

Findings |

SPI Survey

RTÉ Code of Fair Trading
Practice

Review of first year in operation

2015

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SPI Survey on
RTÉ Code of Fair Trading Practice
review of 1st year in operation

Introduction

The Code of Fair Trading Practice was drawn up by RTÉ further to section 112 of the Broadcasting Act 2009 (the "Act") and sets out the principles that RTÉ shall apply when agreeing terms for the commissioning of television programming material from independent producers where RTÉ contributes more than 25% of the cost of production.

The first RTÉ Code of Fair Trading Practice was approved by the Minister for Communications, Energy and Natural Resources in October 2013. In accordance with the Minister's approval letter, the Code was due for review by RTÉ within 18 months. The review did not take place in 2014 as there was a delay in implementing the Code due to lack of clarity on the treatment of commissions from a VAT perspective. Therefore RTÉ did not issue contracts under the Code until August 2014. For this reason, the review of the Code is due to take place now.

In preparation for the review, Screen Producers Ireland conducted a survey of members in September 2015. The purpose of the survey is to seek producer's appraisal on how the Code has worked in practice and to inform SPI's approach to the review of the Code.

The survey was designed to address key issues for producers within the Code focusing on three headings within the commissioning process:

- 1) Editorial
- 2) Legal
- 3) Finance

The survey contained a mix of quantitative and qualitative questions to capture as full a picture as possible.

A total of 46 completed surveys were received from 46 production companies.

The number of contracts represented by the 46 respondents during the 12 month period (Aug 2014 – July 2015) is **79**.

1. EDITORIAL

1a. Are Commissioning Briefs clearly written and adequately detailed?

22%	Very Clear
73%	Adequate
5%	Not Clear

1b. Is there adequate lead-in time for deadlines for Calls for Ideas?

43%	Adequate
46%	Not Adequate
11%	N/A / Don't Know

1c. What would be the optimal lead-in time?

61%	4 to 6 weeks
29%	Up to 8 weeks
10%	More than 8 weeks

1d. How do you rate the response time from RTÉ?

7%	Efficient
42%	Adequate
42%	Not efficient
9%	N/A / Don't Know

1e. What is timeline from 'greenlight' by RTÉ to receipt of 1st draft contract?

11%	1 to 4 weeks
49%	4 to 8 weeks
40%	More than 8 weeks

EDITORIAL | KEY FINDINGS

1a. 22% only of respondents consider Commissioning Briefs *Very Clear*. 73% consider them adequate. These figures combined with the qualitative responses, indicates that the quality of commissioning briefs varies from genre to genre.

1b. 46% respondents stated that the lead-in time for Calls for ideas was *Not Adequate*.
A longer lead-in time for Calls for Ideas would be beneficial.

1c. 61% of respondents identified 4 to 6 weeks as the optimal lead-in time for Calls for Ideas. In 2015, the average lead in time was 3 weeks (based on an analysis of all 16 Calls for Ideas, January to September 2015.)

1d. The response time to programme submissions is too slow.
Only 7% of respondents rated the response time by RTE to programme submissions as *Efficient*.

1e. The time lag between greenlight for a project and issuing of contracts is a significant concern. 40% of respondents waited more than 8 weeks to receive a 1st draft contract, and 49% waited 4 to 8 weeks.

EDITORIAL | RECOMMENDATIONS

1. Improve the quality and clarity of information in commissioning briefs so that all genres are rated consistently.

2. Introduce standard lead-in times of 4 – 6 weeks for Calls for Ideas across all genres.

3. Establish a timeframe for response on programme ideas.

4. Set up regular pre-commissioning briefings to raise the level and frequency of engagement between commissioning editors and independent producers.

5. Establish a process to accelerate budget and contract discussions once the editorial intent to commission has been made.

2. LEGAL

2a. Is there adequate time allowed for contractual issues to be negotiated?

45%	Yes
33%	No
22%	N/A / Don't Know

2b. At what stage were the contracts signed?

24%	One month prior to PP
32%	Within 4 weeks of PP
44%	After PP had commenced

2c. Do the terms of the contracts reflect the Code?

	<u>Yes</u>	<u>No</u>	<u>NA/Don't Know</u>
T1. Producer's Ownership of Copyright	71%	0	29%
T2. RTÉ Licence Period [5 yrs.]	71%	0	29%
T3. Producer's Retention of Secondary Rights	65%	0	35%
T4. RTÉ Revenue Share, General [RTÉ = proportionate to contribution up to max 50%]	68%	3%	29%
T5. RTÉ Revenue Share, Formats [RTÉ = up to 15%]	62%	8%	30%
T6. Producers Revenue Share [recognition of S481 under Producer's contribution to budget]	31%	0	69%
T7. Production fee [scale 20% to 10% negotiable after €889,000]	57%	11%	32%
T8. Flexibility on TX window [where RTÉ is not primary funder]	21%	13%	66%

LEGAL | KEY FINDINGS

2a. 45% respondents said there was an adequate amount of time for contractual issues to be negotiated. However this conflicts with the actual results of question 2b.

2b. The timetable to complete contractual discussions set out in the Code (clause 1.6) was not adhered to in 76% of cases.

These figures combined with the qualitative responses, indicates there is an issue. The delay in finalising contracts exposes producers to unnecessary risk and cashflow issues.

2c. The terms of contracts issued generally reflect the terms of the Code.

A significant percentage of respondents replied NA/Don't Know on the detail of the terms of the Code. A proportion of those may come under 'not applicable' however, the overall figures indicate that many producers are not yet familiar with the terms of the Code.

This reflects a general observation based on enquiries to the SPI office that the Code is difficult to read and understand.

LEGAL | RECOMMENDATIONS

1. Establish a timetable to issue contracts and conclude negotiations, allowing an adequate interval for each party to respond to issues and finalise contracts in a timely manner.
2. SPI to instigate renewed education of members about the terms of the Code.
3. Simplify the Code.
4. Provide clarification on the parameters of the terms, specifically T4, T5, T7, T8.

3. FINANCE

3a. Is there adequate time allowed for financial issues to be negotiated?

52% Yes
30% No
18% N/A / Don't Know

3b. When do you usually receive the 1st instalment of production funding?

58% Prior to commencement of PP
42% After commencement PP

3c. How soon is payment received after issue of an invoice?

47% 1 to 2 weeks
37% 2 to 4 weeks
16% More than 4 weeks

3d. Do you think it would be useful for RTÉ to publish a table outlining the scale of budget and licence fees applicable to various genres and slots.

79% Yes
8% No
13% N/A / Don't Know

FINANCE | KEY FINDINGS

3a. The mixed response about the amount of time allowed for negotiation of financial issues reflects the variety in nature of commissions. (Many programmes have straightforward budgets and finance. Others are more complex and evolve during the commissioning and pre-production process.)

3b. 42% of respondents did not receive funding until after Principal Photography had commenced. This figure combined with the qualitative responses, indicates this is of major concern to producers as it exposes them to unnecessary risk and cashflow difficulties.

3c. The payments system is generally efficient with 47% of invoices paid within 2 weeks of issue. However due to the delay in finalising contracts (see 3b above) delayed cashflow remains an issue as 1st invoices are often raised after Principal Photography has commenced.

3d. 79% of respondents said they would find it useful for RTÉ to publish a table outlining the scale of budget and licence fees applicable to various genres and slots.

FINANCE | RECOMMENDATIONS

1. Establish a clear timetable for budget and finance negotiations to meet the aim of clause 1.6 of the Code which states “.....the editorial, financial, and contractual negotiations should be completed no later than one month prior to the commencement of recording/principal photography of the programme”.

2. Publish a table outlining the scale of budget and licence fees applicable to various genres and slots.

SCREEN
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77 Merrion Square, Dublin 2, Ireland
Tel: + 353 (0)1 662 1114
Web: www.screenproducersireland.com