

CODE OF PRACTICE
- July 2024

1. Introduction

- 1.1 The purpose of this Code of Practice ("Code") is to provide guidance to producers of television programmes on how ITV Rights Limited ("ITVR") selects and commissions programmes for broadcast on the Channel 3 network service, the basis on which ITVR acquires broadcast and other rights in those programmes and the principles to be applied by ITVR when agreeing terms with producers.
- 1.2 The Channel 3 network service is currently branded as "ITV1" in England, Wales the Channel Islands and Northern Ireland; and as "STV" in Central and North Scotland and is referred to collectively in this Code as "Channel 3".
- 1.3 ITVR carries out the function described in section 1.1 on behalf of the regional Channel 3 licensees (the "Regional Licensees").
- 1.4 This Code applies whenever a programme proposal is submitted to ITVR by any Qualifying Independent Production Company¹ (each, a "Producer").
- 1.5 Subject to its regulatory obligations (including the need to obtain formal approval from Ofcom), ITVR reserves its right to review the provisions of the Code from time to time.

2. Core Principles

The following are core principles governing ITVR's programme commissioning functions:-

- 2.1 All producers will have equal and direct access ITVR and the relevant commissioning executives for the purpose of submitting programme proposals².
- 2.2 The commissioning of programmes by ITVR shall in every case be at arms- length and on merit to ensure the most commercially attractive schedule for viewers and advertisers so as to create a schedule of network programmes capable of competing with other broadcast and related services, together with other competing third party services, including but not limited to on demand services (whether free or pay) and/or other audiovisual or media services and to enable the Regional Licensees to fulfil their public service obligations.
- 2.3 ITVR will use all reasonable endeavours to ensure the even-handed dissemination of information concerning its programme requirements to all relevant persons.
- 2.4 ITVR will at all times act impartially in the commissioning of programmes.
- 2.5 ITVR has adopted The APC Code of Practice for the submission of film and programme proposals for the UK film, radio and television industry and will at all times conduct itself in accordance with its provisions. These include:-
 - Taking of steps to maintain the confidentiality of proposals;
 - Acknowledging proposals received;
 - Returning on request rejected proposals;
 - Keeping a log of all proposals received;
 - Maintaining a disputes procedure requiring prompt investigation of any complaint.
- 2.6 ITVR intends to maintain the separation between commissioning and production by keeping the core broadcasting functions of commissioning, contracting and scheduling separate from the Regional licensees' production functions by way of distinct reporting lines.

¹ ¹ As defined in Statutory Instrument "The Broadcasting (Independent Productions) Order 1991" (as amended from time to time or replaced)

² Whilst this Code applies only to Qualifying Independent Production Companies, the commissioning processes outlined will apply for all programme submissions.

3. Commissioning Process

The process for the commissioning of programmes is as follows:-

3.1 The only authority to commission programmes rests with the Managing Director, Media & Entertainment (the 'Managing Director') and/or the Content Director³. No programme can be commissioned without his or her express formal approval.

3.2 Commissioning is currently done on a "rolling" basis throughout the year, i.e. there are no "offer rounds", biannually or otherwise.

Producers should submit programme proposals to the commissioning executive responsible for the genre in question. All proposals should be submitted in writing, unless otherwise directed by the commissioning executive. It is essential that the Producer attaches an *offer* price and/or budget to each proposal, although this may either be submitted directly to the commissioning executive or to Business Affairs (to be advised by ITV).

3.3 Following receipt of a proposal, the commissioning executive will, as soon as reasonably possible, respond to the Producer, notifying it:-

- that (s)he intends to recommend to the Managing Director (or the Content Director as appropriate) that the programme be considered for commissioning, and that therefore the proposal will be taken forward to the Genre Business Meeting (see below); or
- that, in the opinion of the commissioning executive, further work is required by the Producer to the proposal before (s)he could consider recommending the proposal to the Managing Director (or the Content Director as appropriate); or
- that (s)he does not wish to take the proposal forward.

3.4 The Genre Business Meeting usually takes place once every two weeks for each genre throughout the year. This meeting is normally attended by the Managing Director, the Content Director, the Chief Operating Officer, the relevant Genre Director and representatives from the Business Affairs and Finance Departments. At this meeting, the Managing Director (or the Content Director as appropriate) will, if (s)he wishes to proceed with a proposal, authorise the Business Affairs Department to start negotiating licence fee and terms with the Producer. This is currently known as "Stage One" approval.

3.5 Following Stage One approval, the Business Affairs Department will make contact with the Producer to discuss and negotiate an appropriate licence fee (see "Programme Pricing & Financing" below). The Business Affairs Department will also propose licence terms, which shall reflect the terms of the Tripartite Production, Licence, and Compliance Contract⁴ as published and revised from time to time (the "Tripartite Contract"). Other matters to be agreed will include key programme elements (including but not limited to on and off screen talent, delivery date, editorial specification (where requested) and Ofcom production region. The parties shall negotiate promptly in order to reach agreement both on licence fee and terms as quickly as possible (subject to the approval of the Managing Director (or the Content Director as appropriate)).

³ The Managing Director is the principal authority and the Content Director can exercise that authority as an alternate on behalf of the Managing Director.

⁴ The current Tripartite (which pre-dates this amended Code) is deemed to incorporate the ITV & PACT Memorandum of Understanding Setting out specific agreed amendments to ITV's General Terms and Conditions (as agreed with PACT (July 2009)) dated 28th September 20018 (the "MOU"), together with the further Memorandum of Understanding between Pact and ITV effective from 1st January 2023 ,however, a revised form of Tripartite may be prepared to reflect this updated Code

- 3.6 Once the Business Affairs Department has agreed the licence fee and terms with the Producer (both of which shall be subject to the approval of the Managing Director (or the Content Director as appropriate)), a representative from the Business Affairs Department will present the proposal at the next available Genre Business Meeting. If the Managing Director (or the Content Director as appropriate) approves of the licence fee and other terms, (s)he will formally authorise the Business Affairs Department to finalise the negotiation on those terms. This is currently known as "Stage Two" approval. Formal commission is subject to signature of long form contract.⁵
- 3.7 The Business Affairs Department will then finalise the negotiation with the Producer. At this point the Business Affairs Department may issue a Letter of Intent ("LOI") to the Producer which sets out the understanding between the parties on licence fee and key licence terms, however, more usually the Business Affairs Department will then send out a long form agreement, in the form of the Tripartite. It shall be the aim of the parties to conclude and sign the Tripartite within 28 (twenty-eight) days of the agreement of the key terms⁶.
- 3.8 The Tripartite is a binding contract. Therefore, following signature of the Tripartite, the programme is formally commissioned. Prior to signature of the Tripartite, there is no binding legal commitment on the part of ITV.
- 3.9 The terms of the Tripartite are drafted in accordance with the principles of this Code. ITV and Producers are free to agree amendments to the standard terms on a case-by-case basis.

4. Programme Pricing & Financing

- 4.1 The licence fee that ITV pays shall be for a licence of the "primary" rights in the programme for the duration of the licence period (see under "Primary Rights Acquired" below) and for the grant of various exclusive options (see under "Exclusive Options" below).
- 4.2 The level of licence fee shall be one of the items which is the subject of free negotiation between ITV and the Producer. As part of this negotiation, the parties shall have regard to a range of factors, including but not limited to the following:-
- The programme budget;
 - ITV's indicative tariff for programmes of this sort;
 - The value of the programme and the package of rights to be acquired by ITV;
 - The nature of the programme (e.g. whether it is a new or a returning series; its editorial ambition; the filming location(s); the length of production schedule);
 - The type and amount of archive material to be used;
 - The on- and off- screen talent to be featured;
 - The number of episodes (if a series);
 - The use of animation, computer-generated imaging or similar techniques.
- 4.3 Although the above factors have been taken into account in setting the indicative tariff prices, variations in any one or more of the relevant factors can affect ITV's valuation of the programme and may lead to such valuation being outside of those parameters and, in such circumstances, ITV reserves the right to agree a licence fee which is outside of those parameters (whether higher or lower).
- 4.4 ITV's indicative tariff prices shall be published by ITV from time to time. The indicative tariff prices are an initial indication of the range of licence fees that ITV would expect to pay for programmes broken down by genre and day-part.
- 4.5 The indicative tariff prices shall, in addition to those factors set out in section 4.2 above, have regard to the following factors, and ITV shall attribute such weight to such factors as it shall in its discretion decide:-

⁵ Occasionally Stage 1 and Stage 2 will happen at the same time.

⁶ The date of agreement will customarily be the date of the "Stage Two" approval.

- The average cost to ITV of similar programmes in the relevant genre;
- What ITV has typically paid for similar programmes in the Channel 3 schedule in the past;
- The number of producer-paid and pre-cleared transmissions acquired as part of the primary licence;
- The market rate for licence fees for similar programmes in similar genres.

4.5 On occasions the licence fee will be the same as the programme budget (and ITV will therefore be fully funding the commission) but this need not always be the case.

Historically, ITV has not cash flowed productions and has paid licence fees following acceptance of the programme by, or on behalf of, ITV (payment being made on the fifth working day of the next month).

5. Primary Rights Acquired

5.1 Under the current standard terms of the Tripartite, unless otherwise agreed, ITV is granted a UK licence in the programme, including the following "primary" rights, for an initial licence period of 5 years⁷ :-

- **Channel 3 Broadcast Rights:** the exclusive right to transmit the programme on Channel 3 via any broadcast media an unlimited number of times, subject to ITV paying any actual and agreed third party clearance costs for any transmissions beyond the agreed number of "pre-cleared" transmissions.
 - **Video-on-Demand (VOD) Rights:** the exclusive right to and to authorise others to, broadcast, transmit and make available an episode of the programme or otherwise communicate an episode of the programme to the public on any On Demand Service, whether individually or as part of a package or "box set", (including so-called "push" VOD and/or "start over"/"live rewind", FAST rights and similar on demand functionality which for the avoidance of doubt will include where relevant any so-called "Network PVR" functionality) from time to time that uses an ITV-brand (or other Channel 3 licensee brand) or a brand that is controlled or owned or part owned by ITV or other Channel 3 licensee) for the duration of the Licence Period.
- **UK Secondary Broadcast Rights** - the exclusive right to exploit the UK secondary broadcast rights for any Channel 3 licensee branded service throughout the Licence Period⁸.
- **PRTS Rights** the exclusive right to include premium rate telephony services in connection with the Channel 3 Broadcast Rights. Net revenues are shared equally by ITV and the Producer.
- **Interactive Rights** - the exclusive right to use the programme in combination with any "red button" application and to make the same available by any broadcast media in connection with the Channel 3 Broadcast Rights. Net revenues are (unless otherwise agreed) shared equally by ITV and the Producer.
- **Clip Rights** - the non-exclusive right to use clips via all broadcast media for both promotional and non-promotional purposes. Net revenues are shared by ITV and the Producer in accordance with the Tripartite or as otherwise agreed..

5.2 ITV will negotiate with Pact provisions with respect to the right to run a dedicated programme website. Until such negotiations are satisfactorily concluded, ITV and Producers shall agree in good faith provisions with regard to this right.

⁷ For returning series the licence period shall automatically be extended until the end of the Licence Period of the final series commissioned.

⁸ Any additional fees payable to the Producer for exploitation of the VOD Rights and/or the UK Secondary Broadcast Rights will be set out in the revised Tripartite.

- 5.3 The Tripartite provides ITVR with an entitlement to receive, in perpetuity, a share of the Producer's net revenue from all other exploitation of the programme and format, both UK and overseas.
- 5.4 ITVR shall be free to secure additional packages of rights from the Producer for additional sums (where appropriate) through good faith commercial negotiation, should the Producer wish to make such additional packages of rights available.
- 5.5 ITVR reserves its right to revisit the scope of the primary rights package from time to time (subject to any necessary Ofcom approvals).

6. **Exclusive Options**

- 6.1 Under the current standard terms of the Tripartite ITVR is granted the following exclusive options:-

- ***Option to Acquire Download to Own (DTO) Rights*** - the right to negotiate to acquire the DTO Rights (on terms to be agreed. The DTO rights are part of the Producer's reserved rights but, are heldback in accordance with the terms of the further Memorandum of Understanding between Pact and ITV effective from 1st January 2023.
- ***Option to Extend Licence Period*** - the exclusive option to extend the licence period for a further 2 years on payment of 2.5% of the applicable licence fee. This option is exercisable at any time up to 6 months prior to the end of the licence period. Any subsequent extensions are subject to good faith commercial negotiation.
- ***Option to Commission Further Series*** - the exclusive option to commission a further programme or further programmes based on the format on the same terms, other than financial terms, which will be agreed in good faith. This option is exercisable at any time within 12 months of first transmission of the programme or (if earlier) 13 months of acceptance of the programme.

- 6.2 The period during which a programme will be exclusive to ITV shall be 30 months, reducing to 18 months for non-scripted one-offs (excluding one offs that form part of a strand) save in respect of Children's Programmes which shall be exclusive for the whole licence period, or any programme in respect of which ITVR pays the "exclusivity fee" (which is 2.5% of the applicable licence fee where the initial exclusivity period is 30 months and 3.5% where the initial exclusivity period is 18 months).

7. **Other Producer Holdbacks**

- 7.1 The position with regard to the exercise, or non-exercise, of the rights named above by ITVR and/or the Producer is as set out above.

- 7.2 In respect of exercise by the Producer of those of its reserved rights not expressly dealt with above, the Tripartite will provide for the following "holdbacks":-

- ***UK Broadcast Rights*** - the Producer cannot exploit any UK broadcast rights in the programme or format until expiry of the period of 12 months after first transmission of the programme on the Channel 3 network service. However, if ITV wishes to recommission the programme but is unable to agree terms with the Producer the restriction on exploitation of the programme format shall be extended to 24 months.
- ***Overseas Broadcast Rights*** - the Producer cannot exploit any overseas broadcast rights in any episode until that episode has been transmitted on the Channel 3 network service (i.e. the Channel 3 network service must be assured of the worldwide broadcast premiere). If an episode has not transmitted within 6 months of acceptance, this holdback ceases to apply to that episode.
- ***Other Rights*** - the Producer cannot exercise any other of its UK or overseas rights in any episode until that episode has been transmitted on the Channel 3 network service.

8. **Compliance**

- 8.1 This section is intended to reflect the current arrangements for compliance and production monitoring.
- 8.2 ITV Broadcasting shall carry out compliance and production monitoring for ITVR in respect of the programme (save where the Producer is a production company owned by STV where an STV Regional Licensee shall undertake such compliance and production monitoring)
- 8.3 Subsequent to the issue of the LOI (or issuing of the Tripartite as appropriate), the Compliance Licensee (ITV Broadcasting or an STV Regional Licensee) will verify such material matters as is necessary to carry out its compliance and production monitoring services, some of which may need to be verified prior to the execution of the Tripartite. Examples of such matters that may require verification are:-
- that the Producer has the underlying rights entitling it to make the programme;
 - that the Producer has adequate finance to fund the production of the programme to completion, which may include the provision of a production guarantee;
 - that the key elements of the specification of the programme are secured (e.g. named talent);
 - the grounds on which the production qualifies as a regional production according to Ofcom guidance;
 - any other matters.
- 8.4 The compliance and production monitoring will be the responsibility of staff of the Compliance Licensee engaged in the broadcasting and not the production activities of that Compliance Licensee.
- 8.5 The compliance and production monitoring role of a Compliance Licensee will involve it in verifying information relating to the programme. This may occur either before a Tripartite is entered into or during the course of the contract.

9. Monitoring of this Code

- 9.1 ITVR might be asked by Ofcom to report on the application and operation of the provisions of this Code by supplying the further information to Ofcom, which might for example include the following:-
- Number of commissions undertaken in a given period, broken down by genre;
 - The nature of those commissions (e.g. whether primary rights only or inclusive of other rights);
 - The number of instances where ITVR has exercised its right to renew the original licence;
 - Where the price paid for the commission sits in relation to the relevant tariff range;
 - Duration of rights;
 - The number and nature (in broad categories) of complaints and the way in which they have been resolved in accordance with the dispute resolution procedure set out below.
- 9.2 In addition to the above reporting, ITVR shall submit annually to Ofcom by the end of March of the following year a detailed review of ITVR's application of this Code.

10. Dispute Resolution

- 10.1 In the event that a dispute arises in respect of the application of this Code, a Producer should, in the first instance, notify ITVR in writing and try and resolve the dispute with the member of staff of ITVR with whom it has been dealing.
- 10.2 If the dispute is not resolved within 28 days of written notice to ITVR in accordance with section 10.1 above, the Producer may then refer the dispute to the Managing Director.
- 10.3 If the dispute is not settled in accordance with the provisions of section 10.2 above within 28 days of it being referred to the Managing Director, the matter may then be referred to the Chairman of the Network Council whose decision shall be final. Where the Chairman

of the Network Council is a connected party in any dispute under this Code, the decision shall be made by another unconnected representative from the Network Council.

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