



## FILM POLICY REVIEW

### SUBMISSION FROM THE BRITISH SCREEN ADVISORY COUNCIL (BSAC)

13th September 2011

#### KEY RECOMMENDATIONS:

##### GENERAL

- There are no new ‘quick fix’ solutions which would significantly increase the success of the British film industry. A sustained, targeted application of the available public funds will maximise the beneficial impact of such funds.
- Maintaining the availability of the tax credit is the most important element of Government support, without which the infrastructure of the UK’s film industry would become unsustainable.
- Given that public funds are limited, they should be targeted at areas where there is both market failure and where such intervention will have a lasting beneficial effect (capable of being measured). Those areas are script/talent development and film production.
- The protection of copyright and related rights is vital to the future success of the British film industry. A robust and consistent enforcement regime supported by public awareness of the value of copyright will be increasingly important as broadband speeds rise.

##### DEVELOPMENT

- Government investment in development should be sustained and increased where possible. It is vital to ensure that new talent can break through and that culturally valuable projects of limited upfront commercial appeal receive support from a plurality of gatekeepers.
- At the BFI, a separate fund for development should be reinstated and additional monies from the increase in Lottery funds directed to this function. Appointing more than one gatekeeper within the BFI will provide the best conditions for the development of a range of UK talent.

- **The development and retention of UK talent is vitally important to maintain and strengthen the global competitiveness of the British film industry. Government should maintain the level of Lottery investment in training and skills, focusing on priority areas, such as new technology, where industry demand is not being met by supply.**

## **PRODUCTION**

- **The continuation of Government investment in production is vital to maintain a critical mass of activity to train UK creative and technical talent in all sectors so as to be both attractive to inward investors and to facilitate the production of films that feed the UK distribution and international sales sectors.**
- **In order to increase the likelihood of more successful films being produced, the most significant determinant for the allocation of Lottery monies should be the applicant demonstrating a potential paying audience commensurate with the recoupable investment in the film, subject always to the exercise of discretion to ensure support for new talent and for projects of cultural merit with limited upfront commercial appeal.**
- **The most persuasive demonstration of a potential audience will be the meaningful support of a UK distributor/international sales agent. Favouring Lottery funds to productions with such support will ensure closer ties between production and distribution and encourage the development and production of films that appeal to an audience, increasing the likelihood of such films being commercially successful.**
- **Increasing the audience demand for British films is achieved by increasing the public appeal of British films. The answer to audience development lies in the development and production of films with an audience in mind.**
- **Broadcaster investment in development and production funding should be at least sustained at current levels. Such funding is extremely beneficial to the industry, providing a plurality of gatekeepers and fostering a healthy funding landscape that is both competitive and collaborative.**

## **INTRODUCTION**

The British Screen Advisory Council (BSAC) has long been active in the arena of film policy, playing an instrumental role in securing the tax credit, and recently providing recommendations to Government following the announcement of the closure of the UK Film Council (UKFC). In advising Government on the current Review of film policy, BSAC is able to call on a wide range of film industry expertise through a membership which encompasses all the sectors in the audiovisual value chain.<sup>1</sup> In this respect BSAC is unusual

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<sup>1</sup> A list of our membership is available here <http://www.bsac.uk.com/membership-list.html>

and DCMS has indicated particular interest in our conclusions. Please see appendix for membership of the BSAC Working Group which produced this report.

Given our cross-sectoral membership, we feel that putting forward our views in the form of an over-arching policy paper provides greater value than answering the survey questions which are focused, for the most part, on particular aspects of the industry.

We note the principal objectives of the Review, as set out in the terms of reference, are:

- to identify obstacles to the British film industry being more successful
- to determine how best to set policy directions for the increased Lottery funding
- to increase audience demand for film, including independent British film
- to identify ways to develop and retain UK talent.

This report will provide recommendations with these objectives in mind. Over the years, there has been a tendency to search for ‘big ideas’ which provide a silver bullet to solve the problems of the UK film industry; we do not believe that there are any such quick fix solutions that would lead to the greater success of the industry. What is needed is a stable, targeted application of public funds to ensure maximum impact.

One of the most important factors is certainty within the industry in terms of Government tax and funding policy. Periods of uncertainty surrounding changes to the rules are extremely damaging. Declaring a Government funding structure and tax regime fixed for a period of time would in itself create a climate for success. Stable support for the film industry – in particular through the continued availability of the tax credit, Lottery funds and EIS relief – should remain a priority for Government.

BSAC welcomes the increase in Lottery funding from the current £27m to £43m in 2014. However, it should be noted that while an increase of more than 50% in times of austerity can undoubtedly be used to beneficial effect, it is insufficient to address all of the challenges that face the British film industry. Furthermore, the impulse to spread the money across the sector and attempt to ‘tick all the boxes’ should be avoided. Spreading the money too thinly would result in little or no impact being felt. Funds should be directed to where they will have the largest impact. Every function will have a cost, and this must be borne in mind when deciding which activities to support. In our view, limited public funds should be directed to areas where there is both market failure<sup>2</sup> and where Government intervention will have a lasting beneficial effect (capable of being measured).

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<sup>2</sup> The Treasury definition of market failure is ‘where the market has not and cannot of itself be expected to deliver an efficient outcome; the intervention that is contemplated will seek to redress this...Government intervention can incur costs and create economic distortions. These must be taken into account to determine whether intervention is warranted. For example, a regulation may be successful in addressing a particular market failure, but might also involve other costs that mean that overall it is not worthwhile’. HM Treasury, *The Green Book: Appraisal and Evaluation in Central Government*, p11  
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In recommending policy directions with a view to the greater success of the British film industry, it is necessary to define how success is measured. The aim of achieving a “sustainable” industry was correctly downplayed by the UKFC over the years. Indeed, except for Hollywood (though still a beneficiary of tax credits) and the Indian film industry, both of which have the advantage of a massive home market, there is no international precedent for a sustainable national film industry. We welcome recognition that the term “sustainable” is unhelpful and that a definition of “successful” is preferable. We consider the following criteria would provide a useful rule of thumb in measuring success:

- in relation to British Films (a) the annual aggregate UK theatrical box office; and (b) the annual aggregate international box office. The usefulness of referring to a film’s box office is that it is independently reported and is also a strong indicator of success in all other media. Of course, box office is not the same as profitability. That would require at the very least reference to the film’s budget and finance plan, (although such information may be problematic to collate for reasons of commercial confidentiality).<sup>3</sup> However, in general, a high box office and moderate budget would indicate that the film has or will generate sufficient revenues to generate profits for allocation between financiers and producers.
- in relation to both British Films and films that are produced in whole or in part in the UK, the annual aggregate amount of qualifying UK expenditure (as defined in the Films Act 1985).

## **OUTLINING POLICY DIRECTIONS**

### **Development**

There is a clear market failure in the development of independent British films as it is often too risky for the private sector to support new writers/directors/producers or established writers/directors/producers who have something culturally (and not obviously commercially) valuable to say.

Even with established talent, investing in development as a discrete activity will almost always be loss making as only a small percentage of projects will come to fruition and recoupment of the investment in a particular project (together with any premium/interest) will be insufficient to pay off the total amount expended across a development slate. For example, the UKFC had a conversion rate of 16% of script development projects into productions from 2000-2010.

Private sector companies investing in development on any scale tend to be integrated with production/distribution/sales activities. This ensures that revenues from the few films that do go into production generate a sufficient level of revenue across all activities to defray general overheads including development expenditure.

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<sup>3</sup> It should be noted that to take into account the revenues that a film receives across all distribution platforms in its first cycle would be more accurate but too complex an exercise.

Such private sector companies focus funds on projects which they deem to be commercial. However, it is extremely difficult to predict which projects will have commercial appeal at an early stage and such an approach may lead to a rejection of original and innovative ideas which may become commercially successful.

Broadcaster investment in development is not always sufficient to bridge this market failure gap as a broadcaster will understandably not have the maximisation of cinema audiences as its primary objective. Indeed a broadcaster's taste may be quite specific and only favour projects that fit well within its brand.

Government investment in development should therefore be at least sustained so as to increase the plurality of development gatekeepers and to give a better chance for new entrant filmmakers and culturally valuable projects of limited commercial upfront appeal to break through.

The UKFC formerly operated a stand-alone fund for development before combining its three funds into one. The de-coupling of development and production would be beneficial as decisions on whether or not to fund a development would not then be influenced by whether or not the project would be likely to be funded by the production fund. A separate fund for development should be reinstated and additional monies from the increase in Lottery funds directed to this function. In addition, the development fund should be broken down into different sections with different heads (just as in the private sector, the need for different skills and sets of relationships is recognised in the creation of specialist genre divisions and low budget divisions). BSAC is keen to ensure that Government funding is not wasted on needless overhead, but appointing more than one gatekeeper within the BFI will provide the best conditions for the development and production of a range of UK films.

## **Production**

With respect to inward investment, in deciding whether to bring a production to the UK, the availability of the UK tax credit and the Sterling exchange rate are the determinant factors alongside the actual cost of production in the UK and our continuing ability to offer world class creative and technical talent (including that of our facilities/services sector). To maintain inward investment levels Government needs to maintain the tax credit and support the development of UK talent as described elsewhere in this document. The British Film Commission (BFC) has a role to play in facilitating inward investment (for which a record high of £928.9m was recorded in 2010). If the BFC is to fulfil the remit with which it has been tasked, it will need to be properly funded.

With respect to the indigenous British film industry, the limited availability of production finance restricts production levels. In part this is inevitable (and indeed healthy) - the fundamentally risky nature of investment in film means that available production finance will always be limited. However, a structural weakness in the UK industry is the lack of integrated companies of scale. It is widely acknowledged that we have a fragmented infrastructure with limited integration between independent production, distribution and

international sales companies. Stand alone independent production companies tend not to be able to achieve the scale necessary to finance their own films, instead being obliged to pre-sell the rights in their work to third parties, sacrificing the upside.

To address this, Government investment in production is vital to maintain a critical mass of activity that trains UK technical and creative talent (necessary to attract inward investment) and supplies films to the UK distribution and international sales sectors. In addition, if Lottery awards are used to encourage deeper and earlier distribution and sales support<sup>4</sup>, Government provision of production investment will not only increase the number of films being made but also increase the likelihood of a successful film being produced.

In this context, by a “successful” film we mean a film that achieves commercial success measured in terms of the investors recouping their investments in the film. Films in which the investors do not recoup may still be profitable for exhibitors, distributors, sales agents and indeed producers (given that a producer’s fee is a budgeted item that is paid irrespective of a film’s success), but to generate sufficient additional revenues to transform the capital base of a production company, a film needs to achieve net profits.

When that occurs (a) the producer is a major beneficiary of such net profits; and (b) in relation to the producer’s next project(s), the producer will likely be able to demand a lucrative upfront deal (i.e. irrespective of the subsequent film’s performance). The more hit films that are produced, the more their producers will be in a position to build their companies – success will be rewarded.

The question is therefore how public funds can be applied to encourage the production of such successful films. We believe it is through a producer paying close attention to the potential audience and matching the size of the production budget to the size of that audience. Attempts to create UK independent production companies of scale through a policy of promoting vertical-integration with distribution/sales have only been partially successful. However, that is not to say that the experiment has failed. It is after all the model on which the success of Hollywood is based.

Therefore, subject always to the exercise of discretion in relation to projects generated by new talent and projects that appear to be culturally rather than commercially valuable, the allocation of Lottery monies to production should be largely conditional on the applicant demonstrating a potential paying audience commensurate with the recoupable cost of the film. For example, a low budget film of cultural merit may only need to show a letter of interest from a credible distributor or end user (e.g. VOD operator). However a higher budget commercially oriented project may be required to show both a UK distribution presale (with accompanying revenue forecast and marketing plan) and an international sales agency agreement (with accompanying sales estimates). It would be at the BFI gatekeeper’s and business affairs team’s discretion as to the degree of comfort they require in terms of the level of distribution/sales commitment for a given project. It is the expert exercise of this

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<sup>4</sup> The reader should note that in this paper ‘distribution’ refers to exploitation of a film in all and any media including Theatrical, DVD, VOD/DTO/SVOD and Pay and Free Television.

discretion by the BFI that will enable the successful application of this policy. It should be noted that BSAC Members have a divergent opinion as to the appropriate level of distribution/sales commitment that the BFI should require. At one extreme, some feel that no such link should be made, fearing that producers will be obliged to pre-sell their films on poor terms to distributors who would not necessarily be their first choice. At the other extreme, some feel that a UK pre-sale must be in place on the grounds that Lottery funds should not be invested in projects unless a potential paying audience commensurate with the recoupable budget of the film can be clearly demonstrated. In defence of this position was cited the fact that UK distribution is an extremely competitive market where the stronger projects tend to secure favourable pre-sale terms in any event (often better than would be offered for the completed film). If a commercially oriented UK film cannot achieve a UK distribution pre-sale, there would have to be strong countervailing reasons to justify the investment of Lottery funds into such a project.

To be clear, we do not propose that the requirement that a producer demonstrate distribution/international sales support be a condition to Government investment in development nor a condition to any production accessing the tax credit.

It should also be noted that the requirement that a producer demonstrate distribution/sales support is less radical than it may seem as Government investment will normally be a minority investment in a film. It is therefore often the case that distribution/sales are a component of the finance plan of any film. However, making this institutional will send a clear signal to producers of the importance of finding an audience for their film if they are to be a beneficiary of Government investment.

As with the proposed Development Fund, it will also be beneficial to have more than one gatekeeper to the Production Fund, provided that the skills base and taste of each gatekeeper is complementary. For example a genre specialist or a specialist in material targeted at a youth audience (including films primarily intended for exploitation over the internet). We acknowledge that one or more additional gatekeepers will increase overhead costs but provided that this is kept to a minimum, it should be outweighed by the benefit of plurality of taste and expertise.

BSAC Members have divergent views on the PACT “lock box” proposal whereby 100% of funds recouped by “public investors” would accrue to the producer with 30% to be spent by the producer as the producer sees fit and 70% to be invested in the development and production of future British films within a set timeframe. Those in favour believe that this would (a) encourage production companies to focus on the commercial market in order to ensure that the BFI investment recoups (and therefore accrues to the producer’s benefit); (b) allow production companies to retain substantial ownership of their intellectual property, breaking the dependency on project-based public funding, thereby making them more attractive to private investment as they show the ability to recoup investment and earn profits, enabling the gradual growth of production businesses and diversification of business models, thereby strengthening the capital base of the UK production sector and delivering structural

change; and (c) encourage creative diversity by increasing the number of funding gatekeepers by enabling a range of production companies across the UK to invest in local talent. Others believe that the proposal would (a) reward producers of films that are not successful (because they would be receiving revenues in addition to their budgeted fee before the investors have recouped their investments); (b) generate insufficient sums to provide a producer with any meaningful change to their capital base (e.g. the UKFC's average recoupment rate on production awards was 20%) whereas in aggregate such sums returning to public investors would amount to a meaningful sum for future strategic investment; (c) discourage producers from forming closer relationships with distributors and sales agents, collaboration with whom is the better way to access a meaningful capital base; and (d) would be unfair for "public investors" such as Film4 whose money is made on the commercial market. In the light of these different positions, BSAC is not able to put forward a recommendation on this proposal.

As an aside, we would also mention that the business affairs and finance team of the BFI are in a very privileged position in terms of seeing many deals on many films year in year out. By way of contrast, most producers are fortunate to make one film a year. The BFI should therefore be a centre of excellence both in terms of supporting experienced producers and in educating new entrants in development and deal-making skills.

Broadcaster involvement in production funding should be at least sustained as it is extremely beneficial to the industry, providing plurality of funding sources and fostering a healthy funding landscape that is both competitive and collaborative. BSAC welcomes the change to the Channel 4 remit in the Digital Economy Act to include a responsibility for funding film. We recommend that the next BBC Charter Renewal reaffirms the organisation's continued contribution to the film industry. The entrance of broadcasters who are not currently active in this area would also provide greater plurality and strengthen the production sector in the UK. In many countries that have a strong indigenous film industry, there is a far greater commitment (either mandatory, voluntary or structural) to film and film production by the national broadcasters.

## **Distribution**

There is no market failure in distribution in the UK. The business is highly competitive and there are a number of new entrants. That is not to say that the business is not under pressure from a rapidly evolving market place with the digital revolution eroding revenues from traditional media whilst offering little value in replacement. For example, audiences are not willing to pay the same price for a digital download of a film as they are for a DVD or Blu-ray Disc. However, Government should not be expected to second guess the market in terms of defining and supporting a new industrial model – it is not a UK market failure but a worldwide phenomenon with which the entire industry is wrestling.

BSAC is divided regarding the value of continued support for the P&A Fund. Members in favour believe that it enables distributors (a) to launch films on more prints<sup>5</sup> thereby giving

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<sup>5</sup> Data from the RSU suggests on aggregate over the last decade that films in receipt of P&A funding received a wider release than comparable films which did not receive funding.



wider geographic access to the public; (b) to ensure that their films are seen by a greater audience, as data suggests that on aggregate over the last decade films which received P&A funding had a higher mean box office than comparable films which did not receive funding; (c) to extend their marketing to new audiences; and (d) to ease their cashflow. Members who are opposed believe that (a) at a time of limited resources, such funding is not a priority because there is no market failure; (b) the amount a distributor spends on the promotion of a film should be commensurate with the distributor's valuation of the film in the market place, not a valuation skewed by subsidy (the benefit of being subsidised to take a greater risk cannot be readily measured); and (c) if a small distributor cannot afford to give a film the release it deserves then perhaps that distributor should look to its business model and consider whether consolidation of some of the many small UK distributors is a better long term solution.

As a general point, increasing marketing spend and print numbers does not guarantee a larger audience – support from a P&A Fund is of limited use if a film does not appeal to the public. In Australia, the heavy focus on marketing support through Screen Australia has failed to significantly increase the share of national box office for domestic production (which averages 4.6% whereas in the UK it averages between 13 and 17%).

Allocating Lottery funds to productions with distribution support will encourage the development and production of films that appeal to an audience and which distributors will compete to acquire, ensuring closer ties between production and distribution to the benefit of the entire industry. In this way Government investment in development and production is also an investment in the distribution sector.

## **Exhibition**

The UK exhibition industry is a well-developed commercial market. There is no market failure which would justify direct government intervention. Although, there has previously been intervention in the form of the UKFC's Digital Screen Network, it is arguable that the reason the UK leads the way in digital is due to the nature of the UK exhibition market rather than government intervention. The three leading exhibition chains were in competition to outstrip each other in screen availability for 3D projection and it was this that drove digital roll out. There is no further need for support for digital as it is estimated that 90% of British cinema sites will be equipped with digital servers and projectors by 2012. In terms of building audience demand through exhibition, cinemas will always show good quality well marketed British films when they are available. Where producers make British films that the British public want to see (whether *Streetdance 3D* or *The King's Speech*) the audience turns out in their millions.

It has been argued that the percentage of box office that UK exhibitors pay distributors (and therefore producers) is too low, but this does not appear to be a market failure. Although the percentage of box office paid is indeed lower than average compared to some other markets, UK exhibitors have higher costs to bear (tax rates, property and staff costs) and UK

exhibitors also pay a higher rental fee per attendee than most other territories in Europe (primarily because of higher UK ticket prices).

## **UK Film & International Market**

The export market is often crucial to the financing structure and profitability of indigenous British productions. Indeed on some films the majority of their earnings emanate from outside the UK. However, we do not believe that there is a market failure in UK international sales. The most important factor in selling a film internationally is the film itself i.e. its upfront commercial appeal. It is that appeal that ensures that a British film is either pre-sold (which is often the only option available in order to finance a film), or sold when completed (and often only when a demonstrable success at the UK box office). In terms of increasing audience demand for British film in the international market, the most important factor is the quality of the film, rather than improving access or increasing marketing spend. International audiences will watch good quality entertaining British films. There are different views within BSAC's membership concerning the value of existing export support schemes. Some Members believe that small sums of public funding directed at export initiatives have been effective in supporting sales companies to promote British films domestically and internationally. Others feel that, as funds are limited, the continuation of export support schemes needs to be carefully evaluated to ensure effectiveness. Directing increased Lottery monies to development and production, especially to productions which are attractive to distributors/sales agents, should result in an increase in films which international audiences wish to see.

Although BSAC is of the view that the emergence of one or two integrated production/distribution/sales organisations of scale would be beneficial to the success of the British film industry (including its export), we believe that this can only come about organically - we do not believe Government can or should try to create a "national champion" to distribute/sell British films. There is no market failure in UK distribution or international sales. Introduction of such a national champion would have a negative commercial impact on the UK's private sector distributors and sales agents by denying them access to many of the films on which they rely. In addition, such an organisation may not serve filmmakers in general given that they all benefit from the maximising of revenues derived from the exploitation of their films - presumably the national champion would not have to compete or pay for its films, and even if it did, it is difficult to see how the ethos of such an organisation would excel in the cutthroat atmosphere of the market place.

There have been suggestions that BBC Worldwide, as the only non-US major global distributor, could be such a national champion. However, as well as the problems highlighted above, there are additional issues which such a proposal entails. For example, linking all British film content to the BBC brand may be problematic for other investors in the films; the BBC brand may not fit well with all genres of British film; and there is a lack of expertise in film distribution and sales within the existing organisation.

## **Skills & Talent**

The development and retention of UK talent is vitally important to maintain and strengthen the global competitiveness of the British film industry. World-class creative talent and skilled technicians are needed to support and foster a diverse indigenous production industry and to maintain and increase the number of inward investment productions. BSAC has previously asserted that ‘as we can no longer compete on price, it is all the more essential that we should compete on our skills’.<sup>6</sup>

The UK is subject to skills gaps which mean that work in some areas is being outsourced overseas or that UK companies are forced to turn away work. For example, the rapidly increasing importance of VFX in filmmaking is impacted by the global skills shortage in this area - UK VFX companies often struggle to recruit the talent they need from the UK and are therefore forced to recruit significantly from overseas.

As well as lower labour costs and better terms for technical talent luring productions abroad, higher levels of investment and tax incentives in other countries also pose a challenge to the global competitiveness of the UK industry.

Of course we have to accept that Hollywood has always and will continue to act as a magnet to talent, and in particular British talent. That is not a bad thing.

The most effective way to keep such talent working in the UK is for British producers to develop and produce a sufficient number of high quality projects to make the allure of Hollywood less appealing.

The more we make the UK a hub where high level creative talent choose to locate themselves and where the skills base of local technical talent corresponds to industry demand, the more we can be sure that the UK will maintain and increase its global competitiveness.

As there are limited funds available for training, monies should be directed to developing creative talent and high level competitive technical skills in areas which the market is not providing. BSAC believes that Government should maintain the level of Lottery investment in training and skills, particularly in areas such as new technology.

Skillset’s Bigger Future programme has identified several areas where investment is needed as a matter of urgency, including support for new entrant trainees in areas such as 3D and VFX where demand currently exceeds supply.

Lottery monies distributed through Skillset’s Film Skills Fund were cut by the UKFC by 50% for the year 2010-11 to deliver the new three year film skills strategy, forcing a major scaling back of activity. There is an increasing skills gap in the new technology area, as well as in producing the craft and technical skills necessary to sustain inward investment and indigenous production. Eric Schmidt recently stated in his MacTaggart address to the

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<sup>6</sup> See the BSAC report ‘Creativity, Competitiveness & Enterprise in UK Audiovisual’ p9  
[http://www.bsac.uk.com/files/creativity\\_competitiveness\\_and\\_enterprise\\_report\\_dec\\_2009.pdf](http://www.bsac.uk.com/files/creativity_competitiveness_and_enterprise_report_dec_2009.pdf)  
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Edinburgh TV Festival that the UK needs to provide more science and engineering graduates. BSAC has previously argued that the focus should be on developing graduates with ‘an exposure to the reality of an increasingly competitive and technology-dependent business’ and producing ‘a generation of “creative technologists”’.<sup>7</sup> In order to meet the skills needs of the British film industry, Government should consider restoring Lottery funding of the Film Skills Fund to at least previous levels.

The Skillset Film Academies, the National Film & Television School (NFTS), London Film School (LFS) and Screen Academy Scotland, accredited as centres of excellence for film by Skillset, provide MA courses geared to industry demand. These courses are not available elsewhere. We recommend that Government maintain funding for the Film Academies.

Both BBC Films and Film4 are also active in the area of talent development as part of their core work bringing in new talent and providing new opportunities for established talent. BSAC recommends that BBC Films be shielded from cuts at the BBC to protect talent and technical skills development in the UK.

The Livingstone-Hope Review of skills in the VFX and video games industries recommended that the school curriculum should be reformed to include teaching of computer science and programming as current teaching of IT is inadequate in preparing pupils to enter higher education courses and the industry. BSAC calls for coordinated action across government departments to ensure that the changes that the Livingstone-Hope Review recommends are implemented.

### **Audience Development, Film Education & Heritage**

Box office results would suggest that there is not a lack of audience demand for British films. British audiences will always watch good quality British films when they are available. The same is true for international audiences. *The King’s Speech* opened on 4 screens in the US and eventually expanded to over 2500 (the film holds the record for the highest gross per theatre in the US in 2010). Increasing the audience demand for British films is achieved by increasing the public appeal of British films. The answer to audience development lies in the development and production of films with an audience in mind. It is difficult to imagine how the use of public monies to encourage the public to see films that they do not wish to see would be successful.

BSAC supports moves to rationalise the current array of film education bodies, including Film Education and Film Club. It will be important for industry to work with the BFI in deciding how film education policy can become more streamlined and efficient.

It is important that the national and regional audiovisual archives are protected so that their contents can be preserved and digitised and can therefore be accessed by the public. Although we do not believe that access to such material will be effective in leveraging audience

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<sup>7</sup> Ibid  
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demand for British film, the archives are valuable cultural assets for the UK. Going forward with the BFI as the lead body, we should ensure that as much as possible of our screen heritage remains available to as many users as possible.

### **Innovation & Future Proofing**

Whilst it is important to prepare the sector for the changes of the future, we already live in the “digital future”; audiences are already consuming content via internet-connected devices on many platforms. With digital switchover, the advent of smart TVs and universal high speed broadband, these habits will be compounded. It is therefore not possible for Government development and production finance to operate other than with reference to an evolving market place and new means of distribution. That is however very different from the application of Government funding to create a new distribution structure. The evolution of any new business paradigm is best left to the market.

BSAC notes that the barriers between film, TV, video games and new media content are becoming increasingly porous. The definition of “film” as long form content (lasting about 90 minutes) intended for theatrical exhibition is beginning to be challenged as alternative distribution platforms facilitate different types of filmed content. Indeed, it may be that in the near future the BFI will need to invest in the development and production of films that are intended solely for online exploitation.

However, cinema retains its popularity and there is no evidence to suggest that films in different forms distributed on alternative platforms will come to dominate or replace long form theatrical content anytime soon. Whatever the means of distribution and consumption, the most important factor in the future success of the UK film industry is the quality of British film productions. Focusing funding on the development and production of high quality films aimed at the UK and international audiences will increase the chances of producing successful films.

BSAC believes that the exercise and enforcement of copyright and related rights will be a vital ingredient in ensuring the future success of Britain’s film industry and creative industries as a whole. Losses from piracy affect successful British independent films as well as Hollywood movies. Enforcement must be robust and consistent, primarily targeting those involved in piracy for commercial gain or causing a significant harm to the industry. Increasing broadband speeds will mean that it will be possible to download long form content within seconds. Countries that are quick to produce a robust legislative and enforcement framework, taking into account the ease of illegally reproducing content, as well as the growing expectation of access to content anywhere any time on any device, will gain a substantial competitive advantage over those who are slower to do so. As well as enforcement, it is increasingly important that content is made available across multiple platforms for a reasonable price in order to counteract piracy. There have already been positive developments in the market and it is expected that these will continue.

It is estimated that over 90% of pirated copies of films available prior to DVD release are derived from illicit recordings made in cinemas. The act of unauthorised copying per se is not a criminal offence if it is not for commercial gain in the UK, although it is a civil infringement. Therefore, the police are deterred from arresting someone for merely recording a movie in a cinema unless they have reason to believe that it may be used either to commit a criminal offence when the person has left the cinema or in the commissioning of a criminal offence under the Fraud Act. Countries such as America, Canada and Spain have passed legislation to make it a criminal offence to record a film in a cinema and such additional protection in the UK would support the strenuous efforts by the industry to detect and disrupt the many attempts that are still being made in British cinemas. BSAC believes that a new legal framework should be introduced to make recording in the cinema a criminal offence. This would facilitate more straightforward messaging and enforcement to counteract piracy.

## **Finance**

Restricted access to production finance is not necessarily a bad thing (in that it culls the weaker projects), but if too restrictive, a number of commercially and culturally important films will not get made.

The level of market funding available is commensurate with the perceived level of risk in film finance i.e. low risk finance such as the discounting of blue chip pre-sales and tax credit) has traditionally been available (although the current environment of capital constrained global financial institutions has had a negative impact), medium risk finance (e.g. gap finance against sales estimates) is rare; and high risk finance (e.g. equity investment) is rarer still. Consequently, Governments throughout the world provide equity finance to enable their local industries to maintain critical mass and ensure that they continue to produce films which reflect the culture of their country.

To encourage the private sector to provide equity to the film industry, Government should ensure that production companies continue to have access to equity funding raised through the Enterprise Investment Scheme (EIS). Film production is a sector that the EIS seems designed to address given that it suffers from ‘market failures that exist in the equity investment market’<sup>8</sup> and film production companies are ‘smaller, high risk companies which would otherwise experience difficulties in raising the finance needed to carry on their business’.<sup>9</sup>

The current HM Treasury consultation on tax-advantaged venture capital schemes raises two areas of concern for film companies in accessing EIS. Firstly, the ability of a film production company to claim both EIS relief and the UK tax credit; and secondly, the ability of film production companies to qualify for EIS relief under a series of new tests proposed in the document.

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<sup>8</sup> ‘Tax-advantaged venture capital schemes: a consultation’ HM Treasury, July 2011, p.5, para 1.9

<sup>9</sup> Ibid, p23, para 4.4

The receipt of the tax credit, as well as the cash flow derived from its advance, forms an important component of a UK film production's finance plan. For this reason any changes to the EIS should not prohibit the ability of a film production company to also claim the tax credit. We are pleased that at the time of the negotiation of the terms of the tax credit, the Treasury agreed that the tax credit could be used in tandem with EIS. We would hope that this view will not change.

However, the proposed new tests, which will disqualify companies from receiving EIS relief if they display more than three of a list of characteristics, could mean that film production companies are disqualified. Such characteristics include (a) where 50% or more of the activities will be carried out by persons not employed by the company; (b) where 50% or more of the company's costs will be subcontracted payments; (c) where 50% or more of the monies raised by the relevant share issue will be used to acquire intangible assets intended for resale; and (d) where the company has only one customer.<sup>10</sup>

It is unclear whether these characteristics would disqualify all film productions. For example;

- which categories of film workers will count as 'employed' by a production company? Will the HMRC criteria apply (which determines which film workers count as employees for PAYE purposes)?;
- do subcontracted payments (e.g. where a local company is engaged to undertake location shooting in an overseas territory) count towards the percentage of the company's costs?;
- do the film's distribution rights or copyright count as intangible assets intended for resale (e.g. if a special purpose vehicle (SPV) is set up and upon completion of the film, assigns the rights to the parent EIS company, does this count as a 'sale')?;
- what is the definition of 'sale'?;
- if the EIS company licenses third parties for exploitation, will this count as a 'sale' or will all licences, including ones in perpetuity and for all media worldwide, be excluded from the definition?;
- if an SPV assigns the rights to the parent EIS company for exploitation, does the EIS company count as the SPV's 'one' customer?

We urge HM Treasury to ensure that legitimate film production is not caught in the net intended to deter abuse of the EIS system by companies established for the sole purpose of accessing relief. Without care, the film production industry could be inadvertently excluded from EIS support because of its intrinsic structure whereby a new production company is established each time a film is made, it employs very few people, it subcontracts the majority of its work, and it is this company that needs to access the tax credit.

Over the years, it has been suggested that access to finance for film production has been hindered by a lack of understanding between potential investors and the film industry. The creation of a Film Finance Forum, for example, was mooted. BSAC does not believe that

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<sup>10</sup> Ibid, p24, para 4.12  
Film Policy Review  
BSAC Submission, 13 September 2011

there is a lack of understanding. Investors will familiarise themselves with and gain an understanding of any industry where they feel investment would be lucrative. The reason for the market failure in access to equity investment is that investors feel the risks outweigh the potential benefits. Tax relief for film production combined with an environment in which the production of successful films is more likely, is the best way to persuade potential investors otherwise.

### **UK Film in the Nations & Regions**

In our ‘Creativity, Competitiveness & Enterprise’ report, BSAC has previously warned against spreading resources too thinly across the nations and regions and failing to focus capital in areas where there is growth potential.<sup>11</sup> BSAC welcomes the establishment of Creative England as a centralised body with regional hubs. We hope that the implementation of the new structure proves to be more efficient than the previous Screen Agency structure. Not only should savings on overheads be made but the centralised structure should ensure that monies are distributed where they are needed in order to nurture new creative talent. It is however vitally important that such centralisation does not mean that the expertise and local knowledge that has grown up in the Screen Agencies outside of the hubs is lost or that talent previously served by those Agencies is disenfranchised. Government should also be careful of tasking such organisations with too broad a remit to be delivered on too tight a budget. The success of Creative England in delivering across its range of responsibilities will rely largely on the raising of private finance and tapping into European money.

BSAC also welcomes the creation of Creative Scotland, the Lottery distributor for film in Scotland, with a remit to coordinate the strategies of public agencies which receive monies for the creative industries, in education, skills and economic development.

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<sup>11</sup> BSAC ‘Creativity, Competitiveness & Enterprise’ report, p8-9  
Film Policy Review  
BSAC Submission, 13 September 2011



## **Appendix**

The Working Group responsible for this report was Chaired by Cameron McCracken, Pathe. The Group comprised:

Gurinder Chadha, writer and director  
Rupert Gavin, Odeon  
Alex Hamilton, E1  
Philip Knatchbull, Curzon  
Adam Kulick, Goldcrest  
Christine Langan, BBC Films  
Lesley McKenzie, LOVEFiLM  
Cameron McCracken, Pathe UK  
Allan Niblo, Vertigo  
Richard Philipps, Reed Smith  
Marc Samuelson, CinemaNX  
Fiona Clarke-Hackston, BSAC  
Sarah Stevens, BSAC – rapporteur

Evidence was also taken from Guillaume de Chalendar, Bank Leumi; Nik Powell, NFTS; Dan Simmons, Skillset; and Alison Small, Skillset Craft & Technical Academy.

Olsberg-SPI provided data on global film support schemes.

All BSAC Members have approved the report.