



K01779

PRIME MINISTER

INDEPENDENT PRODUCTION INITIATIVE:  
MINUTE BY THE HOME SECRETARY OF 16 OCTOBER

## CONCLUSIONS

The Home Secretary reports that both the BBC and IBA have undertaken to secure 25% of their programmes from independent producers by 1993.

2. You will wish the Group to come to a clear view whether the Government should now accept this target, and the voluntary arrangement with the broadcasting authorities for meeting it. The alternatives would be to press for the 25% target to be reached on a faster timetable, and to be imposed on the broadcasting authorities by legislation. The Home Secretary does not favour either of those courses, but he proposes that officials should maintain the preparatory work on legislation simply as an insurance against the voluntary arrangements collapsing.

3. You may also wish to explore with the Trade and Industry Secretary whether there have been any further developments on the independent producers' complaints about unfair terms of trade being imposed on them by the broadcasting authorities. The Group will need to return to this point, but the work so far done in the Official Group is pointing towards a reference to the Monopolies and Mergers Commission being a more promising prospect than legislation.

## BACKGROUND

4. The Peacock Report recommended (Recommendation No 8) that the BBC and ITV should be required to reach a 40% target for the use of independent producers over a 10-year period. At the meeting on 30 October 1986 (MISC 128(86) 2nd Meeting) the Group agreed that the target should be set at 25%, to be reached in 4 years.

5. During the year the BBC attitude to independent producers has been significantly changed by the introduction of the new management team, who undoubtedly welcome the use of independent producers as a main lever for increased efficiency and lower costs in the BBC.

Nevertheless, when the Home Secretary reported progress at the MISC 128 meeting on 20 July (MISC 128(87) 1st Meeting) both the BBC and ITV proposals for meeting the target were quite inadequate. You felt at that time that the target would only be reached by imposing it in legislation, and you commissioned the necessary detailed work from the Official Group.

6. The Home Secretary now reports that both the BBC and IBA undertake to reach the 25% target before 1 January 1993 (ie in 6 years, rather than 4, since the negotiations started). Both the BBC and the IBA propose to review progress at the end of 1989, when the BBC in particular would want to check on the costs of independent productions and the extent to which they were being kept free from ACTT involvement. The Home Secretary regards these voluntary arrangements as a very successful outcome to these negotiations.

#### MAIN ISSUES

7. When the target was set last year, 25% in 4 years seemed very ambitious. At the meeting on 20 July it was noted that the target might need to be adjusted (downwards) for the BBC. On the face of it, therefore, achieving the target within 6 years would be a major success for the Government. Provided you share the Home Secretary's faith in the broadcasting authorities' ability to deliver, you will probably not wish to try to enforce a faster timetable by legislation. (While statutory controls could certainly be devised, there are some inherently difficult problems of definition, and it could well be an uphill task to reach a target that was imposed by statute on unwilling broadcasters.) There are, however, three main points that you will wish to keep an eye on.

## Unfair terms of trade

8. At the meeting on 20 July you expressed considerable concern about the information that had come to you on the way in which the broadcasting authorities were allegedly using their monopoly position to enforce unfair conditions on independent producers, who were being required to sign away their rights in such intellectual property as the exploitation of logos and of fictional characterisations. You instructed the Official Group to consider the feasibility of prohibiting such unfair restrictions. The Official Group have not been able to take this very far, but it already seems clear that it would be extremely difficult to devise a special legislative framework for this circumscribed area of intellectual property rights. On the basis of the work that the Official Group has done so far, a more effective and flexible approach would probably be to work towards a reference to the Monopolies and Mergers Commission. This would have the advantage of securing a full study of the market, which is currently lacking. It would involve the independent producers themselves making the first moves by representations to the Office of Fair Trading.

9. There is clearly some danger that, under the Government's pressure to increase the use of independent producers, the broadcasters may continue to employ unfair trading practices. You may therefore wish to seek the Trade and Industry Secretary's present views on how best to protect the independent producers' interests without prejudicing the achievement of the Government's 25% target. There is a problem of timing here, because the Home Secretary will be coming under increasing pressure to say whether the Government accept the broadcasting authorities' latest proposals on reaching the target, and it may well not be sustainable for him to postpone an announcement on that while the fair trading point is being explored in detail. At the very least, however, the broadcasting authorities should be put on notice that the Government would not be prepared to see the 25% target achieved at the cost of unfair exploitation of the independents' product.

## ACTT involvement

10. Part of the rationale for encouraging independent productions is that they can be expected to operate with less overmanning and restrictive practices than in-house productions, and this will be jeopardised if ACTT strengthen their present hold on the independent production sector. This is, however, a problem for the BBC and the ITV companies in the first instance and the BBC in particular are very well aware of the issue. There appears to be nothing that the Government can formally do at this stage, other than to stress the importance that they put on the proper conduct of the broadcasting authorities' review of cost and quality of independent productions scheduled for the end of 1989. You may wish to confirm with the Home Secretary that the BBC are not looking to the Government for any specific assistance on this issue.

## Definitions

11. At an earlier stage of the negotiations both the BBC and IBA were offering unacceptable interpretations of the programmes to which the 25% target should apply. The present proposed definitions are set out at paragraphs 7 and 8 of the Home Secretary's minute. In essence, both the BBC and IBA are proposing to base the percentage on all original programming excluding news and directly news-related material, repeats, and continuity. This seems reasonable.

## HANDLING

12. You will wish to invite the HOME SECRETARY to introduce his minute.

13. The TRADE AND INDUSTRY SECRETARY will have general views, and you may particularly wish to seek his comments on the best approach to allegedly unfair trading practices by the broadcasting authorities.

14. The CHANCELLOR OF THE EXCHEQUER will probably have views on all the main issues.

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