

## **Quoting television: a cross-national analysis of regulatory intervention in the independent television production industry in the UK and Spain**

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In order to understand the advent and consolidation of the independent television production industry, it is necessary to consider the essential role that quotas have played. This article offers a comparative empirically grounded analysis of the impact generated by a variety of quotas applied to independent production in the UK and Spain. First, it describes how quotas originating from the Television without Frontiers Directive are implemented in different ways. Second, through a sample of prime-time television in both countries, and in-depth interviews, the article analyses the strength of independent producers, their regional diversity and, in the Spanish case, the volume of investment in them by broadcasters. The results highlight the limitations of quotas and the need to intervene in different areas with alternative tools if the objectives originally pursued by the Directive for this sector are to be achieved.

**Keywords:** independent television production; outsourcing; broadcasting; policy; quotas; UK; Spain

### **Introduction**

A common media policy instrument now used across Europe is the implementation of a variety of quotas, including screen, language and investment quotas among others. Initially, 'quotas were seen as a bulwark against the rising tide of US program imports and a means to protect European cultural identity' (Michalis 2007, p. 161). In other words, cultural considerations were as important as internal market considerations (Harrison and Woods 2007). As Schlesinger (1997) highlights, quotas were imposed against the threat of Americanisation, which meant that media policies would effectively be subject to global industrial competition considerations.

In the case of television, the most common ones have been the so-called European and independent production quotas, which were introduced in the 1980s to arrest the fear of Hollywood's domination of the European box office (Schlesinger 1997) being replicated by the incipient private television industry (although some countries – the UK for example – already had private television broadcasters).

Television quotas were formally introduced on a European level by the Television without Frontiers Directive (TWFD) and subsequently transposed into Member

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States' national legislation. As has been stated elsewhere (Eberlein and Grande 2005), despite the growing need for uniform EU-level rules in the internal market, the bulk of formal powers and the institutional focus of regulatory activities continue to be located at national level. When divergences appear, EU-level rules would also help EU policymaking. In the case of the TWFD, 'the lack of agreement led to the quota obligations being phrased in opaque and non-binding terms' (Harrison and Woods 2007, p. 243). This is plain to see in the justification of the TWFD:

[...] minimum requirements in respect of all public or private Community television programmes for European audio-visual productions have been a means of promoting production, independent production and distribution in the abovementioned industries and are complementary to other instruments which are already or will be proposed to favour the same objective national support schemes for the development of European production may be applied in so far as they comply with Community law a commitment, where practicable, to a certain proportion of broadcasts for independent productions, created by producers who are independent of broadcasters.

The idea behind this obscure phrasing was that some measures should be adopted to permit and ensure the transition from national markets to a common programme production and distribution market.

This article focuses on the effectiveness of quotas and their impact on the independent television production market through a comparative case study of the British and Spanish markets. What makes the UK and Spain an appropriate case study? There are several reasons that justify the choice of these two countries as objects of study for comparison. Formally, they represent two comparable realities in terms of market size and plurinational State configuration, a factor that, as we shall see, is relevant in this context. In terms of quotas however, they are dissimilar realities, and this allows the results of differing applications of the same media policy instrument to be observed. Historically, the two countries have been on opposite sides of the quota argument (pro- and against-quotists): the UK has represented the most liberal position in the European debate on audiovisual issues, whereas Spain has always been a loyal ally of France in terms of protectionist policies applied to their respective national audiovisual industries. Furthermore, the UK, like the Netherlands, has one of the strictest quota policies, which obliges broadcasters to broadcast a 25% minimum of independent productions. Spain is one of the countries that have kept the 10% minimum as stipulated in the TWFD. In contrast, the British case, with its liberal stance towards the imposition of quotas and the high level of such quotas when implementing them, can be explained from a conservative viewpoint by one basic reason: the conception of its independent sector as an example of entrepreneurship and private initiative in the light of an oversized public sector – the BBC in this instance – and the monopolistic attitude of large corporations such as ITV. Obviously, the existence of a previous independent industry was a prerequisite for a higher quota.

### **Research on independent television production**

Academic research into the regulation of the independent television production market is limited and usually centres on a single national market, thus leaving very little room for comparative research.

In the UK, worthy of note among the most significant studies are those focusing on the effect of this regulation on the market (Saundry and Nolan 1998, Deakin and Pratten 2000, Baya 2008) and the role of public intervention in it (Doyle and Paterson 2008). The official position of the regulators has also been reflected (ITC 2002, Ofcom 2006). Another series of works on the British market focuses on the analysis of its structure (Barca 1998), its history (Darlow 2004), the impact of consolidation (North and Oliver 2010) and its management (Starkey and Barnatt 1997, Starkey *et al.* 2000, Deakin *et al.* 2008).

In Spain, regulation of the sector has not been an object of interest to scholars, who have instead concentrated on the production of fiction (Álvarez Monzoncillo and López Villanueva 1999, Bustamante and Álvarez Monzoncillo 1999, Vilches *et al.* 1999, 2000) and the impact of the advent of new broadcasters (Fernández-Quijada 2009a).

Comparative studies have so far been limited to compulsory reports produced by the European Commission to assess the degree of compliance with European and independent production quotas stipulated in the Audiovisual Media Services Directive (European Commission 2010). The main value of these two-yearly reports resides in the longitudinal data they offer, among other areas, on the volume of independent productions broadcast by EU channels, which was 35.26% in 2007 and 34.90% in 2008. However, their cross-national aspiration needs to be seriously questioned because the methodology varies greatly among the countries included: some are based on full monitoring, while others are based on samples. In some cases, the data only refer to terrestrial channels. Finally, some national reports are incomplete, and data are presented as aggregates at EU level and not on a country-specific basis, which makes cross-national comparisons unfeasible.

In addition to these reports, there are two independent and much more in-depth studies that pursued the same objective (David Graham and Associates 2005, Attentional *et al.* 2009). Both works are related since many of the authors involved were the same and data collection was similar, including qualitative data from industry insiders. In both cases, data are limited to the independent production quota, and no inquiries were made into regional or investment quotas. Despite this, the results are far broader than the nine afore-mentioned compulsory reports and allow some comparisons to be made among the different countries studied. The second of these two studies offers data for 2007; in the case of the UK, the percentage of qualifying independent European over total qualifying hours was 36.3%, which dropped to 33.1% in prime time, broadly defined as the slot from 6 pm to 11 pm; in the case of Spain, the percentage was 40.2%, which increased to 41.9% in prime time.<sup>1</sup>

Other comparative studies have focused on the positioning of players and the presence of producers in prime-time television programmes (Medina 2004) and the methodological proposal for measuring pluralism based on the same type of analysis of prime-time television programmes (La Porte *et al.* 2007). In the Latin American context, there are some comparative studies on the fiction production market (Vilches 2007, 2009, Lopes and Vilches 2008, Orozco Gómez and Lopes 2009, Lopes and Orozco Gómez 2010), using the research method of Eurofiction, the pan-European group that did a similar study on the main European markets (Buonanno 2003). Similarly, data provided annually in the *European Audiovisual Observatory Yearbook* should be included. In this broad study on the European audiovisual sector, the chapter on independent production focuses on the main independent companies

operating in the market, offering a ranking according to variables like revenues and profits, but not a picture on a country-by-country basis.

Beyond the specific British and Spanish cases, however, there is a significant study by Nooij (2008) on the Dutch case. This author performed an economic analysis of the effectiveness of implementing independent production quotas in the Netherlands and concluded that it is not an effective instrument for attaining officially pursued objectives, namely to stimulate the audiovisual sector, to improve the quality of television programmes, to facilitate the competitiveness of the market for television production and to continue to respect the freedom of public television organisations. These results cast serious doubt on the effectiveness of this regulation in other European countries and highlight the need for further in-depth research on this issue in other markets.

### **Objective and method**

This research project took a cross-national perspective by analysing the independent television production markets of the UK and Spain. The objective was to analyse the evolution and impact of implementing policies on independent production quotas in these two countries.

To that end, a combination of quantitative and qualitative techniques was used. An initial methodological problem was the absence of comparable data for both countries at the desired level of depth. This meant that an ad hoc measurement had to be developed to generate own data. Other data, such as those offered by Ofcom in its yearly *Communications Market Report*, were used to complement them. It should be noted that a complete source of independent production data existed in Spain until the 2005/2006 season, with a list of all broadcasts, their duration and the channels on which they appeared. This document was called the *Anuario de la Televisión* and was published by the consultancy firm GECA but was discontinued in 2007.

Thus, in the absence of comparable data for the two countries, a sample of prime-time television programmes was taken in order to ascertain the producers' market share in each market. Prime time is the programming slot in which broadcasters place their most expensive and attractive content, since it is the one with the highest number of viewers. Over one week (10–16 May 2010), the programmes in this slot were monitored for both countries. The main generalist broadcasters were selected for the analysis, since they are the ones with the highest ratings and investment in production. In the UK, they were BBC One, BBC Two, ITV1, Channel 4 and Five; in Spain, they were TVE1, La2, Antena 3, Cuatro, Telecinco and laSexta. The data were gathered in a database that included a list of programmes, their duration, the name of the producer, their affiliation to media groups and their classification. Faced with the defining differences of the types of production in both cases, a specially designed classification system was developed for the type of television production: in-house, co-production, external production, independent production and acquisitions (Table 1). For independent co-production, the minutes counted were divided by the number of participating producers and allocated accordingly.

In order to obtain comparable results despite the social, cultural and television-consumption differences between both countries, the definition of prime time was adapted to each country. The diversity of earlier works referring to prime time offers very different definitions for it, both in terms of duration, which is typically

Table 1. Definition of television productions.

Production	Definition
In-house	A programme produced by a broadcaster, or by a producer that it owns, for subsequent broadcasting.
Co-production	Content produced and/or funded by various associated companies, including the broadcaster that subsequently broadcasts it.
External production	A programme made by a producer and funded, in part or in whole, by a broadcaster that usually commissions it in advance, irrespective of whether the programme initiative comes from the producer or the broadcaster.
Independent production	A variant of external production, characterised by the fact that it is produced by companies that, in accordance with legislation in force in each territory, can be considered as independent. If more than one producer takes part in the commission, it may be referred to as an independent co-production.
Acquisition	A production that a broadcaster buys from the programme market without commissioning it in advance.

between two and five hours, and in terms of slots. Regarding the latter, in the British case, they can range from 6 pm to 11 pm, and in the Spanish case from 8 pm to 1 am. The afore-mentioned study by Attentional *et al.* is a paradigmatic example of the difficulties in establishing prime-time in comparative studies. In that case, a wide slot from 6 pm to 11 pm was used to include the viewing habits of all the countries studied, although it was acknowledged in the study that ‘the definition is least appropriate for Spain, where viewing peaks at around 22:00’ (Attentional *et al.* 2009, p. 165). In the absence of an official definition, the final decision was taken after consulting with scholars in television studies from both countries. Albeit subjective, the definition is based on authoritative criteria: three hours of prime-time television programmes were analysed per day; the slot taken for the UK was between 7 pm and 10 pm, and the slot taken for Spain was from 9 pm to 12 midnight.

Regarding the qualitative part of the study, 24 in-depth interviews were held with professionals from the sector: 13 in the UK and 11 in Spain. The list of the interviewees, whose confidentiality was guaranteed, included four types of people: commissioners, executives of independent production companies, trade bodies’ representatives, and regulators. The diversity of producers was dealt with on the basis of five variables: company size; their independence from or affiliation to a parent company; their geographical location in the capital cities of the industry (London and Madrid) and of the regions and nations (Leeds, Cardiff and Barcelona); the diversity of genres produced; and buyers (from all the broadcasters analysed). After identifying potential interviewees via the companies’ and institutions’ websites and the industry’s professional pages, they were initially contacted by email and then, when necessary, by phone. All the interviews were held in person between February and June 2010.

The design of this analysis model is somewhat different from the one in Nooij’s earlier work (2008), which is its clearest point of reference. Firstly, it is more limited because the data refer to a one-week sample and not to a four-year data-set.

In contrast, it offers a more up-to-date picture of the sector and the range of channels analysed is much broader. Furthermore, the interviews add a qualitative component. In any event, the results aim to contribute to the same debate on the effectiveness of quota policies.

### **Definition and implementation of quotas**

Imposing independent production quotas on broadcasters has been one of the most common intervention instruments in television policy over the last two decades. There are three types of quota: independent production, regional and investment quotas.

#### ***Independent production quota***

The independent production quota originates directly from the TWFD. Its Article 5 stipulates that broadcasters should reserve at least 10% of their transmission time or their programming budget to content created by independent (from broadcasters) producers. This means that the independent quota is about production and transmission.

Historically, the UK was the first European market to promote independent production. The 1990 Broadcasting Act placed an obligation on broadcasters to ensure that at least 25% of the total amount of time allocated to broadcasting should be allocated to the broadcasting of independent productions. This quota became effective in 1993 to allow enough time for broadcasters to adapt. Twenty-five per cent may seem like quite a high percentage in historical terms, but it was chosen in a context where the industry had already begun to develop, thanks largely to the creation of Channel 4 – and its sister channel S4C in Wales – in 1982. The history and context of the creation of Channel 4 is complex and includes ideological battles that Goodwin (1998, p. 34) summarises as ‘channelling an originally left-wing aspiration for independent production into a reality which was to give an important extra lever to the free-market right’. The well-documented history of the origins of Channel 4 (Lambert 1982, Doherty *et al.* 1988, Goodwin 1998, Catterall 1999) bears witness to this ideological dichotomy and the tense play-off between the values of heritage and enterprise (Harvey 1996). The infant independent production sector inherited this tension (Darlow 2004).

Channel 4 was obliged by law to adopt a publisher–broadcaster model, meaning that the channel did not produce content, but bought it from the market instead, either by commissioning it to the incipient independent producers or by buying it from international programme markets. It should be noted that the 1986 report by the committee of experts led by the economist Alan Peacock (the Peacock Committee) had suggested an independent production target of 40%, so 25% seemed to be a figure midway between Peacock’s liberal model and the more moderate one advocated by Brussels. In addition, the regulatory authority at that time, the Independent Broadcasting Authority (IBA), had already reached prior agreements with ITV and the BBC to open up their programming to independent producers. Since the 1996 Broadcasting Act, a 10% quota has also been applied to all digital terrestrial television (DTT) channels.

To this 25% quota, a window of a further 25% needs to be added, which the BBC has opened to competition between independent (and generally external) producers and in-house producers. This is known as the Window of Creative Competition

(WoCC). This window, proposed by the BBC itself within the context of reviewing its Royal Charter, offers external producers greater access to the BBC's programming, where they compete with in-house producers. Historically speaking, WoCC is a step beyond the Producer Choice system introduced in 1993, which created an internal market for programme supply within the BBC (Starks 1993, Harris and Wegg-Prosser 1998, Born 2004). In fact, since the launch of WoCC, the percentage of independent producers has risen to almost 40%, a figure similar to ITV1's but much lower than Channel 4's and Five's, the two channels that do not have any internal production.

In the UK, the definition of the independent producer figure came from The Broadcasting (Independent Productions) Order 1991. Three key elements were established, and an independent producer was considered to be someone, or a body: who is not an employee of a broadcaster; who does not have a shareholding greater than 15% in a broadcaster; and which is not a body corporate in which any one broadcaster has a shareholding greater than 15%. For the purposes of this order, the broadcaster could be British or foreign.

This definition was revised in 1995 by The Broadcasting (Independent Productions) (Amendment) Order 1995. Consequently, the shareholding threshold between producers and broadcasters was increased from 15% to 25%. A new clause was also introduced, according to which two or more broadcasters could not jointly have a shareholding greater than 50% in a producer if that producer wanted to be considered independent.

The definition was changed slightly by The Broadcasting (Independent Productions) (Amendment) Order 2003, which stipulated that the third instance of a producer's independence from a broadcaster was only applicable to channels received in the UK, something that had a direct impact on some market players like Endemol, which, from that moment onwards, was considered to be independent, a status that it still maintains today.

In the Spanish case, the transposition of the TWFD in 1994 was formalised and gave rise to some initial rules of the game for an activity that was beginning to develop under the umbrella of private television channels, whose broadcasts began in 1990. The threshold was set at the 10% minimum demanded by the TWFD. In Spanish law, a producer's independence was defined as being the absence of broadcasters that: had a greater than 50% shareholding; had more than 50% of the voting rights; or controlled the board. With the dynamics of the market, this definition became obsolete, since it only contemplated independence in one direction: from producer to broadcaster. However, the dynamism of some Spanish producers led them to become the owners of the new laSexta channel in 2005. This brought about a change in the law to reflect the bidirectional nature of shareholding control.

It is currently Spain's General Broadcasting Act that defines the term independent producer on the basis of its operational independence from the broadcaster. A lack of independence is presumed when a producer and a broadcaster form part of the same business group in accordance with the Trade Code (*Código de Comercio*) or when there are stable exclusivity agreements.<sup>2</sup> The Trade Code sets out four circumstances in which a company is considered to be dependent on another: (a) it has the majority of voting rights; (b) it has the power to appoint and dismiss the majority of board members; (c) it may have, through agreements with third parties, the majority of voting rights; or (d) it has appointed, through its votes, the majority of board members in post at the time of putting together the consolidated accounts

in the two previous years. In particular, this circumstance is presumed when the majority of the controlled company's board members are board members of the controlling company or another company controlled by it.

### **Regional quotas**

A particular feature of the British system, this quota has gradually been introduced since 1998, when the Independent Television Commission (ITC) – the regulatory body at that time – reached an agreement with Channel 4 to ensure that at least 30% of its national production and of its programming budget would be produced beyond the M25 motorway, the orbital motorway that almost encircles Greater London. That is why it is known as the 'out-of-London' quota. The arguments in favour of a more significant presence of the regions and regional production in national broadcasters is based on the idea of a more representative balance of programmes reflecting the cultural and social diversity of the UK. Equally, if public service broadcasting is considered an element of democratic engagement and discussion, it cannot be seen as a distant institution. Moreover, in economic terms, the investment should be distributed throughout the country since broadcasters get their income from the country as a whole. This is also contemporarily seen as a way to promote cultural industries, a policy developed across the country. Originally, this decentralised role was in some way played by ITV, as Murdock (1994, p. 166) explains:

Supporters of the ITV original system's decentralized structure, which limits companies to a single franchise covering a specific geographical area, have always seen it as more sensitive to regional interests than the BBC, with its metropolitan base and bias. There is more than a touch of romanticism in this view. The boundaries of the present ITV regions were drawn up on the basis of engineering convenience, to fit the transmitter system. They were not designed to correspond to organic, regional cultures.

There was a gradual process of consolidation of ITV in the 1980s and 1990s, but the creation of ITV plc<sup>3</sup> in 2004 – with the merger of Carlton and Granada – finally imposed the logic of economies of scale on the organisation and undermined its commitment to the regions and nations.

In the case of the BBC, one of its key purposes is to represent the UK by connecting and uniting the country's communities. However, 'from its earliest days, the BBC has been faced with criticisms of its metropolitan bias and with demands for greater geographical equity both in its organisation and in the provision of its services' (Harvey and Robins, 1994, p. 41). In order to counter this criticism, in recent years, the BBC has developed a strategy specifically targeting the regions and nations that exceed the mandatory regional quota. The BBC has set itself a 50% out-of-London production (internal and external) target for 2016, with 33% originating from the English regions and 17% from the three nations (Scotland, Wales and Northern Ireland).

A similar policy has also been applied by the rest of the broadcasters. In 2001, the ITC reached a new agreement with Channel 5 (currently known as Five) to ensure that 10% of its production would have the same out-of-London origin. In 2002, it was ITV1's turn, with an out-of-London target of 50%, a much higher figure than the previous ones, which can be explained by its historical origins as a network of regional television stations. The BBC has a more complex regional quota, which is applied to the BBC as a whole, and to BBC One and BBC Two



Table 2. Out-of-London quotas.

Channel	Volume		Value	
	2006 (%)	2009 (%)	2006 (%)	2009 (%)
BBC				
BBC One	25	25	30	30
BBC Two	25	25	30	30
ITV1	50	35	50	35
Channel 4	30	35	30	35
Five	10	10	10	10

individually. In addition, it refers to both time allocated to broadcasting (25%) and production spend (30%).

Since 2009, several adjustments have been made to the quota levels (Table 2). The most significant change was the reduction in ITV1's quota from 50% to 35% in terms of both time allocated to broadcasting and production spend, the same level to which Channel 4's quota has been increased. Indeed, Channel 4's data show that its rate of effective compliance significantly exceeds that level. Within the 35% quota, Channel 4 has also introduced a specific feature: 3% of the total must originate from producers located in the nations.

### *Investment quotas*

Investment quotas are only applied in Spain. It is an obligation for broadcasters to invest 5% of their previous year's revenues in European TV movies and feature films, as well as other works such as documentaries and animation. This obligation was introduced in 1999 with the transposition of the second TWFD. Two years later, short films were included in the calculation of fundable works, and the 5% compulsory investment figure was qualified by stating that 60% of it (3% of the total) had to go towards funding works in any of Spain's official languages. The law also became applicable to operators that programmed films fewer than seven years old, which also affected some of Sony's and Disney's thematic channels. An unsuccessful appeal against the law was lodged by the trade body UTECA (Associated Commercial Television Union, *Unión de Televisiones Comerciales Asociadas*) before the Supreme Court of Spain and the European Court of Justice.

For their part, public broadcasters consider this investment obligation as part of their function of providing a public service and supporting the national audiovisual industry. In general, the gradual application of programme contracts to Spanish public service broadcasters is beginning to incorporate, into public service missions, the development of the autochthonous audiovisual industry through independent production.

## **Analysis**

### *Independent production quota*

In the sample taken for this study, the application of the proposed television production type classification offers a clear picture of the results of this policy (Figure 1). In the UK prime time, independent production is the first source of programme

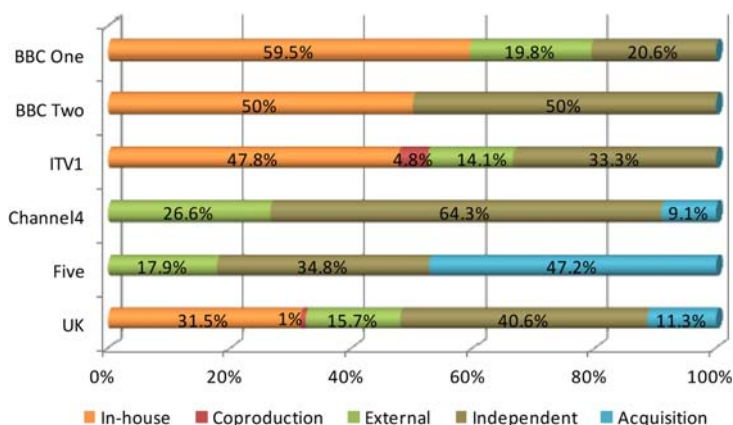


Figure 1. Prime-time TV programmes in the UK, by type of production.

supply (40.6%), to which external production (15.7%) has to be added. Both categories total 3548 programme minutes. Of this total number of prime-time programme minutes, production companies account for more than 55% and in-house production for just under a third (31.5%), with the supply scheme rounded off by acquisitions (11.3%) and co-productions (1%).

In the analysis, considerable differences were found between channels. It is no surprise that Channel 4's publisher–broadcaster model fosters independent production of its prime-time television programmes (64.3%). However, below the mean for British channels are the results (34.8%) for the other broadcaster that applies this model, Five, whose main source of supply is acquisition from international markets. Channel 4 is the other broadcaster that uses this foreign source (9.1%).

In the BBC, there is a sharp contrast because BBC One is the only channel whose independent production percentage is below the 25% minimum threshold set by law,<sup>4</sup> while BBC Two buys content from independent producers accounting for half of the time allocated to broadcasting, thus making BBC Two their second main client. In the two main British broadcasters (by ratings), BBC One and ITV1, in-house production prevails.

In Spain, worthy of note is the absence of the co-production and external production categories (Figure 2). The latter of these two is a direct consequence of the very definition of independent producer under Spanish legislation. As is the case in the UK, the first source of broadcasters' programme supply in Spain is independent production (39.9%), equivalent to 3020 programme minutes, followed by in-house production (31%) and acquisitions (29.1%).

All the private channels in the sample were above the mean, with Antena 3 (58.3%) and Telecinco (54.4%) leading the way. The two public channels were below the mean, and La2 only had a 5.2% presence of independent production, which is below the minimum threshold set by law. This channel did not stand out for its in-house production either, and acquisitions, particularly films, accounted for 60% of its prime-time slot.

Despite some of the broadcasters' quota compliance difficulties, it could be said that their implementation has generally been positive, something that was confirmed by the majority of professionals interviewed.

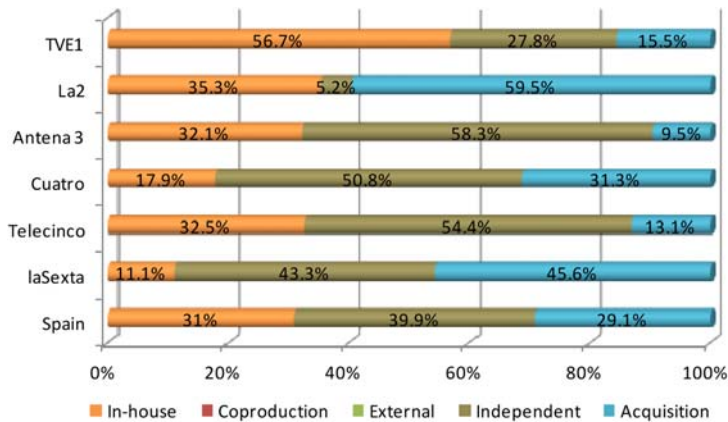


Figure 2. Prime-time TV programmes in Spain, by type of production.

Even though the application of the quota policy has allowed the independent production industry to flourish, in the British case, there is a current of opinion among these professionals about the need to go beyond a quota-based industry:

I'm a firm believer that quotas can be very useful, but I also think that quotas and percentages and figures shouldn't kind of stifle creativity. [...] I still think that the best ideas have to find their way through the systems. (Independent Producer, Cardiff)

The idea of a level playing field comes up on numerous occasions:

I would like to think that, you know, we come up with ideas that are just as good as anyone else's ideas, and therefore there should simply be a level playing field without any special treatment in order to get things commissioned. (Independent Producer, Leeds)

This egalitarian discourse does not conceal the fact that the sector has grown thanks to its hard work and to the incentives provided by regulation, which are seen by producers as a measure to counter the oligopoly of voices and to increase the diversity of broadcasters. In the Spanish case, the industry focuses its concerns on basic aspects of the system, such as the definition of independence, which is still under debate:

Everything is based on a premise that's not real, because they start with a very odd definition of independence that does not match the criteria of independence used in the rest of Europe. (FAPAE Representative, Madrid)<sup>5</sup>

Indeed, this is a debate that remains open in the British case, and which is very significant, as demonstrated by the change in definition that allowed Endemol to gain its independent status, or the attempts by ITV and STV, the licensee for the ITV franchise in Scotland, to apply for a definition of independence similar to the Spanish one:

In the past, ITV has made the argument that they should have qualifying independent status if they are producing for another channel. So on ITV they will obviously not be

an independent, but if they made for the BBC, they would count against the quota. And we have not been at all convinced by that argument. (Ofcom Representative, London)

In the UK in general, the system appears to be much more robust and accepted by all stakeholders. It goes without saying that there are certain elements that cause friction, one of which is the application of WoCC by the BBC. Although the independent producers' trade body Pact (Producers Alliance for Cinema and Television) has officially expressed its satisfaction with WoCC's application, it demands fairness and transparency in the competition between in-house and independent producers (Pact 2010). It also asks for the possibility to extend this quota and to put an end to what is a *de facto* 50% in-house quota:

We could compete for 100%, why not? In-house are the ones where it's a challenge because they're not used to competition. Indies compete every single day. I've got 600 companies who are all competing against each other to win commissions. So that's a normal part of life for indies; it's not a normal part of life for in-house production. But that's what the WoCC introduced. It actually gave the BBC in-house the concept they had to compete to win commissions. That's a good thing for creative industries, that's a good thing to do. (Pact Representative, London)

You could argue that the Window of Creative Competition is a step backwards because the original quota, which was defined as a minimum of 25%, had no ceiling. Nowhere does the original quota say that independent production can only reach 50%. (Independent Producer, London)

These discourses suggest a shift in the balance of power between producers and broadcasters. Protected by the application of quotas until now, producers feel that the WoCC may limit their growth and see it as a protectionist measure for in-house production.

### **Regional quotas**

The sample data for the UK do not allow for a reliable disaggregation by production centre because many companies have centres in several cities, and these centres are not specified in the programme credits. This is the case for TalkBack Thames, Liberty Bell Productions, Red Planet Pictures, Maverick or North One Television, to name but a few. In contrast, the Ofcom data (Table 3) evidence the stability of

Table 3. Compliance with out-of-London quotas.

Channel	Volume		Value	
	2007 (%)	2008 (%)	2007 (%)	2008 (%)
BBC	31.9	33.5	32.6	34.9
ITV1	53.1	50.3	44.3	49.9
Channel 4	42.7	40.7	35.3	31.7
Five	15.4	17.4	33.1	34.5

Source: Ofcom (2009).

Table 4. Regional origin of main national broadcasters' independent production.

Region	Minutes		Producers	
	<i>n</i>	%	<i>n</i>	%
Madrid	2210	73.2	14	56
Catalonia	590	19.5	7	28
Galicia	70	2.3	1	4
Andalusia	65	2.2	1	4
Valencian Community	65	2.2	1	4
Castille-Leon	20	0.7	1	4
Total	3020	100	25	100

compliance with these quotas (in-house and external), which has allowed the industry to develop in the English regions and in the nations.

The characteristics of the Spanish market, where companies usually have a single centre, allowed their independent production data to be aggregated by region. The companies' register was used to find the location of the identified producers' registered offices (Table 4).<sup>6</sup>

The results show that there is a major concentration of activity in Madrid: three-quarters of the independently produced programme minutes could be traced to this city. Then came Catalonia, with almost 20% of the total. The data for the other four regions identified are symbolic; together, they only amount to 7.3%. Producers in the remaining 11 regions were incapable of placing a single programme in the prime-time slot. These data, which confirm those of earlier studies (Fernández-Quijada 2008, 2009b, 2010), suggest that out-of-Madrid production accounted for 26.8% of prime-time programme minutes over the week of the sample. Another piece of data that strengthens the idea of Madrid being the centre of the industry is that 56% of producers are based in the region. Furthermore, as shown in the table, it is the only region where the percentage of programme minutes is higher than the percentage of producers, thus indicating that the programmes they produced were longer.

Discrepancies are also apparent in the case of the regional quota, specifically in two areas: changes in their levels and their real application. Indeed, changes in levels caused a great deal of uproar, particularly when ITV licensees' obligations were lowered in accordance with purely market-related parameters:

Having a range of contents in the nations and regions both on the BBC and on other channels is a great value to viewers. But I think we have to be practical about the economics. . . And in the days when it was possible to make huge profits in broadcasting, the regulator could impose substantial obligations on the ITV licensees in the nations and the regions. You just cannot economically do that anymore. (Ofcom Representative, London)

This clearly raises the question about the level that operators' profits should reach before imposing public service obligations on them, which is something they had in fact accepted when renewing their licences.

Besides specific cases, the real application of out-of-London quotas has come up against application problems in two related areas. First, the way this quota should be calculated, with certain producers' practices that go against the spirit of the law, such as setting up a shell office beyond the M25, while the activity of

production continues to take place in London. This practice is known in the industry as ‘door-plaquing’. Second, some producers’ doubts about whether or not the talent pool is big enough in some regions:

The challenge will be that the talent pools are not yet big enough in those regional centres, there are not enough people. That’s going to involve some long-term strategic investments by the broadcasters, by the producers... in order to get those areas up to speed, a critical mass the talent you can find in London. (Independent Producer, London)

This attitude seems quite paternalistic in relation to the regions’ abilities to offer a production quality that is high enough; it also obviates the potential talent-attracting effect of projects such as MediaCityUK in Salford.

As mentioned earlier, regional quotas are not applied in Spain. Indeed, the very idea of a regional quota in that country has yet to be considered, and questions about it are greeted with utter surprise. The decentralisation of the television broadcasting system, with numerous regional and local television stations, means that most of the output of producers in these regions is channelled towards such stations, creating high dependence and regional protectionism. Moreover, producers have actually turned their backs on the more lucrative national market in return for the security provided by regional public service broadcasters. Regarding the notion of this quota, it does not appear to be a viable solution despite the obvious advantages for regional producers: ‘There shouldn’t be a quota, though specific attention should be paid to geographical distribution’ (Trade Body Representative, Barcelona). This statement points to the idea that producers based in the regions are seen as producing lower-quality programmes, since they are associated – by national broadcasters – with production for regional channels that have fewer resources.

### *Investment quotas*

In Spain, the law on investment quotas has led to a constant flow of funding towards the television and film industries. Around one-third of the funding that the film industry receives comes from television broadcasters, either as direct funding or as indirect funding through rights acquisition. Consequently, television broadcasters have become a basic pillar of the film industry, totalling more than €1.26 billion between 1999 and 2008 (Setsi 2010). In 2008 alone, national television broadcasters invested more than €150 million, on top of which there were a further €46 million from regional public service broadcasters. Regarding the 3% investment in productions in any of Spain’s official languages, the required minimum thresholds have been exceeded by far: although an €111 million investment is required by law, the real investment amounts to €172 million.

In the case of national television operators, more than 83% of the investment has funded films (70.8% Spanish and 12.4% other European), whereas just over 15% has been allocated to TV movies (11.8% Spanish and 3.7% other European). In the case of Spanish film, 62.1% was invested directly in production, whereas the rest was allocated to rights acquisition.

In practical terms, the real obligation to invest in the independent sector is closer to 2.5% than 5%, since up to half of the investment can be made in film or television production divisions of a television network itself, like Antena 3 Films and Telecinco Cinema.

Furthermore, in the Spanish case, the political battle has centred on the investment quota, since it is the one that has the biggest financial impact on broadcasters. The vagueness of the law and its biased interpretations have created some conflicts. As a result, several aspects of the law were reviewed in 2004. For example, the exclusion of serial fiction from the set of works that could be funded under the investment obligations was ratified. This had been a long-standing demand by broadcasters in order to mitigate the impact of the rule on their accounts. Despite that, in the last reform of the law, the inclusion of this genre within the quota was approved thanks to an intensive lobbying by UTECA, which effectively means a reduction in the quota. The argument was that drama production is already self-sufficient without the quota and that its inclusion would only lead to a decrease in investment in other genres: ‘Allowing fiction series to be calculated within the investment obligation is an absolute distortion of the European directive’s intention of fostering own content, because fiction series already get by without any kind of obligation’ (Independent Producer, Barcelona).

## **Conclusions**

The work presented here is intended to contribute to the debate on television quotas. To that end, it is necessary to begin by pointing out its limitations: while it is a comparative case study, it does not reflect the myriad situations of the European audiovisual industry. Consequently, it should be read in conjunction with the rest of the contributions referred to in the literature review, which, among other things, offer longitudinal data.

Although the objective of the TWFD was originally to create a single market, the variety of ways in which it has been implemented has not allowed traditionally closed national markets to be opened up. The result is that there is hardly any circulation of productions between different European countries. In the sample taken for this study, no production from another European country could be found in the British case, whereas three films from Italy, France and the UK were found in the Spanish case. These results are consistent with the usual claims of closed national markets for European productions and, in the case of Spain, with previous studies on the topic (EGEDA 2010).

Generally speaking, quotas have played a central role in developing the industry. Twenty years down the line, however, it would be expedient to launch a Europe-wide debate to reconsider the role they play and to increase the positive effect they have on the industry and on cultural – and regional – diversity. In the cases analysed, despite the different levels of independent production quotas, the most significant differences were found in acquisitions and not in independent production, which is the focus of European law. This raises doubts about why, in the pursuit of effectiveness, the intervention does not also apply to acquisitions. In addition, some public service objectives such as reflecting a country’s cultural and national identities and fostering the development of the audiovisual industry itself would be much better served by limiting acquisitions. Despite the global free-trade agreements in force, obligations of this type could be included in broadcasting licence terms and conditions. Certainly, a cautionary note should be introduced since the situation in small nations’ markets might be different due to a weaker industry.

It would also seem clear that definitions need to be more precise because many of the disputes between producers, broadcasters and regulators are due to their

ambiguity. In addition, if the ultimate objective is to create a European market, understood as a market in which European productions circulate freely throughout Europe, uniform regulation that learns from the good practices of 20 years of quota application is needed.

The simple implementation of quota policies leads to a scenario of low-cost entry and plentiful suppliers; in other words, an oligopsonic market in which broadcasters control the bottleneck of access to the television spectrum. In this context, producers have no chance to build assets, meaning that growth can only occur at the expense of other competitors or from a quota increase. However, this hypothetical increase cannot be a long-term solution because the tendency is to reproduce the same scenario. The only solution is the one that the UK implemented in 2003: a regulatory intervention on the terms of trade governing agreements between broadcasters and producers that allows producers to retain control over rights and to build their own portfolio of products that can be marketed elsewhere (Chalaby 2010). Even though it has been suggested that changes in legislation on rights management are responsible for this change (a matter on which all the British informants in this study agree), other factors come into play in the final equation, such as the role of English as a global language that facilitates penetration in international markets, particularly the American market. In this respect, the question that needs to be raised is whether the Spanish industry could play a similar role in Latin America, formed by markets that share the Spanish language; this flow has been relatively limited thus far. Moreover, the main markets for the only two Spanish distributors are in Europe, despite the language barrier. Furthermore, this process generates a lengthening of the value chain as distributors come onto the scene, which were already mentioned in the 1989 TWFD. While these are emerging stakeholders in the British broadcasting market, they are practically unheard of in Spain.

This scenario is not even considered in Spain, where the general perception of the informants is that there is a decline in independent sector development policies owing to successful lobbying by broadcasters, which has allowed the real scope of the investment quota to be reduced. In addition, there are structural features that have not contributed to the sector's maturity, such as greater interest in the investment quota than in a change of rights exploitation model. In Spain, it is very common to find an audiovisual producer model where the activities of the producers themselves include both film and television, which is not the case in the UK, where broadcasting and film producers are usually separate. In the Spanish case, this has not helped to focus the debate strictly on television, unlike in the UK.

Industry development policies in the regions and nations are also different. Both the UK and Spain are plurinational States, and their independent production industries have developed in the regions via different routes. In the Spanish case, the regional industry has developed by replicating the national quota model on a regional scale; regional producers are regionally based and regionally oriented. In the UK, in contrast, the regional industry has developed thanks to the out-of-London quota, a rule applicable to national broadcasters; regional producers are regionally based but national in scope and, in many cases, international thanks to the exploitation of their secondary rights. The national scope and international projection of these regional producers in the case of the UK mean that they are stronger, bigger and fewer than Spanish producers. British producers are also more likely to form



part of bigger media groups. In cultural terms, British broadcasters reflect a greater national and cultural diversity of the country on television screens than Spanish broadcasters. In Spain, national and regional realities are limited to the regions and nations themselves and thus do not contribute to the national debate as a whole.

The ultimate conclusion drawn from the study described in this article is that policies not only matter but are central in shaping the independent production industry. In general, quotas ‘have the beauty, if you like, of transparency and simplicity, most of the time’ (Ofcom Representative, London). To raise their effectiveness however, their implementation should be coordinated with other tools. A clear example of this is the rights management policy in the UK, which is the next crucial step towards the sector’s development and maturity. In the Spanish case, the use of television policy to act on the film industry has been beneficial to the latter, but broadcasters have viewed it as a covert subsidy and not as part of the obligations imposed by their broadcasting licences. Hence, the political lobbying by broadcasters and producers, though the vision of the problem as a whole has failed on both sides to the detriment of driving television production forward. The short-term policy approach adopted by the different Spanish governments has not helped in this matter either, since they were more concerned with cultivating clientelistic relationships with broadcasters and media groups than promoting a scenario driven by professional criteria and the creation of a consistent market with international aspirations.

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### Notes

1. The sample for the UK included BBC One, BBC Two, ITV1, Channel 4, Five and Sky One; for Spain, it included TVE1, La2, Antena 3, Cuatro, Telecinco and laSexta.
2. This last point is particularly problematic for the analysis because these exclusivity agreements are not usually in the public domain, and there is no regulator that demands that they should be. In practice, therefore, exclusivity does not preclude an independent status.
3. In spite of this consolidation, there are still regional companies within the ITV network, like STV, UTV and Channel Television.
4. This does not mean that it is in breach of the law, since the law requires that quotas be met across programming as a whole and not in specific slots.
5. FAPAE stands for Federation of Spanish Audiovisual Producer Associations (*Federación de Asociaciones de Productores Audiovisuales Españoles* in Spanish) and is the main trade body for Spanish independent producers.
6. The companies’ register was accessed via the Iberian balance sheets analysis system (*Sistema de Análisis de Balances Ibéricos* [SABI] in Spanish) prepared by Bureau van Dijk.

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