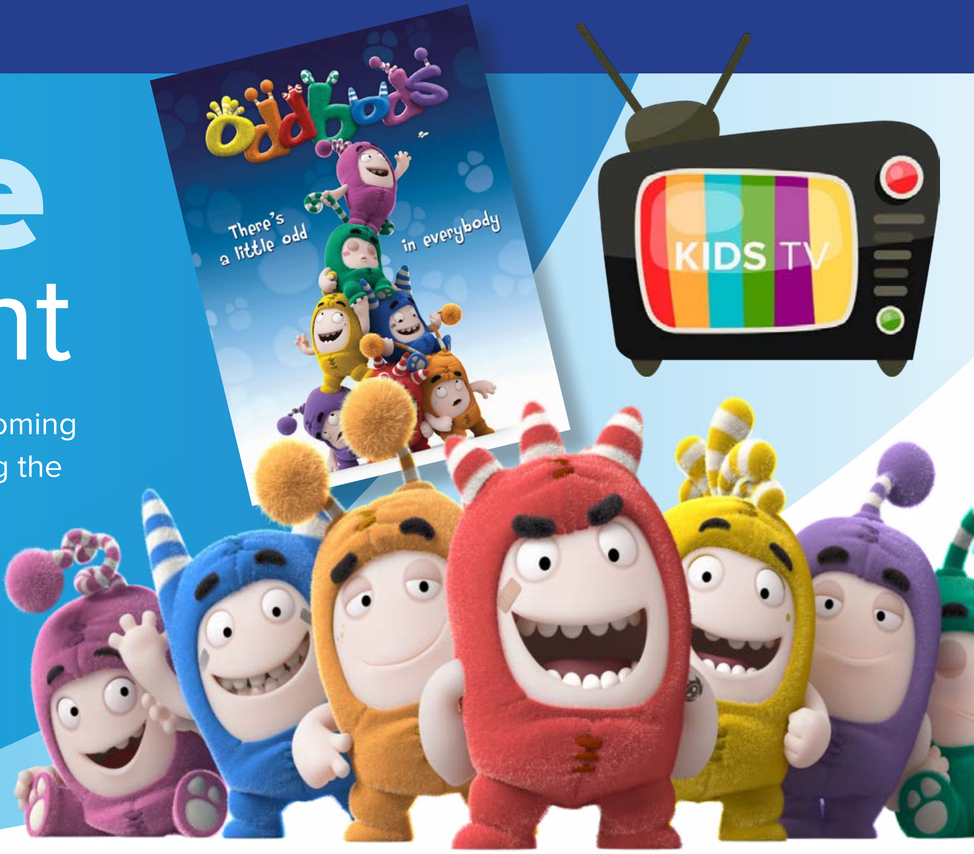
Clause for thought

TV executives often talk about welcoming new entrants to the market, claiming the increased competition makes it an exciting time to be in the content business. Generally, these execs aren't being dishonest, especially in the production world where opportunities have spiked amid the frantic demand for content.



Oddbods airs on Disney Channel Asia, ITV, Boomerang and globally on Netflix

However, the camaraderie does mask some of the true feelings in the industry, especially in the kids' TV distribution sector. 'Complicated' is the word that tends to crop up most when talking to sales houses about doing business today. As the fight for content gets bloodier, distributors are finding themselves in unenviable situations with buyers.

"Everybody wants to have exclusivity. People tend to be aggressive when they're negotiating; they want to be reassured that they are going to be the ones broadcasting a brand or that you can associate a particular brand with them," explains Bianca Rodriguez, head of sales at UK children's entertainment specialist Cake.

Cake has its own hot property in this regard with Bottersnikes & Gumbles (52×11'), an animated coproduction with Cheeky Little Media and Mighty Nice in Australia. The show airs in the UK on CBBC, down under on commercial broadcaster Seven Network and globally on Netflix, which came on board to help finance it. Netflix asked for a two-year or more 'hold-back' period in some territories, which Rodriguez says could not be denied because the streamer had helped fund production. However, she notes that in this instance, Netflix is a coproduction partner not a buyer.

"Our job obviously is to maximise revenues on the one side and to maximise exposure of the brand on the other. It's difficult to get everybody to agree on exclusive deals, but it's doable."

While Rodriguez says exclusivity demands are sometimes agreed with a buyer, she adds that the deals are complicated further by the fact licensing fees are, in general, shrinking. Consequently, distributors and producers are seeing decreasing profit margins for their programming.

"We have to balance where we actually can grant exclusivity, now that broadcasters are offering half of what they used to offer. That is the situation we have been in for the last few years, mainly for linear channels," the exec explains.

Bianca Rodriguez
Head Sales at UK children's entertainment specialist CAKE

"In the past, a linear channel would want exclusivity and free TV, that's it. They would never take pay TV or any kind of VoD rights. At most, they would take some catch-up rights. Nowadays, either they use those rights or they will try to block everything to cover their backs."

Cake and many other distributors are finding that buyers are becoming increasingly unnerved by the rising competition and are attempting to secure their position. Some broadcasters are now even demanding rights that don't exist for fear of missing out, Rodriguez says.

"People are negotiating all 'non-standard rights.' We hate that phrase. What does that even mean? That means any kind of right that doesn't exist yet. It may be fair enough to block what you need and maybe what your competitor needs, but you can't block rights that don't even exist." The rise of streaming services has undoubtedly fuelled much of the fear in broadcasters' acquisition departments. Melissa Cobb, VP of kids and family at Netflix, said in February that the global firm would be looking to release between 50 and 60 kids' and family shows in 2018, with the company pumping significant funds into its productions.

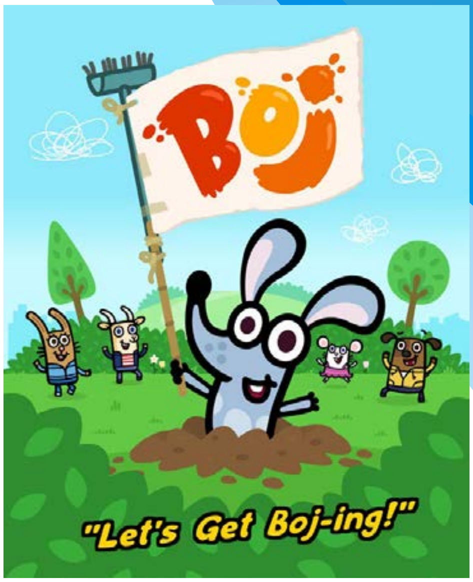
Each Netflix commission comes with the aforementioned hold-back period, which means a certain amount of time must elapse before the show can appear on another platform, like a linear TV channel. Additionally, a branded Netflix Original will remain on the streamer, potentially affecting future sales to other platforms.

Depending on their level of investment in the programming, SVoD firms' hold-backs can run for longer than two years, which is widely seen as the industry standard.

Dominic Gardiner, CEO of UK-based Jetpack Distribution, says the streamers' rise has led to "mistrust" between them and traditional broadcasters. The studios, he says, fed the "cuckoo in the nest licensing a lot of content, and public service broadcasters (PSBs) perhaps underestimated how bullish streamers would be in their land-grabbing. Both are starting to backtrack.

"The studios are now saying we'll do it ourselves, or let's make another streamer like Hulu bigger," Gardiner says. "The other players in there are the PSBs, who thought pay TV would eat itself. Platforms in the past used to play a more collaborative game of windowing. It was the agreed principle by which everybody shared rights. The mistrust has snuck in since windows got shorter and hold-backs got longer."

Dominic Gardiner
CEO of UK-based Jetpack Distribution

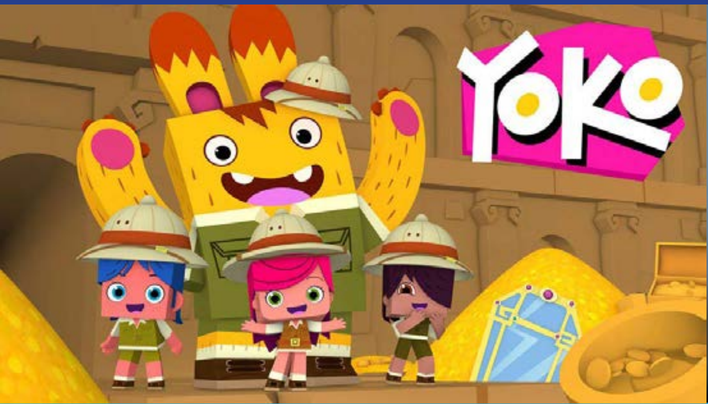


Pesky's animated series Boj

Consequently, broadcasters are now asking for two-year hold-backs on content, if others are doing the same.

"Our objective is to get people to reduce the windows as much as possible, to at least keep people happy, but avoid levels of exclusivity that are harmful to the brand or series," says Gardiner. "If a show's on a platform for two years, exclusively, it's a long time. How does the studio keep the lights on while they wait for a second window to appear? The first window may only have reached 30% of the world; the second window's the big one, sometimes, in terms of reach."

Gardiner agrees with Rodriguez that it has become a "bit of an arms race" in recent years between platforms for rights, with distributors stuck in the middle. Moreover, production companies are often attracted to the latest trends, so the emergence of SVoD services suddenly saw a clamour from creators to get their content on these platforms.



Yoko is among the shows Jetpack licensed to Netflix

"Everyone wants SVoD and everyone wants TV. Within those, everyone wants catch-up rights, so if you can't offer a relatively unhindered catch-up to a linear PSB then they won't buy the show, even if it's dubbed and brilliant and they love it," Gardiner adds.

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There is clearly a sense of prestige attached to having a show on Netflix. Jetpack has licensed a number of shows to the Californian giant, including Australian prodco Cheeky Little's series Kazoops, UK producer Pesky's animation Bojand Wizart/Somuga/Dibulitoon Studio-produced Yoko. However, Gardiner is insistent that, though appealing, the mega-deals with streamers do not define a distributor's existence.

"It takes the same amount of time to do a deal for US$5,000 as it does for US$500,000," he says. "A lot of indies don't recognise that. To add value, we have to do a hundred US$5,000 deals. Indies know the people who pay US$500,000 – they're constantly up on stage telling people what they're looking for. The people they don't see are the 300 who aren't up on stage but who are paying and buying content continually. The big buyers might only buy three or four shows a year, but smaller buyers come back."

Leslie Miller, head of sales at Canadian producer-distributor Brain Power Studio (BPS), says distributors are having to be a lot more dextrous to deal with decreasing licensing fees: "The situation is opening up an interesting dialogue with acquisition teams for both digital and linear, who say, 'We don't have the money that these big SVoD buyers have. So what can we do?'

"It involves talking about second windows and taking rights non-exclusively. And for us, a huge negotiation tool right now is hold-backs. If we can bring the hold-backs as low as we can, it's opening up a whole new world for us to sell to other networks and other buyers."

BPS is currently shopping its live-action show The Ponysitters Club to international buyers, having sold first-window rights to Discovery Kids in Latin America and Netflix worldwide, with the show's second window becoming available in 2020.

"We're more than halfway through 2018, so that's really not that far away to start looking ahead into other territories that we could sell to. We actually already have some buyers lined up," Miller says.

The exec adds that rather than linear broadcasters becoming more demanding in terms of exclusivity, it's the streamers that have begun asking for more rights when licensing shows, with the likes of Netflix pushing for exclusivity on linear broadcast as well as VoD.

Singapore-based One Animation will make more revenue off digital this year than it will from traditional broadcast, according to Michele Schofield, its senior VP, content development and sales. The firm's non-verbal animated property Oddbods, which began life on YouTube, is a key driver of this income.

“SVoD players know they have the scale and resources to drive a hard bargain, but distributors will always have more leverage with an established property.”

Tom Royds
Account Manager for TV and Film at Vistex

“The rights that broadcasters are asking for to lock up a show for three, four years, you just can’t do anymore, because we have other ways to monetise that content,” says Schofield.

“It’s made me scrutinise every contract, even in relationships with broadcasters where we’ve done previous seasons and we’re talking about new episodes or spin-offs. Can I agree to the same terms we agreed to three years ago, or do I need to start renegotiating on those terms?

“Usually it means I need to start asking them for fewer hold-backs, particularly for VoD rights. It’s just not worth it to us to have them lock up all those VoD rights for so long, when their licence fees just cannot justify it.”

Indeed, it’s highly unlikely a kids’ TV property can sustain itself on a single platform, with a presence on as many platforms as possible being key to commercial success in particular.

“We work in a transactional world. When you make content, you have to work across all platforms and territories. There are few titles where the producer said, ‘I created this solely for Netflix,’” says Rodriguez.

Ultimately, any distributor worth its salt has to be on top of the myriad contracts and deals it has across these different platforms. The days of never-ending excel spreadsheets or keeping track of deals in your head – both of which Miller and Schofield said they have witnessed in the past – are over. Rightsmanagement systems and distribution software are now crucial to their businesses.

Vistex is among the companies to have made life simpler for the likes of BPS, Jetpack and One Animation, with its contract-management software allowing them to control deals with broadcasters and stay on top of which rights each one has. As Gardiner admits, distributors have to be careful they “don’t sell rights we don’t have, duplicate, overlap or make mistakes.”

Tom Royds, account manager for TV and film at Vistex, says that while double-selling is a distributor’s worst nightmare, it happens more often than one might think. Royds also says distributors are displaying nimble thinking in juggling the demands of broadcasters, streamers and indies.

“For distributors buying in rights, the pressure is on to satisfy their producers while ensuring they’re not reliant on just the one platform,” he says. “Distributors are being more inventive with how they offer exclusivity to broadcasters. Whether it’s only for part of the term, a selection of territories or a certain subset of rights, buyers want to feel like they’re getting something for a hefty minimum guarantee.

“SVoD players know they have the scale and resources to drive a hard bargain, but distributors will always have more leverage with an established property.”

With consolidation and vertical integration taking more and more content off the market and major companies growing their own catalogues, the industry is only going to get more complicated from a rights perspective, the execs agree. However, Gardiner says the opportunity for distributors to access new programming will not diminish.

“The instinct is to control the whole value chain all the way down to the consumer, but what you get into is a factory model of production, with cookie-cutter-type solutions. If you own big brands, you can keep producing and refining, but it’s the same product over and over again,” he concludes. “You can create the most efficient, unified, vertically integrated company on the planet but it doesn’t necessarily mean you’re going to get the next big content idea. Content ideas generally come from outside that universe.”

So, as long as creativity abounds, distributors can at least rest assured that there’ll always be that next big thing out there, primed for streamers and broadcasters to fight over.

As shown in the C21Pro 2018 Global Distribution Trends Report:

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