



25 September 2006

The Secretary

Media Ownership Bills Inquiry

Senate Committee

Environment, Communications, Information Technology and the Arts

GPO Box 6100

Parliament House

CANBERRA ACT 2600

(via email to ecita_sen@aph.gov.au and fax 02 6277 5818)

Attention: Ms Roxane Le Guen

Dear Madam

REELTIME MEDIA LTD'S SUBMISSION TO THE SENATE COMMITTEE'S INQUIRY INTO THE MEDIA REFORM BILLS

Reference is made to the facsimile dated 15th September 2006 from the Senate Committee inviting ReelTime Media Ltd's ("ReelTime") submission to the Senate Committee's Inquiry into the Media Reform Bills. We are very appreciative of the opportunity made available by the Senate Committee to provide our comments and response in relation Media Reform Bills.

Although we have been given a very short period of time to provide our views on the Media Reform Bills, we hope that our comments are helpful to the Senate Committee in reaching its decision on the Media Reform Bills. Our detailed



comments on the Media Reform Bills are set out in Appendix A. We would also commend to you recent submissions from ReelTime to both the Department's review and the ACMA's Discussion Paper on the *Future use of unassigned television channels*.

We would be pleased to discuss this matter further. Please contact me directly on 0403 745 964 to arrange any further one to one discussions on the critical issues we have raised.

Yours sincerely

A handwritten signature in black ink, appearing to read "Shirley", enclosed in a thin black rectangular border.

**MANAGING DIRECTOR
REELTIME MEDIA LTD**



APPENDIX A

**REELTIME MEDIA LIMITED'S SUBMISSION TO THE SENATE COMMITTEE'S INQUIRY INTO
THE MEDIA REFORM BILLS**

SEPTEMBER 2006



REELTIME MEDIA LIMITED'S SUBMISSION TO THE SENATE COMMITTEE'S INQUIRY INTO THE MEDIA REFORM BILLS

A. INTRODUCTION

ReelTime Media Ltd ('ReelTime') is very appreciative of the opportunity made available by the Senate Committee to provide our comments and views in relation to the suite of Media Reform Bills comprising the *Broadcasting Services Amendment (Media Ownership) Bill 2006* ("BSA Media Bill"), the *Broadcasting Legislation Amendment (Digital Television) Bill 2006* ("DTV Bill"), the *Television Licence Fees Amendment Bill 2006* ("TV Licence Bill"), the *Communications Legislation Amendment (Enforcement Powers) Bill 2006* ("Enforcement Bill") and a discussion paper by the Minister for Communications, Information Technology and the Arts ("Minister") on the two channels of spectrum for new digital services ("Spectrum Discussion Paper"). Although we have been given a very short period of time to provide our views on the Media Reform Bills, we hope that our comments are helpful to the Senate Committee in reaching its decision on the Media Reform Bills.

Our submission is divided in to two sections: Section B provides a short overview of who ReelTime is and Section C sets out our views and comments on the Media Reform Bills.

B. WHO IS – REELTIME MEDIA LTD?

Sydney based ReelTime (www.reeltime.tv) is Australia's first national IPTV operator, with agreements secured directly with copyright owners which include major Hollywood and niche studios for distribution of commercial content over secure broadband networks. ReelTime's service is available over the Australian national



broadband network, and will offer a diversity of content appealing directly to all Australians. ReelTime is a wholesale “white label” operator of content services on behalf of third party ISP's, Telco's and partners.

ReelTime has already signed and secured access, carriage, video server co-location and bulk SMS distribution agreements with Telstra Corporation Ltd for its national network, including the consumer DSL network, and will offer its services to the public via primarily a digital IP based TV Set Top Box, as well as alternative PC download and streaming services. ReelTime's service is also accessible via Pipe Network's (www.pipenetworks.com) national broadband interchange points in capital cities. In May 2006, the ACMA granted ReelTime Media a telecommunications licence – the first such licence granted to a company proposing to offer video-on-demand services in Australia.

On 10 September 2006, ReelTime officially announced the launch of its new movie and TV download services. Such services are accessible by almost all 3.3 million broadband subscribers in Australia especially on some 45 ISPs who offer unmetered access to ReelTime via peering. Over 200,000 broadband subscribers are able to make superfast downloads of ReelTime content using ADSL2/2+ technology.

Importantly, ReelTime is majority owned by Australian unlisted public company, Movies Online Ltd (www.movies-online.com.au), which includes on its share register Sony Pictures Entertainment and ACE Cinema group as substantial shareholders.



B. COMMENTS ON THE MEDIA REFORM BILLS

B.1 *The Broadcasting Services Amendment (Media Ownership) Bill 2006 ("BSA Media Bill")*

ReelTime is fully supportive of the proposals as contained in the BSA Media Bill to remove **media-specific foreign ownership rules** in the BSA, whilst retaining the safeguards contained under the FATA. For publicly listed companies, such an easing makes sense as it is possible for foreign shareholders to hide the beneficial foreign ownership of the shares by using an Australian corporate entity and/or hiding behind nominees. As such, in practice, foreign ownership limits are almost impossible to enforce unless expensive mechanisms and beneficial tracing methods are employed.

However, in respect of the proposals on cross-media transactions, ReelTime as a smaller player in the sector, has **real concerns** about the proposed liberalisation in this area. While the BSA Media Bill proposes a number of safeguards including requiring a minimum number of commercial media entities in the relevant market following cross media mergers and acquisitions and the establishment of a Register of Controlled Media groups, from our perspective, the BSA Media Bill does not articulate sufficient competition safeguards and mechanisms in this area to ensure a high degree of diversity in the industry. We consider that such diversity is important as its smaller players like ReelTime who are offering most of the innovations in terms of delivery mechanisms and content in the sector.

We would also highlight that while any communications market definition utilised by the ACMA and the ACCC should use **convergence models**, which reflect increasing linkages (and synergies) between traditional and "new media".

ReelTime is also strongly of the view that **adequate safeguards** – perhaps via the access provisions of the Trade Practices Act ('TPA') - need to be enacted and



importantly enforced promptly as existing large media groups may consolidate and acquire entities through the processes unleashed through the Government's changes to media sector policy. A failure to act in a timely manner in this sector – especially during the transition phase – may not be easily corrected or rectified. In addition, market definitions adopted by the ACMA and ACCC ought to be forward looking (rather than taking a historical perspective) on the types and range of products and services that are substitutable in defining the relevant market.

B.2 The Broadcasting Legislation Amendment (Digital Television) Bill 2006 ('DTV Bill')

In general, ReelTime is supportive of the proposals as contained in the DTV Bill. In particular, we are **supportive of the proposals in relation to HDTV, anti-siphoning and to modify the power to allocate new commercial FTA television licences** in the BSB from the ACMA to the Government. Subject to a range of competitive and content safeguards, we would support the use of an auction process being used for any such allocation of new television licences after the determined analogue/digital simulcast period.

While we are also supportive of the proposal in the DTV Bill to provide a power to the Minister to approve an application made to the ACMA for allocation of a new commercial FTA television licences for services delivered outside the current Broadcasting Spectrum Bands ('BSB') spectrum allocation (ie using wireless, satellite or broadband services), we consider the allocation of new commercial FTA television licences should be subject to:

- (1) Existing providers of like services such as ReelTime be given priority; and
- (2) The licence conditions should not be too onerous – especially in relation to those services which use the Internet.



This is important as increasing the speed of broadband services on an end-to-end basis could mean that foreign-based providers could offer broadcast type services to Australian consumers without necessarily being subject to Australian domestic regulation, although, there is obviously less risk of this in relation to providers who utilise wireless and/or satellite spectrum in Australia.

While ReelTime is generally supportive of the proposals as contained in the DTV Bill in relation to regulation of multi-channels, and also in relation to multi-channelling by commercial FTA broadcasters, we consider that similar to the telecommunications sector, there should be an acknowledgement of both the market power and the value of the incumbency which resides with major commercial FTA broadcasters. They should and ought be regulated differently (and indeed more onerously than other digital services) for a period of at least five (5) years (and then after in a manner to be decided after review). It is not possible to compare the resources of say ReelTime and the commercial FTA broadcasters and then apply similar or the same rules.

B.3 The Television Licence Fees Amendment Bill 2006 ("Television Licence Bill")

ReelTime is supportive of the proposed amendment in the Television Licence Bill subject to our comments in Section B.2 above on multi-channelling.

B.4 The Communications Legislation Amendment (Enforcement Powers) Bill 2006 ("Enforcement Bill")

ReelTime is supportive of the proposals in the Enforcement Bill to provide the ACMA with key new powers on a range of matters. While the Enforcement Bill requires the ACMA to develop guidelines in consultation with the industry relating to the exercise of its broadcasting enforcement powers, we consider that the Enforcement Bill does not contain adequate safeguards to ensure that the ACMA exercises its powers in a timely, transparent and non-discriminatory manner.



B.5 The Spectrum Discussion Paper

ReelTime is supportive of the proposal to use an auction process for allocation of new digital licences for the two currently unassigned channels of television broadcasting spectrum in the near term for new digital services. We are also supportive of the proposal to allocate the spectrum to offer new digital services only. However, ReelTime considers the current prohibition on commercial and national broadcasters being able to control the datacasting licence transmitter licences – and should be applicable to both datacasting Channels A and B.

- END -