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Screen Producers Australia's submission to the Post-Implementation Review of the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013

Screen Producers Australia was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content.

As the peak industry and trade body, we consult with a membership of more than 350 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ hundreds of producers, thousands of related practitioners and drive more than \$1.7 billion worth of annual production activity from the independent sector.

On behalf of these businesses we are focused on delivering a healthy commercial environment 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 this opportunity to make this submission to the 'Post Implementation Review' (PIR) of the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013.

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The independent production sector in Australia is highly competitive. These businesses are characterised by their professionalism, entrepreneurial spirit and quality of output. They operate in a global media landscape that is equally characterised by its dynamism, in which technological changes are giving rise to changes in production, distribution, consumption and business models.

Despite the many changes affecting the sector one thing remains unchanged: the value Australian audiences place on Australian content. Notably, 91 per cent of people believe it is important that Australia has a film and television industry producing local content. This sentiment is similar across all age groups. Even among people classified as 'low' consumers of Australian content, 87 per cent felt it was important.¹

The single most important benefit of having a film and television industry is to make sure that Australian culture isn't overwhelmed by American culture on account of the amount of movies and television series that Hollywood produces. This is reinforced by the vast majority of people agreeing that Australian screen stories are vital for contributing to our sense of Australian national identity.

Driving this cultural value is a delicate system of government interventions and support for Australian screen producers through tax incentives, content obligations and direct subsidy. Together, they help the film and television sector to directly contribute \$5.8 billion to Australian gross domestic product and about 46,600 full time equivalent employees. Of this, the independent production sector contributes \$1 billion to gross domestic product and more than 13,000 jobs.²

In particular, production of feature films, television drama and documentaries generated \$709 million worth of investment annually, including \$124 million in overseas finance. This level of investment in narrative production positively contributes \$331 million to gross domestic product, taking into account the direct and indirect impacts of production activity on the overall economy.

Free-to-air commercial television plays a crucial role in underwriting the economic impact of the screen industry through their production of local content. Their level of investment is unparalleled when compared to other platforms. This investment has been growing at 9.2 per cent annually, reaching \$1.5 billion in 2013-14.³

Screen Producers Australia acknowledges there are challenges for both free-to-air broadcasters and the independent production sector in an environment of emerging distribution platforms that are not subject to the same regulatory requirements. However, there must remain an obligation that commercial free-to-air television continue to carry given their privileged and protected position in the market.

¹ http://www.screenaustralia.gov.au/research/austories_research.aspx

² http://www.screenassociation.com.au/uploads/reports/ASA_Economic_Contribution_Report.pdf

³ http://www.freetv.com.au/SiteMedia/W3SVC751/Uploads/Documents/FreeTV_Economic_Study_Report_Venture_Consulting.pdf

With respect to this, the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, together with the Television Licence Fees Amendment Bill 2013, we believe the balance is wrong.

Reduction in spectrum licence fees

The Television Licence Fees Amendment Bill 2013 has gifted commercial free-to-air television broadcasters a permanent 50 per cent reduction in their spectrum licence fees. This was a missed opportunity to tie the reduction to expenditure targets that would have ensured a meaningful increase in local production and greater diversity on television screens.

From anti-siphoning to sub-quota obligations, there has historically been a delicate balance of Government regulation and interventions to ensure that commercial free-to-air television investments in local production are wide ranging, across low cost per hour genres like news and current affairs to higher cost content like documentaries and drama.

The importance of local content diversity is also echoed in statements by Free TV Australia, who agree that 'many components of the regulatory regime are important, including obligations and commitments around local content and sports.'⁴

The most recent data reported by Free TV Australia and the Australian Communications and Media Authority shows that expenditure on local content is increasing on commercial free-to-air television. However, of this, just one percent of local production is spent on documentaries and nine percent on drama. By comparison, 28 percent is spent on sports.

In real dollar terms, the level of annual expenditure by commercial free-to-air television in sports increased by 23 per cent whilst expenditure in drama fell by 6 per cent between 2010/11 to 2012/13.

Screen Producers Australia is supportive of conditional reductions in spectrum licence fees given the increased pressure on commercial free-to-air television. However, we are only supportive if there are safeguards to stop these savings being redirected into cheap foreign imports, or to fuel a sports rights arms race, at the expense of other local content genres.

Hourly quota obligation for multi-channels

The final report of the Convergence Review discussed the need for Australian content obligations to be broadened to a wider range of platforms.⁵ With this in mind, Screen Producers Australia welcomed moves in 2013 by Government to introduce quotas on the multi-channels, in particular the annual hourly requirement.

The annual hourly quota would appear to have been arbitrarily chosen. At just 12 per cent of available hours on the multi-channels, the 730-hour requirement in 2013 was set well below existing broadcast

⁴ http://www.freetv.com.au/media/submissions/2013_0051_LTR_The_Hon_Malcolm_Turnbull_MP.pdf

⁵ http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4992_ems_5921e924-1cb5-4c1a-be5a-5d85d54416c0%22

levels. As indicated in Screen Australia's submission, prior to the quota's introduction the broadcasters were averaging around 2,400 hours annually.

Even at 1,460 level of obligation provides an insufficient safety net and fails to offer an aspirational target for the broadcasters to screen locally-produced titles given the simultaneous reduction in licence fee and sub-quota flexibility.

Sub-quota flexibility and the two-for-one drama incentive

The flexibility to acquit the sub-quotas across the primary and multi-channels has affected drama, documentary and children's programs in different ways.

Impact on Australian drama levels

In 2014, Screen Producers Australia was both disappointed and alarmed at the annual compliance results for metropolitan commercial free-to-air television licensees released by the Australian Media and Communications Authority.

The figures revealed, that in relation to its first release Australian drama, the Nine Network met an astounding 51 per cent of its obligation with the use of New Zealand programming, compared to just 7 per cent for Seven Network and 4 per cent for Network Ten.

The Australian Media and Communications Authority recently released an update to the compliance results. The Nine Network have reduced their proportion of New Zealand programming to 37 per cent.⁶ In total they reported 14 first release dramas with eight screening on the multi-channels. This included the first 'Australian television release' of four locally produced feature films and four series acquired from New Zealand.

By comparison, there were nine first release dramas screened by Seven Network. Four of these were drama series on their multi-channels of which *Kinne* as the locally produced title. There were ten first release dramas screen by Network Ten. They continued to screen *Neighbours* exclusively on their multi-channel as well as four first 'Australian television release' feature films, which included one from New Zealand.

The annual average of New Zealand hours screened by the commercial free-to-air broadcasters between 2007 to 2012 ranged between 22 to 48 hours each year. Since the amendments took place the combined annual hours across the commercial free-to-air broadcasters rose from 40 hours in 2012 to 120 hours in 2013 and 180 hours in 2014.

This impact of New Zealand programming is the unintended consequence of the Australia-New Zealand Closer Economic Relations Trade Agreement which has been exacerbated by the quota flexibility across the multi-channels in these amendments. We are seeing low-yield New Zealand programming placed on low-yield multi-channels to acquit quota obligations as the same rate as if it was run on a high-yield

⁶ <http://acma.gov.au/Industry/Broadcast/Television/Australian-content/australian-content-compliance-results>

primary channel. To a risk adverse broadcaster this is likely to be a more attractive proposition than commissioning a new local production that might cost ten-times as much.

This has fuelled calls from Screen Producers Australia to redefine the term 'first release' in the Australian Content Standard, by broadening the definition to reflect the concept of a worldwide premiere and not just a program's initial screening in the licence area.

In addition, given that *Neighbours* was already screening on a multi-channel prior to the introduction of the quota, the two-for-one incentive has proven to be ineffective for adult drama with *Kinne* as the only original commission during the year. Both attracted low format factors of 1 and 2.5 respectively.

Impact on Australian children's programming levels

There has been no change in the number of hours of children's programming screened by commercial free-to-air broadcasters. In fact, there has been no change in over a decade with commissioning activity predicated on the quota level.

Screen Australia state in their submission that moving children's content (foreign and Australian) from the primary channels to multi-channels has allowed the commercial free-to-air broadcasters to schedule longer and more consistent blocks of children's programming. However, the changes in channel, timeslot and day of week have had an impact on program performance. Many Australian children's programs achieved lower ratings when moved from the primary channels to the multi-channels.

The lower ratings acutely effect licence fees paid by the broadcaster to the independent production sector. This was explained in the public hearings of the Environment and Communications Legislation Committee's inquiry into the amendments.

In an exchange between Senator Scott Ludlum and Hamish McLennan, the CEO of Network Ten, the Senator queried if the 'appropriate market level is set by an agreed price between a buyer and a seller... (and the broadcaster would therefore) pay less for an equivalent piece of content on a channel with a smaller audience share than on your main channel.' Hamish McLennan responded, that is correct.⁷

There continues to be a need for children's programming on commercial free-to-air broadcasters. Whilst the sub-quota flexibility allowed for the movement of children's programming to a more stable home on the multi-channels in broadcasting blocks, the downward pressure on licence fees runs the risk of undermining the industry's ability to ensure access to diverse children's programming.

Impact on Australian documentary levels

Whilst it is still prevalent, Screen Australia's submission indicates that first release documentary has been largely unaffected by New Zealand programming since the sub-quota flexibility on the multi-channels was introduced.

⁷ Office Committee Hansard, Environment and Communications Legislation Committee, Monday 18 March 2013, page 40.

There has been an aggregate increase in the amount of first release documentary hours screened across the primary and multi-channels. The proportion of hours screened on the primary channel has remained steady with the Seven Network and Network Ten were the contributors to this rise.

Response to Post-Implementation Review

Is the legislation still appropriate?

The Explanatory Memorandum for the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013 stated:

'The Final Report of the Convergence Review recognised the continued importance of the production and distribution of Australian content and discussed the need for Australian content measures to be broadened to a wider range of platforms. Recognising that increased local content requirements will incur significant costs for broadcasters, new requirements will be introduced over time.'

With reference to this objective, Screen Producers Australia believes that the legislation in its current form is not appropriate. This is in large part due to the lack of industry consultation when drafted and is evident by there being no meaningful increase in locally-produced content. As a result of these amendments Australian programs are harder to find, have increased downward pressure on the licence fees paid to production companies and are threatened by an increased reliance on New Zealand alternatives.

Is the legislation effective and efficient in meeting its objectives?

To ensure that the legislation is effective and efficient with its stated objectives, Screen Producers Australia seeks to increase the aggregate level of sub-quota obligations across all channels with a portion of this quota to be tied to primary channels, and we seek to reduce the impact of New Zealand programming, within the parameters of the Closer Economic Relations agreement, by redefining first release. In principle, Screen Producers Australia supports the removal of spectrum licence fees to help offset this costs associated with an increased quota for television drama, documentary and children's programs.