



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

14 December 1987

INDEPENDENT TELEVISION PRODUCERS

The Prime Minister has seen your letter to me of 11 December to which was attached a draft reply to Mr. Michael Darlow, head of negotiations for the Independent Access Steering Committee. The Prime Minister is content, subject to the views of colleagues, for the Home Secretary to reply as he proposes. If others see difficulties, she would propose to discuss the draft at MISC 128 on Thursday.

I am copying this letter to the Private Secretaries to the other members of MISC 128 and to Trevor Woolley (Cabinet Office).

(DAVID NORGROVE)

Philip Mawer, Esq.,
Home Office.



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

11 December 1987

Dear David,

INDEPENDENT TELEVISION PRODUCERS

Mr Michael Darlow, head of negotiations for the Independent Access Steering Committee, has written to the Prime Minister, the Home Secretary and the Secretary of State for Trade and Industry in similar terms, reporting that his Committee had discontinued discussions with representatives of the ITV companies and inviting the Government to intervene. The Home Secretary suggests that he might reply on behalf of all those approached, and I enclose a draft accordingly.

In the Home Secretary's view we must watch the position carefully but there is no case at this stage for the Government to intervene in the way sought by Mr Darlow. Both the IBA and the ITV companies are committed to the achievement of the 25% target within their present contracts, as extended until 1992. The ITV companies have already voluntarily committed £42m to commissioning programmes from independent producers, more than the amount spent in this way by Channel 4 in 1986. The market has therefore more than doubled within a year.

The disagreement between Mr Darlow's Committee and the ITV companies is rather about the business arrangements under which programmes are being commissioned.

There are essentially two areas of disagreement: how much independent producers should be paid for their work and how the proceeds of the exploitation of that work after broadcast - eg its sale overseas - should be divided. The independent producers have tried to get the ITV companies to agree on these two matters to terms significantly more favourable to them than those governing commissions by Channel 4. The independent producers say that for 3 to 4 years, until a fully competitive market can develop, they need additional protection. There does not appear to be an issue of principle concerning ownership of the copyright in commissioned programmes. Mr Darlow and his colleagues explained to the Minister of State last month that they took a pragmatic view on this, and were essentially concerned about how large a share of the proceeds of the exploitation of programmes producers should receive.

/The ITV

David Norgrove, Esq

The ITV companies have said that they remain willing to negotiate within the guidelines published earlier in this year by the IBA, which are intended to secure fair terms for all concerned (they establish, for example, that neither party should automatically own all the exploitation rights). But the ITV companies want to be free to negotiate on a case-by-case basis, arguing that the circumstances of each company and commission - eg its export potential - are different.

It is obviously desirable that a competitive market should develop as quickly as possible: from this point of view it is not self-evident that the 15 ITV companies should necessarily work to a single set of collectively negotiated terms. On the other hand the terms on which commissions are offered must be fair and must not frustrate the development of an open market. In this context it is of note that none of the producers in receipt of ITV commissions has so far complained to the IBA, although the IBA has asked for any complaints to be brought to notice so that it may form a view on whether its guidelines have been followed.

✓ We must keep in reserve the possibility of legislation to entrench the 25% policy. In practice this could not be effective for the three year extension of existing franchises, but only for the next round under whatever new arrangements we eventually decide. But the IBA have agreed that the 25% for independents should be part of the three year renewed franchises. Pending discussion of the options for legislation or other Government action outlined in MISC 128(87)14, the Home Secretary believes that it would be desirable to encourage the independent producers to look in the first place to the IBA rather than the Government, and, if possible, to the resumption of negotiations. Lord Young's paper makes it clear how difficult it would be for the Government to attempt to impose business terms on the parties.

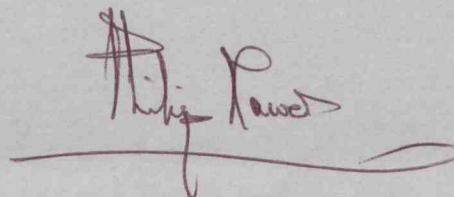
The Director General of the IBA brought both sides together in a meeting this morning which all parties agreed was constructive and useful. The IBA has taken on the task of exploring with both sides an agenda to provide the basis for resuming the negotiations as originally intended at a meeting planned later this month. We are keeping closely in touch with the situation. If this initiative does not succeed we may have to take a hand ourselves.

I should be grateful to know by close of play on Monday whether the Prime Minister and other members of MISC 128 are content for the Home Secretary to reply to Mr Darlow as proposed.

/I am copying

I am copying this letter to the Private Secretaries to the other members of MISC 128 and to Trevor Woolley.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'P J C Mawer', with a long horizontal flourish extending to the right.

P J C MAWER

Draft letter for signature by the Home Secretary to:

Michael Darlow, Esq
Independent Access Steering Committee
74 Newman Street
LONDON
W1P 3LA

Thank you for your letter of 8 December. I am grateful to you for keeping me and my Ministerial colleagues in touch with developments, and I am replying for us all.

We were naturally disappointed at the news which you conveyed on behalf of your Committee.

As I understand it, the ITV Association is committed, with the IBA, to achieving the Government's 25% target by 1993. The issue concerns the business arrangements under which these programmes are being and are to be commissioned. The Government is not of course a party to these arrangements. We nevertheless have a close interest in them: as you rightly indicate, our aim in setting the 25% target was to encourage the development of a fair and competitive market for the supply of television programmes.

Your letter invites the Government to intervene in the determination of the business arrangements. I have made it clear on many occasions that we are ready to consider legislation to ensure that our 25% target is satisfactorily achieved, if this should prove necessary. But even if it were feasible to introduce legislation next Session this could not come into force for some time. In the meantime we are concerned that the progress already made should be maintained.

/cont.

As you will know, the law already provides, in the form of the Office of Fair Trading, machinery for the resolution of complaints of the abuse of market power. It is open to any independent producers or the Association on their behalf to approach the Office.

You are best placed to decide how to secure the commercial interests of your members. So far as the development of a competitive market is concerned it is clearly important that the terms on which commissions are offered are fair, having regard to the nature of the product and market conditions. The guidelines for the commissioning of programmes published by the IBA earlier this year were intended to make it easier to achieve this. The guidelines were broadly welcomed by all concerned. The IBA remains committed to them, and to reviewing ITV commissions against them.

I know that the IBA believes that it should be possible, with the co-operation of all concerned, to achieve our target within those guidelines, and is anxious to assist the parties to make progress on this basis. While, as I have said, I would not wish to rule out legislation at a later stage, I believe that the IBA's efforts to advance matters constitute a positive step, to which I hope your Committee will respond. We shall keep in close touch with developments.

I am sending a copy of this letter to David McCall on behalf of the ITV Association and to Lord Thomson.