

## **Joint SPA-APRA AMCOS submission to the Senate Standing Committees on Environment and Communications Inquiry into Australian Content on Broadcast, Radio and Streaming Services**

SPA and APRA AMCOS welcome the opportunity to make a joint submission to the Standing Committees on Environment and Communications Inquiry into Australian Content on Broadcast, Radio and Streaming Services.

The purpose of this submission is to highlight the similar regulatory issues the screen and music industries face and the shared value these industries place on local content quotas.

Television and radio have been and remain key platforms for the dissemination of Australian content to Australian audiences. Since 1942, Australia has had Australian content quotas for radio. Since 1961, Australia has had Australian content quotas for television.

Quotas ensure the production of quality Australian content and industry capability. Quotas have had a demonstrable effect in growing the market for Australian content and creative employment. As well as this, Screen content quotas not only provide economic and cultural benefits to the television production industry but to symbiotic sectors including marketing, technical and, importantly, music. Where television quotas or commitments exist – notably in the commercial free-to-air sector and the government broadcasters – there is a commensurate use of Australian composers' and artists' music.

Both the music and screen industries have felt the effect of new market entrants that have disrupted the business models of the commercial television and radio broadcasters. This market fragmentation has resulted in migration of audience and advertising spend away from traditional broadcasting towards digital players. Traditional broadcasters operate in a highly regulated, yet highly protected, commercial environment. New market entrants online operate within, and exploit, a grey zone regulation. Moreover, screen and music streaming services bring a wealth of foreign content to Australian audiences with no obligations to invest in, and promote Australian content.

APRA AMCOS, in particular, recognises that music streaming services have local curation teams in Australia and have demonstrated some support for Australian artists. However, a benchmark on locally curated playlists will ensure there is an opportunity for Australian music to be exposed further to new local audiences, and mitigate the risk of foreign artists unfairly dominating local charts.

In this joint submission, SPA and APRA AMCOS make two recommendations to ensure a regulatory regime for Australian content is fit for purpose.

1. Review the efficacy and compliance of the current code categories for commercial radio; and close loopholes on the current Australian content quotas on television broadcasters to ensure the credibility of the system
2. Introduce Australian content obligations on new market entrants including screen and music streaming services

### *Size of the industries*

In 2018, Screen Producers Australia engaged Deloitte Access Economics to aggregate the size and scale of the independent screen production sector in the calendar year 2017. The *Screen Production in Australia* report shows the independent production sector generated \$1.2 billion in production revenue and nearly 20,000 jobs. In 2017, Screen Australia engaged Olsberg SPI to comprehensively measure the economic and cultural value of the Australian screen industry. The *Screen Currency* report outlines that Australian screen content attracts around 230,000 international tourists to Australia each year, driving an estimated \$725 million in tourism expenditure.

APRA AMCOS, which only licenses the copyrights in musical works (not the accompanying sound recordings), collected \$386.6 million in gross revenue for the financial year ended 30 June 2017, which represented an increase of 16 percent (more than \$50 million) on its FY16 gross revenue. APRA AMCOS' strong revenue growth in FY17 was largely driven by the ongoing rise in the number of consumer subscriptions to music and video streaming services. Digital revenue, comprising licence fee collections from music streaming, paid music downloads, video on demand and user-generated content, increased from \$67.8 million in FY16 to \$110.3 million in FY17. In addition, APRA AMCOS collected \$125.3 million in broadcast licence fees in FY17. Furthermore, the value of the local recorded music industry grew 10.5% to \$391 million in FY17, with revenue from music streaming services (at \$213m) accounting for over half of the overall market.

### ***Commercial broadcasting quotas need attention***

The quotas on commercial broadcasters have served Australian audiences well. However, there are some issues that need addressing to ensure the credibility of the local content quota system.

### *Television – New Zealand Content loophole must be closed*

The availability of cheap second-run NZ content to acquit first-run Australian content obligations means Australian producers are competing with NZ producers at a price point that is uncompetitive. This is on the basis that the content is either purchased in its second window after airing in New Zealand or because the cost of production in New Zealand is often cheaper (labour costs are lower) or more heavily subsidised (some New Zealand television content attracts a 40 per cent tax offset. This, together with oligopsonic market conditions, means Australian producers are hamstrung from competing at a level playing field, with deleterious effects over the long term for sustainability of the independent production sector.

In 2017, New Zealand content accounted for 25 per cent of Nine Network's drama, 25 per cent of the Ten Network's documentaries and the Seven Network broadcast 290 hours of New Zealand content.

In late 2017, the House of Representatives Standing Committee on Communications and the Arts Inquiry into Factors Contributing to the Growth and Sustainability of the Australian Film and Television Industry (the House Inquiry) recommended the

Government close the New Zealand content loophole by redefining the concept of “first release”:

“The committee recommends that first-release be redefined to mean first broadcast anywhere in the world.”<sup>1</sup>

### *Radio – Format categories and the Code*

APRA AMCOS’ key concern with the local content requirements for Commercial Radio Broadcasters under the existing Code is that broadcasters are able to self-categorise which *format* they are for the purposes of determining which Australian Music quota applies to their service. For example, if a station categorises itself as falling within the ‘Classic Rock’ format, a minimum quota of 20% Australian Music will apply, whereas if the same station categorised itself as ‘Gold – encompassing Classic Hits’, an Australian music quota of only 15% would apply, and if the category of ‘Easy Gold’ were chosen, the quota would be only 10%. The various format categories are not defined anywhere within the Code and have not been updated since at least 2001.

APRA AMCOS questions why the format of a service ought to be determinative of the applicable Australian music quota percentage for that service. APRA AMCOS proposes that all music focussed services ought to be subject to the full 25% Australian music quota.

APRA AMCOS submits there would be improved transparency and compliance with format-specific Australian Music quotas if the various categories of format service were updated, simplified, reduced in number and defined in the Code.

### **RECOMMENDATION:**

Close the loopholes the Australian content quotas on commercial radio and television broadcasters to ensure the credibility of the system:

- Close the New Zealand content loophole for television broadcasters
- An independent review of the efficacy and compliance of the current code categories for commercial radio

### ***Australian content regulation must include new market entrants***

As Australian audiences migrate to new platforms including streaming services, so must the regulatory model to ensure Australian audiences have adequate access to Australian content. New market entrants such as streaming services should have similar obligations to Australian audiences and industry as legacy businesses. If we value who we are as Australians and want to ensure diversity on our airwaves and screens we must ensure that Australians have access to Australian content on all media formats.

It is the strong view of SPA and APRA AMCOS that local content requirements continue to remain highly relevant to the Australian broadcast media landscape. Ensuring that Australian content remains easily accessible to all Australians helps to

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<sup>1</sup> Recommendation 6.

develop and reflect a sense of Australian identity, character and cultural diversity. In particular, our local stories and local songs are a vital means of expressing our ideas, perspectives, values and identity and equally a means of projecting that voice to our fellow Australians and the world.

### *Australian content obligations for audio-visual content*

Subscription video on demand services have a multi-billion war chest for content acquisitions and commissions and have a significant and growing market share in Australia. After entering the market officially in 2015 (previously Australians could access the US Netflix library illegally through use of a VPN), Netflix announced its first Australian original commission – *Tidelands* – in May 2017. The majority of Australian content in the Australian Netflix library is made up of licensed content (over two-thirds licensed from the ABC).<sup>2</sup> Stan recently announced one million subscribers. Amazon Prime is establishing a presence in Australia with a large acquisitions and commissioning budget. Disney, CBS and Telstra TV have entered or are entering the market.

The level of Australian content on Australian SVOD services is in a dire state. A quantitative analysis of the Australian Netflix library by Dr Ramon Lobato and Alexa Scarlata from RMIT found:

- The Australian Netflix catalogue presently features around 2.0-2.5 per cent Australian content.
- The level of Australian content on Stan is higher (9.5 per cent), though its catalogue is smaller.
- There is more Australian content in the United States Netflix catalogue than there is in the Australian Netflix catalogue.
- In the absence of regulation, the SVOD market is unlikely to generate significant investment in new Australian content, though it adds some value to existing content rights.<sup>3</sup>

### *The House inquiry*

The House Inquiry recommended that a percentage of revenue earned in Australia by SVODs should be spent on Australian productions. The House Inquiry recommended a local content expenditure level of up to 10 per cent. The benefits of an expenditure model (as opposed to a volumetric quota level) is that it provides flexibility for the VOD provider to invest in quality, rather than quantity, of production. Furthermore, the nature of VOD services is different to linear broadcast, where quotas are a more appropriate and proven policy measure in ensuring Australian audiences are delivered Australian content. That said, to ensure that Australian audiences have access to Australian content on VOD services, a quota, together with a display and promotion obligation must come with an expenditure obligation.

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<sup>2</sup> Dr Ramon Lobato and Alexa Scarlata, *Australian Content on SVOD Catalogs: availability and discoverability*

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### *The European Union model*

By way of comparison, Netflix has close to two million subscribers in France<sup>4</sup> and the EU is bringing SVOD services into its regulatory environment.

The revision to the EU Audiovisual Media Services Directive<sup>5</sup> will include modifications to the existing Directive with aim of enhancing the promotion of European film and television content by:

- allowing media services to impose financial contributions to providers of on-demand services established in other media services (but only on the turnover generated in the imposing country)
- putting on-demand players under the obligation to promote European content to a limited level by imposing minimum quota obligations (30% share of the audiovisual offer of their catalogues<sup>6</sup>) and an obligation to give prominence to European works in their catalogues, and
- low turnover companies, thematic services and small and micro enterprises are exempted from these requirements.

### *Music streaming services*

The new media music streaming services are also not currently subject to any Australian content requirements. Given the ongoing shift in Australian consumers away from traditional media to subscription streaming services, this is of some concern. Whilst the most popular music streaming services are large multi-territorial services, APRA AMCOS notes that they do tailor their service offerings to the local territories in which they are made available, albeit to varying degrees depending on the service.

APRA AMCOS is in ongoing discussions with the major music streaming services as to how they can demonstrate their commitment to Australian music on their Australian services. One option is an Australian Content Charter whereby music streaming services would be asked to commit to certain benchmarks when making available in prominent positions on their Australian service offerings, including a minimum agreed percentage of local content in locally curated playlists.

APRA AMCOS does not consider this to be an onerous or unreasonable request to make of music streaming services operating in Australia. In fact, promoting playlists featuring increased levels of Australian music to Australian consumers in an on demand environment may even prove to make good business sense rather than be seen as a cost or inconvenience. It is also a way for foreign multi-national companies (who are generating significant revenue from sales to Australian consumers) to support the local music industry in one of the increasingly important territories in which they operate.

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<sup>4</sup> <https://www.broadbandtvnews.com/2017/01/09/france-televisions-top-launch-netflix-rival-producers/>

<sup>5</sup> <https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd>

<sup>6</sup> [https://www.theregister.co.uk/2017/05/25/eu\\_pegs\\_homegrown\\_netflix\\_quota\\_at\\_30pc/](https://www.theregister.co.uk/2017/05/25/eu_pegs_homegrown_netflix_quota_at_30pc/)

## RECOMMENDATION:

Introduce Australian content obligations on new market entrants requiring:

- an expenditure obligation and a display and promotion obligation on video on demand services
- music streaming services to commit to making available in prominent positions on their Australian service offerings by including a minimum agreed percentage of local content in locally curated playlists.

For further information about this submission please contact:

- Screen Producers Australia: James Cheatley, Director, Policy and Government Relations ([james.cheatley@screenproducers.org.au](mailto:james.cheatley@screenproducers.org.au))
- APRA AMCOS: Nicholas Pickard, Director, Public Affairs and Communications ([npickard@apra.com.au](mailto:npickard@apra.com.au))