





Secretary of State for Trade and Industry

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The Rt Hon Douglas Hurd MP
Secretary of State for the Home
Department

Home Office
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NB: 22.

INDEPENDENT TELEVISION PRODUCERS

... I have received the attached letter from Mr Michael Darlow, the independents' head of negotiations with the BBC and ITV companies in the current 25 per cent debate. Given our meeting, together with Nigel Lawson, on Thursday, I thought it would be timely to circulate it to you and other colleagues on MISC 128. It is a useful summary of how the independents see these negotiations.

When we meet on Thursday, there seem to me to be three points to consider. The first is the question of 25 per cent. As regards the independent television companies I see no reasons why we should not stick to our public commitment to 25 per cent overall, as re-stated in our manifesto. We need to discuss what additional pressure we can put on the ITV companies through the IBA, if necessary backed up by legislation.

Secondly, the rights issue is a crucial one for the independents. Here, contrary to the practice in other areas of the audiovisual industry, the broadcasters seem to be using their monopoly position to force as a matter of course the small independent production companies to give up all rights to exploit their programmes. The Channel Four model seems a rather fairer guide where, even when Channel Four provides 100 per cent of the finance for an independently produced programme, there remains scope for

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individual negotiation of residual rights, including a minimum of 30 per cent of net export revenues. If we wish to build up a viable independent third force in broadcasting they must be able to build up their strength when they have produced successful products.

Thirdly, the definition of "independent producer" is fundamental. In my view we should exclude from being counted towards the 25 per cent target, material produced by companies in which the ITV companies hold more than a 10 per cent shareholding, or where the producers are not completely free to choose their own studios, staff and working practices.

At MISC 128 there was some discussion as to whether the target should be different for the BBC than for the ITV companies. The BBC will be under tighter financial disciplines in future, with the licence fee now tied to the RPI and it may be sensible to give the BBC greater flexibility in achieving our objective.

It is important to bring about a rapid solution to all these matters - and I suspect the broadcasters are dragging their feet since the commissioning process for the 1988/89 programming year will soon have gone too far for much more independent programming to be incorporated in it. And that is already two to three years from our initial commitment to 25 per cent.

Copies of this letter and enclosure go to the Prime Minister, the Chancellor, other members of MISC 128 and Sir Robert Armstrong.

LORD YOUNG OF GRAFFHAM

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Dear Secretary of State

INDEPENDENT TELEVISION PRODUCERS

I am writing on behalf of the Independent Television producers associations who have been negotiating jointly with the BBC and ITV to reach voluntary agreement to implement Government policy aimed at securing that 25% of the new output of programmes in the schedules of the BBC and ITV shall be supplied by independent producers. I have to report that these discussions have not gone well, especially in the case of ITV. In recent weeks we have been forced to the reluctant conclusion that the ITV companies in particular have been pursuing a policy of deliberate prevarication, with the intention of inhibiting the economic growth of the independent sector.

I fully recognise that as the representative of one of the parties involved in the process of negotiation on issues relating to the practical implementation of the Government initiative I might be thought to have a partial motive in writing to you at this time. However, I wish to make a clear distinction in this letter between those items which are probably susceptible to agreement within the current negotiations and fundamental matters relating to the overall stance of the broadcasters which are a cause for much more far reaching concern among independents. It is exclusively on these latter matters that I am writing.

I will not take up your time with a detailed recital of the progress, or non-progress, of the talks between ourselves and the BBC and ITV companies in the last four to five months, abetted by the failure of the IBA to hold the ITV companies to the timetable



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set by the Authority for their conclusion (I would be happy to supply details should you require them). Suffice it to say that the independent producers now fear that the Government initiative could have the long term effect not of strengthening the independent sector but of undermining it.

The hours currently on offer to independents, 500 each from the BBC and ITV, amount to only 5% of the total of the new output of each system and are so limited as to be of only marginal consequence to the operations of the broadcasters. We find it hard to believe that the broadcasters can seriously intend reaching the 25% target within the period set by the Government, as to do so would appear to entail introducing independent productions during the second phase of implementation at four times the rate they have set themselves in the initial phase. The hours currently on offer are certainly not sufficient to induce the kind of change in the programme making practices of the broadcasters, nor level of competition, envisaged in the Peacock Report. Further, the money the BBC has earmarked for independent production is equivalent to only about 60% of their own total production costs for an equivalent number of programmes. This pre-supposes that independents must attract substantial co-production finance in the vast majority of cases. This cannot always be a realistic expectation, in which case independent programmes will frequently have to be produced using BBC facilities, staff and existing working methods whether appropriate or not.

Crucially, also, neither the BBC nor the ITV companies have been willing to offer guidelines as to the principles that should underlie the business terms between independent producers and broadcasters which hold out any prospect of the independent sector being able to develop as a genuine "third competitive force" in the supply of television programmes. They are unwilling to agree even to minimum tariffs and margins for the independent producer, a principle fully recognised, however, by Channel 4.

The BBC and ITV system enjoys the monopoly use of a public asset - the right to transmit, and in the case of ITV make a profit from selling advertising. Both the BBC and ITV intend to take over the most valuable asset of the independent producer - the right to exploit and build a proper capital and asset base from his intellectual and creative property. Although the independent would be called upon to supply substitute programming to meet the needs of the broadcasters schedules, the broadcasters are insisting that in return for entering into a contract to supply a programme the independent must be willing to give up all rights to distribute or exploit the completed programme elsewhere in the world. In addition, the independent must relinquish all ancillary rights related to the programme, the material or idea upon which it is based, or that is included within it. In this way the independent sector's potential for expansion will be limited solely to servicing the broadcasters.

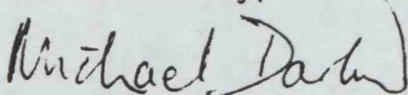
In the meantime, and in the absence of guidelines, many ITV

companies are entering into deals with the individual independent producers which in effect reduce the role of the independent to that of a packager or freelance. Although these deals are represented by the ITV companies as Independent productions they bear no resemblance to the kind of thing that the Peacock Report envisaged and are no basis for the growth of a healthy and competitive independent sector. These ad hoc arrangements are likely to jeopardise the ability of the independent sector to trade competitively and if extended would have the effect of undermining it.

Further, the ITV companies are insisting on the right to hold, at their discretion, up to 25% of the shares of an independent production company making programmes for the targets set for independent production in ITV's schedules. Again this materially prejudices the growth of a genuinely independent "third force".

While our negotiations with the BBC have not yet attained quite the same level of disagreement, a similar chasm has opened between us over the question of underlying principles that would afford the independent sector any prospect of a healthy or competitive future. We now seem to face the prospect of the IBA issuing guidelines, unseen by ourselves, for the implementation of their interpretation of Government policy. These seem, on the evidence to date, likely neither to meet the reasonable needs of the independent sector nor match the Government intention as to target output or the creation of a "third force" by independents. In such circumstances the independent producers may have no alternative but to dissociate themselves from the IBA's action and would probably wish to be able to make direct representations to the Government.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Michael Darlow", with a stylized, flowing script.

MICHAEL DARLOW
Head of Negotiations

