

It shouldn't get the money if it doesn't have the mix.

A modest proposal to enrich our film culture and improve social mobility by increasing diversity in film employment.

V6/TI/FDAG/November 2018

Executive Summary

- The creative industries in the UK are already successful. Were they more diverse, they would be more successful still. Diversity encourages talent and creativity.
- The majority of film production jobs (69%) are in London and the South-East, which is 40% black, Asian and minority ethnic (BAME). Yet BAME personnel account for just 3% of the workforce in film production.
- The threshold criteria for the UK government's tax credit for film investment should be extended to include an overarching requirement for BAME employment.
- Within six years a minimum of 15% BAME employees should become the prerequisite standard for each qualifying film production. Within twelve years it should become the standard for each below-the-line department.
- Enabling measures, backed by all responsible agencies and interested parties, need to be taken in education, training, recruitment and staff development to ensure a supply of suitable BAME candidates for employment.
- This proposal is compatible with BFI Diversity Standards and with talent inclusion riders but goes beyond both by targeting BAME employment specifically, which is too often by-passed in the

pick-and-mix menu of diversity aspirations. Our proposal is also applicable to all productions seeking the UK tax credit, not just those funded directly by the BFI.

- For monitoring in the first six years of the scheme, a simple headcount of all those employed by reference to the audited cost statement (accountant's report), as required under Schedule 1 of the Films Act 1985, set against the number of those so employed who self-identify as BAME, would suffice.
- The achievement of the proposal's aims would encourage new talent, foster greater creativity and make the UK film industry more competitive.
- It would address the yawning skills gap in our fast-growing industry.
- In addition, it would advance government policy as expressed by Rt Hon Matt Hancock MP when he was Minister of State for Digital and Culture. He said then: "On becoming Minister... I made expanding access and diversity one of my top priorities. It is a central tenet of this Government that everyone, from every background, of every colour and identity, from every part of the country should have equal chance to succeed."

1. The UK excels in creativity.

One of the most successful sectors of the UK economy in recent decades has been the creative industries. In 2015, the sector contributed £87.4bn to the UK economy and was responsible for 5.3% of UK gross value added. With growth of 34% since 2010, the creative industries grew at twice the pace of the underlying economy¹.

Since the advent of digital technologies in production, distribution and consumption - and the concomitant growth of online games, mobile entertainment and social media platforms - the economic importance of the creative industries has significantly increased².

Bound up with their economic contribution, the UK creative industries also have profound cultural and social impacts, not just in communities across the whole country but overseas, where UK films,

¹ Creative Industries Economic Estimates, Department for Culture, Media and Sport (DCMS) January 2016.

² The creative industries are now widely recognised as a driver of UK jobs, innovation and growth. According to statistics from the DCMS, in 2015 they accounted for 1.9 million jobs. Creative industries GVA grew by 8.9 per cent between 2013 and 2014 while creative industries jobs grew by 5.5 per cent (compared with 2.1 per cent in the UK workforce). In addition to driving economic growth directly, the creative industries make indirect contributions to the economy by supplying other sectors with creative production inputs such as advertising, design and software. Creative jobs, with their typically high levels of discretion and unpredictable outputs, will likely continue to be in high demand. NESTA research suggests that UK creative jobs are three times less likely to be at risk of future automation than those in the rest of the workforce.

television programmes, literature and art have an influence – measured by audience ratings, awards and revenues – significantly out of proportion to our population and the size of our economy³.

Hence, it is no surprise that the government has recognised that the creative industries have a key role to play in the industrial strategy of the UK.⁴

2. The creative industries do not excel in diversity.

Despite their track record of success, the UK creative industries suffer from a key weakness that constricts their access to talent, their creativity and their connection with the audience. This weakness is the lack of diversity across all segments, all roles, in every department and in every employment grade. Work is being done elsewhere on the gender imbalance in film, in which respect we recognise that there is still a very long way to go; imbalance in respect of sexual orientation and disability have to go even further. What concerns us here is the imbalance in ethnicity.

Cultural economists of all political and philosophical persuasions are agreed that creativity depends in large part on the vitality of the communities in which it arises, as evidenced by the intensity of creative competition, cross-fertilisation of ideas and conjunctions of influence⁵.

³ According to the BFI Statistical Yearbook, of the top 200 global box-office successes since 2001, 34 were based on stories and characters created by UK writers. Among these works were *Harry Potter*, *The Lord of the Rings*, *James Bond*, *Alice in Wonderland*, *The Hobbit* and *The Jungle Book*. In 2017, UK-made films captured 21% (\$8.1bn) of the global theatrical box-office. 80% of the top 200, live-action films released worldwide since 2001 have featured UK actors in lead or prominent supporting roles. UK directors were behind 28 of the 200 biggest-grossing films since 2001, with *Harry Potter* director David Yates topping the box-office lists. UK films and talent won 33 major film awards in 2017/18, including six Oscars and 15 BAFTAs.

⁴ In January 2017, the government issued a green paper on industrial strategy, focusing on “the long-term challenges to the UK economy” with the aim of “improving living standards and economic growth by increasing productivity and driving growth across the whole country”. Introducing the green paper, Secretary of State Greg Clark called for UK industry to “build on our strengths and extend excellence into the future”. The green paper gave high priority to cultivating world-leading sectors. One of the five sectors thus identified was the creative industries, of which film is a leading component. In this regard and as part of the consultation process, Sir Peter Balzalette was tasked with undertaking a creative industries’ review to support sector-deal proposals put forward by the Creative Industries Council and others. Sir Peter’s inquiry focused on three strands: new technology, intellectual property rights and talent pipelines. Sir Peter’s findings in respect of the last of these clearly highlighted the difficulties faced by unprivileged social groups, including ethnic minorities, and the damaging consequences for the creative sector as a whole.

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/649980/Independent_Review_of_the_Creative_Industries.pdf).

⁵ David Stark, the Arthur Lehman Professor of Sociology at Columbia University, studied the teams behind 12,422 video games released worldwide from 1979 to 2009, and found the most innovative teams were built around diverse experiences and knowledge, comprised of people who had experience working together but different knowledge and skills. His findings show that diverse expertise helps them avoid the pitfalls of “groupthink.” In other words, the cognitive distance of diversity creates a productive friction in teams. “It is this uneasy fit, a lack of harmony, which is innovative,” said Stark. “It is a mobilization of productive tension to create something exceptional.” Charles Leadbetter in *The Difference Dividend: why immigration is vital to innovation* (NESTA 2008) writes: “...Immigrants are outsiders who can often challenge the establishment with ideas that might have huge potential value. The diversity of ideas and insights that immigrants bring make a society richer... Closed and

Put simply, diversity encourages talent and creativity. The creative industries in the UK are already successful: were they more diverse, they would be more successful still.

3. Film has a particular problem

The various segments of the cultural industries do not present a uniform pattern of diversity⁶. Music offers a different profile from that of television or publishing, both of which, in turn, are different from film. Various segments have schemes for encouraging diversity, some more successful than others and many still to prove themselves. But in film the problem of lack of diversity is particularly acute.

homogenous societies... can become myopic and prejudiced and so fail to spot vital ideas that come from unusual sources. Even a society full of very bright and able people can behave very stupidly... How the UK makes the most of the diverse talents of its population will be critical to innovation." Max Nathan, LSE, in *After Florida: towards an economics of diversity* (2015) writes: "Diversity may help raise productivity and wages through innovation, entrepreneurship, market access and trade channels. Bigger, more diverse cities help generate hybridised goods and services". Nathan's paper was a response to the popular and influential work of Richard Florida, whose best known work *The Rise of the Creative Class* (2002) observes that an appropriate response to changing urban demographics might be to frame diversity as a source of urban competitive advantage. Several European studies cited by Nathan also link cultural diversity with ideas generation. Parrotta et al. (2011) find positive effects of workforce cognitive and cultural diversity on Danish firms' patenting rates. Studying London firms, Nathan and Lee (2011) find that management and workforce diversity help raise product and process innovation. The creative benefits of multiculturalism and social hybridity have been studied by Gilroy (2004), Legrain (2006), Putnam (2007), Fanshawe and Sriskandarajah (2010) among others, while arguments supporting the 'intercultural' or 'mongrel city' approaches to social policy can be found in Sandercock (2003) and Landry and Wood (2008). According to the McKinsey report *Why Diversity Matters* (2015), companies in the top quartile for racial and ethnic diversity are 35 percent more likely to have financial returns above their respective national industry medians. Companies in the bottom quartile both for gender and for ethnicity and race are statistically less likely to achieve above-average financial returns than the averagely diverse companies in the data set (that is, bottom-quartile companies are lagging rather than merely not leading). In the United States, there is a linear relationship between racial and ethnic diversity and better financial performance: for every 10 percent increase in racial and ethnic diversity on the senior-executive team, earnings before interest and taxes (EBIT) rise 0.8 percent. Racial and ethnic diversity has a stronger impact on financial performance in the United States than gender diversity, perhaps because earlier efforts to increase women's representation in the top levels of business have already yielded positive results. While certain industries perform better on gender diversity and other industries on ethnic and racial diversity, no industry or company is in the top quartile on both dimensions. The unequal performance of companies in the same industry and the same country implies that diversity is a competitive differentiator shifting market share toward more diverse companies.

⁶ According to ONS data, overall 11 per cent of jobs in the UK creative industries were filled by black, Asian and minority-ethnic (BAME) workers in 2014, a similar level to the UK economy as a whole. (BAME accounts for about 13% of the UK population and 10% of the UK workforce.) Between 2013 and 2014, there was a 12.5 per cent increase in the number of BAME workers in the creative economy. The increase for the white British group was 4 per cent. The number of BAME workers in the creative industries increased by 8 per cent between 2013 and 2014 (and by 34.3% since 2011), compared with a 5.1 per cent (14.7% since 2011) increase for the white British group. These headline statistics, while encouraging, do not give insight into the particulars of employment by sector, grade or function nor do they tell us anything about geographical concentration. The creative industries are heavily concentrated in London, where BAME accounts for 40% of the workforce and where we would expect BAME employment to be correspondingly that much higher.

The UK film industry embraces film development, production, post-production, special and visual effects, finance, sales, distribution, exhibition, merchandising and licensing as well as a host of ancillary and service businesses which supply the above. The industry includes major production centres such as Pinewood Studios, an entrepreneurial community of independent producers in Soho, independent distributors and sales agents and the subsidiary divisions of the Hollywood studios. It generates about £7.7bn of revenues and directly employs about 45,000 workers⁷.

The majority of film production jobs (69%) are in London and the South-East⁸. A large proportion of jobs in production, sales and distribution, as well as animation and visual effects are concentrated in the capital, with only the exhibition sector being more geographically dispersed. The London workforce is about 40% black, Asian and minority ethnic (BAME)⁹. Yet BAME employment in film overall is around 4.4%¹⁰ and in film production is just 3%¹¹.

4. Is the lack of diversity really an issue?

Leaving aside for the moment the ethical and moral issues of fairness and equality of opportunity, the ineffectiveness of the actions taken thus far by the various responsible agencies might suggest that the

⁷ According to the BFI Statistical Yearbook 2017, the UK film economy contributed £5.2bn to the UK's GDP in 2015. The UK film sector exported £2bn of services and ran a £1.2bn trade surplus. In 2015, the UK film industry had a turnover of £10.2bn. A 2012 study by Oxford Economics estimated that the core UK film industry directly generated 43,900 full time equivalent (FTE) jobs and contributed £1.6 billion to national GDP. In employment terms, the industry is larger than fund management and the pharmaceuticals manufacturing sector. Furthermore, the overall trend is very positive with employment increasing since 1995, mirroring film production levels (which have risen particularly as a result of inward investment). Overall, when considering the film industry's procurement, spending effects from those directly and indirectly employed and its contribution to UK tourism, trade and merchandise sales, the core UK film industry supported a total of 117,400 FTE jobs, contributed over £4.6 billion to UK GDP and over £1.3 billion to the Exchequer (gross of tax relief and other fiscal support) in 2011.

⁸ Creative Skillset workforce survey, 2015.

⁹ [https://www.creativeindustriesfederation.com/sites/default/files/2017-06/30183-CIF%20Access%20&%20Diversity%20Booklet_A4_Web%20\(1\)\(1\).pdf](https://www.creativeindustriesfederation.com/sites/default/files/2017-06/30183-CIF%20Access%20&%20Diversity%20Booklet_A4_Web%20(1)(1).pdf)

Data from 2011 Census covering population classified as in employment (including employees, self-employed, and students). Figures for England and Wales available from: <http://ons.gov.uk/ons/rel/census/2011-census-analysis/ethnicity-and-the-labour-market/rft-bd0076-economic-activity-by-ethnicity-sex-and-age.xls>. Figures for Scotland available from: <http://www.scotlandscensus.gov.uk/>. Figures for Northern Ireland available from: http://www.ninis2.nisra.gov.uk/Download/Census%202011_Excel/2011/DC2601NI.xls.

"London is one of the most diverse cities in the world, with over 300 languages spoken and 40 percent of Londoners from BAME backgrounds." - Mayor outlines new work to help London's BAME communities thrive 29 November 2017. <https://www.london.gov.uk/press-releases/mayoral/mayors-new-work-to-help-bame-communities-thrive-0>

"Just over 3.8 million of London's residents (44%) are of a black and minority ethnicity origin, which is expected to increase to 50% by 2038" www.bbc.co.uk/news/uk-england-london-31082941
<https://qz.com/337508/london-has-more-people-than-ever-and-44-are-ethnic-minorities/>

¹⁰ "Workforce Diversity in the UK Screen Sector", evidence review, University of Leicester, March 2018.

¹¹ Creative Skillset workforce survey, 2015.

lack of diversity has not been seen as a significant problem. The issue has been flagged up in numerous reports in recent years¹² but the measures taken to rectify it have proved singularly unsuccessful¹³.

In defence of the status quo, it is said that,

- There are cultural affinities that lead certain ethnic or social groups in certain circumstances to favour certain occupations and this cannot be gainsaid by public policy. It is also argued that such affinities can have the effect of creating functional elites that are able to maintain high standards and thereby serve the general good.

- Affinities have their corollary in the lack of enthusiasm that certain groups in certain circumstances feel towards certain occupations. It has been observed, for example, that among Asian families there is a general aversion towards careers in the arts.

- Economic reality impels film-makers towards subjects and storylines that appeal to the largest single segment of the potential audience. That segment is 16 – 34 years old and mostly to be found in social class ABC1¹⁴. Mainstream movies, in other words, are contained within a demographic ghetto that excludes the less well off, the old and the very young as much as it does members of ethnic minorities. In these circumstances, it is argued, the under-representation of minorities in film and hence in film employment is unfortunate but to be expected.

¹² The BFI, PACT and Creative Skillset have all commissioned research into diversity of employment and each has developed a diversity strategy. In 2000, the British Screen Advisory Council, at the request of Chris Smith, Secretary of State at the DCMS, set up a Committee for Ethnic Minority Employment in Film. The Committee delivered its report, *Achieving Diversity in the Film Industry*, and set out a five-year programme to implement six measures: i) sensitise the industry and raise awareness with information, events, careers advice and the development of role models, ii) monitor diversity with annual audits, iii) set up meaningful training, education and mentoring schemes, iv) establish an employment database with online visibility, v) establish a voluntary code for training, education, monitoring and reporting, backed by the provision of bursaries and scholarships, and vi) agree industry-wide targets. This programme was widely supported in the industry, including by representatives of the Hollywood studios. The report was passed to the then newly formed Film Council. Eighteen years later, none of its recommendations has been implemented and, while piecemeal progress has been made in some quarters and on some subjects (for example, the efforts of the BFI and others have significantly raised awareness), the level of BAME employment languishes exactly where it was.

¹³ In 2016, the British Film Institute established Diversity Standards, with which all applicants for Lottery-sourced funding have to comply. In December 2016, BAFTA announced that it would add the BFI standards to the eligibility criteria for some of its awards. These are worthy initiatives. But to meet the diversity standards a film has to address only two out of four criteria: on-screen representation, themes and narratives; project leadership and creative practitioners; industry access and opportunities; and opportunities for diversity in audience development. In practice, the last two criteria could be met by providing work experience and investing in marketing that is targeted at diverse audiences. Furthermore, the criteria can also be met by focusing on just one group out of six: disability, gender, race, age, sexual orientation or lower economic status. In other words, the BFI Diversity Standard and its Screen Diversity Mark of Good Practice, while well-intentioned and possibly productive in the long term, can presently be met without addressing BAME employment at all. Furthermore, the scheme is voluntary, the BFI having no sanction except in respect of the projects that come to it for funding.

¹⁴ Film Distributors' Association Yearbook 2017.

These observations do not withstand serious investigation:

- There is no study of which we are aware that demonstrates observable ethnic or cultural bias either towards or against film employment in the UK;
- Lack of enthusiasm towards careers in the arts, which are widely perceived to be high-risk, is likely to be equally spread across all social, cultural and ethnic groups in the UK; and,
- The ghettoisation of mainstream film-making is arguably in part a consequence as well as a cause of the lack of diversity in film employment.

Another observation sometimes made is that ethnicity quickly dissolves into the issue of social class and what we are really dealing with here is a lack of social mobility. This may or may not be the case, but either way it is no reason not to address the observable and measurable imbalance in BAME employment in the sector. The resolution of the latter issue would surely address in part the issue of social mobility.

It is also said in defence of the status quo that,

- In the production segment, film is a high-risk enterprise that is dependent on a mostly freelance creative workforce¹⁵.
- It is crucial to employers that workers in all departments and in all grades should be available to work at short notice, and that they should be able to guarantee high-quality performance at all times;
- These constraints place a premium on reliability, resulting in the continual employment and re-employment of trusted contractors;
- At the same time, formal training and paper qualifications are not seen as guarantors of quality or reliability and tend to be distrusted. Heads of department prefer to recruit people they have worked with before or people who are recommended by people they have worked with before.

These observations have a large measure of truth but they do not represent serious obstacles to greater diversity of employment. On the contrary, they are an admission of the problems posed by the lack of diversity, especially at the present time when the shortage of skills in the booming production sector is

¹⁵ The Creative Skillset Workforce Survey 2015 estimates that 89% of film production workers are freelance. The BFI Statistical Yearbook 2017 estimates that, in 2016, 49% of those engaged in film and video production are self employed. The apparent discrepancy can probably be attributed to differing definitions and methodologies. We can safely assume that back-office and clerical workers are mostly employees, while the technical teams and creatives on both sides of the camera are mostly self employed.

causing serious difficulties for employers¹⁶. By the same token, distrust of formal training, which makes it harder for those on the outside to get in, is a reason to improve training schemes, not to abandon them. In particular, training schemes need not only to be integrated into the workplace (so that they are “owned” by the industry) but extended into the early years of employment so as to ensure that graduates are supported until they have earned the status of trusted contractors.

5. The culture in parts of the film industry is very conservative

Employment opportunity in film has been limited for many years by the very conservative culture and custom to be found in parts of the industry itself. This is despite the efforts made by Creative Skillset, the BFI and others to open it up¹⁷. Producers, for example, are still overwhelmingly ABC1, white males, most often with a private-school education. Employment in certain technical departments and grades is still largely only available via family connection and personal recommendation¹⁸. The evidence review *Workforce Diversity in the UK Screen Sector*¹⁹ reported that 71% of the film workforce heard about their current job through informal means.

There is no moral point to be scored in making these observations. Film has its own history and the highly fragmented, freelance nature of the work, combined with high risk and the heavy premium placed on reliability, has led employers (including heads of department) to have recourse to working only with those they already know, those they can trust and those who have been recommended by those they trust. As a result, film production presents an unusually homogenous workforce.

¹⁶ The volume and value of films made in the UK has increased steadily over the last ten years, from 105 films with aggregate budgets of £980m in 2008 to 294 films with aggregated budgets of £2.7bn in 2017. (Not all this money is spent in the UK. The aggregate UK spend has risen from £622m in 2008 to £1.9bn in 2017. If co-production expenditures are included, the latter figure rises to just over £2bn.) At the same time, expenditure on high-end TV drama (which today fishes in the same talent pool as film) has rocketed from £415m spent on 49 projects in 2013 to £985m spent on 97 projects in 2017. The BFI has estimated that 10,000 new positions - an increase of about 22% of the workforce - will need to be created in the next five years if the UK film industry is to take maximum advantage of the rapidly growing market for screen drama.

¹⁷ See Creative Skillset’s apprenticeship and training schemes and the BFI’s Film Academy.

¹⁸ Veteran producer Rebecca O’Brien, speaking on a Screen International panel about developing creative talent, criticized ongoing nepotism in the film industry. “Certainly at the upper end of the film industry, there is a real barrier to diversity in that it’s almost a guild run operation,” she said. “A lot of inward investment and the studios are closed to diversity because there is still a climate where people employ their family and friends. That is a real problem at the upper echelons, which is a big part of the film industry... We need to break down those barriers and find positive ways of doing so.” O’Brien added that diversity schemes need to be followed up, recalling her work on a TV series in the early days of Channel 4. “I worked on a multi-cultural kids’ magazine programme for Channel 4 in the early 80s,” she recalled. “I put together a really diverse crew and worked with directors from all sorts of different backgrounds. It was a terrific series and a perfect opportunity at the beginning of Channel 4 to give everybody a go and I thought that was how it was going to be throughout my career. But the sad thing is that was a one off. It didn’t continue... It needs to have follow-up. It can’t just be the one project.”

¹⁹ University of Leicester, March 2018.

This, we believe, is to the detriment not only of the film industry itself but of the national economy and of the goal of greater social mobility.

6. There is a willingness to change.

There are very few employers in the industry who are not aware of these shortcomings and who do not share our desire to see them rectified. They recognise that acquiescing to age-old custom is a recipe for missing opportunity and courting long-term decline. They not only live with the expectation of change, they welcome it²⁰ and some companies are already implementing diversity policies of their own²¹. The BFI itself recently unveiled a 20% BAME target for writers, directors and producers in receipt of BFI funds, to be introduced this year.²² At the same time, its *Future Film Skills – An Action Plan*, published in June 2017, addresses the diversity issue mainly through training and apprenticeships.²³

7. A modest ambition.

It is thus in the context of both great need and great willingness to change that we propose initial measures to ensure that,

- within six years, 15% of employment in each film production, taken as a whole, should be BAME; and,
- within twelve years, 15% of employment in each below-the-line department within each film production should be BAME²⁴.

²⁰ Tim Searle, creative director at UK independent producer Tiger Aspect, who successfully lobbied government for UK tax breaks to support animation, backs a more diverse workforce. "I've put together many teams in my time and having people who are all white, middle class is boring. It's about having a breadth of talent," he told Screen Daily. Among those who contributed to the BSAC report *Achieving Diversity in the Film Industry* in 2001 were many of the most senior film executives and producers in the UK, including Frank Pierce and Rick Senat (Warner Bros), Iain Smith and Duncan Kenworthy (independent producers), Tim Bevan (Working Title Films) and Paul Webster (Film Four).

²¹ When Industrial Light and Magic opened its London office in 2014 it implemented a rigorous diversity policy in recruitment.

²² <https://www.screendaily.com/news/bfi-makes-key-changes-to-film-fund-exclusive/5123037.article>

²³ <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/future-film-skills-an-action-plan-2017.pdf>

²⁴ "Below-the-line" refers to the non-principal cast, crew and providers of production, post-production and professional services as listed in a film's budget and cost statements. "Above-the-line" usually refers to the principal cast, director, writer and producer. While the above-the-line talent would be included in the overall requirement for BAME employment on a film production, they would not be included, for practical reasons, in our proposed second-stage requirement for BAME employment in each department.

8. How it could be done.

There is no single lever that will quickly transform BAME employment in film. However, there is a mechanism already in place that could easily be amended to make a big difference over time: the eligibility criteria for the UK government's tax credit for film investment²⁵. These criteria, for which a certification and verification process already exists within the BFI, simply need to be extended to include an overarching requirement for BAME employment.

At present the tax credit criteria specify, first, that a film project must be intended for theatrical release and incur a minimum level of UK expenditure; second, that it must also achieve 18 points out of a possible 35, with points awarded proportionately for the amount of the production set in the UK, the British nationality of the lead characters, British subject matter, English language, portrayal of British culture and heritage, exploration of diversity issues²⁶, location (measured by expenditure) of principal photography, visual and special effects, music recording and post-production, nationality of key contributors (director, writer, producer, composer, lead actors) and nationality of cast and crew²⁷.

Just as there is at present an overarching requirement that the production be a feature film intended for theatrical distribution, so there should be an overarching requirement that the production meet the minimum requirement for BAME employment. This could either be a threshold requirement or one of the criteria in the cultural test. We expect it – and prefer it - to be the former, although there could be a case for including it among the latter during the six-year phase leading to the introduction of the first-stage threshold. In any event, we expect the minimum requirement to become a prerequisite standard within six years across productions in their entirety and within twelve years in each below-the-line department.

9. How BAME employment in film production could be measured.

Film production relies on freelance workers²⁸ and this might be raised as an objection to the practicability of our proposal. But this is not a real obstacle. In the first six years of the scheme, a simple headcount of all those employed by reference to the audited cost statement (accountant's report), as

²⁵ The film tax relief was introduced in January 2007 to promote the sustainable production of UK films. HM Revenue & Customs issued a summary of the take-up, cost and delivery of the relief up to the end of 2012-13. By that time, 1,390 film productions had become eligible to claim the relief. Of these, 1,050 had made 1,900 claims for a total £1.1bn and payments of £995 million had been made. Total production expenditure by films claiming the relief was £9.8 billion, of which 72% was incurred in the UK. More recently, Olsberg-SPI Nordicity estimates that in 2016 £632m of tax credits seeded £3.2bn of production expenditure in film and high-end television drama, generating an overall economic contribution (GVA) of £7.9bn, including £2bn of tax revenues.

²⁶ The "exploration of diversity issues" refers to the representation of ethnically diverse communities on screen and the investigation of themes and storylines that reflect Britain's diverse population. This criterion is a useful one but it does not address BAME employment in the industry itself.

²⁷ Schedule 1, Films Act (1985)

²⁸ Creative Skillset workforce survey 2015, BFI Statistical Yearbook 2017.

required under Schedule 1 of the Films Act 1985, set against the number of those so employed who self-identify as BAME, would suffice. Working towards the 12-year objective, a simple headcount in each below-the-line department as itemised in the budget top-sheet included in the accountant's report, set against those in each department who self-identify as BAME, would serve the same purpose. (We recommend that, in any event, the headcount audit be introduced as soon as practicable as a part of the paperwork required for tax-credit eligibility. Such data would immediately provide us with base-level data on diversity in film production and would quickly become an invaluable resource, just as the data on production expenditure has become an invaluable resource in the years since 2007.)

10. How will the industry meet such a requirement?

It is up to the industry – in individual companies and in their representative associations - to decide how to meet its obligations, whether this is in respect of policies on recruitment, training, staff development and career progression, and/or in respect of creative choices. We do not believe there is any impediment to the achievement of our modest goals that cannot be overcome by serious intent backed by the tax credit requirement and supplemented by the additional support we outline below.

We note that in recent years the UK film industry has responded successfully to major technological, commercial and cultural disruptions, including the advent of streaming and digital downloads, the multiplication of television channels, rampant piracy, the consumer's expectation of "free" content, subscription and revenue-sharing models, digital production and distribution and competition from long-form drama on subscription television. By comparison with these major developments, an increase in BAME employment is a modest matter. Furthermore, it should deliver positive outcomes in terms of talent development, creativity and audience connection.

11. Does the industry need additional support for this initiative?

While a mechanism for encouraging BAME employment exists - were our proposal for amended eligibility criteria for tax credits to be implemented - and while the implementation and monitoring of BAME employment in that context is a simple matter, we are mindful that there is likely to be a supply-side issue in respect of certain grades and departments, especially some of the technical departments, within film production. This is why we have proposed gradual achievement of our ambition by six-year and twelve-year targets. For these targets to be met, there will need to be a co-ordinated effort by all the players – the industry, the guilds, PACT, BECTU, Equity, Creative Skillset and the BFI – to dovetail their initiatives and to press government to provide the necessary assistance upstream, especially in secondary, further and higher education, so that a career in film becomes a realistic option for those raised in BAME communities. The basis for these initiatives already exists in the BFI's *Future Film Skills Action Plan*. Furthermore, the Apprenticeship Levy, introduced in April 2017, could provide a mechanism by which industry funds could be added to the training pot.²⁹

²⁹ <https://www.screendaily.com/features/films-freelance-problem/5116048.article>.

12. Objections to the scheme.

i) Concern has been expressed that the scheme could fall foul of EU State Aid rules; that it could contravene the anti-discrimination provisions of the Equality Act 2010; and that it could breach Data Protection law.

- The advice we have received suggests that the consideration of cultural diversity in the UK, taken together with recent European cases that have treated positive actions in recruitment favourably (as long as they are proportionate and pursue legitimate objectives), means that the scheme should be compatible with State Aid regulation³⁰.
- The Equality Act 2010 makes a distinction between positive action (seeking to redress disadvantage) and positive discrimination (favourable treatment that compounds the disadvantage of those excluded), especially in the field of recruitment and promotion³¹. We believe that our proposal falls into the former category. Provided that the scheme is subject to very wide consultation across the industry, so as to encourage good relations between those with the “protected characteristic” (i.e. BAME) and those without, and provided that such consultation includes clear evidence of under-representation, justification for the proposed action and full consideration of its practical implications, the scheme should be compatible with the Act. Indeed, the Act makes it a general duty of public authorities to eliminate discrimination, advance equality of opportunity, remove or minimise disadvantages and “encourage persons who share the relevant protected characteristic to participate... in any... activity in which participation by such persons is disproportionately low³². Furthermore, the Equality and Human Rights Commission has provided guidance on using public procurement as a means of achieving social justice. This has clear parallels with using targeted tax incentives for the same or similar ends.
- Racial or ethnic origin is “sensitive personal data” for the purposes of the Data Protection Act 1998 and there is no tradition in the UK of requiring individuals to provide such information. This does not mean that such data cannot be sought by producers for the purposes of certification. Many organisations collect such data, mostly in support of greater equality, and the 2011 Census sets a useful precedent by asking respondents to self-identify with one of 18 ethnic groups (under the five broad headings of white, mixed/multiple, Asian/Asian British, black/African/Caribbean/black British and other). We expect that a viable approach can be adopted (the Equality and Human Rights Commission Code of Practice on Employment³³ gives

³⁰ See paragraphs 47 – 51, Communication from the Commission on State aid for films and other audiovisual works (15/11/2013).

³¹ S158 and S159 Equality Act 2010.

³² S149(1) and S158 Equality Act 2010.

³³ <https://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice>. (see Appendix 2)

some pointers as to how it can be achieved) but we acknowledge that our proposal would need to be subject to expert advice to make sure that it complies with data protection legislation.

ii) If, as we prefer, our scheme is deemed to constitute a threshold requirement (rather than one of the categories that can score points in the cultural test) producers will have to meet the full BAME requirement or they don't get certification. In this respect it differs from, say, a graduated scheme whereby a tax credit might be awarded in proportion to the degree to which the BAME requirement is achieved, or a scheme in which, like the cultural tests, BAME representation is just one of the measures by which points can be earned towards certification. Some say that our "all or nothing" approach risks putting producers into a position of uncertainty: they won't know until the eve of principal photography if their project fully meets the criteria. Their financing plans will thus be put in jeopardy.

- We note that the same objection applies to all the other criteria for certification, and the present system, whereby provisional certification is secured prior to production, should be adequate for the purpose.
- Given the history of well-intentioned but ineffectual initiatives in this area, we are concerned that anything less than an "all or nothing" approach will not deliver the desired outcomes.
- We note that the scheme anticipates a phased introduction in two stages over a period of 12 years. This gives the industry ample time to secure a supply of qualified BAME professionals³⁴.

iii) Questions have been raised about the practicability of what is proposed, focusing in particular on the definition, identification and monitoring of BAME; the extent of production to which the BAME requirement will apply; the treatment of projects that have cultural specificities that might exclude BAME cast; the treatment of projects that might have majority BAME cast but do not meet the BAME requirement below-the-line; and the treatment of productions in the nations and regions, where BAME cast and crew might be in restricted supply.

- The definition of BAME can be copied from question 16 in the 2011 Census form: "What is your ethnic group?" Groups B, C, D and E would qualify, with the wording amended to eliminate nationality, which is irrelevant to our purpose and which might anyway contravene state aid rules. We would expect to rely on self-identification by those employed. We would expect

³⁴ In respect of the two-stage implementation that we propose, the concept of providing different treatment for films with different commencement dates of principal photography has already been established, for example in paragraph 2 of the Films (Definition of "British Film") Order 2015.

producers to monitor such self-identification and for the BFI or other regulating body³⁵ to put in place whatever inspections or safeguards as might be required to prevent abuse³⁶.

- The definition of production to which the BAME requirement will apply should be essentially the same as that currently included within the criteria for certification – ie all the items listed in the final audited cost statement of production. However, we recognise that the final statement includes the cost of sub-contractors whose business is not principally or solely in film – for example, providers of professional services. These could be excluded. In any event, the BAME threshold would only apply to personnel whose remuneration forms part of the UK qualifying expenditure for UK tax credit purposes. Hence, verification would be aligned with verification/audit of the UK qualifying expenditure.
- Projects that have cultural specificities that might exclude BAME cast are unlikely to be penalised because the scheme initially sets the BAME threshold across the whole of a production, including the crew. Subsequently, the BAME requirement applies to the whole production and to each below-the-line department only. Should a problem arise, it would be up to the BFI or other regulating body to exercise discretion, provided that the reasons behind its judgement are made publicly available in writing.
- There might occasionally be projects that struggle to meet the BAME requirement in each below-the-line department and that among such projects there might be some that have a substantial or majority BAME cast – for reasons, for example, of the milieu in which the story is set. It might be considered invidious to disqualify such productions and we propose that, in such circumstances, the BFI or other regulating body exercise discretion, again provided that the reasons behind an exception are made publicly available in writing.
- The BAME population in the UK is concentrated in London and the major conurbations, especially in the East and West Midlands. Films that originate outside these areas might indeed find it more difficult to meet the BAME requirement. Again, we propose that the BFI or other regulatory body exercises discretion, with the option of making exceptions, provided that the reasons behind such exceptions are made publicly available in writing.

iv) We have been asked if our proposal is, in fact, redundant in the light of the BFI's diversity standards and the increasing acceptance of talent inclusion riders in the contracts of leading artists. We welcome both the BFI diversity standards and inclusion riders. But,

³⁵ Throughout this paper we assume that the BFI will manage the scheme, it having (alongside HMRC) the necessary expertise, but it may be that a new or different regulator is required because the BFI is itself a significant funder of film production and could be conflicted.

³⁶ The Commission for Racial Equality has published guidance suggesting that public bodies might make their own assessment of a person's ethnicity if that person fails to provide monitoring data.

- While the BFI is urging all sectors of the industry to adopt its diversity standards, at present they only apply to films in which the BFI invests directly. They are voluntary and they offer a menu from which producers can choose. In effect, a film can meet the standards without employing any BAME personnel at all. Our proposal casts the net much wider – including, very importantly, large-scale productions funded by the Hollywood studios, which benefit from tax credits but which do not tend to seek BFI funding³⁷ – and is very specifically targeted at BAME employment.
- To date, the various versions of the talent inclusion rider have addressed all forms of diversity, including gender, disability and sexual orientation. Our proposal addresses the sole issue of BAME employment, which, we fear, would otherwise get lost.

v) Concern has been expressed about the complexity of legislation required, especially if, as seems likely, it would require primary legislation.

- All new legislation entails complexity and encounters obstacles and opposition. Paragraph 10 of section 1 of the Films Act (1985) provides for amendments to the cultural test to be enacted by Statutory Instrument. This could be used to provide a basis for the first six years of the scheme when BAME numbers are being built up. However, the full, two-stage scheme (implemented in years six and 12) is likely to be deemed a new threshold or condition of eligibility for the tax credit and will therefore require primary legislation. The provisions of the scheme could be included in amendments to S1196 – 1198 of the Corporation Taxes Act (2009) or otherwise in a Finance Act, as has previously occurred with the reduction of the minimum UK spend from 25% to 10% and the removal of the differential tax credit between lower and higher budgeted films³⁸. We do not foresee any particular technical difficulty in achieving this provided that the political will is there.

vi) Attention has been drawn to possible unintended consequences and abuse. For example, the scheme could lead to wrongful self-identification for the purpose of gaining employment, and the formation of “quota crews” hired to meet the BAME threshold but not otherwise qualified to make a contribution. There is also the possibility that unscrupulous BAME personnel could hold productions to ransom. And, depending on the definition of production to be included in the BAME requirement, there is a danger that unscrupulous producers might try to avoid the BAME requirement by transferring production responsibilities to “excluded” sub-contractors.

- Film producers are resourceful. They are accustomed to dealing with the demands of key personnel. They are also familiar with the discipline required to meet the eligibility and performance criteria of public support.

³⁷ According to the BFI Statistical Yearbook 2018, of the £1.9bn spent on films in the UK in 2017, Hollywood-funded productions accounted for £1.4bn.

³⁸ S32 Finance Act 2004, S29 Finance Act 2015.

- Film in the UK is a small industry. Where suspected cases of abuse arise, the BFI or other regulatory body would find it relatively easy to investigate. A system of checks and verifications could be put in place to ensure real compliance.

On all the above issues and any others that might arise we expect to enter into wide consultation with the industry. We also expect to take expert legal advice to ensure compliance with all relevant legislation.

13. In conclusion,

- a) While there may be an ethical and moral case for increasing diversity of employment (the issues of fairness and equality of opportunity), what we argue here is that there is also a prudential case (the issues of social mobility, talent development, creativity and economic benefit).
- b) The mechanism to incentivise increased diversity in film production already exists in the eligibility criteria for tax credits, which only have to be extended to include BAME employment.
- c) The measures required to meet those eligibility criteria are a matter for the industry to decide.
- d) Support mechanisms should be put in place via Creative Skillset and the BFI, in collaboration with the guilds, Equity, BECTU and PACT, and practical measures should be proposed by them to improve the supply of candidates for appropriate training and education.
- e) The Apprenticeship Levy and the Skills Investment Fund could provide the financial support needed to implement these practical measures.³⁹
- f) While there will always be objections to any new scheme, we do not believe that there is any insurmountable obstacle to the adoption of our proposal.
- g) Increased diversity in film employment will contribute to greater creativity, a larger and much needed pool of talent and connectivity with a wider audience. Hence, it will foster continued growth and sustainability, while helping to make the wider creative sector a world-leader. It will thus deliver on the government's ambitions to "build on our strengths" and "extend excellence into the future".

We finish with the words of the Rt Hon Matt Hancock MP, when he was Secretary of State for Digital, Culture, Media and Sport:

"On becoming Minister of State for Digital and Culture I made expanding access and diversity one of my top priorities. It is a central tenet of this Government that everyone, from every background, of every colour and identity, from every part of the country should have equal chance to succeed. That means an equal chance to access arts and culture. While there is already a push for greater diversity on-screen, and we will continue to support that, it must be matched by a similar drive behind the scenes among writers, directors, commissioners and executives. As your Minister, I am determined that... we can make

³⁹ We are aware of the potential duplication involved in the apprenticeship levy and the Skills Investment Fund. Our point is that the levy provides another resource that could be allocated to training and apprenticeships that contribute to greater diversity of employment in the industry.

real progress in this area. And ultimately by working together we will reach our goal: of a country that works for everyone, where each and every person has the chance to reach their potential.”⁴⁰

Or, as the title of the McGregor-Smith review puts it: “The time for talking is over, now is the time to act.”⁴¹

V6/TI/FDAG/November 2018

Acknowledgement: The Film Diversity Action Group has been assisted by a team from law firm Fieldfisher LLP, led by media partner Tim Johnson and employment partner Richard Kenyon. Fieldfisher has provided advice on various legal aspects of the FDAG's proposals on a *pro bono* basis as part of the firm's broader Corporate Social Responsibility initiatives.

⁴⁰ <https://www.gov.uk/government/speeches/does-british-television-and-film-reflect-the-diversity-of-our-modern-nation>

⁴¹ McGregor-Smith review into race in the workplace, BEIS, February 2017