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Screen Producers Australia's submission to National Cultural Policy inquiry

About Screen Producers Australia

Screen Producers Australia (SPA) was formed by the screen industry businesses representing large and small enterprises across production all forms and formats of screen content.

As the peak industry and trade body, we consult with a membership of around 800 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and members. Our members employ hundreds of producers, thousands of related industry practitioners and drive over billions worth of annual production activity from the independent sector.

SPA's members are drawn from all elements of the Australian production ecosystem, including emerging and established producers, production businesses, services and facilities businesses. Our members vary in size from large internationally owned entities, to partnerships, to sole traders and other corporate entities, and are found in every region, state and territory of Australia.

On behalf of these businesses, we are focused on delivering a healthy commercial environment for the entire screen industry through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content have been met.

Screen Producers Australia welcomes the opportunity to make a further submission to the Senate Environment and Communications References Committee Inquiry into the National Cultural Policy, addressing two specific new topics:

- (a) potential tax reform and ways to boost the productivity of Australia's arts and creative sectors; and
- (b) any opportunities, risks and challenges for Australia's arts and creative sectors associated with emerging technologies such as artificial intelligence.

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Introduction - the policy context

Screen Producers Australia welcomes the opportunity to update the Senate Environment and Communications References Committee Inquiry into the *National Cultural Policy* on the new topics proposed in the 48th Parliament.

This inquiry is taking place at a time of heightened anxiety amongst screen industry practitioners. Structural issues pertaining to the availability of local content on digital streaming platforms remain unaddressed; rising costs are putting all financing under pressure and funding for critical agencies at a federal and State level are not keeping pace. Investment by commercial free-to-air broadcasters in drama, documentary and children's programs has [collapsed](#) since the 2021 deregulation. Our national broadcasters are still struggling with years of budget cuts that will never be revived.

The result is that less and less Australian screen projects, particularly scripted, are reaching our screens. Producers are being squeezed by both commissioners and production costs. Script development is rarely funded, meaning producers have to work for considerable periods of time at their own expense, before any scarce funding is received. Evidence is that Screen Australia can only fund 30% of projects presented to them and that many of the unfunded projects have great cultural significance, meaning important Australian stories are going untold.

SPA welcomes the recognition by the Committee that our National Cultural Policy has a role to play in boosting the productivity of our arts and creative sectors, and of boosting Australia's overall productivity effort. That is because innovation and design-thinking are at the heart of our creative industries and these skills are building blocks for boosting productivity.

It is notable that many other arts organisations are advocating for a similar tax incentive to the Producer Offset. In our submission, SPA highlights that this incentive is not currently working as intended and that investment in and the retention of Australian IP should be the aim of taxpayer support.

SPA supports safe adoption of AI in Australian screen production, anchored in lawful access to works and audience trust. AI is delivering practical gains and productivity benefits in the Australian screen industry, particularly in administrative and production management workflows, but we believe that its use must sit on firm legal and market foundations.

Copyright concerns remain a live issue due to a number of issues including unlicensed training – as most models have been trained on copyrighted works without authorisation, infringing copyright. SPA rejects a Text and Data Mining exemption that would let developers use works without paying, which cuts out the people who own the rights and weakens incentives to invest in and create new content.

SPA supports the creative industries position and campaign opposing the TDM exemption. That's because on the available evidence, weakening copyright through broad TDM exceptions has not been shown to improve AI capability or innovation.

SPA also believes that AI systems should be adopted by production companies in a way that empowers the creatives and crew they employ, rather than replace them.

These topics are expanded in more detail as follows:

Part 1: Potential tax reform and ways to boost the productivity of Australia's arts and creative sectors

(a) Boosting productivity

As a key sector within the creative industries, screen is one of the most accessible and impactful forms of culture available to audiences. Our shared ambition is to make Australian screen stories more accessible to Australian audiences and to ensure that Australia continues to have a vibrant and thriving screen industry ecosystem in which provides a broad benefit to all stakeholders.

Screen producing businesses and commissioning stakeholders operate within a regulated market and so rely on government, particularly at a federal level, to be responsive to changes in technology and business conditions to ensure that legislative settings match the policy ambition and industry conditions for the sector.

The levers of government centre around regulations on the provision of local content for Australian audiences, funding for the national broadcasters, screen agencies as well as the range of screen industry tax incentives at both a Commonwealth and State level, amongst others.

There has long been bipartisan recognition at a federal level of the need to apply local content rules to streaming platforms. After around eight years of consultations, the Morrison Government finally took a proposal for a 5% revenue obligation to the 2022 federal election. The now Albanese Government, critical of the delay, committed to get this done and better that proposal in 2019, 2022 and 2025. It is the key commitment for the screen industry in the 2023 National Cultural Policy, *Revive* and was planned to commence operation from 1 July 2024. However, due to a range of reasons, including political complications arising from the Australia-US Free Trade Agreement, the screen industry is still waiting for this important reform.

Local content rules are of vital importance to the Australian screen industry. They bring certainty to industry and ensure a pipeline of investment that gives business the confidence to invest in new technology and skills development, both important productivity pillars.

In Australia, far too often the economic potential and role of Australia's creative industries as drivers of innovation and technological adaptation are unrecognised and the potential is unrealised. Treasury officials appear to view arts portfolio programs as merely "nice to have", making them vulnerable to Budget cuts, rather than critical to a diverse economy. The dearth of reliable, consistent and joined up economic data that captures what are many thousands of small business enterprises measuring the impact of our creative industries exacerbates this misconception.

In terms of Australia's productivity potential, it is notable that Australia comes in at 105 (down 2 places) out of 145 countries ranked by Harvard Growth Lab's Country [Economic Complexity Index](#) (ECI) ranking for economic complexity. Economic development requires the accumulation of productive knowledge and its use in both more and more complex industries. Australia's lack of economic diversity and over-reliance on traditional industries is a factor in this poor outcome.

According to the Harvard Growth Lab, countries improve their ECI by increasing the number and complexity of the products they successfully export. Screen is an obvious industry that drives creativity, design thinking and rapid adoption of new technology – all highly valuable to underpin productivity and innovation.

The screen industry fits within a highly complex regulatory prism – changes when they do occur often happen in a piecemeal way that ignores the fact that shifting one lever without fully considering the flow on effects causes angst and frustration.

Important tax reform commitments remain stalled for years, and there's little progress on the host of other reforms that our industry needs to stay in the tough and highly competitive global game.

Screen is an industry that drives creativity, design thinking and rapid adoption of new technology – all highly valuable to underpin productivity and innovation. Yet our regulatory framework fails to recognise the true value of our industry: the creation and monetisation of intellectual property.

Despite our current important screen tax incentives, the government stands by and watches the ongoing abuse of market power exercised through a distorted market, now dominated by mostly global streaming platforms. As a result, Australia is failing to realise our export potential and missing out on valuable national income.

(b) Proposals for tax reform to screen incentives

SPA has consulted with members and stakeholders and identified a number of areas for action on the levers available to both Federal and State governments to improve business operating conditions for screen producing businesses.

Reform of the legislative and incentive framework for the screen industry lags well behind the changed dynamics of the industry: the shift by audiences to digital streaming platforms from 2015, the changed market and business conditions and the increasingly global nature of the industry.

The funding of screen projects globally has evolved to now depend to a significant degree on a system of tax incentives such as those offered by the Australian government. Screen projects are very expensive to finance but when successful, can have an enormous audience and cultural impact. Very few screen projects reach these heights and a high degree of risk is therefore entailed. Because of this risk/reward proposition, government support is essential to initiate screen production and defray the private sector risk.

Australia's screen incentives are focused primarily on production of the product as that is where the barriers to creation and enterprise exist. This distinguishes screen from many other creative sub-sectors including live performance where the barriers are primarily focused on distribution of the creative work.

Within the framework of screen incentives, SPA has identified a number of key issues for reform. Many of these have been presented to Government on multiple occasions and remain outstanding for legislative action.

SUMMARY OF SCREEN PRODUCTIVITY PROPOSALS

A. **PRODUCER OFFSET REFORMS**

1. Reform Producer Offset to ensure producers retain licensing rights and the producers' margin and equity
2. Apply a "Terms of Trade" framework to the Producer Offset to enhance its effectiveness.
3. Alternatively, consider other options to protect Australian IP in screen projects such as through an amended definition of QAPE or the ACCTs definition of Australian content.
4. Ensure Australia's screen tax incentives prioritise support for Australian content;
5. Increase the Producer Offset to 40% for television projects;
6. Remove 65 hour cap on documentary
7. Consider other Producer Offset Reforms

B. **BOOSTING CINEMA AUDIENCES through new P&A rebate**

C. **PDV OFFSET REFORMS - PDV access for feature documentary**

D. **LEGISLATE ANNOUNCED GOVERNMENT REFORMS**

E. **FACILITATE PRIVATE INVESTMENT**

A. **PRODUCER OFFSET REFORMS**

1. **Reform to Producer Offset to ensure producers retain licensing rights and the producers' margin and equity**

One of the principal financial underpinnings of our industry is the Producer Offset. This offset was designed as vehicle to facilitate equity investment as the mechanism to ensure that screen producers retained a 10% margin in their projects so that they would retain a small share of licensing rights and share with other finance partners in the success of their work. One other way this payment is framed is as a buffer for the producer to enable them to have some cash up their sleeve to deal with the various variables associated with production

The Producer Offset was introduced by the Australian Government in 2007 with the stated intention of providing a benefit to Australia's independent screen producers, as stated by the then Minister for the Arts:

I take this opportunity to affirm on the part of the government its intention that the independent sector should be beneficiaries of the producer rebate. It has not been the view of the government that eligibility for the rebate should be quarantined only to the independent sector, but it is certainly the view of the government that independent producers should be beneficiaries of the producer rebate.¹

¹ [Senate Hansard](#), Minister for the Arts and Sport, 18 September 2007

However, since 2007, rapid changes have taken place in the structure of the global screen industry, including from ten years ago the significant shift to online streaming platforms by audiences.

Streaming platforms as yet have no regulatory obligation to invest in local screen content and have operated to date on an unconstrained commercial basis that has altered the market dynamics of the entire screen industry including in many transactions taking control of the 'producers' offset and therefore equity position and forcing payment of the margin to the streamer instead of permitting the producer to retain this buffer. Streamers have had the benefit of operating in the Australian market, delivering their services over the public National Broadband Network without any reciprocal obligations to audiences.

What is the Producer Offset?

The Producer Offset provides a 30% rebate for non-theatrical feature projects, TV series and other formats and a 40% rebate for theatrical feature projects for Australian productions and Official Co-productions.

The Producer Offset is administered by Screen Australia.

The Producer Offset is a refundable tax offset (a rebate) calculated on a project's qualifying Australian production expenditure (QAPE), for:

40% of an applicant's QAPE for a feature film that was produced for commercial exhibition to the public in cinemas;

30% of an applicant's QAPE for an otherwise eligible project such as a Program produced for television or a subscription service, where the project commenced principal photography on or after 1 July 2021; or

20% of an applicant's QAPE for an otherwise eligible project such as a Program produced for television or a subscription service, where the project commenced principal photography prior to 1 July 2021.

To be eligible for the 40% Producer Offset, a project must be a feature film produced for commercial exhibition to the public in cinemas.

As an industry that has intellectual property as its output, the principal issue at stake in the screen industry is ownership of licensing rights in screen stories. The value of screen stories is located in these intangible rights rather than a physical product.

The changed and often unfair commissioning practices instituted by the steamers reflects their market dominance and has quickly established itself within the industry as standard practice. One regrettable consequence is that their aggressive "take it or leave it" commissioning practices have flowed across to other commissioners (purchasers of programs) including the ABC and SBS and others.

However, because the Producer Offset relies on the allocation of funds (not rules) to leverage licensing rights, with the changed market dynamics driven by powerful streaming platforms which have eroded the ability for producers to retain ownership and control of these rights, the framework of the Producers Offset is no longer adequate to protect a producer's taxpayer supported equity share.

Producers are now under significant pressure to hand over all their licensing rights, well beyond the traditional scope of an initial broadcast period of 3-5 years and often, in perpetuity. In the same contracting process, they have had the ‘margin’ taken from them both removing this financial buffer. If rights are obtained in perpetuity, a producer signs away all future possibility of seeking a buyer for a spin-off series, merchandising or any stake in the future development of their creative work.

The Producer Offset is no longer delivering the benefit to screen producers that it was created to achieve. The obvious remedy that SPA has long argued for, is for Australia to adopt a “terms of trade” framework, similar to that which exists in the UK.

In the context of the Cultural Tax Summit, SPA has consulted its members on a range of reform proposals and this measure is strongly supported by approximately 80% of survey respondents.

2. Terms of Trade: Most Critical for the Sector

A recent UK report, “[Celebrating 20 years of Terms of Trade](#)” highlights how this regulatory framework has boosted the entrepreneurialism of independent producers and effectively addressed the market imbalance driven by buyer concentration that is inherent in domestic screen industries.

Terms of Trade in the UK have achieved record growth of sector revenues of 150% and revitalised the independent sector. Prior to Terms of Trade, UK TV exports were on a very small scale but now international revenues have increased by 649% between 2004 and 2022, establishing the UK as a global content hub and taking UK content to the world.

In Australia, we can only look on in envy at the success that this important framework has achieved for UK’s independent screen producers. For sound policy reasons, SPA has long advocated for a similar regulatory framework in Australia and believes that the long awaited and planned regulation of streaming platforms offers the best chance for our screen industry to achieve this screen industry reform. SPA has consulted its members on a range of reform proposals and this measure is strongly endorsed.

Original IP from Australians and made in Australia should be owned by Australians. Our aim is to create local stories with local talent for the world to see by leveraging our access to the Producer Offset we bring a lot of value to the project and this should be reciprocated with equity. Our original IP made here in Australia should not be able to access the offset on behalf of international companies without us retaining some of the project’s success.

The retention of rights is paramount for a sustainable future of independent producers and their appetite for risk in development. We’re currently moving further towards a fee based model, with no backend, leading to a culture in which there is no ability for producers to build capital to develop and speculate on future projects, which, in turn, will put more and more pressure on funding bodies to take the risk, including upfront fees for producers.

Rights retention. Enforcing the intention of the legislation to allow producers to retain Offset equity rights would allow for more sustainable investments and returns.

[SPA member survey comments, August 2025]

The lack of such a framework undermines the effectiveness of taxpayer investment in the Producer Offset. If both levers were available, many of the structural issues affecting the domestic industry would be resolved and put our industry on a strong foundation to be better able to negotiate commercial commissions in a tough marketplace.

Over many years, SPA has provided extensive evidence to the Australian Government to highlight the foundational importance to screen producers of a Terms of Trade framework, to ensure that Australian intellectual property, funded in part by Australian taxpayers, is able to stay under the ownership and control of Australians.

For example, in 2023, SPA released an updated report by Lateral Economics on this issue, including case studies, to highlight this issue. The report, "[Taking Australian stories and skills to the world in the age of global streaming](#)", highlights how local Australian screen producers will not fully benefit from a reinvestment obligation if they sell away Australian stories, voices, creativity and culture – our precious Australian cultural IP.

The value of these rights is well illustrated by the example of Australia's most successful television show, *Bluey*. The Lateral report describes how while Brisbane's Ludo Studio has licensed global distribution rights to *Bluey* to BBC Studios, it has retained rights, including all future production rights, ensuring that they and the creator are included in all future development of *Bluey*.

With an accompanying Terms of Trade, the Producer Offset could secure a thriving and growing future for Australia's screen industry, with all the benefits that have been achieved in the UK. Without it, Australia's screen industry will continue to struggle in a global marketplace that is stacked against them.

3. Other options to retain Australian IP?

In the absence of a Terms of Trade framework, Australia could consider alternative mechanisms to achieve the same objective. For example, the Producer Offset rules around Qualifying Australian Production Expenditure (QAPE) could be amended to mandate that intellectual property rights belong to the independent producer and require the ownership structure of funded projects to be reported on.

Another regulatory option is for the definition of Australian content. This approach would entail amending the definition of "Australian Program" in the [Broadcasting Services \(Australian Content and Children's Television\) Standards 2020](#) (ACCTS) to specify that a Program is not an Australian Program unless the intellectual property rights are owned and controlled by a business under the creative control of Australians.

In addition, any contributions made by state agencies such as Screen NSW to a production could be done on the basis of fair contracting and rights retention in a similar structure to Screen Australia's investment requirements.

4. Taxpayer incentives (apart from Location Incentive) should prioritise support for Australian screen stories

The Australian screen industry operates across both local screen projects and international location work. Both are of importance to the industry ecosystem. The local industry has

traditionally trained new entrants to the industry, including actors, writers, directors, editors and the whole host of crew. For many, this local training has been the foundation of a successful domestic and international career.

Another consequence of this is that Australia has been highly successful in building its international reputation and securing a growing share of offshore projects to film here. Australia's wealth of creative enterprise, technical skills, cultural alignment, natural landscapes, studio infrastructure and tax incentives have ensured that Australia is a leading location destination for international projects. According to [ProdPro's 2025 TV and Film Outlook Report](#), Australia is currently the 5th most preferred overseas destination for US location work.

The growth in international work has also been in part a deliberate outcome of Australian Government settings and incentives. For example, in May 2023, the Australian Government announced an increase in the Location Offset from 16.5% to 30% to ensure Australia remains competitive with other attractive offshore locations for mainly US production work. This increase has cemented taxpayer support for offshore productions filming in Australia.

The Location Offset mostly incentivises and benefits overseas studios and non-Australian production companies when there is zero retention of IP in Australia. Yes, it's about sustainable employment and a healthy industry but it is also critically cannibalising local independent producers because it is driving up the cost of production for Australian productions - specifically with crew wages. Crew wages have exponentially increased in recent years due to the rates crew are offered and paid on foreign films being produced in Australia by (mostly) US studios - and crew are expecting the same rate for Australian dramas when the money is not there in financing (and we don't blame them because they don't want to take a pay cut from one job to the next)

[SPA member survey comment, August 2025]

The delayed regulation on streaming services has meant that some streamers simply are not commissioning any Australian content or potentially commissioning up to one single show a year. Others have dropped down anywhere to a quarter to a half of the activity that was undertaken previously laying bare the deceit in arguments that these businesses will deliver production activity and content to Australian audiences independent of regulation.

This diminished output when combined with reductions to currently reduced obligations on commercial television and the sustained budget cuts experienced by the national broadcasters have meant that many screen businesses have had to shut permanently or are in stasis awaiting an outcome of policy reform. Those that have continued to operate have done so by increasingly pivoting their work to rely on a combination of local Australian productions and service work for offshore projects to sustain their businesses through the peaks and troughs of commissions. However, it also exposes a current imbalance in industry support mechanisms.

Australia funds *Ausfilm*, an organisation that is funded to promote Australia as a destination for international film and TV production. There is no equivalent body that has the objective of increasing Australia's screen exports and this absence of focus shapes the way Australian content capabilities are perceived internationally as well as placing brakes on the entrepreneurial behaviours of the local sector looking to build and exploit intellectual property globally. While the export objective is currently located within the many functions of *Screen Australia*, for some many years and for a range of reasons including difficult budget constraints, Australia's screen export efforts have stagnated.

The result is a growing trade gap and imbalance in Australia’s efforts to bring international productions to work in Australia compared to Australian efforts to export Australian screen products. As a result, Australia has a massive and growing cultural trade deficit; reportedly, for every dollar of cultural products exported we import eight.

The sudden [announcement](#) in May (and repeated again in October) by US President Trump of 100% tariffs on “movies made in foreign lands” sent a shock wave through countries like Australia that has developed shifts within its screen industry around location work often the expense of a strong domestic oriented industry.

As outlined above, the regulation of streaming platforms to ensure Australian audiences can access Australian stories on streaming platforms, as announced in the 2023 National Cultural Policy *Revive*, has not yet eventuated. The result is a regulatory and taxpayer driven framework that now increasingly leans towards international location projects over local Australian projects.

5. Increase Producer Offset for TV

Currently the Producer Offset provides a different level of rebate for feature films (40%) and television (30%). The higher rebate level for feature films was established to support theatrical cinema as a significant cultural medium. Changed audience behaviour that now leans more towards streaming services means that this mechanism has decreased in significance and impact for screen producing businesses.

Financing television is becoming increasingly difficult. Licence fees and ROW (rest of world) Advances are not keeping up with the increasing cost of production. Commissioners and distributors are asking for more with less. Deficits in finance plans and series' falling over are all too common and increasing the Offset to 40% for Australian made television series' is vital to continue telling Australian stories.

TV: why should they be penalised? The 10% difference could be the difference between a project being financed or not.

It would fill the gap that has now appeared in finance plans due to distribution advances decreasing and Screen Australia funds lowering.

Increase the producer offset for TV to 40% as there's a significant decline in the volume of projects being commissioned by broadcasters and streamers.

TV to 40% would also aid productivity tremendously and streamline Australian content process (it would assist POCU as remove a stumbling block for many productions).

[SPA member survey comments, August 2025]

As the comments above highlight, financing of television programs is challenging for producers. Feedback to SPA from members is that they often face a 10% gap in finance plans for television projects. An increase would help to address this gap and could be advanced on a genre-by-genre basis.

SPA supports a Producer Offset of 40% for television projects.

6. Remove 65 hour cap on documentary

In 2021 the Producer Offset rules were amended to remove the 65-hour cap for drama but not for documentary. SPA has questioned the rationale for not applying the same benefit to documentary as is applied to drama.

Documentary is an important and vulnerable genre that plays an important cultural role for audiences. Documentary production is equally important as drama in Australia and this cap should not apply to either documentary or drama to ensure a consistent was across both genres.

The 65-hour cap for access to the Producer Offset that was removed in 2021 for scripted content should also be removed for documentaries.

7. Other Producer Offset Reforms

- Finance costs to be included in QAPE – delays resulting from administrative processing add a cost burden to business that is a legitimate cost incurred but which is not recognised as QAPE. This adjustment would assist the cost squeeze on business from events outside of their control.
- Reduce ATO payment times from current 8 weeks from final certificate – the lengthy delay from final certificate to receipt of the tax offset creates an additional financial burden on business and could easily be addressed by the ATO recognising the final certificate as a prompt for quick payment.
- Remove format duration eligibility criteria – eligibility requirement should fit the market commission regarding program format duration, ie children's.
- Interim tax rebates based on spend to date for a financial year, benefit to multi-year animation projects – this approach has been adopted in New Zealand and provides a benefit to business.

B. BOOSTING CINEMA AUDIENCES

- New P&A rebate - Australian cinema releases struggle to find their audience and to compete against large international projects with significant marketing budgets. While the Producer Offset supports production expenditure, there is no complementary mechanism to assist with the high and unavoidable costs of marketing and distribution. A targeted rebate for eligible Print and Advertising (P&A) expenses would help Australian films secure visibility in cinemas, strengthen their box office potential, and increase the likelihood of recoupment and reinvestment.

C. PDV OFFSET REFORMS

- **PDV access for feature documentary**

Currently the Post, Digital and Visual Effects (PDV) Offset (a 30 per cent rebate for work on post, digital and visual effects production in Australia, regardless of where a project is filmed) is not available for feature documentaries.

This exclusion has prevented some Australian screen businesses from partnering with global businesses to do PDV work here.

SPA has raised this with the Office of the Arts and been advised that historically, producers making this format were not considered to be a likely applicant to the PDV Offset given the relatively high expenditure threshold of \$5m put in place at the time of its introduction in 2007. Since then, the threshold for the PDV Offset has been reduced to \$500,000 and the Department is aware that this exclusion is an issue for Australia's feature documentary makers.

Enabling feature documentary to have access to this incentive would remove a current barrier and facilitate documentary makers in developing these important global partnerships and also bring more valuable PDV work to Australia. Feature documentaries are hard hit by changes in market and local funding and this change would be very welcome by these producers.

Across the board, SPA members have also said that a faster turnaround in PDV offset returns would benefit producers and reduce interest payments on borrowings against this amount.

Feature documentary projects should be able to access the PDV Offset

D. LEGISLATE ANNOUNCED REFORMS

Two important reforms have been announced by the Federal Government but not yet enacted.

Lower Location Offset threshold to \$15m

As part of MYEFO, in December 2024 the Australian Government announced the Location Offset threshold would return to \$15 million. This welcome change has not yet been legislated.

Removing the Producer Offset "Above the Line" cap

In May 2024, the Australian Government announced the abolition of the "above the line" cap in the Producer Offset. The removal of this cap put Australian projects on a more equal footing with international projects as the Location Offset did not contain a similar cap.

This measure was announced in the 2024 Budget as applying to principal photography that started from 1 July 2024 onwards for the 2024-25 financial year. However, the measure has not yet been legislated.

E. FACILITATE PRIVATE INVESTMENT

As well as public investment measures, Australia could consider a framework to incentivise private investment which remains persistently low.

Screen Australia's Drama Report 2023–24 shows that over the past five years; Australian private investors have contributed on average just \$1 million per year to television and SVOD projects (0.17% of total finance) and \$20 million per year to theatrical features (4.5% of total finance).

These figures highlight the structural absence of local private capital in financing Australian content. Introducing a targeted tax incentive for individuals and companies investing in eligible productions could play an important role in addressing this gap, provided that the measure is carefully aligned with the existing Producer Offset and related schemes. In designing such a

mechanism, it is important to avoid the unintended behaviours that were seen under the former 10BA regime.

There are international precedents which demonstrate that investor-level incentives can coexist effectively with producer rebates or offsets. Examples include:

- France – SOFICA scheme: accredited investment companies channel private funds into French films and TV. Investors receive income tax reductions, while producers still claim the national spend rebate (crédit d’impôt). Safeguards include cultural tests and independent oversight.
- Belgium – Federal Tax Shelter: Belgian companies reduce corporate tax by investing in certified productions. Productions also access regional spend rebates. Safeguards include strict certification, deduction caps, and audits.
- United Kingdom – SEIS/EIS alongside AVEC: investors receive tax relief for backing high-risk production companies under the Seed and Enterprise Investment Schemes, while producers access the Audio-Visual Expenditure Credit. Safeguards require genuine capital at risk and arm’s-length investment.

These examples show it is possible to attract private capital into screen production while preserving the integrity of spend-based offsets. SPA notes that private investment is becoming increasingly important in finance plans, as licence fees, government funding and other sources remain stable or decline, while production costs continue to rise.

Part 2: Any opportunities, risks and challenges for Australia's arts and creative sectors associated with emerging technologies such as artificial intelligence.

SUMMARY

SPA supports safe adoption of AI in Australian screen production, anchored in lawful access to works and audience trust, based on the following observations.

- **Licensing first:** require verifiable records of training datasets and lawful bases for use (for example, licences) and reject any commercial or broad TDM exception. There is no evidence that weakening copyright via TDM improves AI capability or innovation.
- **Market reality:** the licensing market is maturing with USD\$18.5 billion projected to be spent by AI developers by 2034. Deals span news, books, music, images and video. Members report strong demand for archives and b-roll.
- **Key risks:** unlicensed training use, uncertainty over copyright in AI assisted outputs, and the possibility that outputs reproduce a substantial part of third party works.
- **Current practice and law:** broadcasters allow exploratory use in development but limit generative outputs in finals. Litigation is ongoing and precedent is limited, so practical transparency and licensing obligations are needed now.
- **Workforce:** entry level pathways may change as tasks shift toward supervision and data centred workflows. The net effect is uncertain.

A. INTRODUCTION

Artificial Intelligence (AI) systems have been utilised by production companies, distributors, and exhibitors for many years.

Examples of the use of this technology include:

- testing the potential success of a production if released in the market during development.
- improving efficiencies, particularly shortening the length of time that it takes to complete complex VFX shots during post-production; and
- using AI algorithms to recommend titles to viewers.

AI is already delivering productivity benefits in the Australian screen industry, particularly in administrative and production management workflows. Around 75% of Australian producers report using AI for scheduling, budgeting, and metadata management, freeing resources for creative activities. In post-production, AI tools significantly reduce labour-intensive tasks such as rotoscoping, VFX editing, and automated dubbing and subtitling. Major international studios similarly use AI for predictive analytics in greenlighting and content planning, reflecting the growing acceptance of these productivity tools.

SPA is not oblivious to the potential harm that these AI systems present. Broad and aggressive adoption of these systems could have a large and negative impact on the labour market within the screen industry, removing employment opportunities for writers and editors, and removing entry pathways into the industry for certain below-the-crew.

It is SPA's view that these AI systems should be adopted by production companies in a way that empowers the creatives and crew they employ, rather than replace them. All participants in the screen industry ecosystem should be able to benefit from the opportunities these AI systems present.

B. RECENT DEVELOPMENTS

As noted before, production companies, from SMEs to large employers, are utilising AI to improve efficiencies, with more than 50% of respondents adopting it in their business operations and when developing ideas for upcoming productions. These systems are enabling producers to complete tasks, such as research, ideation for marketing plans, and management of business affairs, in a timelier and cost-efficient manner. This time saving allows them to focus on other areas of their business, often the creative areas, that they are so passionate about.

SPA is anecdotally aware that Generative AI is used by some crew members, generally on smaller productions, during development for a range of tasks, including creating mood boards for the 'look' of the project, expediting the creation of rendered costume drawings, and contracting below-the-line cast, crew, and services.

Another benefit of adopting these systems, particularly for micro to small production companies, is it enables them to increase the quality and quantity of their output. For example, a single person production company with very limited resources can enhance the quality of their pitching materials; those documents and materials used by a producer to pitch a production to commissioners and distributors, by including high quality, story specific images created from a Text-to-Image AI system.

It is important to note, that in this scenario the use of an AI system is not replacing a job that would have been offered to a creative practitioner; there are no resources available. The producer would have completed the task, albeit it in a more inferior and timely manner.

Despite the potential gains to be had, the adoption of publicly available Generative AI systems into production is not universal. Some production companies are opposed to its adoption on philosophical grounds. Others are hesitant to adopt it into physical production due to copyright concerns.

Another development is the emergence of a maturing licensing market for the use of audio-visual works to train these systems. The global AI training-dataset licensing market was valued at nearly USD\$2.62 billion in 2024 and is projected to reach USD\$18.5 billion by 2034 at a CAGR of 20.38%.

There are numerous high-profile licensing arrangements under which AI developers obtain rights to use copyrighted works for model training across the creative industries; examples include:

- OpenAI's agreement with the Associated Press to license AP's text archive;
- Microsoft's three-year arrangement with HarperCollins to use selected non-fiction titles for training a new AI model;
- ElevenLabs' deals with Merlin and Kobalt to license music catalogues for AI music training; and
- Runway's partnership with Getty Images to build a video-generation model trained on Getty's fully licensed creative library.

AI developers are increasingly securing copyright licences rather than relying on unauthorised use, both to mitigate legal exposure and to obtain access to non-public and/or higher-quality content. The growth of these markets demonstrates the economic value of copyrighted works

in training datasets and the willingness of rights-holders and AI firms to transact on agreed terms.

SPA is anecdotally aware that some members have been approached by third-party licence brokers seeking to acquire their extensive back catalogues and b-roll footage (i.e. supplementary or background footage used to intercut with primary shots) to license to AI developers. In several cases, remuneration offered has exceeded \$150,000 per hour of footage for a non-exclusive 12-month licence, particularly where the material enables AI developers to address demographic under-representation in existing training datasets (e.g. footage featuring people from diverse racial and ethnic backgrounds). This is an important emerging revenue stream at a time when production activity is contracting; any impediment to such licensing, such as a broad text-and-data-mining exception (discussed below), should be opposed.

Licensing is sustainable: it provides certainty to all parties, enables lawful access to content, and preserves the economic incentives to invest in and create new work. Accordingly, Government should back a licensing-first approach: affirm that AI training uses engage exclusive rights and require authorisation; reject any broad text-and-data-mining exception that would undermine bargaining; and support practical market infrastructure that reduces transaction costs while ensuring fair remuneration for Australian rights-holders.

C. COPYRIGHT CONCERNS REMAIN

Producers and production companies are like any other creative when it comes to the use of AI and copyright. They are creators of copyright material and are concerned with the protection and enforcement of their copyrights.

Additionally, as many copyright protected works are used in the making of a film or TV show, production companies are also keenly aware of the need to not infringe on third-party copyright. Contracting practices have been established where production companies will warrant the final delivered film does not infringe third-party copyrights. These dual roles, as creators and licensees, heighten producers' sensitivity to how generative AI is deployed across development, production, and post.

The adoption of publicly available text-to-image/video Generative AI systems (Chat-GPT, DALL-E, Runway, etc.) into physical production has been slowed by concerns over how and when the use of these systems might infringe another's copyrights.

In practice, the key risks are:

- Training-stage use: producer works included in training datasets without authorisation.
- Protection of outputs: uncertainty whether AI-assisted outputs meet the human authorship threshold.
- Downstream infringement: AI outputs may reproduce a substantial part of third-party works, creating end-user infringement risks.

Together, these risks point to the same remedy: transparent, licensed access to training data and clear certainty around AI-assisted outputs.

These risks are already shaping commissioning practices. In response to these concerns, many broadcasters have issued AI guidelines for production partners that specify when generative AI may be used on commissioned projects. These policies typically allow narrow use during development for ideation and visual exploration, but limit incorporating generative AI outputs in

final deliverables. Consequently, broadcasters and distributors generally restrict use of the technology during physical production and post-production, permitting only tightly controlled, pre-approved usage.

D. INFRINGEMENT OF PRODUCTION COMPANY COPYRIGHT

Training-stage use—whether producer works have been included in datasets without authorisation

Developers of the foundational Generative AI models have not been transparent about whether the datasets used to train the AI were free of copyright protected material. In fact, last year, the Books3 database, a dataset containing approximately 183,000 pirated books, was uncovered and found to have been used by companies such as Meta to train generative AI models. These systems require huge datasets of billions of pieces of data, and it is more than likely most were trained on copyright protected material, collected by scraping the internet.

Because this field is nascent, there is limited precedent on which businesses can rely. The industry is awaiting the outcomes of numerous actions brought by authors and other creators against AI developers. As of September 2025, there are 51 cases in the United States alone, and it may be some time before a stable body of law emerges, especially if matters continue to resolve out of court, as occurred in August when Anthropic reached a substantial settlement. This uncertainty reinforces the need for transparency and licensing obligations on developers.

Australian AI regulation must require developers to maintain and disclose a verifiable record of their training datasets and to demonstrate compliance with copyright law, including evidence of licences or other lawful bases for use. Such transparency will channel demand toward licensed content, provide legal certainty, and support a sustainable market for lawful access to high-quality works. It will also equip rights-holders to monitor use and enforce their rights where necessary.

E. COPYRIGHT PROTECTION OF AN OUTPUT

Protection of AI-assisted outputs—whether the human contribution meets the threshold for copyright to subsist.

Copyright subsists only in material created by a human author. Accordingly, material produced with little or no human input lacks authorship and does not attract copyright protection. The Copyright Act, however, is silent on the threshold of human involvement required for copyright to subsist.

Generating outputs from text-to-image and text-to-video systems typically involves an end user supplying written prompts that the model interprets. The human contribution can range from a brief phrase to a multi-step sequence of iterative prompts refining the result.

Because the technology is novel and the Copyright Act does not specify the degree of human authorship required, the industry is looking to the courts for guidance. To date, Australian courts have not provided definitive clarification on this issue.

F. OUTPUTS THAT INFRINGE COPYRIGHT

Downstream infringement—the possibility that AI outputs reproduce a substantial part of existing works.

Under Australian law, an AI-generated output can infringe copyright. Numerous academic and industry analyses have documented examples of potential infringement. Under the Copyright Act 1968 (Cth), infringement occurs where a ‘substantial part’ of existing copyright material is reproduced in the output without an applicable exception or authorisation.

Published analyses show some systems can generate outputs closely resembling well-known works, even without naming them in the prompt. This is particularly concerning for end-users of these systems as they may be liable for copyright infringement.

The requirement to disclose training data (above), would again provide protection to end-users where developers had used copyright material in the training data sets. Without the copyright material in the data set, the end-user would be unable to generate an infringing output. Training-data disclosure reduces the chance a system can produce protected works and helps users assess residual risk.

Producers face three linked risks—unauthorised training use, uncertain protection of AI-assisted outputs, and downstream infringement. A licensing-first framework with mandatory training-data disclosure provides legal certainty, channels demand toward lawful use and reduces transaction costs while enabling innovation.

G. NO TDM EXEMPTION

The Productivity Commission’s Interim Report on harnessing data and digital technologies has caused significant concern across the creative industries by signalling consideration of a new fair dealing exception, under Australian copyright law, for text and data mining (TDM). Such an exception would permit AI developers to train systems on copyright-protected works without authorisation, bypassing licences. SPA strongly opposes any commercial or broad TDM exemption because it would interfere with rights-holders’ control over how their works are used, undermine their ability to monetise those works (as outlined earlier), and weaken the economic incentives that copyright is intended to sustain.

There are examples of TDM exemptions in other jurisdictions, however, no new TDM exemption has been legislated following the launch of ChatGPT, by OpenAI, in 2022. Those that have been implemented face challenges.

The European Union Intellectual Property Office (EUIPO) has published *The Development of Generative Artificial Intelligence from a Copyright Perspective*, identifying significant challenges with the EU’s one-size-fits-all ‘rights reservation’ approach. The report highlights that no single opt-out mechanism has emerged as a common standard across sectors, and none of the current technical or legal tools allow for enforcement—meaning TDM users are largely left to self-regulate. It also notes that datasets used in GenAI training are often scraped from the web without clarity around licensing or the presence of rights reservations. Furthermore, many of the technical tools proposed to implement reservations remain at an early stage of market maturity, which limits their uptake and effectiveness.

On the available evidence, there is no demonstrated link between broad TDM exceptions and superior AI capability or innovation outcomes. SPA therefore opposes any commercial or broad TDM exemption and supports a licensing-first framework with verifiable training-dataset

disclosure and compliance. This approach provides legal certainty, preserves incentives to invest in new Australian works, and enables lawful access through standard terms, collective licensing options, and provenance/audit tools.

H. LOSS OF CAREER ENTRY PATHWAYS

Another area for consideration, raised several times by respondents of SPA's survey, is the potential loss of career entry pathways into the screen industry. This concern is also shared among the industry, including the Australian Writers Guild and the MEAA; AI systems may potentially remove many entry level jobs in production.

Industry data and testimonies underscore that these threats are real. SPA's 2024 survey of producers flagged "potential loss of career entry pathways" in multiple departments – naming writers, production assistants/secretaries, editors/assistant editors, and animators/VFX artists as roles likely to be affected by AI-driven efficiencies. A Screen Australia survey in 2025 found that a significant portion of screen industry practitioners believe AI will indeed replace human roles in the next 3–5 years.

In response, industry and government must find a balance. AI is here to stay, so the focus is on how it's adopted. The ideal is to use AI to assist humans (e.g. speeding up workflows so crews can focus on higher-value creative work) rather than to outright replace the junior workforce.

The AI transition must be actively managed by industry leaders and policymakers, setting clear rules on transparency, consent and compensation so creatives' work is not exploited, and investing in retraining so displaced entry level workers can move into new roles (for example, from hand drawing frames to supervising AI outputs, or from junior editor to data wrangler in virtual production). SPA and MEAA are negotiating new cast and crew agreements for film and television to address some of these concerns, although SPA notes the challenge of solving industry wide issues through contracts that govern the terms and conditions of individual workers.

Overall, the evidence indicates that entry level opportunities may change as AI adoption grows, with some tasks at risk of automation and others shifting toward supervision and data centred workflows. New roles may emerge, but it is unclear whether they will offset any reduction in junior work or be accessible to new entrants. The net effect on career entry pathways remains uncertain and may differ by genre, budget level and production model.

I. DISRUPTION ON ESTABLISHED DISTRIBUTION MODELS

A plausible scenario to consider is pressure on established distribution models if copyright uncertainties persist or take years to resolve. In that case, the ability to develop or access AI systems with demonstrably low copyright risk could skew toward well-resourced companies, TV broadcasters, international VOD services, and Hollywood studios.

Outside the United States, screen production is typically led by independent production companies. These companies originate the IP and secure commissioning from broadcasters, commissioners, distributors or sales agents, and in Australia often a mix of these, to move projects into production. The commissioning party provides or arranges the finance to produce the work and, in return, receives a licence to distribute the film or series on its channel or service for a set period.

One way to avoid the copyright risks above is to use a closed, sandboxed model trained only on non-copyright material; a production company could then add its own IP to the training dataset, giving strong assurance that outputs will not infringe third-party rights. For most independent production companies, however, this is not a viable option: the upfront build, specialist staffing, security settings, and ongoing compute costs make such systems prohibitively expensive and effectively out of reach.

This path is open only to well-resourced organisations such as broadcasters, VOD services and major studios. If they elected to build and run these systems at scale, commissioning would fold back into the buyer, independent producers would be pushed to the margins, and the supplier base that sustains Australian production would be hollowed out. In plain terms, the market would contract sharply, with fewer deals, fewer jobs and fewer Australian stories.

J. STAND-ALONE AI REGULATION

SPA supports a standalone, risk-based approach to AI regulation, as outlined by the Department of Industry, Science and Resources in its work on Mandatory Guardrails for AI in High-Risk Settings. SPA agrees that developers and deployers of high-risk systems should be subject to transparency obligations under guardrail 6. Audiences, especially children and their parents, must understand the nature of the content they are viewing. SPA is agnostic about the precise mechanism, provided transparency effectively informs audiences and strengthens trust.

SPA maintains that legislation and regulation concerning copyright and AI should remain within the remit of the Attorney General. SPA is a member of the Copyright and Artificial Intelligence Reference Group (CAIRG), established by the then Attorney General, Mark Dreyfus. CAIRG is examining copyright issues arising from AI, with a current focus on the use of works for training. This work is ongoing, and the Attorney General's Department should be closely consulted wherever other government AI regulatory activity intersects with copyright.

K. CONCLUSION

AI is already delivering practical gains across the screen sector, but its use must sit on firm legal and market foundations. SPA's position is consistent throughout this submission: prioritise licensed access to works, require verifiable training dataset disclosure and compliance, reject any commercial or broad TDM exception, apply a standalone risk-based framework for high-risk settings with clear audience transparency, and keep copyright policy within the Attorney General's remit. On the available evidence, weakening copyright through broad TDM exceptions has not been shown to improve AI capability or innovation.

Done well, this approach supports investment in Australian stories, protects creators' rights, sustains fair market participation for independent producers, and helps maintain public trust while the technology matures. The path forward is to harness AI's efficiency benefits without eroding the rights and incentives that underpin Australia's creative economy.