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The rise of Britain's super-indies:

Policy making in the age of the global media market

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Abstract

This article analyses Britain's remarkable performance in the European television industry. In the space of a few years the UK has risen to become the world's leading exporter of TV formats and the world's second exporter, behind the Unites States, of finished TV programmes. The first section compares and contrasts British TV exports data with that of France, before examining the emergence of London as Europe's media hub. The second part argues that this significant progress is essentially due to deft policy making. In 2003, the British government operated a strategic shift in favour of content producers and created a new intellectual property regime. This regime has enabled producers to keep hold of their rights and become asset-owning businesses, eventually giving rise to a new breed of production companies: the super-indies. This paper shows how these super-indies have acquired the scale to compete in an international TV market and drive today's British TV exports. Contrasting again Britain's performance in the European TV trade with France, this article also analyses historical influences and claims it is Britain's imperial past that helps her performance in the European TV marketplace. In addition to the globalization of the English language and the cultural affinities this nurtures, the trading heritage of the British Empire has facilitated Britain's political elite's understanding of the role that trade and the market can play in the creative industries, and enabled them to frame a broadcasting policy that is adapted to the global age.

Key words

British TV exports; Broadcasting policy; comparative media studies; content rights; French TV exports; independent TV production sector; intellectual property; super-indies; transnational TV formats

The rise of Britain's super-indies:
Policy making in the age of the global media market

Introduction

It is not always recognized but Britain is the dominant power in Europe's television industry: it is the world's leading exporter of TV formats and is in second position for television programmes, behind the United States. British TV production companies are expanding fast on the international market, the country's public broadcaster, the BBC, has unrivalled international and commercial clout among its peers, and London has become Europe's regional media hub.

Disparities amongst European nations have been overlooked in favour of imperatives of European integration, leading to an emphasis on the construction of a European communicative space. As phenomena such as the transnationalization of European television and the hypothetical construction of a European public sphere were discussed, the huge disparities amongst the cultural influence of nations were neglected (see Gripsrud, 2007; Schlesinger, 2007).

The first section provides an overview of Britain's performance in the world TV marketplace examining both British TV exports and the country's top exporters. It compares this data with those from other countries, and then examines the emergence of London as Europe's media hub. The second section seeks to understand how Britain has attained pre-eminence in European television. This paper argues that this improved performance is largely due to a policy decision in 2003 that re-balanced the relationship between broadcasters and their

suppliers, the independent TV producers. The new Code of Practice that came into effect the following year enabled these producers to keep all the content rights that are not explicitly purchased by broadcasters. This principle created a new intellectual property regime that turned rights into assets for independent production companies. These companies were then able to use their assets to develop and attract funding, the most ambitious among them acquiring, or merging with, other producers. It is the largest companies to emerge from this first round of consolidation – the so-called 'super-indies' – that have been expanding internationally lately, this paper shows. It also analyses sociological and historical influences and claims it is Britain's imperial legacy that helps her performance in the European TV marketplace. In addition to the globalization of the English language and the cultural affinities it nurtures, the trading heritage of the British Empire has facilitated Britain's political elite's understanding of the importance of trade for the cultural industries, and enabled them to frame a broadcasting policy that is adapted to the global age.

Throughout this paper, Britain's role and performance in European television is compared to that of France. The comparison between the two nations reveals the influence of both policy and history in shaping these two countries' contrasting position in today's European television industry. This article is based on both primary and secondary sources, including numerous interviews with industry leaders.

British TV programmes and formats in the European TV marketplace

This section analyses the performance of British television exports in the global TV market, distinguishing between finished programmes in genres such as factual entertainment and drama, and formats, which are shows that are licensed outside the UK in order to be adapted to local audiences (e.g. *The Weakest Link*, *Who Wants to Be a Millionaire?*). The first corpus of data is provided by two studies commissioned by PACT (Producers Alliance for Cinema and Television), the British trade association for independent producers and distributors, covering 45 channels in eight countries.[1] The 2007 study duplicated methodology first used in 2003 but monitored a few more channels. It found that the UK's share of finished programme exports (in terms of programming hours) in these eight countries stood at 7.5 per cent in 2007 (down from 8.7 per cent in 2003), whilst France's share stood at 2 per cent (Table 1).

Table 1: Total finished programme exports, 2003 – 2007. In percentages of programming hours

Country of o Rigin	**USA**		**UK**		**Germany**		**Canada**		**France**	
Year	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*
% of exported hours	73	75	8.7	7.5	3.3	4.4	4.0	3.1	2.0	2.0

Source: Television Research Partnership, 2008: 22.

British television made up for a modest drop in exported finished programming with growth in the format trade. The practice of selling shows under licence to be adapted for local audiences became a multi-billion dollar industry in the late 1990s (Moran, 2006; 1998). Britain is the global leader in this trade and has consolidated its position over recent years. In terms of programming hours, more than half of all formats sold in the eight countries surveyed in the PACT

study originate from the UK, against 4 per cent from France (Table 2).

Table 2: Total formats exports, 2003 – 2007. In percentages of programming hours

Country of origin	**UK**		**Netherlands**		**USA**		**France**		**Argentina**	
Year	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*
% of exported hours	51.0	53.0	15.0	18.0	17.0	14.0	5.0	4.0	5.0	3.0

Source: Television Research Partnership, 2008: 29.

Another study established that only the UK, the Netherlands and the USA have a positive balance of trade in the format industry, with Britain exporting 8,000 hours of formats more than it imports, and France importing about 4,000 hours of formats more than it exports. The latter spent more than €500 million producing imported formats in 2005 (Bisson et al, 2005: 17-21).

Many of the first 'super-formats' that went round the world at blazing speed originated in Britain: Celador's *Who Wants to Be a Millionaire?*, Planet 24's *Survivor* and, slightly later, Pearson Television's and 19 TV's *Pop Idol* (Bazalgette, 2005). *Millionaire*, in particular, was an astonishing commercial success, and it is the world's most widely distributed format with 109 licences sold to this day (Spencer, 2008; Television Research Partnership, 2004: 26).

Over the years, British independent production companies have had other notable successes across all genres, including *Antiques Roadshow*, *Changing Rooms*, *Faking it*, *Gok's Fashion Fix*, *Ground Force*, *Property Ladder*, *Ready Steady Cook*, *Secret Millionaire*, *Supernanny*, *Top of the Pops*, *What Not To Wear*, and *Wife Swap*, to name but a few. British formats currently showing on European screens include All3Media's *Cash Cab*, ITV Studios's *Come Dine With Me*, *Hell's Kitchen* and *I'm a Celebrity… Get Me Out of here!*, RDF's *Don't*

Forget the Lyrics, Shed Media's *Who Do You Think You Are?*, Maverick TV's *How To Look Good Naked*, BBC Worldwide's *The Weakest Link* and *Strictly Come Dancing (Dancing With the Stars)*, FremantleMedia's *Pop Idol*, and the two hits that the latter company co-produces with Sony's Syco TV, *The X Factor* and *Got Talent*.[2]

By comparison, French formats are far and few between. Historically, France's most successful format has been daytime game show *Des Chiffres et Des Lettres* (*Countdown* in the UK), but it ceased to perform well on the international market many years ago. In better shape is France Télévisions's adventure game show *Fort Boyard*, currently in its 19th season in France and still produced in five European territories.[3]

Taking into account both formats and finished programmes (but excluding films), British programming represents 13.1 per cent of the hours exported to the eight countries surveyed by the PACT study, against 2.4 per cent for France (table 3). This translates into 11,900 hours of programmes and formats for Britain, against 2,200 hours for France (Television Research Partnership, 2008: 9).

Table 3: Total finished programme and formats exports, 2003 – 2007. In percentages of programming hours

Country of origin	**USA**		**UK**		**Germany**		**Canada**		**France**	
Year	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*	*2003*	*2007*
% of exported hours	67.0	67.3	13.1	13.1	3.0	3.9	3.6	2.8	1.9	2.4

Source: Television Research Partnership, 2008: 29.

The number of broadcasting hours gives a first indication of British television's performance on the global TV market, but the gap between France

and Britain gets even wider when financial revenues are taken into account. The price paid for programming varies according to territory, genre, and a show's market appeal. Drama pays more than documentary and, for instance, the licence of W*ho Wants to Be a Millionaire?* is many times more expensive than that of any other game show.

Hollywood TV series have unmatched appeal at the top end of the market, but over the years quite a few British series have achieved considerable success in Europe, some of them attracting cult followings: *The Avengers*, *The Prisoner*, *The Saint* and *The Champions* in the 1960s were followed by series such as *The Persuaders*, *Absolutely Fabulous*, *Dr Who*, *Inspector Morse*, and *The Office*. British drama currently showing in Europe includes *Skins* (Canal Plus, France), *Secret Diary of a Call Girl* (M6, France), *Doc Martin* (ZDF, Germany), and *Cranford* (Ned 2, the Netherlands) (Esposito, 2008b; Fry, 2008). Britain's most successful series ever is All3Media's *Midsomer Murders*, currently in its 12th season in its home market and sold in over 200 territories (Pedersen, 2008).

The broadcasting rights for these series and other desirable formats will cost considerably more than the less popular shows, and thus it comes as no surprise that a set of 2006 statistics shows that British companies exported almost eight times more than their French counterparts. Table 4 also reveals that France's sales have expanded by only two percent since 2004, compared to 12.6 per cent for Britain (Table 4). This trend is supported by the PACT study, which states that 'overall […] estimates or revenues from UK TV exports show strong growth between 2003 and 2006' (Television Research Partnership, 2008: 4).

Table 4: France v. Britain: TV programme exports by region, 2004 - 2006

	France		**Britain**	
	2004	*2006*	*2004*	*2006*
	€millions	€millions	€millions	€millions
Europe	74.5	81.6	238.7	287.2
Americas	18.9	16.5	347.7	368.0
Rest of the world	14.8	16.9	185.7	214.2
Total	108.2	115.0	772.1	869.4

Source: *Screen Digest*, October 2007: 299.

The rise of Britain's super-indies

Who drives British TV exports? Traditionally, it is vertically integrated broadcasters that have been Britain's top exporters. BBC Worldwide, the Corporation's commercial arm, has posted a series of strong results over recent years. In 2007/08, sales were up 13 per cent from the previous fiscal year to £916 million (€1.08 billion, exchange rate 7 August 2009), and profit up 17 per cent to £118 million (€138.7 million) (BBC Worldwide, 2008: 2-3). Just under half of the revenue came from outside the UK, with three divisions (programmes, channels and formats) realizing £465.2 million of international sales between them (ibid: 9). These figures place the BBC as Europe's leading programme exporter and the world's third largest format originating company.[4] ITV, the UK's leading commercial broadcaster, is another strong performer in the international TV market, its large catalogue of well-known dramas and entertainment shows stretching over five decades of television production. Its Global Content division, which sells programmes and formats in more than 200 territories, announced total revenue of £622 million for 2008 (ITV, 2009: 32).

Today, however, these players are joined by a new breed of TV production company – the so-called 'super-indies' – that are rapidly developing a growing

presence on the global stage (Table 5). This section offers a brief profile of the leading super-indies before exploring their impact on the British TV production sector.

Table 5: The leading super-indies

Company	**Overall turnover (£m) 2008**	**Overall turnover (£m) 2007**	**Change (%)**
All3Media	230.0	202.5	+13.6
Shine Group	216.0	146.0	+47.9
IMG Media	207.5	221.7	-6.4
Endemol UK	170.0	160.0	+6.3
RDF Media	120.6	99.3	+21.5
Tinopolis	68.0	66.0	+3.0
Shed Media	63.0	71.8	-12.3
DCD Media	34.0	42.0	-17.7
Target Entertainment	25.0	12.6	+98.4

Source: *Broadcast Supplement: The Annual Survey of the UK Independent TV Producers*, 20 March 2009: 5

All3Media was launched in September 2003 and incorporated 16 companies from five different countries within its first few years. These include Bentley Productions, Cactus TV, Company Pictures, Lion Television, Lime Pictures, Maverick Television and North One Television in the UK, Idtv in the Netherlands, MME Entertainment in Germany, South Pacific Pictures in New Zealand and Lion Television in the USA.[5] All3Media's export catalogue spans most genres but is particularly strong in drama (*Apparitions*, *Hollyoaks, Midsomer Murders*, *Skins*, *Wild At Heart*) and factual entertainment (*Bondi Rescue*, *Fifth Gear*, *The Rough Guide To…* and *Victorian Farm*. Formats include *Cash Cab* (2,500 episodes produced in over 50 territories), *Miss Naked Beauty* and *Top Trumps* (Pedersen, 2008).

The Shine Group, which was founded by Elisabeth Murdoch in 2001, hit the

acquisition trail after five years of organic growth. In 2006, the group acquired three prominent British production companies, Firefly, Kudos and Princess, before buying Reveille - the American company that was behind US versions of *The Office* and *Ugly Betty* - the following year. In 2009, Shine pursued its international expansion plans by establishing start-up companies in Germany, France and Australia, all staffed with experienced TV executives, and acquiring Sweden's Metronome Film & Television. Metronome was the largest production group of the Nordic region with 15 companies across the region and in the USA. Today, Shine's footprint spreads across nine territories, revealing the group's ambition to join the elite club of global production giants (Daswani, 2009).[6]

IMG Media, originally an American sports rights company founded in 1960 and based in New York, has chosen London for its international headquarters. Present in over 30 countries, the group has expanded to sports and fashion events management, notably producing Fashion Week worldwide. In addition to IMG Sports Media, which produces about 6,000 hours of live sports television every year, the group owns three large UK production houses: Darlow Smithson (*Seconds from Disaster*, *Touching the Void*), Tiger Aspect (*Mr Bean*, *Murphy's Law*, *Charlie and Lola*) and Tigress (*Brazil*, *Everest*), which all have a substantial portfolio of programmes sold across the world.[7]

Endemol, the Dutch production company founded by Joop van den Ende and John de Mol in 1994, remains based in Hilversum, in the Netherlands, but Britain is the group's main market and Endemol UK is a major force in British television. It incorporates Brighter Pictures (*Big Brother UK* and derived shows), Cheetah Television (*Gok's Fashion Fix*; *Deal or No Deal*; *Ready Steady Cook*), Initial

(*The One and Only…*, *Golden Balls*), and Zeppotron (*Would I Lie to You?*). London has been an important creative hub for Endemol ever since Peter Bazalgette became chief creative officer in 2005, seven years after joining the company. Bazalgette left the group two years later following a take-over but the development teams of Endemol UK and USA have recently formed a creative partnership and meet regularly in order to brainstorm for global formats (Bazalgette, 2009; Parker, 2009; Tunstall, 2009; van Diepen, 2008; Endemol, 2007).

RDF Media Group was founded in 1993 by David Frank and made its first acquisition 12 years later with Touchpaper Television, a company specialising in drama. By the end of 2006, RDF had acquired five other independent production companies: IWC Media, Scotland's leading TV production company, Radar, Presentable, The Foundation (children's programming) and The Comedy Unit. RDF has had several international hits with shows like *Wife Swap*, *Location, Location, Location*, *Don't Forget the Lyrics*, *Faking It* and *Secret Millionaire* (Millichip, 2008; RDF Media Group, 2008: 4).

Tinopolis is Wales's largest independent production company. Formed in 1990 by Ron Jones, it established itself as a major programme supplier to S4C.[8] It made a few acquisitions in the early 2000s (Fiction Factory and Salem Films), and floated on London Alternative Investment Market in January 2005, enabling it to purchase a London-based production company, Television Corporation. Tinopolis has kept two of its subsidiaries: Sunset + Vine, a TV sports production and distribution company, and Mentorn, a major producer of dramas (*The Hamburg Cell*), current affairs (*Question Time*), and factual and entertainment (*The World's*

Worst…), with a Los Angeles division that produces reality and entertainment series for US networks (*Paradise Hotel*, *Work Out*, etc.). Other subsidiaries include POP1 (factual, children and arts), Folio, which specialises in police shows (*Traffic Cops*, *Drunk & Dangerous*, etc.), and Daybreak Pictures (drama).[9]

Shed Productions was established in 1998 and acquired Ricochet in November 2005, followed by Wall to Wall and Twenty Twenty two years later. Shed Media – as the group was renamed - produces and distributes programming in a variety of genres, notably factual entertainment (*Supernanny*, *Who Do You Think You Are?*, *World's Strictest Parents*), and prime time drama (*Footballers' Wives*, *Hope Springs*, *Waterloo Road*). Shed Media's in-house distribution arm, Outright Distribution, acquired in 2006, exploits the group's intellectual property rights and distributes third party content in over 200 territories (Shed Media, 2009; Bonney, 2008).

These companies have emerged following a period of consolidation that has taken place in the UK independent TV production sector over recent years. This trend is unique in Europe because these groups have responded to incentives created by Britain's regulatory environment (see below). Consolidation is altogether a sign of economic health for a sector that has long been under-capitalized, and a promise of further growth. Development requires investment, and in order to attract funding from the City it is necessary to demonstrate a certain level of predictability and an ability to manage risk. Several companies clubbing together is a way of reducing risk ('de-risking' in management jargon) in an industry that remains unpredictable and where success can be elusive (Bonney, 2008).

Super-indies are finally acquiring the scale that is necessary to successfully compete on the international market. Their catalogues, which combine material from several production companies, span all the key genres and have become diverse enough to interest large buyers. They have also developed multinational production capabilities and can create shows in the USA, notably. The financial rewards are higher than anywhere else in the world's largest TV market, but the USA is also a global shop window for programming: a ratings success there is a sure way to boost a show's worldwide sales. Many British formats, including *Millionaire*, *Weakest Link* and *Pop Idol* have become global phenomena after being picked by a US network (ABC, NBC and Fox respectively). In addition to format sales, the US version itself can be of interest to foreign broadcasters. Thus Shed Media with *Supernanny*, RDF with *Wife Swap* and FremantleMedia with *Pop Idol* not only filled their coffers by producing these shows in the United States, they then sold further licences around the world because of their success there, and went on to sell the US version to interested broadcasters (in 180 territories in the case of *American Idol*) (Clark, 2008; Millichip, 2008).

Alongside Shine and RDF, Shed has become one of the most successful super-indies in the United States. In 2008, 30 per cent of Shed's revenue was generated by the American market. Significantly, for the first time this year, a higher proportion of the group's gross profit came from the American market (30 per cent) than the UK (26 per cent) (Shed Media, 2009: 5). Shed has an excellent track record of successfully exporting and producing British formats in the USA, starting with *Supernanny* in the mid-2000s (the American show is currently in its fifth series), *World's Strictest Parents* and *Who Do You Think You Are?* The

genealogy series that searches family trees has recently signed up Hollywood stars including Sarah Jessica Parker and Lisa Kudrow, and has already attracted interest worldwide (Brzoznowski, 2009). Based on this performance, Shed Media US has won a prestigious commission from NBC, the American network, and is set to produce *The Marriage Ref*, a reality and comedy show devised by Jerry Seinfeld (Shepherd and Curtis, 2009).

The super-indies also help foster an export culture in the independent television production sector. Most of them have developed a similar corporate structure, assembling several production companies with one outfit specializing in international sales and distribution such as All3Media International, DCD Rights (formerly NBD TV), RDF Rights, Shed's Outright Distribution and ShineReveille International.

These distribution arms enable super-indies to exploit their intellectual property and maximize the value of their rights. They also represent third party programmes and help independent producers to distribute their work on the international market. Small independent producers also receive market intelligence and advice from these distribution divisions, helping them to avoid basic mistakes.[10]

London as Europe's regional media hub

Another significant development in British television is the role that London plays in the European broadcasting industry: it has become Europe's undisputed regional media hub. An observer estimates that '[a]round 20% of the world's global media operations are centred on London' (Barrett, 2008: 23). Indeed, most

media companies with pan-European activities are based in London.

All global media conglomerates have their regional headquarters in the British capital. It is the case of Disney (located in Hammersmith), Liberty Global (Fulham), NBC Universal, Sony Pictures Television International, Time Warner and Viacom (all in the West End). The head of News Corporation's European operations, James Murdoch, is also based in the British capital. It is from London that these conglomerates run extensive pan-European TV networks such as Cartoon Network, Disney Channel or MTV (Chalaby, 2009). The exception is Bertelsmann's RTL, based in Luxembourg, but its content division, FremantleMedia, is in London.

Global TV news networks tell a similar story. CNN London is the network's European headquarters, employing more than 130 staff. It is a major deployment base for correspondents across Europe. It is also the network's largest production centre outside the USA, producing more than 50 hours of programming per week.[11] Similarly, Al Jazeera English has three TV newsrooms outside Doha: Kuala Lumpur, Washington DC and London. Bloomberg Television and CNBC Europe are both located near the Square Mile, London's financial district.

The British capital houses many legal, financial and research companies that serve both the domestic and international television industry. It is also where the headquarters of many global advertising and communications groups are located. The advertising industry is dominated by a small number of holding companies, which are OmnicomGroup, WPP, Publicis and IPG (*MediaWeek*, 25 March 2008: 4). Publicis is French and headed from Paris, but WPP is a British company based in Mayfair and both IPG and the OmnicomGroup are American corporations that

have their regional headquarters in London. Each of these holding companies encompasses a broad spectrum of activities covering public relations, direct marketing, new media and creative agencies. They also control media buying agencies, such as Omnicom's OMD or WPP's MediaCom, which specialize in buying and planning ad campaigns. These agencies are international networks in their own right and have offices around the globe. All these agencies, including Publicis's ZenithOptimedia and Starcom MediaVest, have their European headquarters in London, which is where pan-European advertising accounts are held and pan-European campaigns are planned. Thus when multinationals such as Ikea, Nokia, Vodafone, Starbucks, Reckitt Benckiser, Toyota, Renault-Nissan or Zurich decide to consolidate their media account at European or global level, it is the London office that is responsible for coordinating the media buying and local advertising budgets (Reid, 2009; Durrani, 2008).

Understanding Britain's performance in the international TV market

It is clear that Britain enjoys a prominent position in Europe's television industry, both as the region's leading TV programmes and formats exporter and a centre of power where decisions with transnational implications are made. How has the UK reached this position? This paper argues that in 2003 the British government implemented a policy shift in favour of content producers by creating a new intellectual property regime. This regime has enabled producers to keep hold of their rights and become asset-owning businesses, eventually reaching a scale necessary to thrive in the global TV market. Then, this section examines historical

influences and claims it is Britain's imperial past that helps her performance in the European TV marketplace.

Britain: The strategic shift towards content producers

Britain was the first European nation to recognize the commercial value of its creative industries and shape its policies accordingly. Before the drive for export began in earnest, the government took a momentous policy decision in 1982: Channel 4 was set up as a 'publisher-broadcaster' and was required to *commission* its programming from independent producers (Ofcom, 2006: 34; see also Goodwin, 1998). The UK independent TV production sector was born, and was provided support by a strengthening of the commissioning culture over the years. The 1990 Broadcasting Act introduced 'the statutory independent quota' to other terrestrial broadcasters, stipulating that they must commission at least 25 per cent of their programming from independent producers (ibid.). The 1996 Broadcasting Act expanded the principle to digital terrestrial television channels (ibid.).

When elected in May 1997 the New Labour government paid a close interest in the creative industries, first forming the Creative Industries Task Force, a forum for reflection that sought 'ways of maximizing the sector's economic potential' (Steemers, 2004: 51). The government then mapped the creative economy, commissioned a few more studies, and published its Communications Bill, a draft media law, in May 2002 (Freedman, 2003).

It is at this point that PACT, the independent producers' and distributors' trade body, noticed that the Bill failed to tackle a number of key issues and launched an epic and successful lobbying battle. It petitioned the Parliament

arguing that this legislative exercise would remain useless unless the Bill improved TV programming. Better quality could only be sustained by a healthy programme supply market yet, despite the policy initiatives taken by previous governments, it was in a state of terminal decline. PACT claimed that *unless a radical change occurred in the basic relationship between buyers (i.e. broadcasters) and suppliers (i.e. independent producers)*, the supply side was effectively going bust. It contended that its members' access to the UK market was restricted by too many exceptions in the quota system and denounced its 'cynical manipulation' by broadcasters (PACT, 2002: 1). It also argued that the very small number of commissioning broadcasters (essentially the BBC, ITV, Channel 4 and Five) enabled them to negotiate the best possible terms of trade with independent producers. At one stage, PACT even compiled a dossier documenting the abuse that independent producers had received from a public broadcaster through strong arm tactics, price fixing and blackmailing (McVay, 2009).

Another point of contention was the issue of content rights: when a producer delivered a programme to a broadcaster, the latter could acquire all the rights attached to it 'in perpertuity' (PACT, 2002: 2). Broadcasters were able to obtain bundled and exclusive rights not only for the primary window (i.e. the terrestrial showing), but also for cable and satellite, overseas sales, and even the ancillary rights for licensing and merchandising. PACT argued that its members' inability to protect their own intellectual property left the sector 'weak commercially and heavily under-capitalised' (ibid.).

Members of the PACT Council, Eileen Gallagher and John McVay, PACT's

Chief Executive, lobbied Members of Parliament, pursuing with particular vigour the powerful Joint Scrutiny Committee convened by Lord David Puttnam.[12] This effort led to a call the then regulator, the Independent Television Commission (ITC), to launch a review of the programme supply market.

The ITC concurred with PACT in its report, making several recommendations to redress the balance of power between terrestrial broadcasters and producers (Steemers, 2004: 67). In turn, ITC's views were favourably received by the Department of Culture, Media and Sport (DCMS), and in particular by Kim Howells, a junior minister. Howells recognized that independent producers had a strong case because of his previous experience working at the Department of Trade and Industry (DTT). He had seen at first hand a similar scenario in the case of the British supermarkets – a handful of dominant buyers behaving in a way that was detrimental to suppliers (the farmers). PACT looked at DTT's approach to this issue and discovered that Howells had overseen a code of practice aimed at preventing supermarkets from abusing their dominant position. McVay went back to Howells and asked him to do the same for the independent TV production sector. Tessa Jowell, then Secretary of State at the DCMS, acquiesced and her department introduced 66 amendments to the Communications Act 2003, essentially giving PACT what it asked for (McVay, 2009).

A Code of Practice was introduced at the beginning of 2004 that regulates the *terms of trade* between broadcasters and their suppliers (see below). Its core principle is the *disaggregation of rights*, enabling producers to keep all the rights that are not purchased by broadcasters. This includes all *distribution rights* (terrestrial, cable and satellite, Internet and international), and all *ancillary rights*,

which can be exploited via merchandising and licensing to create books, DVDs, mobile applications, Internet downloads, etc. In other words, 'producers should retain rights in the programmes unless they are explicitly sold to a P[ublic] S[ervice] B[roadcaster] and/or other parties' (PACT, 2008: 33).[13] This principle created *a new intellectual property (IP) regime* which has not only transformed the fortunes of the independent production sector but opened up a new era in the history of British – and possibly European – broadcasting.

The IP - the programmes and associated rights – that used to be controlled by broadcasters have now become the assets of independent producers. Since the City can now witness companies with creative people who own marketable IP, these assets enable producers to generate income and attract investment (either by floating the company on the stock market or finding private equity investors). In brief, this new IP regime has transformed small service companies that relied on hand-to-mouth feeding from commissioning broadcasters into fast-expanding businesses.

From an analytical perspective, the Code contains three remarkable elements with the capacity to transform the broadcasting industry. Firstly, the Code does not attempt to constrain market forces; on the contrary, it reinforces – and even creates – a market for programming rights. Under the previous regime, this market was undermined by broadcasters abusing their dominant position in order to amass all the rights 'in perpetuity'. The new regime re-calibrates the relationship between commissioners and suppliers, thereby creating a situation where broadcasters are forced to negotiate these rights in a transparent manner.

Furthermore, if the Code sets the framework for negotiation of the terms of

trade, these terms are still settled by the market: it is up to broadcasters and suppliers to negotiate sales contracts. Thus, it is incorrect to claim that the Code favours one side over another. If producers do better in the current regime, it is because the Code has ended unfair commercial practices from a handful of dominant players. And it is also because, today as ever, producing content has more strategic value than merely distributing it.

Secondly, this Code improves the programme supply market. The early dominance of broadcasters created a phenomenon of vertical integration in all but name. The current regime has created a clear separation between broadcasters and suppliers. By giving the latter more control over their production, it has revived the production sector and made it more attractive to supply content to broadcasters. Thus the Code has helped the supply side by enabling existing producers to grow, whilst attracting new entrants into the industry. On the other side of the coin, the sector has become more competitive, with hundreds of companies vying every day to come up with the best ideas. But a *truly competitive supply side* has many advantages, not least that of enhancing the quality of programming because it is healthy competition that drives creativity and innovation.

Thirdly, the Code has an in-built mechanism that pushes producers to exploit their assets in as many ways as possible. John McVay had a clear idea of how he wanted the legislation to work:

> So we wanted to move away from the traditional European model, which is very inward-looking and often dominated by debates around subsidies and

> cultural issues. We actually wanted to take a more entrepreneurial view of what the sector was for, what it could do. […] So what we wanted to do was arrive at arrangements which incentivised producers to become more international because a) they get growth, b) they become more diverse as businesses and c) ultimately content will become global (McVay, 2009).

Thus it is apparent that when production companies retain the IP attached to their programmes, it is in their own interest to sweat their assets to the last drop. And indeed, among other things, the Code has transformed the distribution of fees attached to international rights. When the commissioning broadcaster had complete control over these rights (it would even appoint the distributor), it was due 70 per cent of *gross* revenues from any onward sale. It was thus able to deduct expenses and more often than not the production company would receive next to nothing. Under the new Code, the broadcaster's share has been reduced to 15 per cent of net revenues of any show sold overseas.

It is the globalization of the marketing horizon that has lead to the formation of super-indies and to their typical configuration of several production companies plus one distribution arm (see above). This has translated into a significant growth of the sector's export revenue, which amounted to a total of £391 million in 2008, an 80 per cent increase on the 2004 figure of £215 million (Hurrell, 2009).

The main beneficiary is of course the independent television production sector, but the volume of export has increased so much that it is said that Channel 4 receives more money today from 15 per cent of net revenues than it previously did from 85 per cent. In the late 1990s, a sales executive reported that

'international sales were always seen as the cherry on top of the cake', but today, according to Louise Pedersen, All3Media International's managing director, it is more like the pastry (Perdersen, 2008; David Graham and Associates, 1999: 38).

France: Le fait du Prince

The British process of broadcasting policy making is conversational in character. Once the Bill was published, the government not only listened to representations from various organizations but amended the legislation according to the new evidence it had received. This dialogic element has been sorely lacking in France, as recent policy developments demonstrate.

French presidents have always kept a close eye on television, and so far President Nicolas Sarkozy has not failed tradition (Kuhn, 2010, 1995; Chalaby, 2002). Like his predecessors, Sarkozy has taken major policy decisions primarily based on his very own political needs. The reform of public service broadcasting that he initiated in winter 2008 and that was approved after a long dissent by the Parliament in February 2009, provides a case in point. The head of France Télévisions, the public service broadcaster, is no longer independently appointed by the Conseil Supérieur de l'Audiovisuel (CSA), the French regulatory body, but by the President himself (nominally the Cabinet).[14] In addition, since January 2009, all the channels controlled by France Télévisions have had to stop broadcasting commercials during prime time, an interim measure that precedes a complete ban in 2011.[15] At the stroke of a pen, the public broadcaster has lost €834 million in advertising revenue, and as it has had several calls for a TV licence fee increase turned down by Sarkozy, it will never retrieve most of this

income (*The Economist*, 2008: 78).

It is generally accepted that this reform allowed Sarkozy to kill two birds with one stone: he has asserted his control over the public broadcaster while doing a favour for commercial broadcasters by easing the competition for advertising revenue.[16] No consultation with the industry was ever possible, because the process would have uncovered the political nature of the motives behind the reform. But this leaves the French television industry exposed to a series of unforeseen effects which have the potential to inflict lasting damage. It is already certain that it represents a huge loss of income for the independent production sector, which relied on France Télévisions for many of its commissioned work. In turn, this will weaken the country's capacity to produce content of an international standard and may well lead to further deterioration of French TV exports.

English language

Another advantage that plays in favour of Britain is the English language, which is the international TV industry's official tongue. Michel Rodrigue, the chief executive of Distraction Formats, a Montreal-based formats distribution company offers a revealing anecdote: his company, which is Quebecan, signs contracts in English in France because that is the language the TV executives are used to working with there (Rodrigue, 2008). When showcasing programmes at market fairs such as MipCom or MipTV, non-English producers dub or sub-title the pilots. And since television buyers only acquire what they understand, Rodrigue confirms that '[n]on-English formats are a much harder sell' because '[p]eople can't look at something and understand it straight away' (in Esposito, 2008: 19).

English is by far the most widely spoken second language in the European Union, and the gap in popularity between it and other second languages is continuously increasing (European Commission, 2007). Thus British production houses have discovered that their finished programmes – in addition to their formats – sell increasingly well in Europe in a growing number of genres. Among others, Jeremy Clarkson and Gok Wan have become big stars in the European countries where the British (and original) versions of *Top Gear* (BBC Worldwide), *How To Look Good Naked* (RDF Rights) and *Miss Naked Beauty* (All3Media International) have aired (Jarvis, 2008; Pedersen, 2008).

The widespread use of English means that Anglo-American culture has become Europe's default transnational culture. Any band singing outside their country of origin in their native tongue would be noticed for expressing themselves in their local language. But Depeche Mode singing in English anywhere in Europe is just plain Depeche Mode. Conversely, the fact that an ever smaller number of Europeans learn a language other than English means that their exposure to other cultures is limited. Thus Europeans' lack of acquaintance with French culture is making the exportation of French TV channels and programmes ever more difficult. A few years ago, a French TV company began exporting Match TV, a station modeled on the popular weekly magazine, *Paris Match*, which features French film stars and entertainment celebrities. After a few months, the company management realized that with a few exceptions these good people were totally unknown outside France and withdrew Match TV from European cable networks (Rouxel, 2002; 2005).

London's Cosmopolitanism

As seen above, London has become Europe's media hub. So what is so attractive about the British capital? Alongside New York, it is one of the world's largest financial centres, 'ahead of the others by a large margin' (*The Economist*, 2007: 6). The proximity of the City facilitates access to capital for the media companies that would be unable to develop without this source of investment. London is also home to a large media industry and provides a tight network of companies that can deliver services ranging from equipment hire and post-production to recruiting and legal affairs (see also Scott, 2005).

London attracts talent from all over Europe and its uniquely diversified labour market is a rich reservoir of skills, providing media companies with all their employment needs, from finance directors to part-time translators of exotic languages. Above all, London is a world city with a unique cosmopolitan culture that is a spur to creativity. In a report commissioned by the British government, a think tank argues that London has become a 'global creative powerhouse' because it belongs to 'a society that has become more open, diverse and plural, spawning a depth of cognitive diversity which is at the heart of creativity' (The Work Foundation, 2007: 18). The authors cite the values of tolerance, openness, 'the early embrace of democratic institutions', and even 'overseas expansion' as reasons why London and the UK 'have been more ready to accommodate "difference" and thus the creativity that springs from it' (ibid.).

From a trading culture to trade in culture

The advantages offered by the English language point to a further potential explanation of Britain's cultural primacy in Europe: history. Is Britain's contemporary dominance of European culture a legacy of its Empire?

Britain was the 19th century's dominant world power, and the legacy of this period includes the globalization of English, Britain's position at the heart of world trade and the global financial system, and the Commonwealth (Ferguson, 2004). The cultural ties among countries of the Commonwealth (chiefly Australia, New Zealand, Canada, and India), alongside the United States, have definitively benefited the British TV industry and, as seen above, these countries are key import and export markets for British broadcasters and producers.

Then, there is the nature itself of the British Empire. Contemporary historians have begun to argue that what lied at the heart of this Empire was not territorial conquest but trade. '[T]he fact remains, writes Niall Ferguson, that no organization in history has done more to promote the free movement of goods, capital and labour than the British Empire in the nineteenth and early twentieth centuries' (2004: xxii). Britain relied on its naval supremacy to protect international trade routes and London became the hub of the international trade system:

> Foreign trade and the Navy therefore formed two elements of a single symbiotic system […]. The Navy protected trade and protected the country. Trade generated the seamen to man the Navy, and the money to pay for it. Overseas possessions had a subordinate role in this system, as sources of

> trade, but only in atypical years of the mid-century did the British become obsessed with colonies for their own sake, and the debacle of the American War cured them of that. The eighteenth-century British were not keeping up a Navy to conquer a colonial empire. Integrally involved with the international trade system was the financial system. Few of Britain's overseas trades balanced by themselves, but the system as a whole was balanced by bills exchanged on London: a massive and complex system of international credit payments. Combined with banking, brokerage and insurance, it made London the centre of a financial empire which earned large sums in 'invisible' trade, and articulated the national and international trading system' (Rodger, 2004: 580).

'Trade, not territory, adds N.A.M Rodger, was the key to Britain's prosperity' (2004: 573), and trade, not ideology, is the key to Britain's dominance of the European TV marketplace. Other empires, including France's, laid emphasis on territorial possession and cultural integration, but trade has helped British elites understand the potential benefits of commerce in culture. In other words, a trading culture has helped foster a trade in culture. Unlike their French – and European - counterparts, British politicians have swept aside the hoggartian doubts of the intelligentsia to firmly place the market at the heart of the media industries. Culture, successive British governments have grasped, is not sacred but a commodity that can be exchanged for profit.

Conclusion: a culture fit for export

More than any other European nation, Britain produces a culture fit for export. Commercial culture – as this is what it is - is despised by continental cultural and political elites because they prefer cultural genres that they perceive as superior (Bourdieu 1979). In France, for instance, when TF1 planned to lodge the contestants of *Star Academy*, a talent show, in the upmarket Marais district in Paris, local residents went up in arms and petitioned the broadcaster. The show, writes Adam Sage, is 'detested by the intelligentsia, who see it as the Americanisation of France's lofty cultural tradition' (Sage, 2008). By way of contrast, it was revealed that Gordon Brown and his family are allegedly keen viewers of *The X Factor*. So keen was the British Prime Minister that he 'has been bombarding contestants […] with missives urging them to rebel against Simon Cowell's strictures' (Sherwin, 2008).

Many analysts object to the reduction of culture to its exchange value, claiming for instance that the British government is pursuing a 'neo-liberal agenda' (Friedman, 2003: 27). True as it may be, it is easy to overlook the positive aspects of commercial culture: it is democratic in character because it is accessible to all – including prime ministers – and when exported it has a positive impact on the nation's balance of payment. Trade, in culture as in other sectors, entails that an exchange is taking place between two actors. But is any exchange taking place when a nation tries to impose its culture upon others, or when a social class uses culture to distinguish itself from the masses?

The British broadcasting policy has the merit of being adapted to the global media order and enables British media companies to thrive among international

media conglomerates. Too many nations, France included, still adopt cultural policies that are framed in the mould of national identity. They see international television as a way of expanding the nation's electronic boundaries and promoting a national perspective. But they fail to grasp that in the era of transnational capitalism, what is at stake is trade, not ideology.

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Endnotes

[1] Canada, France, Germany, Italy, the Netherlands, Sweden, USA, and UK.

[2] Company sources.

[3] 'C21 Formats Lab Weekly', *C21Media.Net*, 8 October 2008, available at http://www.c21media.net/resources/weekly_detail.asp?id=689, consulted August 2009.

[4] By way of comparison, France Télévisions's sales and distribution arm posted €60 million revenue and €4 million profit in 2007 (France Télévisions 2008, p. 64). The proportion of this revenue coming from international programme sales is unspecified.

[5] http://www.all3media.com/, consulted December 2008.

[6] http://www.shinelimited.com/, consulted August 2009.

[7] http://www.imgworld.com/, consulted December 2008.

[8] It moved from Cardiff to Llanelli in 1998, a town once famous for its tinplate production (hence the name Tinopolis).

[9] 'Tinopolis axes TV Corp name', *Broadcast*, 5 January 2006, available at http://www.broadcastnow.co.uk/news/multi-platform/news/tinopolis-axes-tv-corp-name/154488.article, consulted August 2009; 'Analysis – Profile – Welsh indie mining a rich seam' Broadcast, 27 January 2005, http://www.broadcastnow.co.uk/news/multi-platform/news/analysis-profile-welsh-indie-mining-a-rich-seam/1019169.article, consulted August 2009; http://www.tinopolis.com/WhoAreWe/Default.aspx, consulted August 2009.

[10] In factual entertainment for instance, it is standard advice to avoid having the presenter speak directly to camera. Documentaries with a voice-over cross boundaries far easier than those with a presenter, thus if one must be included, it is preferable to film him or her as s/he moves since lip synchronization matters less (Millichip 2008; Pedersen 2008).

[11] Company source.

[12] It is called a 'joint' committee because it brings together Members of the House of Lords and the House of Commons, a rare occurrence.

[13] When a broadcaster acquires a licence for a programme, the price can only include a certain number of uses for a specific channel. They can buy other windows for other channels, but they have to be negotiated separately.

[14] 'Télévision – La réforme de l'audiovisuel public définitivement adoptée', *LCI.fr* (4 February 2009), http://tf1.lci.fr/infos/economie/medias/0,4247538,00-la-reforme-de-l-audiovisuel-public-definitevement-adoptee-.html, consulted August 2009.

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[16] Sarkozy is particularly close to TF1, the leading commercial network, , which is controlled by Martin Bouygues, who 'just happens to be a close friend of Mr Sarkozy's and godfather to one of his sons' (*The Economist* 2008, p. 78).