CODE OF PRACTICE

Relating to Programme Commissioning of Independent Productions by Channel 5

1. Introduction

1.1. This Code of Practice sets out the principles to which Channel 5 will adhere in its dealings with UK independent producers when such programmes are commissioned for its main public service channel or its Designated Internet Programme Service (DIPS)[1] - both known as "5".

1.2. Channel 5 is committed to working with UK independent producers to support a competitive television programme supply market across the country and its regions in the UK. Where an independent production company has conceived or developed a programme idea, we accept they should retain the ultimate intellectual property rights to such programmes.

1.3. For the avoidance of doubt, this Code of Practice does not apply to programme ideas that originate with Channel 5 which we may ask independent producers to make for us.

1.4. Throughout its existence, Channel 5 has adopted a policy of negotiating potential developments and commissions on a case-by-case basis in a flexible, fair and reasonable manner. We will continue to follow this approach in the future.

2. Key principles

2.1. Channel 5 does not operate an annual commissioning cycle but commissions in accordance with the needs of its schedule throughout the year.

2.2. Channel 5 will treat all programme proposals it receives in strictest confidence.

2.3. Channel 5 will respond to producers as soon as possible and in any event within six weeks to advise whether Channel 5 is interested in commissioning a development or programme. Where Channel 5 is so interested it will ask the producer to complete a standard Commissioning Specification Form for submission to the relevant Production Representative.

2.4. Channel 5 will consider all programme proposals it receives from independent producers on their respective merits and by reference to the obligations imposed on it by legislation, the terms and conditions of its broadcast licence, the needs of Channel 5's services and schedules, the funds it has available and the existence or potential of complementary funding sources (such as co-production funding).

[1] DIPS status subject to Ofcom designation. This Code of Practice shall only apply to programmes commissioned for Channel 5's DIPS if Channel 5 intends the commission to contribute to the fulfilment of its independent production quota.

2.5. Channel 5 will not prescribe any specific funding arrangement and is prepared to consider on a case-by-case basis a variety of financing propositions. Channel 5 will fund all or part only of the agreed cost of production and negotiate in good faith whatever position with regard to the ownership, exclusivity, duration, exercise, control and participation in exploitation income as the parties agree is appropriate, taking into account all relevant circumstances including these principles and the need to balance risk with reward.

2.6. All negotiations will be carried out by Channel 5 in good faith, to a reasonable timetable and in a transparent, flexible, fair and reasonable manner.

2.7. Channel 5 has negotiated standard commercial terms with Pact intended to apply to certain types of production from qualifying producers,[2] available at https://www.viacomcbs-mediahub.co.uk/corporate/channel-5-programme-production/business-affairs. Independent production agreements that do not fall within the intended scope of Channel 5's Pact-agreed terms of trade shall nevertheless always reflect and adhere to the principles and processes outlined in this Code of Practice.

3. The commissioning process

3.1. The procedure adopted by Channel 5 for commissioning developments and programmes is set out below:

3.1.1. When Channel 5 wishes to commission a producer to produce and deliver either development work or a programme or series, the relevant Channel 5 Programming Executive will raise an internal document ("a Commissioning Form") which will be sent to and approved by the appropriate departments within Channel 5. Following internal approval of a Commissioning Form, the producer will be notified of the contact name and details for Channel 5's assigned Production Representative. Channel 5's Production Representative will negotiate a budget, schedule and other deal terms with the producer. Commissioning Forms will normally be raised a minimum of four weeks before the start of production to allow for negotiations.

3.1.2. Once the budget, schedule and deal terms have been agreed, they will be submitted to Channel 5's Business Board for approval. Producers will receive confirmation no later than five working days after the date of the meeting as to whether Business Board approval has been given. Production should not commence until such approval has been received and Channel 5 will not bear any liability for commitments made before then. It is the duty of both Channel 5 and the producer to ensure that production does not start until approval has been confirmed. To ensure separation of responsibilities for programme commissioning and operation of in-house production activities where they exist, the managers of Channel 5's in-house production activities shall not participate in the decisions of the Business Board.

[2] These standard terms apply only to unscripted commissions and do not apply to scripted or children's programmes

3.1.3. Once Business Board approval has been granted, a Channel 5 Business Affairs Representative will issue a contract setting out the terms and conditions of the commission as soon as reasonably practicable.

3.2. Up-to-date information relating to programme production, technical delivery and credit requirements, guidance and advice shall be made available to producers at https://productionhub.uk.paramount.com/PcLogin.aspx.

4. The Primary Rights licence

4.1. Primary Rights include a licence across an agreed period to transmit or otherwise exhibit the programme on Channel 5's linear and streaming services, however so delivered. Such licences will include agreed periods and levels of exclusivity for Channel 5 services (holdbacks against the producer exercising certain of its retained rights), alongside other promotional and clip rights. Licence periods, exclusivity and other terms for commissions that fall within the scope of our standard Pact terms of trade can be found here: https://www.viacomcbs-mediahub.co.uk/corporate/channel-5-programme-production/business-affairs. Outside Pact terms of trade, licence and holdback periods of up to 10 years may be agreed with producers, based on genre, licence fee and other market factors.

4.2. In addition, Channel 5 will also acquire further rights including:

4.2.1. Certain operational rights and entitlements to enable Channel 5 to effect the efficient transmission or exploitation of the rights granted to it (including the right to subtitle and dub; the right to edit for timing, regulatory, legal or other compliance; technical manipulation rights; off-air recording rights, etc.); and

4.2.2. An option to extend its linear and streaming licence, with or without accompanying exclusivity, on a limited basis in accordance with Ofcom's Guidance for Public Service Broadcasters on Commissioning Codes of Practice and, where applicable, Channel 5's Pact terms of trade;

4.2.3. An option to use the programme within the licence period (as extended) on a UK service under common corporate ownership with Channel 5;

4.2.4. the right to operate telephone lines, text services and/or online services (both premium and otherwise) for and in connection with competitions and similar activities featured in or associated with a transmission of a programme with revenue received from such telephony-based activity being shared with the producer on terms to be agreed in good faith.

5. Paying for Primary Rights

5.1. Channel 5 will be clear about what it is prepared to pay for each category of rights it is to acquire on all commissions. In evaluating the relevant license fees for each commission, Channel 5 will consider several factors, including the following:

5.1.1. Its editorial requirements and objectives and their impact on cost of production, including schedule, use of third party material, location, talent, VFX etc.;

5.1.2. The expected commercial or other value of the commission over the lifecycle of the rights licensed, based on Channel 5's intended exploitation plan - its return on investment;

5.1.3. The anticipated value of the rights in the programme retained by the producer relative to the rights to be purchased by Channel 5, and the presence or prospect of other funding partners investing the programme in return for acquiring some or all of these producer rights;

5.1.4. Whether the programme is a known/returning format or series, or a brand new property without an established approach to production;

5.1.5. The scale and/or volume (e.g. episode count) of the commission and associated scope for production economies of scale;

5.1.6. The overall financial parameters Channel 5 is operating within at the time of the commission.

5.2. As is common in the industry, we will also negotiate and agree in good faith production fees on all commissions on a case-by-case basis by reference to current industry rates and in particular the scale and volume of a production or wider commitment to its producer (e.g. via an output deal).

5.3. Producers shall be required to secure third party clearances according to Channel 5's reasonable instructions, within the scope of the terms of its licence. For the avoidance of doubt, any resulting clearance costs will be payable by Channel 5.

6. Other licensing principles

6.1. Channel 5 will be flexible in its approach to windowing arrangements for linear rights to match the need to complete finance for the programme.

6.2. Channel 5 will consider in good faith any producer request for early release of any or all elements of its UK holdback provisions (as outlined in 4.1 above). In doing so, it will be mindful of:

6.2.1. its remaining licence period and utility for the programme;

6.2.2. its commissioning intentions for further series of the same title;

6.2.3. its competitive position in relation to the intended exhibitor of the programme in the territory following such early release of Channel 5 holdback;

6.2.4. any contracted or proposed compensation it will receive from the producer from the latter's exploitation of the programme in the territory (e.g. a share of secondary sales revenue).

6.3. A licence of Primary Rights will be drawn up in a manner designed to ensure that the producer will be able to use Channel 5's intended commitment to raise additional funding for the production from a bank or other third parties on market terms.

6.4. All rights not acquired by Channel 5 under a standard license of Primary Rights will be retained by the producer unless otherwise agreed. Channel 5 will not link negotiations relating to the acquisition of Primary Rights to negotiations for producer-retained rights. Channel 5 will negotiate in good faith with producers where it wishes to further extend the term or the rights granted to it and, subject to the foregoing, will not seek to extend the scope of its control over the producer's retained rights beyond the standard licence holdbacks.

6.5. Subject to the principles set out in this Code of Practice, Channel 5 will not be precluded from seeking to include other rights in its Primary Rights licence through commercial negotiation.

6.6. Channel 5 will normally require that the commissioning documentation grant to it the right to commission further programmes on terms substantially similar to the original commission within 12 months of delivery of the original (but no later than six months following the first transmission by Channel 5 of all episodes).

6.7. Channel 5 will not require matching-rights provisions (or provisions which have that effect) in relation to any part of the producer's retained rights though, for the avoidance of doubt, may secure such provisions through commercial negotiation.

7. Channel 5 interest in producers' rights

7.1. Channel 5 shall participate in the value generated by the exploitation of its commissions by producers, the level and scope of which shall be subject to commercial negotiation consistent with the principles set out in this Code of Practice and, where applicable, the terms of Channel 5's Pact terms of trade.

7.2. Channel 5 accepts that the decision as to which distributor to appoint will be made by the producer and no deal will be conditional on the appointment of a distributor linked to Channel 5.

7.3. Channel 5 will negotiate and agree in good faith its position with regard to ownership, control and exploitation of format and changed format rights in keeping with the principles set out in this Code of Practice.

8. Reviewing and reporting on this code

8.1. Channel 5 will undertake regular internal reviews at senior management level of the operation and effectiveness of this Code and meet with Ofcom as and when requested to review its operation.

8.2. Channel 5 will refer any complaints it receives from independent producers and/or Pact with regard to application of this Code of Practice for consideration by a Committee chaired by Channel 5's Chief Content Officer (or equivalent) and ensure that any complainants are afforded a reasonable opportunity to detail their complaint including, if requested, at a meeting between members of the Committee and the complainant and shall provide a detailed written response to a complaint within a reasonable time.

8.3. To keep costs on both sides to a minimum, Channel 5 will submit unresolved complaints to arbitration by an independent third party approved by Channel 5 and the complainant and Channel 5 will abide by the decision of such third party.

8.4. Channel 5 may be asked by Ofcom to report on the operation of this Code by supplying further information, which might for example include the prices paid for commissions and the duration of rights licensed.

Channel 5 Broadcasting Limited

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