

15 June 2021

Senator the Hon David Fawcett
Chair
Senate Environment and Communications Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator

Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021

We refer to the Bill above and the Committee's current inquiry into the Bill. We also refer to correspondence forwarded to us from the Australian New Zealand Screen Association (ANZSA), which contains a number of misleading claims regarding evidence we have provided to the inquiry. We appreciate the opportunity to respond to that correspondence.

We stand by the evidence we have provided, but note that the issues addressed by the ANZSA are currently being considered by a separate Government review, which has received detailed submissions from many parties on these issues. As is the case in any policy debate, there are a range of viewpoints on these matters and the perspectives put forward by the ANZSA represent only part of the picture. We are confident the Government has been provided with a full range of perspectives and information throughout this process and look forward to engaging further with the Government on points of detail.

As this is a separate and ongoing process, and is addressing issues not dealt with by the Bill, we do not propose to re-make our detailed submissions in this letter. We would however like to note the following points regarding the ANZSA's mischaracterisations of our evidence.

Canadian legislative intent

We stand by our statements regarding the Canadian Government's intention to regulate streaming services. This intent was first outlined by the Canadian Prime Minister Justin Trudeau in December 2019¹ and has been reiterated at several points since then, including upon the release of implementing legislation.²

Our evidence to the Committee pointed to this intention and did indeed note that final decision will be made by the Canadian regulator. We have been informed by our counterparts in Canada that there is an expectation amongst stakeholders about the level at which regulation will be set and this was the basis of our evidence. We did not misrepresent this as a final or implemented decision.

We do not believe we have misrepresented any aspect of the development of the situation in Canada and disagree with the ANZSA's representation of our evidence.

¹ <https://pm.gc.ca/en/mandate-letters/2019/12/13/minister-canadian-heritage-mandate-letter>

² <https://www.canada.ca/en/canadian-heritage/news/2020/11/supporting-a-stronger-more-inclusive-and-more-competitive-broadcasting-system0.html>

We note the ANZSA also seeks to draw a direct comparison between the existing Canadian expenditure requirement for Canadian content and the 55% transmission quota for Australian commercial free-to-air broadcasters. We do not agree with this comparison given the Canadian system is an expenditure requirement and the Australian requirement relates to a proportion of air-time, however we note these comparisons will be considered by the Government as part of its ongoing review process.

EU obligations

We do not agree with the ANZSA's characterization of our evidence whereby they state we have "given the impression that the 20 per cent investment obligation [...] in France is typical." We have never sought to make this representation and instead have presented the French example as market-leading, best-practice and instructive.

The rest of our evidence on this point also points to limited examples we have been made aware of through our European sources regarding existing or likely levels of regulation. While the ANZSA presents a long list of other countries with their levels of obligation, our evidence pointed to the fact that we expect these levels may in future be revisited as the policy debate and market situation evolves over time. We stand by this evidence.

The ANZSA also refer to differing levels of 'natural interest' in Australia and France in local content. However we note they reference levels of interest in cinema content, when in our view, the relevant comparison would be in relation to the popularity of Australian content on the small screen. We note that in 2019 all of the top 50 programs on Australian commercial free-to-air television were Australian, showing a very strong level of interest in local content in Australia.³

Industry data

Whilst the ANZSA presents examples of streaming platforms' announced investment levels in Australian content, we stand by the need for independent scrutiny of these announcements and that the best means for that is through the data currently being collected by the Australian Communications and Media Authority.

There is no transparency regarding the streaming platforms' investment reports, and given the numerous variables, assumptions, inclusions/exclusions which can significantly impact on what is counted as "Australian content", there is obviously a need for standardized and transparent reporting across the industry. This will allow a 'like for like' comparison across streaming platforms and then also with legacy media platforms.

There is considerable regulatory scrutiny on streaming platforms at present due to the Government review, and we are concerned that the level of investment reported is at least partly due to that level of scrutiny and may not be sustained over time without regulatory investment. The level is also inconsistent across providers.

The best way to ensure consistent and ongoing levels of investment is through minimum regulatory obligations supported by robust and transparent reporting requirements. This is explored further in our submission to the Government's review.⁴

We thank the Committee for the opportunity to respond on these points and appreciate your consideration of these matters.

³ <https://www.screenaustralia.gov.au/fact-finders/television/industry-trends/top-programs>

⁴ <https://assets-us-01.kc-usercontent.com/89c218af-4a5a-00a2-9d83-3913048b3bc7/97f0ff71-1acb-4f43-a772-170a9fc802b1/FINAL%20GP%20Submission%20190521%20-%20Cover%20Page%20-%20v2.pdf>

Yours sincerely

Matthew Deaner

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