DOCUMENTARY FILM COUNCIL

Documentary Film Council response to DCMS Inquiry into British Film and High-End Television

18/10/2023

The Documentary Film Council (DFC) is a new sector-wide organisation for the UK's independent documentary film industry that launched at Sheffield DocFest in June 2023. Owned and run by and for its members, the DFC has been developed in consultation with all the major organisations in the field[1] and hundreds of filmmakers working in partnership with UKRI-funded researchers. It is the first democratic, sector-wide body for the UK's independent documentary film industry and is designed to provide the sector with an organisation that has the remit and the resources to act on its behalf, and which is accountable to those it represents. It is a member-led charitable co-operative (the first of its kind in the UK screen industries), with a board elected by its membership.

This document has been developed by the DFC interim board and leadership team and is based on a survey of members' responses to the key questions posed by the CMS Committee. It also draws on findings from both the UKRI-funded 'UK Feature Docs' research project (2018-21) and the DFC's first 'Open Assembly' in June – a facilitated workshop in which 200 leading documentary filmmakers and executives were consulted on the challenges facing the sector.

We have organised our submission according to the key questions as set out in the Inquiry's Terms of Reference. However, many of the specific issues and concerns outlined below are underpinned by fundamental problems to do with the marginal position of documentary within the wider landscape of UK independent film. Over the past two decades, documentary has evolved into a distinct part of the global screen industries and is now a small but important part of the UK's independent film sector. Independent documentary encompasses an astonishingly diverse range of films and plays a major role in reflecting the lives of British people across the UK and in maintaining an informed population. Yet there is a widespread feeling across the independent documentary sector that it is poorly understood by policymakers in both film and television alike and that the unique needs of this sector have been overlooked as a result.

We would therefore like to emphasise the following points as part of our submission of evidence.

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[1] These include Docs Ireland, BBC Storyville, Doc Society, Guardian Docs, Sheffield DocFest, the Grierson Trust, Scottish Documentary Institute and The Whickers, as well as many more organisations that work with documentary alongside other forms of moving image.

1. Documentary is a unique and distinct part of the independent film sector that operates differently to fiction film.

Arguably the most fundamental problem facing independent documentary in the UK at present is that many policymakers outside or on the margins of this field do not understand that this sector is a unique and distinct part of the independent film industry, with its own models and modes of finance and production that do work in the same way as those for fiction film. Because of documentary's unique relationship with the real world, policy frameworks designed for fiction are often inappropriate for documentaries.

Similarly, independent documentary also differs from factual television and formatted entertainment. This too is often not well understood by non-specialist policymakers, who frequently fail to see the difference between independent documentary producers and major factual true-indies, owned-indies, super-indies or even streamers. This results in different parts of the nonfiction film spectrum - say, true crime series or factual-entertainment formats - being misunderstood and conflated with one another, which further hinders understanding of the independent documentary space and sometimes actively threatens it (as illustrated by the recent Treasury-proposed changes to the documentary for tax credit regulation which, as noted below, would actually prevent many independent documentaries from qualification).

2. Defining independent documentary is key to developing effective systems of support.

Creating a working definition of independent documentary and building shared understanding around that is therefore urgent and essential given that it will underpin any more specific policy initiatives designed to support the sector. Defining independent documentary is notoriously challenging because of the complex ways in which these films come into being and the diverse formal and aesthetic qualities they can possess. However, a working definition might define independent documentaries as:

> Films that claim to directly represent the real world and that are produced by independent production companies which retain editorial control and are not owned by super-indies, studios or other larger groups. These films are produced outside of television commissioning structures and financed by a range of sources that may include broadcasters, streamers and other minority partners. They have feature-length running times and are intended for theatrical release.

According to this definition, independent documentaries would fit the description of 'Fully independent films' as defined in the BFI's *Economic Review of UK Independent Film* (2022, p. 17).

3. Bespoke policy frameworks are needed to create optimal conditions for independent documentary to flourish.

Because of the unique nature of independent documentary, bespoke policy frameworks are required to create the optimal conditions this part of the independent film landscape needs to thrive. Sometimes, this may require only very minimal changes to mechanisms designed for fiction, at other times documentary may require entirely separate consideration. But unless independent documentary is understood as a separate and distinct ecosystem from that of independent fiction film, with its own set of needs and models of production, distribution and exhibition, it will not be possible to create the conditions required for it to flourish. Recent UKRI-funded research has begun the process of developing bespoke policy initiatives tailored to documentary, but cultivating and maintaining policy agendas is a constant process that depends on independent documentary being recognised as a sector in its own right (see no. 1, above).[2]

4. Designing effective policy requires regular research and robust datasets.

Evidence-based policy depends on robust and regular data collection. Yet too often, data on the independent documentary sector is merged with data on factual television or independent film and/or is not isolated to the UK. The BFI Statistical Yearbooks are an ideal means to address this. They are an immensely valuable source of information but at present data on documentary focuses largely on box-office and the number of releases. Capturing data on areas such as employment; import and export; the leading production and distribution companies; exhibition across the Nations and English regions; projects qualifying for tax relief; and the proportions of production and distribution funding from different sources, would help develop a much more detailed understanding of the sector and the kinds of policy mechanisms that could support it more effectively.

5. Independent documentary is chronically under-funded.

Chronic under-funding is a central issue in the independent documentary sector and is directly related to myriad other problems that plague this part of the independent film industry. Without a significant increase in the selective funding for documentary – for production (especially development) but also for distribution and exhibition – it is simply not possible to address the very serious challenges facing this sector in any coherent, meaningful way.

Furthermore, the existing UK Film Tax Relief is a key part of the funding model for independent documentary but there are several elements of this that hinder documentary filmmakers from

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[2] See *Making it Real: A policy programme for UK documentary film* (Presence et al 2021).

applying. Arguably chief among these is the rule that principal photography must not commence before an application is made. Many documentaries are shot over a period of several years, well before the filmmakers are able to define what the finished film will be. Although there are ways around this rule that involve licensing footage shot before the application to a new company that makes the FTR application, this is complicated and disincentivises documentary filmmakers from accessing the FTR and developing international co-productions on the basis of it.

While we would therefore recommend a number of amendments to the current tax relief system, we believe that a more suitable approach we would be to develop a dedicated Documentary Tax Relief, as already exists for other small but culturally vital sectors in the form of the Animation Tax Relief (2013) and the Children's Television Tax Relief (2015).

How attractive is the UK as a global destination for the production of film and high-end television?

The UK is a highly attractive destination for film and HETV production. A highly-skilled English-speaking talent pool, a range of world-leading facilities and an effective and relatively straight-forward tax relief system are all major assets that the UK offers international partners. These are all key factors in the record levels of inward investment we have seen in the UK in recent years. Indeed, in 2022, inward investment accounted for almost 88% of the total spend on UK film and 84% of the spend on HETV – the highest levels ever recorded (BFI Statistical Yearbook, 'Screen Sector Production', 2022). However, a policy framework in which production is based largely on inward investment from the US has placed significant pressure on the independent film sector, of which documentary is a part, and which impacts on the documentary sector in distinct ways.

What are the barriers to maintaining and increasing overseas investment in the sector?

In the context of documentary, attracting 'overseas investment' means attracting international co-production partners, accessing grant funding and securing international sales. Long-standing under-investment in the UK independent documentary sector seriously limits the co-production possibilities available to UK producers. Because they are able to offer so little compared to many international partners, UK producers and production companies frequently become minority partners in international co-productions or struggle to get them off the ground at all. International partners for UK documentary co-producers have also reported finding the requirements for UK co-productions difficult to meet, citing cumbersome paperwork and other bureaucratic processes that make the UK stand out from other territories.

Because the state of the UK's independent documentary sector is so poorly supported, British producers often find that their international partners' expectations of what they can bring to the table are unrealistic. This also highlights the stark contrast between the outside perception of a healthy film and television industry (which as noted, is attracting record levels of inward investment) and the much tougher reality of the independent (documentary) sector.

A further barrier to international investment for the documentary industry is that British producers can lack experience of raising private and philanthropic investment. This is partly due to the prominent role of public service broadcasters (PSBs) in the UK, which from the post-war period to the early 1990s, fully-financed a range of documentary as part of their public service obligations. British producers therefore did not need to navigate private and philanthropic sources to fund their work (and those sources are therefore equally unused to working with filmmakers). This is in stark contrast to the US, where foundations and filmmakers have much more long-standing relationships and processes. For example, filmmakers cited in the UKRI-funded *Keeping it Real* report, which surveyed 200 leading independent feature documentary producers and directors, described private finance in the UK as 'opaque and inaccessible' in contrast to the 'network of passionate documentary philanthropists and donors in the US' (Presence et al, 2020, p. 38).

What are the benefits and challenges of overseas investment for the UK's film-making capacity?

Overseas investment boosts employment opportunities but more support is needed to ensure skills retention and further training of local talent, and to make use of in-house staff and production crew to work towards more sustainable productions both environmentally and financially. In terms of facilities, there is a need for increased studio capacity and for Film Offices to handle location enquiries. It was felt that some of these issues are already being addressed by regional initiatives currently in development but that this was uneven, and that there is a need for more cohesive measures across the Nations and English regions.

As noted above, a major challenge for UK documentary filmmakers is gaining increased domestic support so that British producers are better able to develop international co-productions. There is a vital need to address the failure of non-specialist policymakers to understand how this sector operates, the ways in which it is distinct from both independent fiction film and factual television production, and the extent of its cultural and economic contribution to the UK screen industries (the films are generally much cheaper to make that fiction films, generate funds in a range of ways beyond theatrical box office and also make a range of other economic contributions, such as providing training and early career development opportunities for emerging talent).

What are the current challenges facing the UK's independent film production sector?

One of the principal challenges facing the UK documentary film production sector is the extremely limited amount of funds available. The sector is starved across the value chain but the need for increased production funding – especially for development – is particularly acute. A striking indication of this is the *Keeping it Real* report's finding that 'filmmakers' own funds' were the most frequent source of funding in this sector (Presence et al, 2020, p. 39).

Under-funding from public sources has also been compounded by the decline of the pre-sale market as a result of dwindling DVD sales and fees from international broadcast licenses. DFC members surveyed for this inquiry reported that there is currently 'little to no pre-buying' in the market, suggesting that this previously vital source of funding now no longer exists. This places even more importance on the three principal sources of public film funding – the BFI, the BBC (BBC

Film) and Channel 4 (Film4) – and yet BFI funds have been cut and PSB finances are under more pressure than ever before.

Funding for independent documentaries in the UK is also significantly below the opportunities available in continental Europe – to such an extent that conditions in the UK's independent documentary sector are often met with incredulity from partners in France and Germany, for example (when interviewed for the [UK Feature Docs] project, a documentary commissioner at ARTE France noted their annual budget was more than four times that for BBC Storyville, the last remaining broadcast strand for independent documentary on British television).

These problems impact on the sector in different ways but they are particularly challenging for small independent producers, and this only enhances the dominance of the major players. For example, respondents to this inquiry emphasised the need to find ways to ease some of the reporting demands on smaller companies, with reporting requirements for broadcasters noted as particularly challenging. These can be easily met by the larger production companies and super-indies but place intense pressure on staff workloads at smaller independents. Similarly, respondents noted that these wider market pressures had caused the distribution sector to become 'depressed and risk averse', and that an larger number of finished films than normal are not finding audiences. Again, independent businesses and emerging filmmakers are particularly impacted by these problems.

The challenges UK producers' face in working with international partners have been severely compounded by the fact that the UK is no longer in the EU. As is widely known, the Global Screen Fund's £7m per year is hardly a replacement for the €70m in investments, grants and distribution support provided by the MEDIA programme in the 2014-2020 funding period. Significantly increasing the GSF resources should be a priority.

More specifically for the independent documentary sector, there is also fairly widespread concern at the lack of coordination among documentary film funders. This was a key finding of the UK Feature Docs project and was reiterated by DFC members contributions to this inquiry, who argued, for example, that 'documentary sector financing is not at all joined up'. Some of the respondents noted a lack of transparency with regards to what support exists and how to access it.

<u>What is the demand for and capacity for production of films with a clear British identity?</u>

The wider documentary sector is driven by commercial criteria, with formatted and factual entertainment, true crime and celebrity-oriented television dominating the market. Along with studio-backed blockbusters and series, this further reduces the space required to produce independently made documentary, which is where some of the most distinctive, regional and diverse voices in British film culture can be found. Documentary punches significantly above its weight in this respect, as indicated by producers and directors such as Ella Glendining (*Is There Anybody Out There?*), Kim Hopkins (*A Bunch of Amateurs*), Andrew Kötting (*The Whalebone Box*), Kim Longinotto (*Dalton's Dream*), Kat Mansoor (*Cow*), Sean McAllister (*A Northern Soul*), Andy Mundy-Castle (*White Nanny, Black Child*), Elhum Shakerifar (*A Syrian Love Story*), Paul Sng (*Tish*) and Saeed Taji Farouky (*A Thousand Fires*), to name but a few.

Are the nations and regions of the UK adequately represented and supported in the production of British films?

When it comes to documentary, there is widespread concern regarding inconsistent provision across the nations and regions. Documentary filmmakers in Scotland and Wales are perceived as being much better supported than the English regions. Northern Ireland Screen invests mainly in fiction, with non-fiction oriented towards television productions, and contributions to budgets are generally low. However, provision for documentary in Northern Ireland is not well understood on mainland Britain (and vice versa), and there is a need to build a much better shared understanding of the differing conditions and support for independent film (including documentary) across the UK. Some members reported 'quite aggressive repayment terms' from some of these national bodies and noted that this had made it difficult to secure additional investment in their projects.

What more can be done to incentivise film and high-end television production in the UK?

The UK's PSBs play a crucial role in the independent film landscape and in our wider media culture. It is essential that we revitalise our PSBs and support the BBC and Channel 4 as well as the commercial PSBs (ITV and Channel 5) to maintain and enhance their vital role in society: serving the British public with the range of universally accessible 'content' that people need to be informed, engaged and active citizens, and which reflects both our own culture and values and those of the wider world in which we live. At a time when democratic processes all over the world are being undermined by new models, technologies and political forces, future-proofing our PSBs should be among the government's highest priorities.

With regards to documentary, enhancing obligations on PSBs to support a specific number of independent documentary films (as distinct from commissioned factual, formatted and factual entertainment programmes) would be a clear way of incentivising the production of this kind of work. As noted, BBC Storyville is now the only dedicated platform for independent documentary on British television (and its budget of less than £1m is widely known to be inadequate). Developing equivalents at each of the PSBs would be a major step forward (and yet relatively low cost compared to initiating similar support mechanisms for drama).

In addition to bolstering PSBs, it is urgent that the government also regulates global streaming platforms in ways that support our independent screen industries. Many European countries are currently introducing regulations on streamers that operate in their territories which, for instance, require a proportion of work available on that platform to be produced in that territory (i.e., a quota) or which oblige the platform to contribute to a selective fund that can then be used to support independent work (i.e., a levy). A levy is by far the most preferable option because it results in much greater freedom and flexibility with regards to the kind of work the fund can be used to support. We badly need regulation like this in the UK. Were it to be introduced, a proportion of the fund should be ring fenced for independent documentary.

As noted, addressing the various problems that inhibit documentary filmmakers from accessing the Film Tax Relief would be valuable. It is also particularly urgent that the recent change to the definition of documentary proposed by HMRC, which would actually exclude many independent documentaries, is not adopted.[3] Consultation with representatives from the independent documentary sector – not super-indies or streaming platforms – should take place to ensure this is done as carefully and constructively as possible. Furthermore, and as noted above, the introduction of a dedicated Documentary Film Tax Relief to accompany the Animation Tax Relief (2013) and the Children's Television Tax Relief (2015) would be the most significant intervention in this respect.

Reframing the role and cultural value of independent documentary as a charitable activity and as serving the public interest could open up further avenues for funding, though more research is needed to explore this and the various safeguards that would be required (such as ensuring it could not be exploited for commercial gain or by overseas entities, and including a cap on any non-charitable funding in a given project, for example).

<u>Are the current funding routes, tax credits and governance for the industry fit for purpose?</u>

The UK independent documentary sector has been in a state of crisis for some time, owing largely to chronic underfunding across the value chain. This was evidenced in several ways during the UK Feature Docs project – via interviews with producers, commissioners, distributors, sales agents and exhibitors as well as filmmakers; surveys of producers and directors; focus groups and so on – and was emphasised again by the DFC members surveyed for this inquiry. Moreover, there is a widespread sense that this crisis is poorly understood by policymakers outside the sector, who perhaps understandably assume that some of the high-profile success stories at the commercial end of the nonfiction spectrum mean that the entire documentary ecosystem is booming. In fact, the sector has split into two unequal halves. As one respected producer reported to the UK Feature Docs project:

> There are two parallel industries running now – the high-end celebrity filmmakers/celebrity subject world, and then the smaller work made by piecing together tiny sources of funding. There is a 'golden age' if the first industry is considered. Otherwise, it is very much getting harder.

Under-funding of independent documentary has eroded capacity in the sector. Too few resources are concentrated in too few, mainly London-based organisations (whom research participants nonetheless often credited for doing 'great work' despite their limited resources), and this has resulted in the concentration of decision-making power, a lack of transparency and poor coordination between both regions and nations and between production, distribution and exhibition.

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[3] The proposed definition specifically excludes programmes where significant elements have been 'arranged for the purposes of the programme' or which include depiction of events by 'one or more persons playing roles'.

The emergence of the DFC is itself a recent attempt to try to mitigate some of these governance problems in our part of the independent film industry. Designed in collaboration with all the existing organisations in the sector as well as hundreds of filmmakers, the DFC is designed to provide the independent documentary sector with democratic national body that is run by and for its members. Generating a shared national understanding of the independent documentary sector and how to address the challenges it faces requires a national organisation with the remit to do that work. However, as with the rest of the sector, the DFC faces serious funding challenges. Having been set-up with support from a seed funding grant from the Arts and Humanities Research Council, the DFC is struggling to find even the basic resources to cover its costs as it enters its first three year terms from 2024-6.

What are the issues facing the UK's film exhibition sector?

The independent cinema sector faces a major economic threat. Our colleagues in exhibition are better placed than us to demonstrate this to the inquiry but we would like to emphasise that we fully recognise the crisis that is unfolding in the exhibition sector and urge the government to do all it can to address it.

We would also like to emphasise the vital role that exhibition (and distribution) play in the wider industry and culture of independent film. Production, distribution and exhibition are intrinsically linked and the independent film ecosystem cannot function effectively unless each stage of the value chain is operating effectively. Moreover, passion for cinema – particularly independent cinema – so often begins *in* the cinema. Theatrical exhibition is still by far the best way to engage with cinema. The exhibition sector is in this respect at the very heart of our independent film industry, despite the more common assumption that the value chain begins with production.

Independent cinemas also frequently provide the vital first platform for new and diverse filmmaking talent, across both film and documentary, who then go on to find wider success with more mainstream audiences and exhibitors. Filmmakers such as Clio Barnard, Jeanie Finlay, Asif Kapadia and Stevan Riley all established their names in independent cinemas before finding wider success. Finlay, one the most prolific and successful British independent documentary filmmakers working today, edits her work at Nottingham's Broadway cinema (where her production company is also based) and is a passionate advocate for the venue, for its impact on her career, and on the wider role it plays in the community. Finally, it is also well known that theatrical release is a key revenue driver across subsequent windows and platforms. Protecting theatrical distribution for independent cinema is thus a key means of preserving and protecting revenues across the independent film value chain as a whole.

In terms of the independent documentary's sectors specific concerns, these primarily relate to familiar issues to do with protecting the space for documentary within a market crowded with studio-backed US cinema in the multiplexes and, in the independent sector, a similarly crowded release schedule that is supported by far fewer sites and screens across the UK. Several proposals to support the distribution and exhibition of independent documentary were developed during the UK Feature Docs project consultation. These were subsequently published in the *Making it Real* report and range from ideas to involve distributors at earlier stages of production, enhancing access to films from the festival circuit and working with the BFI's Film Audience Network and DFC membership to build audiences in the nations and English regions (Presence et al, 2021, pp. 52-60). The DFC is working on these plans but, as noted, we are also struggling to fund our organisation, and developing initiatives to support documentary will be very difficult when much of the independent exhibition sector itself is struggling to survive.

What more can be done to protect and promote the UK's screen heritage?

Documentary is an ideal form with which to promote the UK's screen heritage. Archival documentary has proven to be one of the most compelling and commercially successful documentary modes of recent years. Films such as *Diego Maradona* (2019), *They Shall Not Grow Old* (2018), *Amy* (2015) and *Searching for Sugarman* (2014) have all demonstrated the power of archival documentary filmmaking. Despite this, a range of issues inhibit independent documentary filmmakers' access to the archive.

These problems are political and aesthetic as well as practical and economic because they condition who can access and engage with the UK's screen heritage and who cannot. Section seven of the *Making it Real* report was developed in consultation with archive producers and academic specialists in film archives and intellectual property policy, and focused specifically on addressing barriers to archive use in independent documentary. Two key recommendations from the report were also emphasised by DFC members in the preparation this submission to the inquiry:

- Develop a code of practice for fair use:
  In the UK there is ambiguity regarding copyright exceptions and what constitutes 'fair use' when it comes to reusing protected material. Such a code exists in the United States, where it has been developed in collaboration with archival institutions, copyright lawyers and filmmakers and which has helped establish a set of legal precedents for fair use. We urgently need to develop such a code in the UK.

- Develop a scaled rate card:
  Access to archive is prohibitively expensive to all but the most well-resourced projects (the budget for *Amy* was $3.4m; 84% of those surveyed for *Keeping it Real* typically worked with budgets of less than £500,000, often much less). This is a major barrier to promoting screen heritage and has significant implications for diversity and inclusion given that only the most privileged filmmakers can produce archival documentary. A scaled rate card which enabled independently financed productions to secure discounted access would result in more frequent and equitable access to and use of screen heritage.

What can the industry and Government do to ensure British film and high-end television can adapt for the future?

What should be prioritised to ensure a strong skills pipeline and retention in the film and high-end TV industry?

Our members stressed how difficult it is to build sustainable careers in the independent documentary sector and called for more documentary specific training from ScreenSkills and more structured support into the industry. Closer relationships between Higher Education Institutions (HEIs) and the key documentary organisations was emphasised as one means of improving this.

What are the risks and benefits of artificial intelligence to the sector?

There has been very little research to-date on the implications of AI in the documentary sector, though this clearly an urgent priority. While the SAG-AFTRA strikes have highlighted some of the very serious threats AI poses to onscreen drama talent, AI will have a range of unique risks and benefits that are particular to nonfiction filmmaking. This research should be funded as a matter of priority.

What needs to change to ensure the industry is supporting inclusivity and sustainability?

Addressing the concerns highlighted above regarding the lack of understanding of the independent documentary sector and its extremely precarious financial ecosystem would help increase inclusivity and sustainability. Without these kinds of structural, systematic interventions, standalone diversity initiatives are swimming against the tide.

One key initiative that the DFC has undertaken – which was funded as part of its seed-funding grant – was the creation of a documentary Talent Directory. Despite large, commercial databases such as The Knowledge or Talent Manager, no crew database existed for the UK independent documentary sector in the UK (though documentary specific databases such as . Brown Girls Doc Mafia or the A-Doc Crew Database exist in the US). The DFC Directory is designed to raise the profile of the workforce in this sector and to make it easier to recruit people from under-represented backgrounds.

Other recommendations developed during the UK Feature Docs project sought to build on existing measures, such as developing distinct diversity targets for the nations and regions that recognise demographic variations, or developing a Diversity Standards Liaison role to help filmmakers improve representation on their productions and ensure the BFI's Diversity Standards are being met (for more information on these proposals see Dr Clive Nwonka's report, *Race and Ethnicity in the UK Film Industry*). Research has also indicated that there is a need to collate, monitor and evaluate existing diversity and inclusion initiatives run by individual organisations across the sector, which are generally not well coordinated.