Submission to the Standing Committee on Communications and the Arts

Inquiry into the Australian film and television industry

31 March 2017

Introduction

ASTRA welcomes the opportunity to the Standing Committee on Communications and the Arts Inquiry into the Australian film and television industry.

Our submission is structured as follows:

Section 1: Executive Summary

Section 2: Background

Section 3: Present business environment

Section 4: Balanced regulatory reform

Section 5: Government support for local production

Section 6: Copyright protection

Section 7: Conclusion

1. Executive Summary

- The Australian film and television industry delivers a number of vital cultural and economic benefits to Australians.
- Not only does the local industry deliver those highly treasured 'local stories told in local voices', it also drives significant economic benefits through the activity and employment it generates.
- However, the industry's future sustainability is being severely tested by the influx of new entrants into the Australian market and rapidly changing consumer behaviour.
- Increasing unregulated competition is driving up programming costs, particularly for key differentiating content such as sport and premium drama, making scale more important than ever.
- Yet it is extremely challenging for local broadcasters to match the ability of the unregulated new entrants to invest in original and existing content.
- This confluence of factors requires local broadcasters to adapt, invest and innovate and ASTRA's members are well down this path.
- However, prompt action is also required from Government to remove inappropriate and imbalanced regulatory interventions which penalise only subscription TV.
- Reform to production support measures is vital so as to ensure the industry can continue to deliver highly valued services, invest in local productions and employ thousands of Australians.
- The continued delivery of economic and cultural outputs is also dependent on a robust and balanced copyright framework.

2. Background

ASTRA is the peak industry body for subscription media in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multichannel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major subscription TV operators, as well as over 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

ASTRA's members provide a diverse range of news, information, sport and entertainment programs which deliver significant social benefits to a broad cross-section of the Australian community. In 2017, one third of Australians subscribe, along with millions more who watch subscription content in public venues. Every week more than 1000 hours of first-run locally produced content is broadcast on subscription TV, as well as the best international content.

The industry is a key part of the film and television production sector in Australia In addition to its cultural contributions, the subscription television industry makes substantial economic contributions. In 2015/16 ASTRA added $2 billion to the economy, and created jobs for 8340 Australians.[1]

[1] PwC analysis prepared for ASTRA

The subscription television industry is a strong supporter of the local production sector. In 2015–16 the subscription television industry invested a record $893 million in Australian screen content (including drama and other genres). $6.5 billion has been invested over 10 years. Local broadcasters are the key underwriters of the Australian production industry, and in 2016 provided over half of the total finance for the Australian TV drama slate.[2] Our industry stands ready to invest even more and a key part of that will be ensuring that the regulatory environment and funding support rules encourage investment, creative risk-taking and innovation.

Subscription TV is poised to continue to make great contributions in the new media landscape, growing the economy, creating even more jobs and delivering high-value services to consumers. However, in order to fully achieve our potential and ensure global competitiveness, regulatory imposts must be framed so as to avoid undue complexity and inefficiency, and in a way that ensures a level regulatory playing field across media operators.

3. Present business environment

This part of ASTRA's submission outlines the competitive pressures, technological developments and changes in consumer behaviour which are currently combining to place pressure on the local subscription television industry. As outlined in the next part of this submission, this confluence of factors requires prompt action from Government to remove inappropriate and imbalanced regulatory interventions so as to ensure the industry can continue to deliver highly valued services, invest in local productions and employ thousands of Australians, on a level playing field.

Whilst the Committee's focus is on the local industry, we must look to the transformations taking place in the broadcast and production industries globally to properly understand current local conditions.

In particular, ASTRA notes the following broad changes which have occurred largely since 2010:

1. The industry as a whole is facing intensifying competition from new entrants who are not bound by the same regulation as 'traditional players' and are also able to invest to grow scale at much greater rates than local broadcasters; and
2. The growth of subscription video on demand (SVOD) and mobile viewing through which consumers are increasingly self-aggregating content through SVOD and "over the top" (OTT) apps.

Locally, this intensifying competition has manifested itself in four key ways:

1. "Direct to consumer" and SVOD services such as Netflix, Amazon Prime and Hayu (NBC).
    - In 2016, 7.1 million Australians used SVOD services, with Netflix subscribers or users making up 2.8 million of that total.[3]

[2] http://www.screenaustralia.gov.au/getmedia/595410ac-1ee0-4aeb-a0bb-48716f0c8d7a/Drama-Report-2015-16.pdf?ext=.pdf
[3] See:http://www.nielsen.com/au/en/insights/news/2017/small-screens-driving-audience-growth-to-netflix.html

    - Streamed programming in Australia now accounts for 22% of our total TV viewing time, up from 18% in 2015.[4]
2. IP based aggregation platforms e.g. Apple TV, Chromecast and Amazon, which allow consumers to self-aggregate content of their own choosing from multiple platforms, circumventing local broadcasters.
3. Streaming and content bundling offerings from traditional telecommunications companies.
    - An increasing number of telecommunications companies are now providing additional services to help differentiate their offerings ahead of the NBN rollout.
    - For example, Optus' cricket and English Premier League (EPL) streaming services.
4. Free-to-air (FTA) multi-channels that provide a diverse range of niche content.
    - For example, SBS Food and 7Mate channels.

3.1 Imbalances in scale in local and global competitors

As well as enjoying a free pass on regulatory imposts, the other key advantage held by global competitors in the media space is their ability to invest and grow scale in ways that local operators are not equipped to match.

An example is Amazon Prime Video, Amazon's video streaming service which was recently made available to Australian customers. This service is a comprehensive video streaming service, however has been described by some as being primarily intended as a means of attracting customers to Amazon's core online retail business (rather than the video service being a primary business objective). Therefore, the viability of Amazon Prime Video is of less consequence to Amazon's broader business goals, and also due to Amazon's global scale, Amazon can afford to invest and compete for premium content at rates local Australian businesses simply cannot compete with in the current regulatory setting.

Similarly, Netflix operates on a global scale model in order to minimise their monthly fees and attract customers, which they can afford due to the sheer scale of their truly global business. In its most recent quarterly report Netflix reported that international membership grew by 5.12 million in Q4, and that its global subscriber base now amounts to 93.8 million members.[5] This allows Netflix to produce original shows such as *The Crown* which was budgeted at $US13 million per episode, making it on a dollar per hour basis the most expensive television series ever produced.[6]

The effect of the introduction of large scale businesses into the Australian environment is to force ASTRA members and other local broadcasters to rapidly increase investment in original and existing content in order to try and differentiate their own offerings and to remain competitive with new players.

For example, in 2015 Foxtel committed to doubling its investment in new Australian scripted, factual, lifestyle and entertainment programming by 2018, creating original

---

[4] Deloitte, Media Consumer Survey 2016 - Australian media and digital preferences 5th edition, p7
[5] Netflix, Q416 Letter to shareholders (18 January 2017) p2, https://ir.netflix.com/results.cfm
[6] See: http://www.smh.com.au/entertainment/tv-and-radio/the-crown-the-get-down-and-the-most-expensive-television-shows-yet-20160729-gqgicn.html.

premium content such as *Secret City*, *The Kettering Incident* and *Picnic at Hanging Rock*.

This marked increase in content costs comes at a time of increased price competition and falling audience numbers (see below), placing considerable pressure on the local broadcasting industry's long-term outlook.

This upping of investment may appear as largely beneficial to the local television industry however, local television broadcasters do not have access to the funds which are available to international SVOD service providers and this content 'arms race' cannot continue indefinitely. OTT players are increasingly becoming leading producers of content with examples such as Netflix, who in 2017 plans to invest over US$6 billion on content (up from US$5 billion in 2016).[7] It is very difficult for local broadcasters with smaller scale business models and larger local costs to match overseas funding levels.

3.2 Changing viewer habits

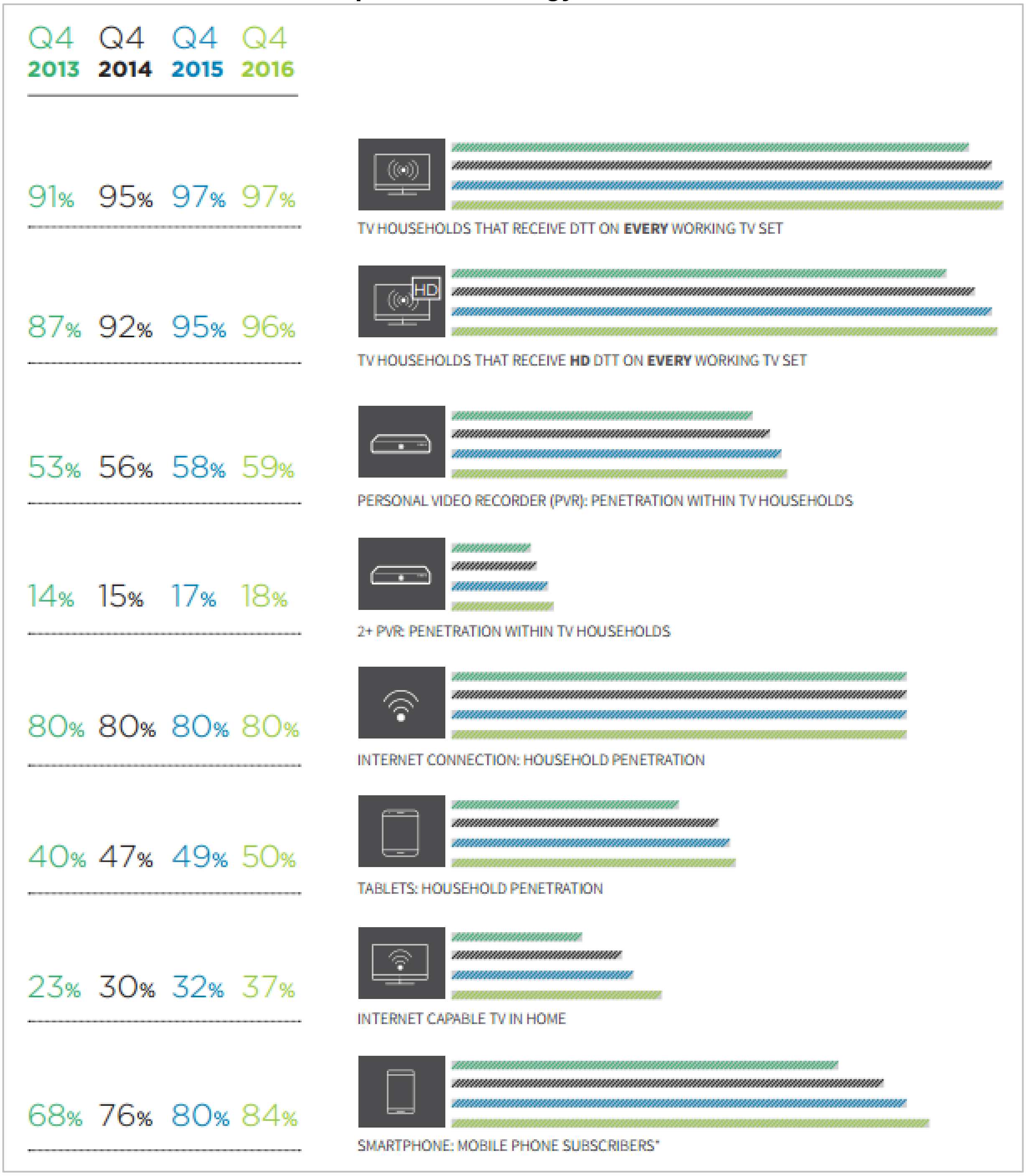
In addition to this intensifying competition, consumer viewing habits are also changing, requiring further evolution and change in the local industry. Whilst linear "traditional" TV viewing remains dominant and watching TV remains the most popular entertainment activity,[8] there has been a gradual decline in the time spent viewing live and playback TV over the past five years. This is largely due to technological developments delivering new choices in terms of screens, content and platform.[9]

Further to Graph 1 below, the average Australian home now has 4.5 connected screens in addition to their TV sets, up from 3.9 four years ago.[10] We are also experiencing a generational shift in viewing habits with consumers aged 16-34 spending almost 2.5 hours more each week watching streamed on-demand user generated content, compared to 35-69 year olds and almost four hours less than the older population when it comes to watching live and linear broadcast content.[11]

---

[7] Netflix, p 3
[8] Deloitte, p 13
[9] OzTAM, Australian Multi-Screen Report Quarter 4 2016 (29 March 2017) p 3
[10] OzTAM, p 3
[11] Ericsson, TV and Media 2016 Report https://www.ericsson.com/networked-society/trends-and-insights/consumerlab/consumer-insights/reports/tv-and-media-2016

Graph 1: Technology Penetration



Source: OzTAM, Australian Multi-Screen Report Quarter 4 2016 (29 March 2017) p 11

Viewing via mobile devices has increased and is expected to continue to grow as internet speeds rise enabling more options for content delivery. Unique audiences visiting the Netflix website or app via a desktop/laptop, smartphone or tablet have increased by 48% in the past year. It is understood that a majority of this year-on-year growth was driven by increased access via smartphones (+82%).[12]

ASTRA has observed that consumers are now increasingly comfortable with self-curation and are drawing on direct to consumer content to self-aggregate content. In terms of SVOD subscriptions, many subscribers are doubling-up on SVOD services -

[12] http://www.nielsen.com/au/en/insights/news/2017/small-screens-driving-audience-growth-to-netflix.html

18% of SVOD subscribers having more than one service, and 64% believe that they require more than one service to access all the content they want.[13]

The implication of these consumer based trends for STV and local broadcasters is that it requires the local STV and broadcast industry to invest in other services which differentiate their offerings e.g. premium and diverse content and in some cases, broadband and telephony offerings.

3.3 What needs to be done?

The STV industry understands that a commercial response by industry is required through the development of products and services to adapt to changing competitive pressures. This includes ensuring local services are priced and packaged competitively. However, as set out below, Government intervention is required in order to ensure that all competitors operate on a level playing field.

In terms of the steps which have been taken by industry to address growing competitive pressures and changing consumer demand, subscription TV has worked intensively in recent years to create a wide range of consumer options, ensuring the best mix of local and international content is available in a timely way, on a range of devices, and at attractive price points.

The diverse and wide ranging content that Foxtel offers is now available on a full range of devices and platforms. As well as its iQ and MyStar set-top boxes, this includes tablets, mobile phones and other popular devices. For example, Foxtel Play streams TV, news, sport and movies, both live and on-demand, on month-to-month, no lock-in contracts. Foxtel Go is provided at no extra charge to Foxtel Play and cable and satellite subscribers and provides live and on-demand content on mobile and tablet devices.

In addition, to address competitive pressures, these services are available at extremely competitive prices, making subscription TV content more affordable than ever. Cable and satellite prices now start at $26 per month (which provides access to 45 channels and a large amount of on-demand content) and Foxtel Play offers low prices and flexible packages, without the need to sign up to a fixed term contract. Customers who use an IP connection, with their own device are able access five different entry level tiers to match their interests. There are two options for drama priced at $15 per month each or $25 for both. For $10 a month, there is one option for Lifestyle, one for Documentary and one for Kids. In addition, customers are able to take the Sports tier for an extra $29 per month and the Movies tier for an additional $20 per month.

The industry has therefore clearly moved to address the challenges arising from consumers' demands for affordable and timely content. However, there is an underlying and imperative role for Government to ensure that any regulatory interventions are geared to encourage investment, innovation and consumer choice. In particular there is a pressing need to wind back discriminatory policy settings which are not only inefficient and redundant, but which serve only to disadvantage the STV sector and lavish generous protections on other sectors.

The next section of this submission addresses the areas in which regulatory reform should be prioritised to enable local businesses to expand and better compete with new entrants.

[13] Deloitte, p 7

4. Balanced regulatory reform is crucial

The Government has moved to recognise the competitive pressures on local broadcasters through a Bill providing limited media reform. The Government's Broadcasting Legislation Amendment (Media Reform) Bill 2016 seeks to liberalise two existing restrictions on the ownership of traditional media platforms.

ASTRA supports deregulation of the media industry, and agrees that changes in technology and consumer behaviour are quickly rendering existing media regulation redundant – the rationale cited by the Government for its reform agenda.

However, ASTRA does not support selective, operator-specific deregulation, which will entrench the competitive advantages enjoyed by FTA television networks, thus skewing investment towards the oldest business models and least innovative technology in broadcasting. This will dampen innovation, diminish diversity and deny to Australia the jobs and growth that can be unleashed if reform is applied to the entire industry in an operator-neutral way.

The same upheavals in the competitive landscape and the same financial pressures cited by the Government as driving the reforms in the Bill apply equally to the subscription TV industry. Subscription TV faces the same pressure on fragmentation of audiences as FTA broadcasters, and has to compete with the same largely unregulated overseas competitors, but faces the added challenge of price pressure from other subscription providers.

Whilst we are not opposed in principle to the reforms contained in the Bill, ASTRA believes the Government should pursue a whole-of-industry deregulatory agenda which enables all, rather than some, Australian broadcasters to continue growing, investing and creating jobs in the face of challenges represented by largely unregulated offshore entrants.

4.1 Acquisition of sports rights

One of the most significant Government interventions in the media industry is the anti-siphoning scheme which impairs the operation of 1900 sporting fixtures each year. Amongst these are events such as a FIFA World Cup soccer match between North Korea and the Ivory Coast, played overseas in overnight time zones, and watched by as few as 11,000 viewers.

The scheme imposes a condition on the subscription TV licence that prohibits subscription television broadcasters from acquiring broadcast rights to listed events unless a FTA broadcaster has first acquired them.

The scheme now operates well beyond its original public policy intentions to the detriment of sports bodies, competitors of FTA broadcasters and, ultimately, to the general public, who are denied the full potential for innovation and choice that would flow from improved competition for sports broadcast rights.

Recent actions by FTA television broadcasters and online companies have seen the public policy behind the scheme fatally undermined and its anti-competitive effect intensified towards local subscription television broadcasters. For example, Seven was able to leverage its privileged access to the 2016 Olympics television rights to launch a paid service via an app. The result was a portion of Olympics content was only available behind a paywall – the exact outcome the scheme was intended to prevent.

This is an absurd outcome that runs counter to the purported objectives of the scheme, and reveals once again that the scheme is not designed to benefit Australians. Rather it is entirely configured to secure a competitive advantage for FTA broadcasters. The loophole which allows FTA broadcasters to charge for listed sport simply compounds the anti-competitive effect of the scheme. All the while new media platforms like SVOD players can bypass the scheme entirely, buying up big ticket sports exclusively and charging for access.

Because the scheme only applies to subscription TV licensees, it would not prevent an OTT streaming service like Netflix from acquiring exclusive rights to nationally significant sports and charging viewers for access. This is no longer a hypothetical argument, demonstrated by Optus' active participation in the acquisition of sports rights and its stated intention to target further sports rights.[14] Twitter has obtained the rights to select NFL matches in the US and Amazon is reported to have hired an executive whose sole focus will be the acquisition of sports rights.

It is also relevant to note that sport on subscription television is now more affordable than ever, with sports packages available from only $39 per month on Foxtel Play.

4.1.1 Modest reform is proposed

ASTRA submits that a truly reformist agenda would at least begin to address the anti-competitive impact of this outdated and protectionist scheme. The anti-siphoning rules, after all, date from precisely the same era as the rules being repealed in the Government's reform Bill – making them as much of a relic of the analogue era as the 'reach' and '2 out of 3' restrictions.

Our overarching principles in relation to reform are that the regulation needs to be rewritten so that it better reflects the public policy objective of the scheme. This can be done by ensuring only events that satisfy the test of being nationally important and culturally significant are listed, and that the list reflects current commercial practice.

4.2 Principles for holistic deregulatory reform of the media industry

As outlined above, the Australian media landscape has grown to include new subscription services offering consumers even more choice and flexibility. The subscription television industry welcomes competition, but submits that in order to maintain diversity and maximise consumer choice, competition must take place on equal terms. New entertainment services delivered online are not subject to the complex and burdensome media-specific regulation that applies to incumbents and are thus in a position of comparative advantage in terms of regulatory compliance costs and business practices.

[14] http://www.smh.com.au/business/optus-eyes-bigger-sports-prizes-after-winning-epl-rights-20151102-gkox75.html

	Streaming services & digital platforms	Commercial free-to-air TV	Subscription TV
Operates without local job creation	✓	✗	✗
Operates without formal licence	✓	✗	✗
Operates with no local content investment	✓	✗	✗
Free from onerous advertising restrictions	✓	✗	✗
Privileged access to local sports broadcast rights	✓	✓	✗
Benefits from licence fee cuts	✗	✓	✗
Guaranteed access to spectrum	✗	✓	✗
Protected by legislated ban on new competitors	✗	✓	✗

It is inconceivable that the existing convoluted rules could be effectively applied to these new participants. The only way to enable fair competition amongst all participants, therefore, is to dismantle much of the current regulatory regime.

ASTRA submits that greater competition, underpinned by balanced regulation, is more likely to maximise the viability of the industry by promoting investment, fostering innovation and creating jobs. It will also generate greater economic activity and therefore increase taxation revenues available to the Commonwealth.

Conversely, regulation that distorts competition or applies asymmetrically will hinder investment, innovation and job creation, and harm Commonwealth revenues.

Advances in broadcasting may be enabled by technology, but the benefits they promise to consumers will be delivered only to the extent they are supported by freer markets and fairer competition.

In ASTRA's view, the policy debate regarding media reform should be guided by the following principles:

- *Advancement of the interests of consumers*—changes to the regulatory framework should only be made, and existing regulations only maintained, if they advance the interests of consumers.

- *Promotion of competition*—free and open competition is widely recognised as a positive driver of economic growth and efficiency. Where existing regulation produces anti-competitive outcomes, it should be removed. Any future regulation should be assessed against this principle to ensure that it promotes competition and a level playing field.

- *An adaptable, flexible framework*—the regulatory framework should be adaptable to the rapidly evolving and innovative technologies that drive change in the media and communications industry.

- *Regulatory forbearance*—regulatory intervention should be a last, rather than a first resort. Self-regulatory and co-regulatory measures should be preferred.

- *Regulatory consistency and technology neutrality*—in an ideal state regulatory consistency and technology-neutral regulation is preferred. However, as a practical matter, there will need to be a phased approach to achieving this outcome as the current regulatory landscape confers benefits and affords protections to some sectors over others – regulatory burdens on protected sectors should only be lifted when those protections are unwound.

ASTRA supports more comprehensive reform agenda that equips all Australian media companies to respond on a competitively neutral basis to the changes underway in technology and consumer behaviour, and the entry of unregulated offshore providers.

This approach is more likely to foster innovation, expand consumer choice, drive growth and jobs and ensure the ongoing sustainability of the local industry. Ad-hoc concessions to certain operators merely risk undermining the impetus for further deregulation, jeopardising the opportunity to safeguard local investment, innovation and jobs in future.

5. Government support for local production

As set out above, there is an urgent need to ensure the macro level regulatory interventions in the media sector are appropriately balanced. This is crucial to the ongoing sustainability of local broadcasters, and in turn, is vital for their continued investment in local production.

However, there is also an important role for Government in shaping targeted and efficient direct support mechanisms for the local film and television production industry. Support measures which reward innovation and risk-taking and which reflect the business practices of local broadcasters are more likely to meet the overall objectives of delivering cultural outputs and supporting the local production industry.

ASTRA submits that this can be achieved in two key ways. Firstly, through the equalisation of the tax incentives for film and television production. Secondly, through improvements to the eligibility for government funding support rules, so that they are more efficient and reflective of the modern media industry.

5.1 Equalisation of the Producer Offset

The Producer Offset is administered by Screen Australia and paid through the Australian company tax system after a project is completed. It provides a rebate of 20% of 'qualifying Australian production expenditure' for television programs and 40% for feature films.

ASTRA and Screen Producers Australia (SPA) have commissioned economic analysis which demonstrates significant beneficial impacts for Australian jobs and the economy from an increase in the Producer Offset tax incentive for television productions (Attachment A).

The analysis, from PwC, finds that 360 new television jobs and $103.9 million in economic activity would be created if the tax offset available to qualifying television productions was doubled from 20% to 40%, the same value currently enjoyed by film.

The report shows that a doubling of the tax offset from 20% to 40% would cost the Commonwealth $15.5 million, yet would generate an additional $119.4 million in economic activity, making the overall economy better off by more than $100 million.

The analysis considers seven scenarios and their various impacts, however our overwhelming preference is for ‘scenario six’, under which the rate of Offset for all eligible television projects is raised to 40%

The Offset has had great success encouraging projects of greater scale and ambition, increasing financing certainty and providing relief from the challenges of raising production budgets which, has enabled greater confidence in and employment of the thousands of producers, actors, writers, directors and crew in the sector. In combination, this has worked to help retain Australia’s creative talents from leaving for other competitive centres of production, most notably Los Angeles or London.

This beneficial impact could be amplified through this simple and inexpensive reform.

The Offset recognises the importance to Australian cultural policy objectives of a healthy and viable production sector. It was introduced to support the Australian screen media industry at a time when it is striving to meet the challenges of a changing global environment.

The tax offset model of support encourages greater private sector investment in the industry and has greatly improved the responsiveness of the industry since its introduction in 2007. Tax-based incentives have also been successful in overseas jurisdictions. In the US state of Georgia, the introduction of production industry tax credit has seen annual production spending increase 400%, as well as the creation of large amounts of broader economic benefits including increased numbers of local suppliers, substantial infrastructure development and training opportunities.[15]

However, the funding disparity in favour of film over television under the Australian Producer Offset scheme is becoming ever more difficult to justify given the increasing prominence of television (and other platforms) as vehicles for distribution of quality audio-visual content. Increasing the offset rate to 40%, to align with film, would encourage greater investment and production on the platforms where content is more likely to be seen by Australian audiences.

A guiding principle should be that of a consistent offset to Australian content regardless of the format or distribution mechanism for delivering that content. The cultural objectives of having Australian stories produced and viewed are equally realised via television as they are through feature film. In addition, the local television production industry is just as valuable a creator of jobs and expertise as the local film production sector and is as deserving of stimulus.

5.2 Other improvements to the Producer Offset

5.2.1 Eligible formats

Within the documentary genre, the Producer Offset specifically excludes infotainment, lifestyle and magazine programs from eligibility. This artificially boxes in creativity and innovation in the documentary production sector. In an environment in which increased global competition is already placing significant

[15] Economic Contributions of the Georgia Film and Television Industry – Myers Norris Penny, 28 February 2011

pressure on the viability of documentary production, a decision to restrict government support so narrowly risks being extremely counter-productive. This restriction does not take into account issues relating to the production of factual programming for platforms other than commercial television, such as subscription TV.

The restriction does not reflect the current nature of documentary production and the types of factual programming that are of value to viewers. Government review and reform of this outdated and restrictive approach is warranted.

5.2.2 Minimum spend requirements

In order to obtain the benefit of the Producer Offset, a production must include a minimum level of 'Qualifying Australian Production Expenditure' (QAPE). For example, a drama must reach a minimum QAPE of $500,000 per hour (and a total of at least $1 million) in order to be eligible.

These levels apply on a 'one size fits-all' basis and do not account for the differences in the types of platform (including FTA, subscription TV, SVOD). It is unclear why such levels are necessary and they clearly hinder the ability for content makers to innovate and create programming on lower cost bases.

These obvious barriers to investment, innovation and job creation should be removed.

5.3 Direct funding support measures

The main Government funding initiatives for Australian content are through direct funding by Screen Australia, and the Producer Tax Offset for drama and documentary production (also administered by Screen Australia) (see above). Funding is also available through State and Territory screen bodies.

Screen Australia provides direct funding for Australian film, television and games producers. Television funding is provided under a number of funding initiatives, focusing on drama, children's programs and documentaries.

However, existing regulation and Screen Australia funding guidelines limit the extent to which subscription TV can access Screen Australia's support.

5.3.1 Minimum licence fees

To qualify for Screen Australia funding, there is a 'one size fits all' licence fee of $440,000 per broadcast hour for drama – this is the amount a broadcaster must agree to pay a producer for the right to broadcast the program.

The current $440,000 per hour requirement is another instance in which funding eligibility reflects the mass-audience, advertiser-funded commercial FTA productions, but does not reflect the differing business models across different platforms.

A high licence fee does not make sense for subscription platforms where individual channels and services generally attract lower audiences than commercial FTA broadcasting services.

Greater flexibility is needed in this area to incentivise ongoing investment in new productions and to encourage innovation and the development of lower cost, more agile production models.

5.3.2 Rights gained

Counter-intuitively, Screen Australia takes the view that the $440,000 per hour should only entitle a broadcaster to rights for the broadcast platform, and that broadcasters should pay an additional licence fee for digital platforms.

Screen Australia expects projects it funds to be made available on at least one digital media platform other than broadcast television, and this is something ASTRA members want to do – because subscribers expect to get programs on air and digitally.

The exclusion of digital rights from the broadcaster licence fee does not reflect the modern media environment in which content providers (such as subscription TV) reach their viewers by a number of means. The ability to reach audiences on a variety of platforms is becoming an important part of the content delivery business.

The mandated licence fee should include sufficient rights to allow broadcasters to distribute the program across numerous platforms.

5.4 Legislated minimums

We encourage the Government to also consider whether Australian content regulation set out in the *Broadcasting Services Act 1992* remains fit for purpose. It will be important for a holistic review to consider both incentives and obligations, especially given the arrival in Australia of overseas-based services that are not required by law to support Australian content.

6 Copyright

The continued production of Australian stories by Australian practitioners, and the future sustainability of the local film and television industry is contingent on a robust and balanced copyright system.

As explained by Foxtel, in its submission to the Productivity Commission’s final report on intellectual property arrangements:

> Overall wellbeing will be improved when intellectual property arrangements support our ability to make a contribution to Australia through investments in jobs, local and national economies and Australian culture. Foxtel’s priority is ensuring that intellectual property settings enable us to sustain our Australian-based business model, and maximise the return on our investment in content – so that we can continue to make these contributions.

A system which permits copyright owners to ensure fair return on investment supports a subscription television industry which delivers to consumers of a diverse range of news, information, sport and entertainment programs which convey significant social benefits to a broad cross-section of the Australian community. ASTRA acknowledges that steps taken thus far by Government to create such a system and in particular welcomes the introduction of site blocking powers under section 115A of the Copyright Act 1968 which have already proven to be effective in combatting piracy in Australia, as also supported by international precedent.[16]

However a potential threat to the copyright eco-system arises out of the recent recommendations of the Productivity Commission in relation to intellectual property.[17] The irresponsible and ill-conceived recommendations of the Commission represent a direct threat to the continued sustainability of the Australian production industry.

In particular, ASTRA notes the Commission's encouragement of Australians to circumvent geo-blocking technology. This would constitute direct government intervention into the distribution of local and international content in a way that would seriously undermine local businesses, cultural objectives and popular consumer offerings. It would have serious long term implications.

This is because territorial licensing (and the subsequent protection of those licenses via geo-blocking technology) enables the right investment conditions for sustainable local production. It also provides a model for the importation of international content which contributes to the revenue necessary for that investment in local production. It ensures the best mix of local and international content is available to Australians at reasonable prices.

Territorial licensing enables local producers of premium programs like *Banished*, and *Top of the Lake*, to decide into which territories they will licence their program, and the price terms on which they do so. Producers will only invest the many millions of dollars required to produce high quality content if they can be assured that a regime is in place that allows them sufficient control over the use of that content for a fair and appropriate return on that investment.

The ability of Australian content businesses to acquire relatively inexpensive international content is also underpinned by territorial licensing. This is true not just for subscription television, but also for FTA television services and local SVOD services.

This is crucial as it enables service providers to offer a comprehensive catalogue of content in an economic way and helps generate enough revenue to invest in Australian content, which, as noted above, is costly, and is significantly more expensive to produce than it is to acquire Australian distribution rights to international programming.

In this way, there is a clear link between geographic licensing arrangements and the achievement of important cultural policy objectives. Moves to subvert these licensing arrangements would have significant implications for Australia's cultural life and cultural industries, as well as for Australian consumers.

---

[16] For example, research published by academics from Carnegie Mellon University in April 2016 regarding the effects of site blocking in the UK on consumer behaviour found that the blocking of 53 piracy websites in November 2014 led to a notable decrease in piracy including a 90% drop in visits to blocked sites, as well as an increase in visits to both paid and ad-supported legal streaming sites. See: B. Danaher, M.D. Smith, R. Telang, Website Blocking Revisited: The Effect of the UK November 2014 Blocks on Consumer Behavior, 18 April 2016 – available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2766795.

[17] https://consult.industry.gov.au/ip-pc-inquiry/pc-inquiry-into-ip-arrangements-1/

The Commission's final report included a range of other recommendations. Please refer to the individual submissions made by ASTRA's members for their response to these recommendations.[18]

ASTRA urges the Committee to critically assess the implications of the Productivity Commission's recommendations for the local production industry.

7 Conclusion

Locally produced content continues to be extremely popular with Australian audiences and continues to be produced at a very high quality. However, there is a clear link between the continued production of this content and the sustainability of local broadcasters.

This submission has highlighted changing operating environment for subscription television broadcasters and the serious challenges posed by new entrants and changing consumer expectations. Notwithstanding these factors, it is possible for the local industry to prosper and continue its strong history of local investment and job creation. In many respects, it is for the industry to ensure that it continues to reflect consumer preferences and offers a strong value proposition.

However, there is also a clear role for Government in ensuring the future viability of the local television industry through re-examining and reforming outdated, unnecessarily intrusive and distortionary legacy regulatory interventions – regulatory interventions which no longer meet their purported objectives and which only serve to hold back one part of the industry. A reconsideration of direct and indirect funding support mechanisms must also be a part of the Government's response to these issues.

We welcome the Committee's inquiry as an important step in understanding the likely outcomes of failing to fix imbalanced and discriminatory regulation.

[18] See http://www.pc.gov.au/inquiries/completed/intellectual-property/submissions

ATTACHMENT A

[Provided as separate pdf file]