



SCREEN
PRODUCERS
AUSTRALIA
60 YEARS

SUBSCRIPTION VIDEO ON DEMAND SERVICES

Obligations have historically protected audience access to great Australian screen content. These obligations also provide for a healthy local production industry for Australian content. These obligations need to adapt to the expanding market and include online subscription services like Netflix.

WHAT IS THE PROBLEM?

Subscription video on demand services deliver television programs and films over the internet, rather than through traditional broadcasting means. This means they are not regulated like broadcasting organisations and operate in a “grey area”.

In September 2000, the then Minister for Communications, Information, Technology and the Arts, Senator the Hon Richard Alston, made a ministerial declaration specifying that the following class of service does not fall within the definition of

“broadcasting service”:

...a service that makes available television programs or radio programs using the internet, other than a service that delivers television programs or radio programs using the broadcasting services bands.

The minister explained that the purpose of the definition is to ensure that a service that “provides television or radio programs through the internet—other than a service that delivers television programs and radio programs using the broadcasting services bands—does not fall within the definition of a broadcasting service”.

The media landscape has changed dramatically since 2000, with new market entrants taking a greater audience share. **Foxtel has 27 per cent market share and Netflix has a 28 per cent market share and 2.23 million Australian subscriptions.** What was perhaps a minor regulatory intervention to address a lower order issue in 2000, has had a host of unintended consequences that persist decades later.

Screen Producers Australia is asking the Government to clarify this grey area, adopt a technology-neutral approach to regulation, guided by the initial principles of the *Broadcasting Services Act 1992*.

HOW ARE BROADCASTERS REGULATED?

The Broadcasting Services Act places conditions on organisations that are provided a broadcast licence. These conditions include obligations to show Australian, regional and children’s content, advertising and classification requirements, and minimum expenditure on Australian drama by subscription television broadcasters. The commercial television broadcasters also have a sheltered competitive environment as no new commercial television broadcast licences can be offered, as well as privileged access to the acquisition of rights to highly-lucrative sporting events.

HOW ARE SVOD SERVICES REGULATED?

Because SVOD services make television programs and films available through the internet and not the spectrum, these services are not regulated like television broadcasters. Indeed, they are hardly regulated at all. These SVOD services do not have requirements to show Australian, regional and children’s content, restrictions on advertising and classification requirements, or minimum expenditure on Australian drama.

To show how lacking these SVOD services are in regulation, **Netflix recently agreed to a self-regulatory model for classification of content.**

Around the world, countries are taking action: France and Brazil have content requirements on SVOD services while Canada and the EU are currently considering action.

WHAT REGULATORY PRINCIPLES ARE RELEVANT?

When the Broadcasting Services Bill was introduced, the Government at the time said the purpose of the legislation was to implement:

“reforms to the broadcasting regulatory regime to establish general rules for the industry which are clear, stable and predictable; to establish minimum requirements expected of industry participants; to introduce flexibility into the regime to enable responsiveness to changing circumstances; to monitor outcomes and trends against policy objectives; and to provide a range of redressive measures to the regulatory authority to deal with breaches or adverse trends.”

Further, the legislation “provides a simple regulatory regime for broadcasting services that applies

irrespective of the technical means of delivery”.

These principles have not changed since the early 1990s, but the marketplace for production and consumption of content of has changed dramatically. Our current regulatory environment is too focussed on the method of content delivery: broadcasters are highly regulated, SVOD services are hardly regulated at all and get to choose when they will be regulated and when they won’t.

The 2012 Convergence Review found “there should be a flexible and technology-neutral approach to content regulation that reflects community standards”. The Convergence Review then proposed a technology-neutral regulatory model that would treat television broadcasters and SVOD services similarly.

WHAT IS SCREEN PRODUCERS AUSTRALIA ASKING FOR?

Screen Producers Australia is asking the Government to equalise the playing field and extend local content quotas or local content expenditure requirements to SVOD services.