

Senator David Fawcett

Sydney, June 11, 2021

Dear Senator,

We write to you to address some of the incorrect statements made by a number of witnesses who gave evidence on June 7 at a hearing held by the Senate Environment and Communications Legislation Committee's Inquiry ("the Inquiry") into the Broadcasting Legislation Amendment (2021 Measures No.1) Bill 2021 ("the Bill").

While we note the terms of reference for the Inquiry focusses on the measures contained in the Bill, several witnesses made misleading statements to justify a 20% expenditure obligation on subscription video on demand (VOD) services. The evidence provided by these witnesses present Australia as being out of step with global peers on the subject of local content obligation regulations for VOD services. This is incorrect.

These comments also suggest France and Canada are regulating at a similar 20% level the Screen Producers Association and the Screen Guilds are demanding, and that these countries are comparable to the Australian screen eco-system. This is simply not the case.

The comments also suggests that VOD services are not investing in Australian content. This is incorrect.

About ANZSA

Australia New Zealand Screen Association (ANZSA) represents the film and television content and distribution industry in Australia and New Zealand. Its core mission is to advance the business and art of film making, increasing its enjoyment around the world and to support, protect and promote the safe and legal consumption of movie and TV content across all platforms. ANZSA works on promoting and protecting the creative works of its members. Members include: Village Roadshow Limited; Motion Picture Association; Walt Disney Studios Motion Pictures; Netflix Inc.; Paramount Pictures; Sony Pictures Releasing International Corporation; Universal International Films, Inc.; and Warner Bros. Pictures International, a division of Warner Bros. Entertainment Inc., and Fetch TV. ANZSA's members have long been active contributors to Australia's Screen Eco-system; our members commission, create and produce Australian content, they bring major international blockbusters to Australia, and they distribute this content via cinemas, home entertainment and broadcasting and streaming. Our members operate TV channels and now also VOD services.

As stated above, the June 7 Hansard contains a number of misleading statements we would like to correct:

Canada has not set a local content investment obligation for online streaming services.

1. Page 8. Mr. Deaner: "What we've got in Canada—and maybe I'll summarise, also, some of the other changes—is that the Canadian government has made a commitment, publicly, that it will be regulating for this obligation and it will be making a decision this year. We anticipate that decision to be—and we're told it is going to be—between 20 to 30 per cent on those streaming

services. That is a decision that is being made by their regulator, the ACMA equivalent, which is called the CRTC. It's not yet specified, because it's an arms-length decision, but, as I say, we understand it will be that level."

The Canadian Parliament has referred Bill C-10 to Select Committee, and whether it will pass before the election later this year is yet to be determined. If enacted, this Bill will give the local regulator CRTC the power to regulate VOD services. The Bill does not make any references to whether or at what level VOD services are required to invest in local screen content.ⁱ That will only happen if the Government issues a policy direction, and the form and level of an obligation would then be determined in a consultation process conducted by the CRTC. It is false to infer that any decisions have been made.

2. Page 8, Mr. Deaner: "They also have a very robust framework for their equivalent of subscription television, cable and satellite television, which is an expenditure obligation of about 30 per cent of their revenue into the system in Canada. That is delivered against children's, documentary, light entertainment and drama programming. It's a very significant expenditure level."

Canada's broadcasters are subject to a 30% local content investment obligation. It is our understanding that this obligation can be discharged using all forms of Canadian content, including sports, news and reality content. The equivalent in Australia is the 55% share for Australian content requirement for all programming between 6am and midnight on the primary commercial broadcast channels.

Investment obligations in the European Union

3. Page 8, Mr. Deaner: "The other layer to this is Europe, as you mentioned, Senator Hanson-Young. We understand that France is at— already, because it has been passed into legislation—a level of 20 to 25 per cent. We understand Ukraine is at 20 per cent. We understand Italy is at 12.5 to 20 per cent. Other countries are starting out maybe a little lower but with, we're told, the intention to ramp up. We understand that Germany is probably going to be of a similar level to France. That's the best intelligence we have."

The recently revised Audiovisual Media Services Directive (AVMSD)ⁱⁱ governs the single market for the distribution of linear TV and VOD services across the European Union. Whilst the AVMSD permits Member States to impose levies (such as for a national TV or Film Fund) or local investment obligations as proportion of revenue on VOD services, the reality is that very few Member States have done so.

With the EU's official deadline for transposition into national legislation behind us, countries like Sweden, Finland, Austria, Bulgaria, Czech Republic, Hungary, Estonia, Latvia and Lithuania have all opted not to mandate a local investment obligation at all. The UK, now of course out of the EU, has also opted not to impose a local investment obligation. Where investment obligations have been introduced they are required to be applied in a proportionate and non-discriminatory manner to both local and non-domestic services with due caution for potential market impact.

Each Member State will have a different justification for investment obligations or levies but in most instances they are to support the preservation of local language and national identity within the broader European content sector. These goals are often distinct from a desire to drive inward investment, which is more commonly achieved via tax incentive programmes similar to those that we have in Australia.

SPA has given the impression that the 20 per cent investment obligation currently proposed (not yet implemented and still subject to industry-union roundtable discussion) in France is typical. In reality France is an outlier compared to its EU Member State peers. Even so, a content obligation can't be seen separate to the 'natural' interest in local stories, and given that cinema attendance is generally unregulated it is a good yardstick to assess the natural interest level in local content. In France, local films take 34.8% of the box office. In Australia that number is just 3.3%. If Australia would adopt a similar ratio as the French have chosen to do, the investment obligation rate would be just 1.9%.ⁱⁱⁱ

The majority of EU Member States have no system of levies or investment obligations. Those that do have much lower thresholds than those proposed by France and its neighbour Italy (17%). Poland recently introduced a levy of 1.5% the same rate as is currently proposed by Greek legislation. Germany has an established levy of 3%, and Spain one of 5%. Belgium, Croatia and Denmark have all set their thresholds at 2%. Before the recent dissolution of its government, the Parliament in the Netherlands had been debating proposals of 3% and 6% for VOD services. Switzerland is considering an investment obligation threshold of 1%. All of these rates are substantially below the natural level achieved by local films at the Box Office in these countries^{iv}

<i>Country</i>	<i>AVMSD implementation proposals % Investment obligation for SVOD</i>	<i>Share of local content as % of total box office - UNIC 2019 data</i>
Belgium	2.0%	NA
Croatia	2.0%	4.3%
Denmark	2.0%	23.7%
France	20.0%	34.8%
Germany	3.0%	19.7%
Italy	17.0%	21.2%
Netherlands	3.0% - 6.0%	10.9%
Poland	1.5%%	28.2%
Spain	5.0%	15.0%
Switzerland	1.0%	6.8%
UK	0.0%	13.0%

A Library Quota serves a different objective than an Investment Obligation

4. Page 14. Mr. Fardell: "But, if you look at Netflix in Europe, the European Union put a quota in for 30 per cent in 2018, and that has not affected their business whatsoever."

The AVMSD sets out a mandatory obligation for member states to ensure VOD services to have at least 30 per cent of European works in their catalogues. This 30 per cent catalogue obligation has been taken out of context by Mr. Fardell to further justify a 20 per cent investment obligation proposal. However it is a false comparison.

The VOD quota exists not to support investment (that is an option for Member States through levies/investment obligations as noted above) but to encourage the sharing of culture and language across borders, to help maintain a sense of European identity. European works are classified broadly as works originating from at least 40 countries that are signatories to the

European Convention on Transfrontier Television^v (ECTT) including major TV exporters such as the UK, France, Germany, Spain, and The Netherlands. Within this context there are 44 000 European films and over 12,650 European TV seasons currently available on 462 VOD services in Europe.^{vi} Further, Europe has a population of 447.7 million citizens spread across the 27 AVMSD Member States. The sheer scale of the European content market means that such interventions can be made in a way that broadly mitigates against unintended consequences.

Let the data guide your decisions – there is no evidence of market failure

5. Page 10. Mr. Deaner: “The difficulty with a big number like that is that it's designed to say: 'We're here, we're huge, we're big, we're doing lots. Please don't regulate us because you don't need to.' But you really need to dissect that number. The government is asking those numbers of each of those services currently. That information hasn't been provided, but we understand that they aren't necessarily huge numbers. In fact, they possibly sit at about 10 per cent.”

At the Minister's direction, ACMA has requested VOD services to voluntarily report investments in Australian content. This data has been provided and ACMA is currently aggregating this data.

For now, the numbers provided by streaming services are the only data available on the public record, and they show a remarkable commitment to the telling of Australian stories:

- Stan has commissioned productions with budgets totaling more than \$250M, and has outlined its plans to ramp up its output to 30 Stan Originals per year by 2025.^{vii}
- Netflix's investment in first run Australian adult drama and Australian children's commissions and co-productions in financial year 2019-20 was more than \$111 million. For comparison, the ACMA reports that the total investment on Australian adult drama and Australian children's content from all commercial broadcasters combined was \$89.7 million.^{viii}
- Since 2019, Prime Video has commissioned 14 Amazon Original series in Australia, investing \$150 million in local productions, which has resulted in more than 2,500 jobs across Australia.^{ix}

It is irresponsible for Mr. Deaner to speculate on the accuracy of data he has no access to, especially given the fact that several lead indicators suggest that the production sector he represents is thriving.

Since the emergence of VOD services, investment in Australian stories has increased dramatically. In 2014/15, when the first VOD services launched in Australia, Screen Australia reported an investment of \$425 million in Australian content. In 2018/19 that had increased to an all-time record of \$698 million. Due to the national pandemic lockdown, three months' of production activity worth \$325 million was suspended in 2019/20, and as a result total investment in Australian stories ended up at \$543 million.^x But clearly the market-demand was there; the content had been commissioned and was ready to be produced (and almost all of it has since resumed production or been completed)^{xi}. Without the pandemic, 2019/20 would have shattered 2018/19's all-time record and delivered \$868 million in investment in Australian stories.

One of the drivers of this increase of investment is the increasing export opportunity for Australian stories. In 2014/15 just 29% of budgets for Australian stories were financed from foreign sources, in 2019/20 that had increased to 43%.^{xii} This increase has been enabled by streaming services, which have provided the opportunity for a much more diverse array of content to find audiences across the world.

It is our position that regulatory intervention should only be considered if there is a lack of access to Australian content. The upcoming release of VOD services investment data by the ACMA is an important component to this analysis. Our Media Reform Green Paper submission^{xiii} sets out our detailed analysis and argumentation for this position (also attached), including the substantial risks and unintended consequences associated with regulating the still nascent and fast-changing streaming sector.

We caution against pre-determining the outcome of the Media Reform Green Paper process and making any recommendations relating to content obligations for VOD services in the context of the Inquiry on a Bill in which VOD services were not included, and in which those representing the VOD sector therefore did not participate.

We thank you for your consideration of this letter, and stand ready to answer any further questions you may have.

Kind regards,

Paul Muller

Chief Executive Officer
Australia New Zealand Screen Association

ⁱ <https://www.justice.gc.ca/eng/csj-sjc/pl/charte-charte/c10.html>

ⁱⁱ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN>

ⁱⁱⁱ The French box office data is taken from page 19 of the [UNIC Annual Report](#). The Australian box office data is provided by the Motion Picture Distributors Association of Australia. The equivalent Australia rate has been calculated as follows: 20%/34.8% x 3.3%.

^{iv} Ibid. III

^v https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/132/signatures?p_auth=5hk0XuAA

^{vi} European Audiovisual Observatory Lumiere VOD European Works directory, November 2021

^{vii} <https://www.communications.gov.au/sites/default/files/submissions/mrgp-stan.pdf>

^{viii} <https://www.communications.gov.au/sites/default/files/submissions/mrgp-netflix.pdf>

^{ix} <https://www.communications.gov.au/sites/default/files/submissions/mrgp-amazon-prime-video.pdf>

^x <https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report>. The Screen Australia Drama Report, whilst a great source for total investment, cannot be relied upon to assess investment levels for SVOD services. See Appendix 3 of our Green Paper submission for details:

<https://www.communications.gov.au/sites/default/files/submissions/mrgp-australia-new-zealand-screen-association.pdf>

^{xi} Senate Environment and Communications Legislation Committee Estimates 23 March 2021, Graeme Mason, page 106, <<https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/140f26dd-8d3b-4457-a348->

[9baa49ecf095/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2021_03_23_8615.pdf;fileType=application%2Fpdf#search=%22committees/estimate/140f26dd-8d3b-4457-a348-9baa49ecf095/0000%22>](#)

^{xii} ANZSA aggregated calculation across feature films and TV, Children's and Online based on data from Screen Australia Drama Report, pages 12 and 23. <<https://www.screenaustralia.gov.au/getmedia/f87c32c8-3d5d-4d99-95ad-224931812f49/Drama-Report-2019-2020.pdf>>

^{xiii} <https://www.communications.gov.au/sites/default/files/submissions/mrgp-australia-new-zealand-screen-association.pdf>