



ADG AND ASDACS SUBMISSION  
SUBMISSION TO THE AUSTRALIAN CHILDREN'S AND SCREEN  
CONTENT REVIEW

September 2017

AUSTRALIAN DIRECTORS GUILD &  
AUSTRALIAN SCREEN DIRECTORS AUTHORSHIP COLLECTION SOCIETY

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## 1. ABOUT THE ADG AND ASDACS

The Australian Directors Guild (**ADG**) is the industry association and union representing the interests of film and television directors, writers/directors, documentary film makers and animators throughout Australia. Formed in 1982, it has over 800 members nationally and has recently been registered as an association of employees under the *Fair Work (Registered Organisations) Act (Cth) 2009*.

The Australian Screen Directors Authorship Collecting Society (**ASDACS**) is a collecting society representing the interests of film and television directors, documentary filmmakers and animators throughout Australia and New Zealand. It was established in November 1995 in response to support from the French collecting society, SACD, which had collected the director's share for Australian directors for income arising from private copying schemes. The purpose of ASDACS is to collect, administer and distribute income for Australian screen directors arising from secondary use rights.

Contact for the ADG & ASDACS

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## 2. Executive Summary and Recommendations

Since the inception of support for the Australian screen industry in the late 1960's, we have seen the incredible development of a vibrant and international recognised screen industry that has not only projected the image of Australia and Australians around the world but has provided a mirror to our culture that allows us to examine who and what we are. It has forever created characters and stories that resonate in our culture on a daily basis.

It is clear we have reached another turning point in the history of content creation, once again fuelled by a change in technology. Just as the silent era gave way to talkies, radio gave birth to television, the internet is now overtaking the distribution of all content on our screens. But one thing remains the same THE NEED TO TELL OUR STORIES TO EACH OTHER AND THE WORLD.

Just like in the 1960's we stand at a crossroads where the decision is either to not provide for an Australian voice to be heard on these new screens or to support changes to ensure there are Australian voices on all screens. The choice is ours.

A number of commentators have asked why the government should support the screen industry when they walked away from the car industry. The answer to this is simple. Tell me where in the world you can buy Australian stories.

The ADG and ASDACS believe that the government should be involved in supporting all forms of Australian content on our screens and that there should be an Australian Content Guarantee that is platform agnostic. This guarantee should look at the different ways this can be delivered and apply the most appropriate policy settings to deliver this guarantee. Our submission outlines specific ways this can be achieved.

Here is a summary of our recommendations for changes to the way content is supported, regulated and managed by the government.

### **Copyright**

- A change to the Copyright Act that makes the owners of Audio Visual works the Producer and Director to align with the UK Copyright Act;

### **Public Broadcasters**

- The ABC and SBS should have the same Australian content obligation as all broadcasters and commercial distributors of content;
- That this obligation should be across the Children's, Drama and Documentary sector.
- That the government increase funding to the ABC that is tied to these sub quotas.
- That the government increase funding to the SBS that is tied to these sub quotas

### **Australian Content Requirements**

- The Government guarantee Australian content on all commercial screens that reach Australian consumers;
- That this guarantee be platform neutral;
- That it be applied to all commercial content distributors – FTA, Cable, VOD, etc;

- That a range of options be provided to these distributors of content for their content guarantee in the form of a quota, spend, minimum hours or any other way that can be devised to guarantee a minimum of Australian content on our screens;
- That it be applied to first run Australian drama, children's and documentary;
- That this content guarantee also applies to the public broadcasters – ABC and SBS.
- That the Federal Government do not dismantle the current quotas system without a viable alternative in place.

### **Screen Australia**

- That the government commit an additional \$150m over three years to Screen Australia;
- That these funds be used exclusively to increase production in television drama, children's and documentary;
- That these funds be contestable and not allocated to any broadcasters or content distributors.

### **Offsets**

- Increase the television offset from 20% to 40%;
- Retain the rate for feature films at 40%.
- Recognise the interactive sector as creators of screen content, and therefore the need for policies to support this sector including access to the Australian Producer Offset;

### **Children's Television**

These recommendations are taken from the Australian Children's Television Foundation submission which we support.

#### **ABC**

- 50% of content for school age children is Australian, and 25% of all content for school age children is new Australian content;
- New Australian content for school age children should include 64 hours of new Australian children's drama each year, of which at least 50% (32 hours) should be live action children's drama. Australian children's drama for the purposes of the ABC, should mean that it is based on Australian source material or contains distinctively Australian elements;
- 40% of content for preschool children should be Australian, and 20% of all content for preschool children should be new Australian content;
- In addition to percentages, acceptable minimum overall hours of first run Australian content for both pre school and school aged children should be established.

#### **Commercials**

- A C Drama quota of 32 hours a year per commercial free to air broadcaster be maintained;
- A P Drama quota of 16 hours a year per commercial free to air broadcaster replace the current 130 hours of P requirement.

### Subscription

- Apply to all children's channels (not just those classified as "drama" channels) at an increased expenditure level of 20%;
- The definition of "new" content should be amended to ensure that the expenditure is for genuinely "new" and original content, not just content that is "new to Pay TV."

### SVOD

- An expenditure quota for SVOD and other platforms should specifically include children's content.

### Regulation

- That the Broadcast Services Act be reviewed and amended to reflect the current broadcasting environment;
- That the Australian Communication and Media Authority be charged with this review;
- That the definition of broadcasting be amended to ensure a platform neutral approach to government regulation.
- That Australian/NZ programs should only qualify for content points in one territory, not both.

### 3. COPYRIGHT

At the outset, as stated in our submission to the Productivity Commission of 30 November 2015, the ADG and ASDACS are supportive of copyright in Australia, for the benefit of both creators and consumers. Copyright is a significant contributor to the Australian economy, with copyright industries assessed as the fourth largest industry by PwC in a recent report.<sup>1</sup> Based on methodology designed by the World Intellectual Property Organization (**WIPO**) and utilising Australian Bureau of Statistics' data, the longitudinal study commissioned by the ACC highlighted that copyright industries make a significant contribution to the Australian economy, including through:<sup>2</sup>

1. Employing over 1 million people, which constituted 8.7 per cent of the Australian workforce
2. Generating economic value of \$111.4 billion, the equivalent of 7.1 per cent of gross domestic product (**GDP**)
3. Creating over \$4.8 billion in exports, equal to 1.8 per cent of Australia's total exports.

At an international level, a recent study by EY entitled report "Cultural Times the First Global Map of Cultural and Creative Industries" analysed the economic weight of 11 sectors advertising, architecture, books, gaming, music, movie, newspapers/magazines, performing arts, radio, TV and visual arts demonstrating that the creative and cultural industries, including the screen industry are a massive contributor to the world economy.<sup>3</sup> In 2013, these sectors together generated US\$2,250 billion in revenues, equating to 3 percent of world's GDP, and 29.5 million jobs (1 percent of the world's active population).

Given international developments in the area of cultural institutions, for example the *Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities* of 28 June 2013 and the ongoing deliberations of the World Intellectual Property Organization (**WIPO**) Standing Committee on Copyright and Related Rights, it is clear that access to, and the preservation of copyrighted material remains a key issue for these many of these stakeholders.

However, it should be noted that in relation to modernising statutory licences that allow educational institutions to use and pay licence fees for works and broadcasts, screen directors continue to be one of the few classes of "authors" in Australia's substantial screen sector that do not benefit from these statutory licences. Therefore, the ADG and ASDACS strongly urge the Department to consider our proposal, most recently to the Productivity Commission, to

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<sup>1</sup> PwC, *The Economic Contribution of Australia's Copyright Industries: 2002 2014, 2015* available at: [https://www.copyright.org.au/acc\\_prod/ACC/News\\_items/Copyright\\_Industries\\_continue\\_to\\_be\\_a\\_significant\\_contributor\\_to\\_the\\_Australian\\_Economy.aspx](https://www.copyright.org.au/acc_prod/ACC/News_items/Copyright_Industries_continue_to_be_a_significant_contributor_to_the_Australian_Economy.aspx) (accessed 11 January 2016).

<sup>2</sup> Ibid.

<sup>3</sup> EY, *Cultural Times: The First Global Map of Cultural and Creative Industries*, 2015 available at <http://www.worldcreative.org/> (accessed 12 January 2016).

urgently review of the Copyright Act to ensure that screen directors will be fairly and equitably remunerated from their works, including through statutory schemes that apply to educational institutions.

Australian directors make vital contributions to culture, diversity and economic growth in Australia. Directors are creative and talented individuals which form the basis of all film, television and dramatic productions. Their work brings people together both emotionally in a shared appreciation for art and physically in theatres and lounge rooms across Australia. In addition to providing entertainment, their work also educates and builds empathy in our community, instilling an appreciation of history, our unique Australian culture and perspective on other cultures.

Yet for close to 50 years, Australian directors have been denied any meaningful “ownership” of their films due to an outdated and unfair interpretation of Australian copyright law. This has been reinforced in industry practice which provides most economic rights to producers as deemed “makers” of the film. This contrasts with Europe where directors are recognised as creators of films.

Directors do not have economic rights by virtue of the Act *except in relation to retransmission rights*. In 2005, the Australian Government agreed to look at the issue of extending a share of copyright in films to directors<sup>4</sup> and enacted the *Copyright Amendment (Film Directors’ Rights) Bill 2005* symbolically recognising directors as copyright owners for the purposes of the statutory retransmission scheme.<sup>5</sup> This is an entitlement to royalties when a free to air television broadcast is retransmitted across a different network. Directors are not entitled to a share of these royalties if they have not retained their right to receive royalty income in their contracts or where the film is a ‘commissioned’ film. This is different to the position in other territories, where the right is unalienable. At a practical level, an assignment of copyright by Australian directors is commonplace industry practice.

Despite victories in gaining moral rights and a small stream of retransmission royalty income over the last 15 years, directors in Australia face strong opposition to enforcing even these minor rights. In the vast majority of cases, directors are the weakest party in negotiations with production companies and are unable to individually negotiate fair deals, forced to accept buy out deals for the transfer of all their rights without fair compensation. As a result, directors often receive no benefit from the future success of their work, including through the growing digital market and have no body of work from which to derive future incomes.

*Yet, it is imperative that directors should be allowed to make a living from their creations.*

ASDACS on behalf of Australian directors, is seeking a sustainable creative industry for directors through improved recognition of their creative contribution. Australian directors

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<sup>4</sup> The Hon. Philip Ruddock, Attorney General, *House of Representatives Hansard*, 17 March 2005, p. 1.

<sup>5</sup> Section 98 of the Act.



should be granted an inalienable right of remuneration for the ongoing exploitation of their films through copyright ownership in their films.

Therefore, the key issues for Australian screen directors that need to be urgently addressed are as follows:

#### Parity

- Australia is well behind the rest of the world in recognition of directors' rights
- Currently, directors in more than 35 international territories including most of Europe, the United Kingdom, South America and Hong Kong receive ongoing economic returns for the films they make
- U.S. directors benefit from strong union negotiated agreements with residuals<sup>6</sup>
- Other key creators in Australia including producers, script writers and musicians have an entitlement to ongoing returns; directors do not
- Australian directors get royalty payments collected overseas, and need to reciprocate

#### Remuneration

- Half of all members of the ADG make less than \$25,000 a year despite most having worked in the industry for more than 10 years (as referred to above)
- At a time when funding for the Arts has been significantly reduced, directors urgently need secure ongoing income streams through royalty payments
- Many Australian directors are forced to work overseas with the flow on impact of less productions, less mentoring and less jobs in Australia – all necessary for a fully functioning creative ecosystem in film and television

#### Landscape

- The work of directors is the foundation of Australia's screen industry which, as stated above, contributed \$5.8 billion in GDP, supported 46,600 full time jobs and contributed almost \$2 billion in tax revenues in 2012 2013
- The accelerating pace of digital distribution and production has disrupted traditional business models which no longer provide fair ongoing returns for directors

In our view, a simple amendment to the Copyright Act so the definition of “maker” of a film specifically refers to directors will enable directors to share copyright in films and television productions with producers.<sup>7</sup> This simple yet effective amendment will ensure that directors are able to meaningfully participate in the opportunities of the digital revolution, strengthening their creative recognition and in turn, the screen industry in Australia.

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<sup>6</sup> Knox, D, “Aussie directors lacking Residuals deal, says US director”, *TV Tonight*, 5 November 2015, at <http://www.tvtonight.com.au/2015/11/aussie-directors-lacking-residuals-deal-says-us-director.html>.

<sup>7</sup> Section 22(4) of the Act.

This change will ensure a sustainable future for directors with improved recognition of their creative contribution in film and television in line with producers, screen writers and composers. The proposed solution is in line with the United Kingdom amendments to its copyright legislation in 1996 where directors were deemed to be makers of the film and thus share in copyright with producers. This proposal for directors' fair remuneration is also supported worldwide through the international authors' body, Writers and Directors Worldwide<sup>8</sup> who recently passed a resolution supporting our campaign in Australia.<sup>9</sup>

Importantly, changes to the Copyright Act that recognise directors as makers of films would ensure that the proposed amendments to the Copyright Act set out in the Guiding Questions fairly apply to and benefit all creators in the creative process for film and television.

We therefore recommend the following:

1. A change to the Copyright Act that makes the owners of Audio Visual works the Producer and Director to align with the UK Copyright Act;

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<sup>8</sup> <http://www.writersanddirectorsworldwide.org/> (accessed 11 January 2016).

<sup>9</sup> Beijing Executive Council meeting of WDW, November 2015.

## 4. PUBLIC BROADCASTERS

The ABC and SBS as our dedicated broadcasters are essential for the health and wellbeing of our screen industry, not only for the makers of screen content but also for the Australian audiences who consume it.

The ABC has had a huge impact on drama, children's and documentary that generates cultural outputs, creative capability, businesses with attendant economic outcomes and product with international visibility.

Some background to the current state of the ABC is important. As outlined in Kim Dalton's recent publication "Missing in Action: The ABC and Australian's Screen Culture".

*From Missing in Action: The ABC and Australia's Screen Culture*<sup>10</sup>

*The ABC received budget increases in its triennial budgets of 2006 (Howard) and 2009 (Rudd). In 2006, \$10 million per annum for drama, documentary and children's content. In 2009, a staged increase in funding across the triennium would by the third-year total \$67 million per annum—\$40 million for drama programs and \$27 million for the establishment of a dedicated children's channel with a commitment to deliver 50 per cent Australian programs. All of this funding, \$77 million in total, was to be ongoing beyond the triennium in which it was provided. It went into base funding and was subject to the ABC's annual indexation. The new funding represented an almost 30 per cent increase to ABC TV's budget and the impact was significant in terms of cultural and creative outcomes, industry activity and development, and the quality and quantity of Australian programs delivered to audiences.*

*From a base in 2006 of five hours of drama, no prime-time Indigenous content, limited Australian children's content and a limited documentary offering, within seven years ABC TV was offering Australian drama at levels approaching that of the commercial networks, a dedicated children's channel with 50 per cent of its content Australian and across all genres, and a diverse slate of Australian documentaries. For the first time on Australian television Indigenous producers, writers, directors and actors were making drama and documentary programs for prime-time slots, launching with the popular and critically acclaimed Redfern Now mini-series.*

*What is important in the context of this paper is that these outcomes were not solely the result of additional funding. Additional resources were essential; however they were provided to the ABC in support of a clearly articulated policy-based proposal and a three-pronged strategy I had developed as Director of TV, which had broad industry and public support. Firstly, the ABC committed to increased levels of Australian drama, documentary, children's and Indigenous content. Secondly, it committed to working productively and in partnership with Australia's independent production sector. Thirdly, the ABC committed to engaging strategically with federal and state funding agencies to finance its expanded slate of*

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<sup>10</sup> "Missing in Action: the ABC and Australia's Screen Culture" by Kim Dalton, Currency House Platform Papers, 2017. P.

*Australian content, including ensuring an increase in production outside Sydney and Melbourne.*

*In summary, the additional funding was provided in the context of, and in support of, Australia's national screen policy framework. Over time, the Australian public and ABC TV audiences experienced this additional funding in the form of a significant increase in the volume, diversity and quality of new Australian programs appearing on their screens. The impact of this additional funding and the outcomes that flowed from it can appropriately be described as policy outcomes and these are worth some more detailed consideration across drama, children's, documentary and Indigenous work.*

It is very clear that the increased financial support from the government created a revolution of content creation in this period and although the ABC has dropped the ball on a number of fronts it has kick started a number of new productions and opportunities for Australians that have continued with shows such as "Cleverman" and "Glitch" which have not only become local hits but have used the new streaming services such as Netflix to expand their reach in a completely new way internationally.

We therefore believe that the ABC and SBS should have content obligations just like the commercial broadcasters and distributors. The fact that the ABC can reduce its Australian content to below the 50 percent requirement without any justification is alarming. We would suggest the following:

- The ABC and SBS should have the same Australian content obligation as all broadcasters and commercial distributors of content;
- That this obligation should be across the Children's, Drama and Documentary sector.
- That the government increase funding to the ABC that is tied to these sub quotas.
- That the government increase funding to SBS that is tied to these sub quotas

## 5. AUSTRALIAN CONTENT REQUIREMENTS

It is time to rethink the way we regulate Australian content on our screens and it is time to think of the whole echo system that provides content for Australians. This includes Free to Air Television (FTA), Subscription Video on Demand (SVOD), Subscription Cable (Cable), Advertising Video on Demand (AVOD), Transactional Video on Demand (TVOD) and any other delivery system that delivers commercial content to audiences.

Ever since the inception of content quotas in the 1960's, both sides of politics have seen the need to support Australian content on our screens. The great Hector Crawford led this fight when it was clear that overseas content (read US and UK) would dominate our screens if there was no requirement of broadcasters to make Australian content. During the period before quotas were introduced for commercial television only 1% of their content was Australian.

We are reminded of this situation recently with the sale of one of Australia's broadcasters to the largest American broadcaster CBS. Commentators in the press have noted that the Australian public should have no worries about Australian content:

*"Firstly, and significantly, a CBS owned would probably not seem overly American, at least not more overly American than it already is. Ten is, after all, a network which has in the last two decades loaded its schedule with more US content than any other commercial network. In part that is because in the wake of its last collapse, receivership and rebirth, US content was cheaper. To Ten's eternal credit it turned that weakness into a strength.*

*Secondly, it is unlikely there would be less Australian content. Which means 'Offspring' fans, you're okay. Ten's investment in **Australian content is guaranteed by government quota; without significant legislative change, that remains the same.**"<sup>11</sup>*

The same question of what content will go onto the new CBS owned Ten has been discussed widely and the point we wish to make is that the discussion immediately asked the question about "what content would be aired" was the dominant discussion point. Will we see Channel Ten become the American NFL station in the future?

Without a content requirement on all broadcasters – whether they be free to air, cable, video on demand, streaming services or by whatever means they are distributed – there will be no guarantee for the Australian public of a significant (at least 50%) of Australian content and sub quotas in drama, children's and documentary.

This guarantee must apply to all, regardless of platform and include the public broadcasters – SBS and the ABC. We will discuss the issues surrounding the public broadcasters in our section on those significant cultural institutions.

But what form should these "content guarantees" take?

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<sup>11</sup> "What will a CBS owned Ten look like?" by Michael Idato, Sydney Morning Herald, 28/8/17.

Effectively there have been two systems operating for Australian terrestrial broadcasters:

1. Content quotas for the FTA broadcasters to ensure 50% Australian content on our screens with sub quotas for first run drama, children's and documentary;
2. A requirement for a 10% spend on first run Australian drama, children's and documentary on the Foxtel cable network.

Currently there are no content requirements of the VOD players Netflix and Stan. We also note that CBS has committed to start a new streaming service as well as Apple and Amazon. YouTube is also planning a more sophisticated delivery of high end content through its Red service.

It should be pointed out at this stage that all these services are effectively the new iteration of the studio and broadcaster system. This is clearly pointed out in Michael Wolff's book "Television is the new Television" on which he points to the corporate behaviour of these new behemoths of the audio visual industry and the way they are acting exactly like the companies they are now competing with in the marketplace. He notes that there has simply been a shift in the industry from Los Angeles to San Francisco 350 miles north.<sup>12</sup>

So, we may be talking about a revolution in the delivery of content but we are still talking about the delivery of content and in this case Australian content.

In March 2012, the Federal Government released its "Convergence Review" (the **Review**) which was established in 2011 to:<sup>13</sup>

*to examine the operation of media and communications regulation in Australia and assess its effectiveness in achieving appropriate objectives for the convergent era.*

The Review considered the way Australia regulates, and more importantly, how a future regime of support for the screen industry could be developed. The basic recommendation of the Review was to replace the quota system with a content fund that would require those that produced work to contribute to this fund. These "content service enterprises" would contribute to the fund, depending on their scale of their enterprise but not according to their platform of distribution. This was in effect, a "platform agnostic" approach to supporting Australian screen content recognising the inherent value of Australian content.

In particular, the Review stated in its Executive Summary:

*From the Commonwealth Government's "Convergence Review" – Executive Summary.*

*Both the public and most industry stakeholders told the Review that it was important to ensure Australian stories and voices continued to be represented in our media. Despite Australian content regularly rating in the top 20 television programs, the Review has found that the high costs of Australian production relative to buying international programs mean that there is a continued case for government support of Australian production and distribution. The Review found that Australian drama, documentary and children's programming requires specific support as it would not be produced at sufficient levels without intervention.*

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<sup>12</sup> "Television is the New Television" by Michel Wolff, p.44.

<sup>13</sup> Convergence Review, Final Report, 2012, p.vii.

*While digital television multi-channels are introducing new opportunities for content, these channels are not currently subject to Australian content requirements. Similarly, a new range of internet-delivered channels and services with television-like content are becoming available. These two factors are reducing the proportion of Australian content across all media available today. With the high costs of producing some Australian content, such as drama, documentary and children's programs, the Australian content obligations should be spread more evenly over the range of competing services.*

*The Review proposes a 'uniform content scheme' to ensure that Australian content continues to be shown on our screens. The uniform content scheme will require qualifying content service enterprises, with significant revenues from television-like content, to invest a percentage of their revenue in Australian drama, documentary and children's programs. Alternatively, a content service enterprise will be able to contribute a percentage of its revenue to a 'converged content production fund' for reinvestment in traditional and innovative Australian content.*

*Not all content service enterprises will be required to contribute under the uniform content scheme. To qualify for the scheme, content service enterprises will need to meet both 'scale' and 'service' criteria. The scale criterion will require the content service enterprise to meet minimum revenue and audience thresholds for the supply of professional television-like content to the Australian market. These thresholds should be set at a high level so only significant media enterprises will be required to invest in Australian content. As an example, if a new internet-delivered service grew revenue and audience from providing professional television-like content to a level comparable with today's established television broadcasters, it would then have obligations to contribute to Australian content.*

*In addition to the scale threshold, there will be a 'service' criterion. The service criterion will mean that only content service enterprises that offer drama, documentary or children's programs will be subject to the uniform content scheme.*

*Both the scale and service criteria can be reviewed over time as providers emerge and grow, and to take account of any changes to the targeted genres.*

*Adoption of the uniform content scheme will mark a significant departure from the present obligations. The Review therefore proposes a transitional framework to allow the government to address the challenges of producing Australian content while working on the implementation of the uniform content scheme.*

*The key features of the transitional framework are:*

*> For commercial free-to-air broadcasters—there should be a 50 per cent increase in Australian sub-quota content obligations for drama, documentary and children's content to reflect the two additional channels each broadcaster currently operates that do not attract any quotas. The broadcasters should be able to count Australian content shown on the digital multi-channels towards meeting the expanded sub-quota obligations.*

*> For subscription television providers—the 10 per cent minimum expenditure requirement on eligible drama channels should be extended to children's and documentary channels.<sup>14</sup>*

*The Review has recommended the creation of a converged content production fund. This fund should have a broad focus that supports traditional Australian content, new innovative content, and services for local and regional distribution. The converged content production fund should also play a role in supporting Australian contemporary music. In addition to direct funding from government, this fund could be supported by spectrum licence fees from broadcasting services and contributions from content service enterprises under the uniform content scheme.*

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<sup>14</sup> Convergence Review, March 2012. p. xi xii.

We believe that a “Australian Content Guarantee” is essential to the health and well being of the Australian screen content industry. Changes to the way we deliver this guarantee should be developed to accommodate the new delivery methods and content distributors.

It is clear the quota system that the commercial networks have been operating under has been effective and successful. It is a system that costs the government nothing and ensures that an industry that is now getting valuable spectrum for a very low cost provides Australians with the content they want to watch. The many surveys that have been conducted and the success of Australian shows clearly indicate that Australians love Australian content. If no obligation from commercial broadcasters were in place, and none for the new streaming services, we can guarantee that the production of Australian content would drop dramatically and may even go back to the 1960’s when only 1% of total content on commercial networks was Australian.

We would therefore recommend the following:

1. The Government guarantee Australian content on all screens that reach Australian consumers;
2. That this guarantee be platform neutral;
3. That it be applied to all commercial content distributors – FTA, Cable, VOD, etc;
4. That a range of options be provided to these distributors of content for their content guarantee in the form of a quota, spend, minimum hours or any other way that can be devised to guarantee a minimum of Australian content on our screens;
5. That it be applied to first run Australian drama, children’s and documentary;
6. That this content guarantee also applies to the public broadcasters – ABC and SBS.

It will be important to make sure we have a transition period for this to be implemented. For this reason, there should not be a scrapping of any content quotas or expenditure requirements until the transition to the new system is complete. Under the terms of the US Free Trade Agreement if we dismantle or reduce our quotas **we are unable to reinstate them to the original levels.**



## 6. SCREEN AUSTRALIA

When the AFC, Film Australia and the Film Finance Corporation were merged to create Screen Australia, the *raison d'être* for this merger was to be more efficient and enable more funds to flow into the production of Australian content. Screen Australia has been extremely efficient in managing its operation reducing its staff numbers by at least 50% over the past four years.

During the last four years, the agency has seen significant cuts to its allocation from government which are now starting to bite into funding for local content. Screen Australia has seen its budget allocation drop from \$100.9m (2013 14) to \$84m (2017 18). A 16% drop over the last four years.

To compound this, that sale of the Film Australia property in Sydney was supposed to supplement the income of the agency. Instead the sale has funded a "top up" for overseas productions who assert that the 16.5% location offset was not enough to attract them to our shores.

The lack of clear policy regarding funding the screen agency and the obfuscation of its responsibilities in providing effective incentive for offshore production has meant a diminishing of Screen Australia's ability to support local content.

The ADG therefore recommends the following:

7. That the government commit an additional \$150m over three years to Screen Australia;
8. That these funds be used exclusively to increase production in television drama, children's and documentary;
9. That these funds be contestable and not allocated to any broadcasters.

## 7. OFFSETS

The Review has identified a number of measures to directly support content production, including raising the Producer Offset from 20 per cent to 40 per cent for television drama and recommending the establishment of an interactive entertainment offset.

The increased offset for television drama recognises the significant investment being made by Australian production companies and broadcasters and the high production values and cultural benefits inherent in this genre.

For the ADG, the majority of our working director members direct for the small screen in television drama, children's and documentary. They director for commercial broadcasters, steaming services, commercials and all content production for the screen. Offshore production does not support Australian creatives such as directors and writers and therefore the increase of the offset for television would be a significant shot in the arm for the screen industry and provide the Australian viewer with more choices and better content.

We also believe that the interactive sector should be recognised as part of the screen industry and all relevant offsets should apply to them.

The ADG would therefore recommend the following:

- Increase the television offset from 20% to 40%;
- Retain the rate for feature films at 40%.
- Recognise the interactive sector as creators of screen content, and therefore the need for policies to support this sector including access to the Australian Producer Offset;

## 8. CHILDREN'S TELEVISION

It has never been a more important time to support the creation of original Australian Children's television. In a world where the volume of content increases with every new online portal, the ability of maintain the voice of Australian children for Australian children is vital.

Initially we would like to support the submission of the Australian Children's Television Foundation, and organisation that has the best interests of Australian children at heart and has supported some of the most innovative and important content for Australian children on television.

There is no doubt that the explosion of portals delivering content to Australian children are expanding and that the only way that Australian content on these screens can compete is if it is at the highest quality and is promoted adequately.

In 2015 the change to the way quotas could be used by commercial broadcasters provided them with a way to dump their children's programs onto their secondary channels and begin the campaign to devalue them and build a case for the dismantling of any obligation they may have to Australian children.

When the government announced this change all the major guilds campaigned against it and the ADG said that it was a way for the commercial networks to marginalise children's content in timeslots that would not generate audiences for the shows. And that is exactly what happened. It is disingenuous of television networks to say that the shows do not get audiences when they do not promote them. No show can find an audience on free to air television if it is not promoted.

We have seen the success of the ABC's dedicated children's channel ABC 3 with its focus on children's content for all ages. The 2009 launch of the dedicated children's channel ABCME (formerly ABC3) transformed the children's television landscape in Australia. In its first year of operation the ABC went from commissioning around 6 hours a year of live action children's drama to 26, alongside other genres which included animated series, light entertainment, news and factual content for children.

Children have responded accordingly, with ABC channels in the top 65% of children nominate an ABC children's channel as their favourite, with subscription TV coming a distant second at 22% and the closest stand alone commercial free to air channel "Go" at 4% For children under 5, the preference is even clearer, with around 70% preferring ABC2.<sup>15</sup>

It is clear from these figures that Australian children want to watch television that is specifically created for them and is Australian.

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<sup>15</sup> ACMA, Children's television viewing, Research Overview, p 10.

But we need to maintain the level of Australian content on the ABC. To do this, funds need to be made available to the ABC that are specifically for children's content. The ABC should be transparent and accountable for the levels of Australian content that it achieves for children, the range of genres it provides and the funds that it invests in children's content.

We agree with the Australian Children's Television Foundation (ACTF) recommendations of accountability and transparency as follows:

*The ABC should receive tied funding for children's content, to a level which is sufficient for the ABC to provide a comprehensive service for Australian children including locally produced content for all children's age groups, in a range of genres, including live action drama. This funding should be quarantined from the rest of the organisation's funding, and tied to key performance indicators (KPIs) which set out explicit targets for the level of Australian content provided by the ABC to children. As a minimum these should be:*

- *50% of content for school age children is Australian, and 25% of all content for school age children is new Australian content;*
- *New Australian content for school age children should include 64 hours of new Australian children's drama each year, of which at least 50% (32 hours) should be live action children's drama. Australian children's drama for the purposes of the ABC, should mean that it is based on Australian source material or contains distinctively Australian elements;*
- *40% of content for preschool children should be Australian, and 20% of all content for preschool children should be new Australian content;*
- *In addition to percentages, acceptable minimum overall hours of first run Australian content for both pre school and school aged children should be established.*

In regards to the commercial networks, whether they be Free to Air, Cable, VOD, SVOD or wherever commercial children's content can be shown, there needs to be continued obligations for the current distributors of content (broadcasters and subscription TV) to broadcast original Australian content for children.

From the figures quoted above it would be tempting to then say just let the ABC be responsible for all children's content on our screens. The commercial networks have clearly failed to meet the Children's Television Standards (CTS) . But to take away the responsibility of delivering Australian children's content to Australians would take us back to the 1960's when there was no Australian children's content on our commercial screens.

We therefore again agree with the ACTF recommendations as follows:

*We believe that Australian children's content should be available on a wide range of platforms. The commercial sector – whether free to air, subscription or SVOD, is not abandoning the children's audience. We can expect to see a plethora of imported children's content on all those platforms in the years to come, and indeed the*

*commercial free to air broadcasters are actively developing Apps and online children's destinations. If we abandon support for Australian children's content in a commercial environment, then we can expect to see no Australian content amongst the extensive imported offerings on commercial platforms. This would be an unacceptable outcome.*

*Regulatory reform is therefore required. The starting point should be to ask what a new regulatory regime is expected to achieve. In our view the guiding principles for any new regulatory regime should be that it is aiming to achieve:*

*Quality content on commercial platforms where children will find it;  
Content for a range of age groups (pre school and school aged);  
Distinctively Australian content;  
Competition between services for the audience (whether the competitor be the ABC, subscription channels, free to air or SVOD services).*

*The purpose of regulation is to ensure the demand for children's content on commercial platforms exists. It is difficult to conceive how another form of incentive (such as a content fund) would create that demand without some form of regulation.*

#### *Commercial free to air broadcasters*

*The CTS requires commercial broadcasters to screen 260 hours of C content per year, of which only half must be first release Australian content; and 130 hours of P content, which may not be repeated more than 3 times. These regulations were devised when free to air was the only platform and it was envisaged that broadcasters should provide an hour a day of C Content and 30 minutes a day of P content on their linear services. They don't fit the digital "any device, any time" environment, they favour cheaper content over quality content, and the classification system has failed to keep up.*

*In the ACTF's view the most important element to retain is the requirement to continue to support high quality Australian children's drama. We recommend that:*

*A C Drama quota of 32 hours a year per commercial free to air broadcaster be maintained;  
A P Drama quota of 16 hours a year per commercial free to air broadcaster replace the current 130 hours of P requirement.*

*We further recommend that the definition of drama should be restricted to scripted narrative content (live action drama or animation) but that episode length be flexible. A minimum of 50% of the C Drama quota should be live action drama.*

*We consider that the broadcasters should be responsible for classifying their own content, but that ACMA should set minimum licence fees and monitor terms of trade and expenditure on children's content.*

*The broadcasters should be free to show the C and P Drama it commissions on any of their platforms, and advertising restrictions should be reviewed in order to promote*

*opportunities for them to monetise their content, whilst maintaining relevant protections for the child audience.*

*The broadcasters should also, through ACMA, be enabled to trade these quotas amongst themselves (where a particular broadcaster wished to carry more P Drama and other agreed to take some of their C Drama quota in return for example); or where a broadcaster agreed to fund another broadcaster or commercial platform to acquit its quota obligations or even to trade with the adult documentary quota. Any trading should be between commercial platforms only.*

#### *Subscription broadcasters*

*The New Eligible Drama Expenditure (NEDE) scheme has resulted in some outstanding adult drama series premiering on subscription television. In the children's space, where the NEDE applies, it has more often resulted in subscription children's channels obtaining secondary licences at modest licence fees for content that has already been commissioned by free to air broadcasters to meet their C Drama obligations. It hasn't resulted in much new content.*

*The NEDE scheme should therefore be reformed to:*

*Apply to all children's channels (not just those classified as "drama" channels) at an increased expenditure level of 20%;*

*The definition of "new" content should be amended to ensure that the expenditure is for genuinely "new" and original content, not just content that is "new to Pay TV."*

#### *SVOD and other platforms*

*An expenditure quota for SVOD and other platforms should specifically include children's content.*

*Where a platform does not wish to commission children's content, it should make a contribution to a commercial content fund, which should be available for investment in Australian children's content on other commercial platforms. In other words, the fund should benefit those commercial players who do choose to invest and commission Australian children's content.*

## 9. REGULATION

The Broadcast Services Act was first formulated in 1992 when the media landscape was vastly different to the one we have today. In that Act the definition of a broadcast was specific and related to the current method of broadcast. We believe that the act needs to be changed to make it reflect our current broadcast environment.

Throughout this document I have used the phrase “content distributor” to describe companies like Netflix and Stan. This is because they do not fall under the definition of broadcaster under the act. The definition in the act is as follows:

***broadcasting service*** means a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, but does not include:

- (a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or
- (b) **a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or**
- (c) a service, or a class of services, that the Minister determines, by notice in the *Gazette*, not to fall within this definition.

It is clear that this definition is not fit for purpose in a digital world. A complete review of the BCA must be undertaken to bring it in line with the new realities of broadcasting.

In 2014 the commercial broadcasters screened 180 hours of New Zealand programs which qualify as Australian under the Closer Economic Relations Trade Agreement. In 2015, the figure was 135 hours. At the same time, those programs counted as quota in New Zealand. For this reason, they were sold into Australia at a greatly reduced price compared to Australian program license fees.

The ADG therefore recommends the following:

1. That the Broadcast Services Act be reviewed and amended to reflect the current broadcasting environment;
2. That the Australian Communication and Media Authority be charged with this review;
3. That the definition of broadcasting be amended to ensure a platform neutral approach to government regulation.
4. That Australian/New Zealand program should only qualify for content points in one territory, not both.