

APPENDIX 1 - OVERSEAS LOCAL CONTENT RULES

Extract from Australian Film Commission, submission 29, appendix 5

Europe

The main instrument of regulation is the European Council directive 'Television without Frontiers' of 1989 (Directive 89/552/EEC).

Article 4 requires that where practicable a majority of transmission time should be reserved for European programs. In addition, article 5 requires that at least 10 per cent shall be devoted to European work produced by independent producers.

From its monitoring the EC reported that the vast majority of broadcasters complied with both requirements.

The requirements set out in the European directive are the minimum to be adopted by the member states. Additional provisions that are not in conflict with the Directive may be implemented. Article 3 says member states are 'free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this directive.'

The following is a selection of countries where additional content regulation has occurred.

Denmark: at least 50 per cent of programs must be of Nordic origin (in addition to European directive).

France: 50 per cent of prime time (6pm to 11pm each day and 2pm to 6pm on Wednesday) must be original French language works and an additional 10 per cent must be works from European countries.

Italy: At least 50 per cent of all movies screened must be European, of which half must be Italian.

Spain: 51 per cent of transmission time must be for European works. At least half of the 51 per cent must be in Spanish or one of the other official languages of Spain.

United Kingdom: Non-European works are limited to less than 50 per cent of the broadcasting time. For Channel 3 (Independent Television Commission) 65 per cent of programs, including repeats, must be originally commissioned rather than acquired by the channel. Channel 3 licence specifies there must be minimum quantities of particular types of programs. Both Channel 3 and 4 have to devote a majority of their transmission time to European material, including 25 per cent of independently produced programs. Plus, there continues to be an implicit uncodified 86 per cent British quota (Jacka and Cunningham p127).

Canada: 60 per cent of total transmission time has to be Canadian. In addition there are Canadian content requirements for prime time (6pm to midnight) as follows: public licensees - 60 per cent; private licensees - 50 per cent.

Source: Franco Papandrea 1997, 'Cultural Regulation of Australian Television Programs', Bureau of Transport and Communications Economics, AGPS Canberra.

APPENDIX 2 - CULTURAL EXEMPTIONS IN INTERNATIONAL TRADE AGREEMENTS

Extract from Department of Communications, Information Technology and the Arts, submission 32, attachment C

General Agreement on Trade in Services (GATS)

An overwhelming majority of countries have resisted moves at international trade fora to liberalise trade in the audiovisual sector. A component of the General Agreement on Trade in Services (GATS), services in the audiovisual sector were a contested outcome of the Uruguay Round, concluded in 1993. The US, a net exporter of audiovisual services, sought the removal of restriction to the trade in audiovisual sector. While 125 member countries were covered by the outcome of the GATS negotiations, only fourteen countries made specific commitments in the audiovisual sector: Dominican Republic, Hong Kong, India, Israel, Japan, Kenya, Korea, Malaysia, Mexico, New Zealand, Nicaragua, Singapore, Thailand and the USA. Of these only New Zealand and the USA committed to the removal of all regulatory barriers to trade in film and television industries.

Article IV of the GATT allows members to give preference to local film production. The GATS requires transparency of audiovisual sector regulation as for other services. However, Article IV is carried over if a country does not make a specific commitment for market access and national treatment. Significant opposition to the US push for liberalised trade came from European Union member states, particularly France, with participation from Canada, India, and Australia. Such countries listed broad exemptions to Most Favoured Nation treatment under the GATS, justified as measures promoting regional identity, cultural values and linguistic objectives.

Canada

Canada, whose broadcasting system is often compared with Australia's, has exempted cultural industries from its free trade agreements with the world's major television-producing nation, the US. Canada has exempted cultural industries from the Free Trade Agreement with the US and the subsequent North American Free Trade Agreement with the US and Mexico. The US has not exempted cultural industries from these agreements, but there is certainly no need to have local content quotas in the US as virtually all programming screened on American free-to-air television is produced under American creative control. Canada has a higher transmission quota than Australia (60 per cent of transmission time must be devoted to Canadian programming, whereas in Australia the transmission quota is currently 55 per cent).

European Union

In Europe, the European Union (EU) directive 'Television without Frontiers' came into effect in 1991, and sets a European transmission quota. The EU took an individual exemption from the audiovisual provisions of the General Agreement on

Trade in Services (GATS) adjunct to the GATT agreement reached in 1993 in order to preserve quota and other support schemes.

Australia

Australia has made no specific legally binding commitments to the audiovisual industry under the GATS, preserving the application of Australia's local content standards within the World Trade Organisation. Although it is possible that local content regulations will be raised in the next round of multilateral trade negotiations to start in the year 2000, particularly by the US, it is also possible that a number of territories will continue to exempt the audiovisual industries from the GATS.

APPENDIX 3 - NETWORK COMPLIANCE WITH THE AUSTRALIAN CONTENT STANDARD

Source: Australian Broadcasting Authority, *Review of the Australian Content Standard - discussion paper*, July 1998, attachment C

1. Australian Content Standard

	Transmission quota		first release Australian drama			
	1996	1997	1996		1997	
annual requirement	50 per cent	50 per cent	225 points		225 points	
compliance in -	per cent	per cent	Points	hours	points	hours
7 Network -						
ATN	56.4	52.7	335.69	253	263.93	188.17
HSV	57.35	56.01	334.63	244.9	259.93	186.17
BTQ	57.61	53.86	331.69	251	268.43	189.95
SAS	60.98	61.08	324.29	233.25	261.48	186.68
TVW	60.54	58.95	327.69	245.15	267.82	190.13
9 Network -						
TCN	60.6	62.9	268.7	149.6	272	124.8
GTV	59.1	60.0	271.7	149.9	269.6	124
QTQ	62.5	63.5	270.8	148.8	270.8	124.2
10 Network -						
TEN	51.32	50.9	248.4	183	266.5	189.5
ATV	51.32	50.9	248.4	183	266.5	189.5
TVQ	51.32	50.9	248.4	183	266.5	189.5
ADS	51.32	50.9	248.4	183	266.5	189.5
NEW	51.32	50.9	248.4	183	266.5	189.5

	first release Australian documentary		first release Australian children's drama	
	1996	1997	1996	1997
annual requirement	10 hours	10 hours	24 hours	28 hours
compliance in -	hours	hours	hours	hours
7 Network -				
ATN	20	34	24	27.5
HSV	20	42	24	27.5
BTQ	19	32.5	24	27.5
SAS	17	34.5	24	27.5
TVW	19	35	24	27.5
9 Network -				
TCN	19.5	24	24	28
GTV	19.5	23	24	28
QTQ	19.5	27	24	28
10 Network -				
TEN	10	10.5	24.25	28
ATV	10	10.5	24.25	28
TVQ	10	10.5	24.25	28
ADS	10	10.5	24.25	28
NEW	10	10.5	24.25	28

2. Children's Television Standards

	Australian C classified		C classified		Australian P classified	
	total hours 1st release		total hours		total hours	
	1996	1997	1996	1997	1996	1997
annual requirement	130	130	260	260	130	130
compliance in -	hours	hours	hours	hours	hours	hours
7 Network -						
ATN	144	134.0	261	261.5	131	130.5
HSV	144	134.5	261	262.5	131	130.5
BTQ	144	134.0	261	262.5	131	130.5
SAS	144	134.5	260.5	263.0	131	130.5
TVW	144	135.0	261	262.5	131	130.5
9 Network -						
TCN	133	133.5	268.5	271.5	131	130.5
GTV	133.5	134	269.5	271.5	131	130.5
QTQ	133	133.5	269	272	131	130.5
10 Network -						
TEN	160.25	131.5	306.75	282.5	131	130.5
ATV	160.25	131.5	306.75	282.5	131	130.5
TVQ	160.25	131.5	306.75	282.5	131	130.5
ADS	160.25	131.5	306.75	282.5	131	130.5
NEW	160.25	131.5	306.75	280.5	131	130.5

APPENDIX 4 - HOURS OF NEW ZEALAND PROGRAMS ON NEW ZEALAND TELEVISION

Extract from Australian Film Commission and others, submission to ABA review of the Australian Content Standard, 1998, appendix 6, sourced from New Zealand On Air, Local Content Research New Zealand Television 1995, p4,15

program type	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1997 1st release
drama/comedy	39	59	55	86	223	264	283	357	357	335	170.88
sport	509	691	1653	1283	1735	1075	1531	1545	1077	865	864
news & current affairs	550	709	997	924	1009	1023	1087 8	1045	1198	1440	1437.5
entertainment	292	458	528	525	886	588	364	454	302	482	230.08
children's	325	440	534	739	1264	1019	861	745	745	806	366.58
children's drama	12	21	25	20	33	27	2	28	12	0	
Maori	131	144	143	111	163	170	156	173	173	256	181
documentaries	43	36	107	139	175	190	207	257	252	269	189.01
information	213	253	208	213	226	431	477	415	867	1147	771.77
total NZ content	2112	2804	4249	4039	5715	4788	4969	5018	5066	5601	4210.85
% of schedule	23.9	31.8	24.2	31.7	30.2	23.2	23.2	19.7	19.2	21.3	16.0
total 1st release NZ in prime time	686	943	1189	1281	1640	1769	1821	1546	1586	1636	
% of prime time	23.5	21.6	27.2	29.3	37.5	40.5	41.7	35.4	35.4	37.5	

'Figures for 1988-96 are all programs including first release and repeats. 1997 total figures and first release are shown separately.

'New Zealand On Air came into existence in 1989.'

APPENDIX 5 - EXPENDITURE BY COMMERCIAL TELEVISION ON AUSTRALIAN PROGRAMS

Extract from Australian Film Commission and others, submission to ABA review of the Australian Content Standard, 1998, appendix 1, sourced from Australian Broadcasting Authority Financial Results 1996/97

	1992/93	1993/94	1994/95	1995/96	1996/97	change 95/96-96/97
Aust. drama	89.0	72.66	72.8	77.2	73.8	- 4.4%
children's drama	4.4	3.0	4.4	7.0	7.8	+ 11.3%
documentaries	17.9	19.3	24.0	24.0	13.3	- 44.7%
total Australian	517.6	469.9	477.4	504.0	549.6	+ 9.0%
foreign drama	164.9	160.9	183.4	174.2	199.6	+ 14.6%
total OS	183.2	184.1	200.6	196.5	214.9	+ 9.4%
total spending	700.7	654.0	678.0	700.6	764.5	+ 9.1%

'Note: The figures for children's drama in 1995/96 reflects the increases in the children's drama quota introduced then. Prior to 1996 the requirement for first release children's drama was 16 hours and there was no requirements as there is now for 8 hours of repeat children's drama.'

APPENDIX 6 - NEW ZEALAND ON AIR SUBSIDIES TO TELEVISION PRODUCTION

Extract from Australian Film Commission and others, submission to ABA review of the Australian Content Standard, 1998, appendix 7, sourced from New Zealand On Air annual reports 1994/95, 1995/96, 1996/97

1. New Zealand On Air Program Funding 1995/96 and 1996/97

	hours	96/97 funding (\$000)	% of total production cost	hours	95/96 funding (\$000)	% of total production cost
drama/comedy	62	15,998	55%	77	13,914	60%
Documentaries	99	9,758	62%	107	9,329	71%
children and young persons	410	10,790	78%	391	9,179	79%
special interest programs	204	10,790	85%	247	11,755	80%
total production funding	775	44,841		822	44,177	
plus development funding		260			751	
total television funding		45,101			44,928	

2. New Zealand On Air subsidised television program funding 1990-1997 (hours)

program type	1990	1991	1992	1993	1994	1995	1996	1997
Drama	49	77	187	213	229	218	77	62
Documentaries	60	119	112	214	200	169	107	103
children's	162	283	410	447	476	469	391	410
Maori	74	118	145	118	116	n/a	n/a	n/a
special interest	189	91	90	134	148	210	247	204
Total	534	688	944	1126	1169	1066	822	779

'Note: Since 1994 most support for Maori programming has been through NZ On Air to Te Manga: Paho, the separate and independent Maori broadcasting funding agency - hence these figures are not now published in NZ On Air Annual Reports.'

APPENDIX 7 - COMPARISON OF AUSTRALIAN AND NEW ZEALAND SUBSIDIES TO TELEVISION PRODUCTION

Extract from Australian Broadcasting Authority, Review of the Australian Content Standard - discussion paper, July 1998, attachment H

Australian Film Finance Corporation (FFC)

Established in 1988, the Australian Film Finance Corporation (FFC) provides financial support for Australian feature films, telemovies, mini series and documentaries. Assistance is targeted to documentary, children's and adult drama categories as these programs are perceived to be more important for delivering outcomes in terms of the cultural objective. Series and serials are not funded. While the FFC generally invests in television documentaries, it does not invest in other actuality programs such as infotainment, current affairs, cooking, how to or sports programs. In allocating subsidies, the FFC looks to the level of non-FFC participation, the level and appropriateness of marketplace participation, recoupment prospects for the FFC and other criteria under its guidelines.

New Zealand on Air (NZOA)

New Zealand on Air (NZOA) was established in 1989. In accordance with the Broadcasting Act, NZOA is required to reflect and develop New Zealand identity and culture by promoting programs about New Zealand and New Zealand interests, and promoting Maori language and Maori culture.

In terms of television, NZOA aims to ensure a diverse range of New Zealand programs remain part of the main television schedules. NZOA emphasises three genres - documentaries, drama programs and programs for special interest groups. The categories of programs funded by NZOA are broader than those of the FFC and include information, documentaries, Maori programs, children's drama and entertainment, news/current affairs, sports, drama and comedy.

NZOA only funds programs that will have a broadcast audience and to an extent, NZOA targets high rating programs so that around 60 percent of the funding for television is for prime time programs (between 6.00 p.m.-10.30 p.m.). The funding offered by a broadcaster is generally considered important. NZOA is rarely the sole funder. NZOA, like the FFC, invests in programs and benefits from any profit made on the programs. In assessing funding applications, NZOA also considers how well the program reflects the diverse nature of the New Zealand population and its culture, and the key personnel involved in the production.

Preliminary assessment of direct subsidy levels in Australia and New Zealand

NZOA annual reports over the last five years to 1996-97, provide lists of the categories of television programs funded during the relevant financial year, the amount of NZOA funding for each program and NZOA funding as a percentage of the total cost of all programs in a particular category. The general levels of subsidy provided by the FFC are set out in the FFC's guidelines. The FFC subsidy as a proportion of the total budget for particular program categories has been calculated using information from FFC annual reports over the last five years. The following table outlines the different subsidy levels reported by FFC and NZOA.

The fact that NZOA subsidises a wider range of programs than the FFC makes it difficult to draw direct conclusions about the relative level of subsidies provided.

Subsidies as a percentage of total program costs - AUSTRALIA (FFC)					
program genre/format: FFC guidelines	1992/93	1993/94	1994/95	1995/96	1996/97
adult drama: miniseries, telemovies; generally not more than 60 %, with 50 % desirable level	50%	57%	57%	57%	39%
documentaries: non-accord documentaries: 60 % (may be higher with lower budget production) accord documentaries: ABC: up to 16x1hr programs, budgets up to \$300k, cash presale of 30% of budget. SBS: up to 10x1hr programs, budgets up to \$200k, cash presale of 30% of budget	72%	64%	66%	50%	67%
children's programs: generally only miniseries of 13x30minutes: generally not more than 50% of the budget	62%	69%	53%	60%	33%
Subsidies as a percentage of total program costs - NEW ZEALAND (NZOA)					
program genre/format	1992/93	1993/94	1994/95	1995/96	1996/97
comedy and drama	36%	49%	36%	60%	55%
documentary programs	68%	50%	62%	71%	62%
drama and entertainment	63%	72%	71%	79%	78%

'Note:

Documentaries under the FFC guidelines are either accord documentaries financed through a pre-existing arrangement with a local broadcaster ('an accord'), or non-accord documentaries which are one-off projects commissioned by broadcasters outside the terms of the accords. The FFC has accords with the ABC and SBS but has no formal accord with networks Seven, Nine and Ten. Accord requirements vary. Most documentaries financed by the FFC are produced under an accord. Only two non-accord documentaries have been funded by the FFC in recent years.

'In addition to the program categories in the table, NZOA subsidises special interest programs (eg cultural and arts programs). It appears that these types of programs are similar to those funded by Australian public broadcasters. In 1996-97, for example, NZOA funded 85 per cent of the total production costs of special interest programs. The FFC does not fund this category of programs.'

APPENDIX 8 - LIST OF SUBMISSIONS

- 1 NSW Writers' Centre Inc
- 2 Mr Julian Pringle
- 3 Light Source Films Pty Ltd
- 4 Mr David Muir
- 5 Mr Desmond Tsui
- 6 Bower Bird Films
- 7 Red Productions
- 8 Ms Glenda Hambly
- 9 The Funny Farm Pty Ltd
- 10 Mr John Cundill
- 11 Piccolo Films Pty Ltd
- 12 Screen Producers and Directors Association
- 13 Mr Richard Sarell
- 14 Ms Lucy Freeman
- 15 Journocam Productions
- 16 Samara Films
- 17 Media Entertainment and Arts Alliance
- 18 Ms Sonia Borg, AM
- 19 Film Positive Pty Ltd
- 20 Michelle MacEwan and Wim Bezemer
- 21 Gil Scrine Films
- 22 & 22a Screen Producers Association of Australia
- 23 & 23a The Australian Children's Television Foundation
- 24 New Zealand Government
- 25 & 25a Federation of Australian Commercial Television Stations

- 26 Young Media Australia
- 27 & 27a Australian Screen Directors Association Limited
- 28, 28a & 28b Attorney General's Department
- 29, 29a & 29b Australian Film Commission
- 30 Australian Writers' Guild
- 31 Australian Film Finance Corporation Limited
- 32 Department of Communications, Information Technology and the Arts
- 33 Australian Teachers of Media (NSW)
- 34 Film Australia
- 35 Department of Foreign Affairs and Trade
- 36 Australian Screen Culture Industry Association
- 37 Screen Producers Association of Australia - Western Australian Chapter

APPENDIX 9 - WITNESSES WHO APPEARED BEFORE THE COMMITTEE

Friday 4 December 1998, Committee Room 2S3, Parliament House, Canberra

NSW Writers' Centre

Mr GG Masterman, QC, Committee Member

Screen Producers and Directors Association (New Zealand)

Ms Jo Tyndall, Project Blue Sky

Media Entertainment and Arts Alliance

Ms Anne Britton, Joint Federal Secretary

Screen Producers Assn of Australia

Mr Nick Herd, Executive Director

Ms Adrienne Pecotic, General Manager, Grundy Organisation

Australian Children's Television Foundation

Ms Pia De Mattina, Corporate Lawyer

New Zealand Govt

Mr Geoff Randal, Deputy High Commissioner

Dr Trevor Matheson, Counsellor

Federation of Australian Commercial Television Stations (FACTS)

Mr Tony Branigan, General Manager

Young Media Australia

Ms Toni Jupe, Communications and Media Manager

Australian Screen Directors Association

Mr Richard Harris, Executive Director

Australian Broadcasting Authority

Ms Lesley Osborne, Manager Standards

Ms Andree Wright, Director, Policy and Program Content

Ms Maria Vassiliadis, Lawyer

Attorney General's Department

Mr Bill Campbell, First Assistant Secretary, Office of International Law

Mr Mark Zanker, Assistant Secretary

Australian Film Commission

Ms Kim Ireland, Policy Adviser

Australian Writers' Guild

Ms Sue McCreadie, Executive Director

Australian Film Finance Corporation

Mr Michael Ward, Policy Manager

Department of Foreign Affairs and Trade

Mr James Wise, AS, New Zealand and Papua New Guinea Branch

Ms Marina Tsirbas, Acting Director, Treaties Secretariat

Department of Communications, Information Technology and the Arts

Ms Megan Morris, Assistant Secretary, Film Branch

Dr Beverly Hart, Assistant Secretary, Licenced Broadcasting Branch

Mr Rohan Buettel, Assistant Secretary, Legal, Parliamentary and Corporate Branch

Dr Alan Stretton, First Assistant Secretary, Film, Public Broadcasting and Intellectual Property Division

**APPENDIX 10 - COPY OF ADVICE ON SIDE LETTER FORM
THE ATTORNEY GENERAL'S DEPARTMENT**

ATTORNEY GENERAL'S DEPARTMENT

OFFICE OF INTERNATIONAL LAW

3 February 1999

Ms Roxane Le Guen

Secretary

Environment, Communications, Information

Technology and the arts Legislation Committee

Parliament House

CANBERRA ACT 2600

Dear Ms Le Guen

**REFERENCE CONCERNING PARAGRAPH 160 (d) OF THE BROADCASTING
SERVICES ACT 1997**

I refer to your letter dated 2 February 1999 concerning the possibility of using a side letter to clarify certain issues relating to the Closer Economic Relations ('CER') Services Protocol with New Zealand. You state that the Committee would be grateful for advice on the status of a side letter and the way in which such a letter is usually used in relation to treaties.

- 2 I understand that at least one of the issues which is anticipated could be clarified by an exchange of (side) letters would be the status of New Zealand co-productions with third countries under the CER Services protocol. The exchange would be intended to embody a proposed common understanding with New Zealand that New Zealand –third country co-productions are not covered by the CER Services Protocol. In this respect I note that at page 17 of the Hansard record of the 4 December 1998 hearing of the Committee, I gave evidence which would support the proposition that New Zealand-third country

co-productions would not be a New Zealand service for the purposes of the CER Services Protocol. If that view is correct, then there would be no need for an exchange of letters. However, others appearing before the Committee took a different view. Certainly, the Australian Broadcasting Tribunal, both in its evidence before the Committee, and in its November 1998 review (Attachment D; paragraph 5), supports the use of a 'side letter'. In that report it states 'the ABA will also be seeking a side letter to the CER Protocol which excludes official New Zealand co-productions with countries other than Australia.'

3. I assume that the letter referred to would be one to be exchanged between Australia and New Zealand. It is not uncommon for letters (usually referred to as 'side letters' if done at the time of treaty adoption, signature or ratification) to be exchanged between countries to record a common understanding of the meaning and application of particular provisions treaties, particularly bilateral treaties such as the CER Services Protocol. Those letters would not normally be of treaty status (unless couched in mandatory language) but would have considerable influence over the subsequent interpretation of the treaty. This follows Article 31 of the Vienna Convention on the Law of Treaties.

4. Article 31.1 of the Vienna Convention provides:

'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'

In relation to letters exchanged after a treaty enters into force, Article 31.3 is relevant and states, in part, as follows:

'There shall be taken into account, together with context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.
- (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

5. The type of letter to which you refer could fall within either one or both of paragraphs 3 (a) and (b) of Article 31. In short, an exchange of letters between the two countries evidencing a common understanding of the application of a provision of a bilateral treaty, while not binding in and of itself, would normally be followed in any subsequent application of the treaty. The form

and content of any side letter would be the subject of discussion with the Department of Foreign Affairs and Trade.

6. It is important to note that it is an exchange of letters which gives rise to a common understanding. It is not simply a matter of one country unilaterally sending its views to the other. Therefore, use of this mechanism in relation to the interpretation and application of the CER Services Protocol would require the participation of New Zealand. A refusal by New Zealand to participate in such an exchange might indicate that it does not agree with the interpretation which would be the subject of the proposed exchange.

7. I trust the above information will be of assistance to the Committee.

Yours sincerely

Bill Campbell

First Assistant Secretary