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The Secretary
Senate Environment, Communication, Information Technology and the Arts Committee
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**SPAA Submission to the Senate Environment, Communication,
Information Technology and the Arts Committee Inquiry into the
Powers of the Australia's Communication regulators
Feb 2005**

The Screen Producers of Australia, SPAA, thanks the Senate Enquiry Committee for allowing comment on the proposed structure for the formation of the new Authority, the Australian Communication and Media Authority, otherwise known as ACMA. SPAA is supportive of the amalgamation of the Australian Communications Authority (ACA) and the Australian Broadcasting Authority (ABA) into ACMA.

SPAA aims to provide the environment and conditions under which a vigorous independent screen production industry can thrive in Australia. SPAA represents independent television, feature film, animation, documentary, TV commercials and interactive media production companies as well as post-production, finance and legal companies.

SPAA endorses the observations outlined within the Australian Film Commission submission except where the issues outlined below may extend or override those addressed within that submission.

SPAA recognises and supports the merging of responsibilities, previously managed separately between the ABA and ACA. This has the potential to bring cohesion and certainty to the convergence of telecommunications technology with traditional broadcasting functions. SPAA is particularly interested in the regulation of Australian content on all platforms that will fall within the new authority's control.

SPAA endorses the view that further work is required to establish the policy framework and direction of the entire regulatory system and that ACMA adopt a similar overarching policy objective to the United Kingdom's, *Oftcom* approach, being to make the United Kingdom "home to the most dynamic and competitive communications and media market in the world".

SPAA recommends:

- Inclusion in the new legislation of a specific Object that gives the ACMA the responsibility to facilitate independent film and television production in Australia, including but not limited to the establishment of minimum terms of trade between independent producers and broadcasters.
- Extension of the Australian Transmission Quota and the Australian Content Standard for adult and children's drama and documentary to the Australian Broadcasting Corporation (ABC).
- The ACMA to have the authority to review the effectiveness of the ABC's charter and the role of the public broadcaster in the future.
- Recognition of cultural and social content issues enshrined at board and supporting board structural levels in ACMA.
- Increased flexibility in ACMA's ability to enforce or encourage adherence to content regulations and to rectify non-compliance issues.

Facilitate Independent Production

SPAA is concerned that at present there are no structural safe guards to prevent economic and technical regulation assuming priority over the social and cultural objectives of broadcasting regulation. This concern stems from the different cultures of the two merging organisations, namely the economic development focus of the ACA and the cultural and social objectives of the ABA. SPAA believes there is also a critical need for recognition of the economic conditions required to support the cultural and social objectives of Australian Content.

In the act of transferring the roles and responsibilities of the ABA into ACMA, an oversight in the drafting of the Broadcasting Services Act 1992, (BSA) needs to be remedied.

An additional object to those listed in the Preliminary Section 3 – Objects, of the BSA needs to be inserted at the time of establishing new legislation for ACMA in order to recognise the role of ACMA in facilitating Australian independent production.

It was the intent of the 1992 legislation that a core objective planned for the then new ABA was to facilitate independent production. The associated Explanatory Memorandum and Minister's parliamentary speech introducing the legislation clearly specify the intent of the legislation in this area. It is generally accepted that the failure for this to be written into legislation was a drafting error.

The ABA has as recently as 2002 attempted to act on this intention through the introduction of independent producer criteria in accessing Australian drama content points.

The cultural relationship between broadcast content and independent production is established internationally. Europe (including UK), Canadian and Korea carry legislation to support the ongoing activities of their independent production industries.

It would be remiss for the omission to be carried over into a new organization, especially given the terms of reference of the Senate Committee to benchmark the new authority against "world's best practice".

Terms of Trade

SPAA also notes *Ofcom's* involvement in the development of terms of trade between the UK independent production sector and broadcasters. This was deemed necessary to address the unequal power and influence between the two trading parties. In forming *Ofcom*, the UK government saw the relationship between a healthy independent production sector and program diversity.

SPAA believes similar authority to develop terms of trade should be incorporated into the ACMA operation to ensure the economic structures that underpin the cultural and social objectives of the authority are best developed. Given that the expertise, knowledge and resources to effectively regulate in this area will reside with ACMA it makes sense in our view that minimum terms of trade between broadcasters and the independent production industry are governed by ACMA.

ACMA Disciplinary Powers

SPAA endorses the *Ofcom* "light touch" approach as documented in *Ofcom's* first annual report, which emphasises working with the industry to achieve its objectives.

SPAA believes the ACMA would benefit from a level of flexibility in negotiating non or poor performance remedies so that there are other outcomes apart from disciplinary letters, publication of findings, fines and/or threat of licence revocation. For example, SPAA submits that a power to allow the authority to negotiate additional local content

points as a remedy/penalty for non-compliance or breach, would serve the public interest.

Board Formation and supporting structures

SPAA does not believe the new authority will be able to serve the public or production industries interests fairly or robustly without ensuring that the Board and its organisational structures have equal and permanent representation covering the cultural content issues, previously administered within the ABA .

Government needs to ensure that the ACMA's internal structures are not overwhelmed or vulnerable to majority dominance by technical and spectrum issues. SPAA sees merit in the recommendation that ACMA adopt a similar approach to *Ofcom* with the establishment of a Content Board able to feed recommendations to the main board. SPAA submits that there needs to be adequate and fair representation at Board level to ensure the strategic direction of content regulation is represented at the highest level.

Given the recent experiences associated with the leadership controversy at the ABA, SPAA is concerned that incorporating ACMA under the Financial Management and Accountability Act 1997, carries a potential risk of politicisation of the Authority. It is recommended that the Authority have the capacity to develop limited enforceable, internal mechanisms to address controversial or ineffective performance at all levels of the organisation.

Expansion of Content Monitoring and regulation Minimums to National Broadcasters

The ABA does not presently regulate the ABC, except in the area of complaints made about compliance with the Code of Practice.

The ABC is an important instrument in providing Australian audiences with a range of diverse programming. As a minimum, ACMA needs to be granted the additional authority to apply basic Australian content standards to the ABC.

The ABC is a counter balance and /or counterpoint for general Australian audiences to the viewing choices available via the commercial broadcasters. There is a particular need to ensure a level of content certainty, a base line to ensure that Australian adults and children's drama programs broadcast by the public broadcaster are never allowed to fall below that required of their commercial counterparts. Therefore SPAA recommends an extension of the Australian Television Content Standard to include the ABC.

SPAA believes the ABC has at times suffered from a distracting level of politicisation in relation to the implementation of its broadcasting charter. ACMA should be the



independent authority able to review consumer complaints regarding broadcasting content and the implementation of the ABC's charter.

SPAA believes the strength of the *Ofcom* model, as the overarching authority above all broadcasters including the BBC, is a critical factor in the success of the UK media industries.

SPAA would be happy to provide further argument and information in support of its submission should the Senate Committee request.

Yours sincerely

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