where a programme/ series has already been commissioned / and contributors contracted:

1. Where a licence fee has already been agreed, and where contracts with underlying rights holders have also been agreed

Independent producers should attempt to renegotiate those contracts in order to obtain the additional BBC public service rights at a reasonable cost having regard to the above. If this does not prove possible (in a small number of exceptional cases) the BBC accepts the programme / series will not be available for use in the proposed on demand or other public service (the indie will need to make this clear in the Schedule of Residuals delivered to the BBC).

2. Where a licence fee has already been agreed but contracts with underlying rights holders have not yet been agreed

There should be more flexibility in this scenario, and that if rights prove problematic then there may be alternatives. Like point 1 above, it should be possible to obtain additional rights required at a reasonable cost agreed with the BBC, but again, if this does not prove possible (and only in a small number of cases) either an editorial adjustment will need to be made to the programme, or the programme / series will not be available for use in the proposed on demand or other public service. This will need to be agreed with the relevant BBC Business Affairs Manager and made clear in the Schedule of Residuals.

3. Where a licence fee has not been agreed

The BBC has agreed that if and where there are additional legitimate costs for additional rights then this will be reflected in the contract with the BBC. N.B. It is important to note that (and as outlined in the grid above) there are a number of agreements or standard approaches already acquiring these rights (e.g. All Rights agreements for presenters, the Equity interim blanket deal, Writers Guild) so the BBC would not expect any additional costs in these areas.