

SPAA SUBMISSION TO
SENATE STANDING COMMITTEE ON ENVIRONMENT, COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS'
INQUIRY INTO
BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2006
AND RELATED BILLS



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SPAA

The Screen Producers Association of Australia (SPAA) is the industry body that represents Australian independent film and television producers on all issues affecting the business and creative aspects of screen production.

SPAA members include television, feature film, animation, documentary, TV commercial and interactive media production companies as well as services and facilities providers such as post-production, finance, distribution and law firms.

As content producers SPAA members have a keen and material interest in the media reforms proposed by the government.

SPAA's Submission and a request to appear before the Senate Inquiry.

SPAA notes the short time frame in which this inquiry is to occur and has therefore prepared a brief response to the fundamental changes proposed, rather than engaging in detailed discussion as to the mechanism within. SPAA seeks an opportunity to give evidence at the Senate Inquiry and is pleased to provide further background information on the issues raised or on other details in the legislation not highlighted in this document.

SPAA Response to the proposed legislation:

Summary

1. SPAA is disappointed by the lack of vision in the Media Reform Legislation and does not believe the public is best served by the current draft legislation.
2. The television market, including the structure and regulations that help shape or grow it, remains to date the major force underpinning the Australian screen industry.
3. The outline notes on the media ownership legislation asserts the principle that; to ensure the provision of diversity in entertainment and news services to the public the government need ensure a range of different types of broadcasting exist, eg; subscription, narrowcasting etc. SPAA believes this approach fails to recognise the fundamental issue that affects diversity - that is what content, created by whom, and viable **access** to broadcasting services.
4. Those who control television broadcasting licences should not also be the owners and producers of the content broadcast on these services. SPAA

believes diversity of IP ownership and control is an important component in any consideration of the media asset ownership and control rules.

5. New technology and the access that the general public have to the internet should not be confused with complete democratisation of the media. The mainstream media remain dominant and will remain dominant for the foreseeable future.
6. SPAA does not oppose changes to cross media ownership and foreign ownership laws if regulation to assure diversity of content supply is assured though the introduction of an Independent Production Benchmark as exists in the UK and across mainland Europe.
7. The legislation favours a further consolidation of media ownership without adequate content safeguards and presents soft options on digital media platforms.
8. The government should expect a level of obligation from the commercial media sector to Australian content in all its endeavours. This should be a principle that is carried across to all new media platforms and broadcast services requiring government licence and access to public spectrum and or infrastructure. Specifically the commercial multi-channelling services, and digital services referred to in Senator Coonan's discussion paper as Channel A & B, should carry Australian content regulation from inception.
9. Phased local content regulation on new digital services will not necessarily maintain the Australian content market for content suppliers.
10. SPAA is concerned that the Media Ownership Bill allows for consolidation of ownership and viewed together with the Digital Media Bill presents the possibility of existing commercial broadcasters extending their media presence and potentially controlling the new Channel B service. The proposed moderate change to the regulatory environment is inappropriate. It fails to provide for regulatory mechanisms that ensures the continued funding, diversity and expansion of Australian content in the emerging commercial digital environment.

The implications are;

- reduction in mainstream media ownership diversity,
 - a likely increase in cross platform content re-versioning,
 - an increase number of platforms for broadcast of content with overall decrease in the level of Australian drama and documentary content as a percentage of total,
 - increased market power by broadcasters over the commercial terms of trade for independent content provision.
11. SPAA supports the introduction of Free To Air's (FTA) multi-channelling if Australian content regulation is introduced at the same time as

commencement of these new services, with a view to introducing appropriate sub-quotas in the 2010-2011 digital switch over.

12. SPAA does not oppose but is wary of the secondary impact that the relaxation to anti-siphoning rules could have on the level of demand by FTA's for other Australian content.
13. SPAA does not oppose transfer of power from ACMA to the Government to award broadcasting licenses.
14. SPAA continues to recommend the introduction of a fourth channel as being both sustainable and an effective use of available spectrum and a potential catalyst for digital switch over.

Australian Content Regulation

Australian content regulation remains an effective tool in the FTA and Pay TV environment. Whilst new technology allows for access to a multitude of alternative news and audiovisual services via the internet, the viewing habits of the nation are not going to be replaced by this new access. Internet and associated new media services will provide new opportunities but they will not replace FTA and Pay TV services.

Delaying regulation of Australian content to new broadcast services does not deliver long-term benefit to the Australian public. It establishes corporate structures and a culture where local content need not be considered if other more profitable content options exist. Hence, as and when regulation is introduced it will be considered an impost or burden rather than a central tenant of any new enterprise. SPAA expects that preventing simultaneous development of new services with Australian content obligations actually undermines local content regulation and positions Australian content as a 'luxury'.

The absence of Australian content regulation at the onset of new media services must be reconsidered. The Explanatory Memorandum accompanying Digital Media Bill expresses long-term desirability of Australian and Children's content regulation but sites a need to phase in regulation to avoid onerous costs of compliance for owners. SPAA does not accept this argument given the FTA commercial broadcasters current profitability, the potential increased capitalisation available through changes to media ownership laws and savings gained through efficiencies of scale.

The legislation currently postpones Australian content requirements for the FTA's multi-channels and is silent on regulation requirements for the new digital services. Cultural and the broader industry implications of media change need be developed hand in hand with these reforms. If there are real commercial barriers in establishing new digital broadcast services, the government should consider addressing these directly rather than forfeiting Australian content minimum quotas. Such regulation and its real cost impost can then be reviewed later.

Offering viewers real benefits in the form of quality new content, including Australian content, is the main incentive that will leverage Australian consumer's willingness to switch over to digital television services.

SPAA is concerned that the current legislation fails to provide for regulatory mechanisms that ensure the adequate funding, diversity and expansion of Australian content in the commercial digital environment. In this regard, a fourth channel would have an instant audience and is likely to be commercially sustainable. Mobile TV remains in testing phase and would not generate significant new quality content demand in the first instance. Australian citizen's would not be disadvantaged if Mobile TV type services were not realised until in 2010-2012, once greater spectrum is available and the market developed.

- SPAA recommends extension of current Australian content regulation to all new broadcasting services and the development of a new Independent Production Benchmark.

Content Diversity and Maximising Viewer Services

SPAA recognises the current challenges facing the media industries however, these challenges are not exclusively the domain of the established Free-To-Air (FTA) broadcasters. Independent content creators are vital contributors to content development, production and diversity and the key to the growth of Australia's Intellectual Property (IP) sector.

Content diversity is not assured through diversity of media owners, given the limits that exist in the market to sustain a large number of owners. This limit is clearly recognised by the Government's assessment that a relaxation in media ownership rules is now warranted.

SPAA recommends to the Australian government the observations made by Ofcom in Jan 2006 with regard to UK's broadcasters inability to deliver adequate diversity without intervention; (Jan 2006 Television production sector – a review) Ofcom observes:

Ofcom's audience research has firmly established that viewers as consumers see entertainment as a key purpose of television.

However, viewers as UK citizens are also aware of the impact of television on society – it is therefore important that this perspective is also considered in this review, and that we are clear about the link between the production sector and public service broadcasting (PSB).

A healthy production sector is one that promotes and encourages creativity and innovation – our analysis in this area suggests that there is no one model that delivers creativity and innovation, and that both broadcasters and producers have an important role to play.

A mixed ecology of production is important in delivering diversity in programming – which is important for viewers as consumers and UK citizens. Diversity is important not just in programming output, but also as an input to the production of programmes. As an input, diversity in production has several aspects, whether:

- ❖ *diversity of social, cultural and geographic perspectives;*
- ❖ *diversity of corporate scale and structure (in-house or external, large or small);*
- ❖ *diversity through a plurality of players in the market;*
- ❖ *diversity of channels; and*
- ❖ *diversity of commissioning within channels.*

SPAA strongly asserts that any Digital Action Plan and reform to cross media and foreign ownership rules must take into account and protect the vital role of the independent production sector in providing content diversity.

The issue of diversity of content in relation to changes to media ownership rules is not adequately addressed by imposing specific restrictions on rural and regional news services.

- SPAA recommends Government introduction of an **Independent Production Benchmark** to ensure a minimum level of independently sourced entertainment programs on all licenced broadcasting services.

Changes to Cross Media Ownership Rules;

- SPAA supports the relaxation of media ownership regulation if the Government introduces a safety net in the form of an Australian Independent Production Benchmark.

SPAA believes that the current removal of ownership controls must be accompanied with market intervention to ensure diversity of access to broadcasting infrastructure, through the introduction of an Independent Production Benchmark, (being a minimum level of content being supplied to the broadcaster from the independent production sector), in conjunction with any reform to ownership laws - the current legislation fails to address this issue.

SPAA believes the current media reforms proposal, to remove media ownership restriction will deliver consolidation of media ownership and in so doing a consolidation over the control of content. This has implications not simply for news and current affairs but for the editorial and creative control and expression that occurs in creating all content including factual entertainment, documentaries ,children’s programming and adult drama.

In regard to cross media ownership, the management of both Networks Nine and Seven have already acclaimed the benefits to their shareholders of simultaneous

ownership of TV licenses and magazines and the resultant 'synergies' and cross promotion.

Today the Australian networks are pushing to produce more 'in house'. This has several benefits for the networks. Firstly they own what they broadcast and gain value from future exploitation by repeating it, selling it overseas or licensing its format. More importantly, it allows management to tightly manage editorial outcomes. This allows the 'synergies' of cross promotion or advertising product placement to become revenue generators - less likely to be achieved with an independent producer in control of the creative vision of their own program/story. And the push for in-house production is not just limited to reality, infotainment and entertainment. It also includes adult drama.

SPAA argues that a broadcaster's primary role is to sit in the distribution chain, that's what their licences are for - broadcasting. As soon as they seek to drive the creative hub, and appropriate the role and revenue of content creation, they immediately reduce the public's access to diversity and free creative expression.

The current legislation proposes various options for addressing issues of regional news and current affairs diversity. These mechanisms alone are inadequate. SPAA believes similar concerns over the reduction in diversity of content suppliers and access to diverse media outlets and content exist in the major cities.

Changes to Foreign Media ownership rules

- SPAA is not opposed to such media ownership relaxation changes **if** appropriate local independent production benchmarks are in place.

In the case relaxation of foreign media ownership rules, SPAA acknowledges that this could provide beneficial additional capital injection into the broadcasting market but it could also deliver increased foreign content control.

Multi-channelling for National Broadcasters – 2007

- SPAA welcomes the relaxation of multi-channelling on the two public broadcasters and the commitment to monitor local content levels.

SPAA supports the lifting of genre restrictions on these public broadcaster networks on the basis of developing further diversity and providing greater consumer benefits and therefore assisting in encouraging additional consumer digital take-up.

National broadcasting services should not be considered as a substitute or compensation for the commercial broadcaster's obligations in relation to Australia content for Australian viewers.

Digital Multi-channelling for FTA's - 2007

- SPAA supports a multi-channel use of additional spectrum if accompanied by Australian content regulations.

Australian FTA's are some of the most profitable broadcaster in the western world yet government regulation remains the only real assurance that Australian Content will be included in the service. This demonstrates that the market alone does not assure Australians of a diverse range of quality Australian content.

SPAA believes failing to introduce the most basic (i.e. no sub-quotas) Australian Content regulation at the maximum 55% threshold in the first instance on multi-channels will lead to new business models with a lack of corporate understanding or sense of obligation or structure to support Australian content into the future. Further, in this vacuum there is the likelihood that foreign material will be accessed because it is 'dumped' into secondary markets such as Australia at a fraction of its production value. It creates false commercial expectations and does nothing to correct the market imperfections, which if unchecked, are unlikely to support the development of new Australian markets with new opportunities for Australian content.

The Government needs be mindful of the conditions in which regulation may be applied as specified in the USA/Australia Free Trade Agreement. As SPAA understands it, to apply no Australian content standard or quota at the current time does not limit the government's options to introduce regulation at a future date to a limited number of channels. However, once regulation is introduced it can only ever be retained at the introduced level or reduced.

SPAA contends that the 2010-2012 review of media policy, to coincide with digital switchover, should include consideration of introduction of additional sub-quota on the basis that a minimum 55% Australian transmission quota is introduced in 2007 without any further sub-quotas.

Changes to Media ownership and services and the effects on Terms of Trade

- SPAA recommends Australian Communications and Media Authority (ACMA) must be given the authority to determine minimum terms of trade between the broadcasters and the small to medium size independent businesses that provide Australian content on our FTA networks.

There are relatively few Australian broadcasters compared to potential content suppliers. The market is therefore weighted in favour of the broadcaster.

Primary TV rights remain the largest source of revenue for independent producers. SPAA is dedicated to the ongoing development and strengthening of the Independent production sector for cultural and commercial reasons. The sources of demand for non-FTA platforms are growing, slowly but these are mainly revenue share models rather than sources for funding program production costs. Business models for new platforms are yet to be established.

The FTA broadcasters are likely to remain the main buyers of originated programming going forward – and so their negotiating strength, with or without the proposed reform, remains dominant for the foreseeable future. Consolidation of media ownership will further tip the balance of terms of trade between broadcaster and independent sector in favour of the broadcasters.

In the UK, extensive studies by Ofcom also confirm that terrestrial broadcast remains the dominate media player. This conclusion comes from a country where new media services, including increased free digital services and expansion of Pay TV, have occurred years ahead of Australia.

The Ofcom report also observes market imperfections in the broadcasting sector which, given Australia's market is if anything, even more concentrated, are valid for our own consideration;

Three particular features of the television production sector – related to its market structure and the conduct of programme-buyers – may prevent viewers' interests from being met. This may mean that, as well as intervening at the broadcast level for PSB and competition concerns, intervention is also needed at the production level. The following factors have been identified as driving the need for intervention in television production:

*Negotiating strength: there is a relatively small number of buyers of originated programming, but a very large number of producers. This imbalance is likely to provide broadcasters with a relatively strong negotiating position with producers. While this may deliver savings that can be passed on to viewers, the extent to which broadcasters take advantage of this position may be at the cost of producers and potentially viewers. **Given the current market structure, it may not be possible to rely on effective competition to ensure broadcasters are incentivised always to use their negotiating strength in the interests of viewers – they may therefore damage the quality, diversity and plurality of external production** (emphasis added)*

Vertical integration: some broadcasters (notably the BBC and Channel 3) are considered vertically-integrated broadcaster-producers, in that they have in-house production units. Vertical integration is not usually considered a problem by competition authorities and regulators unless it is combined with market power. Without market power, broadcasters would be incentivised to serve the interests of viewers and therefore commission programmes that offer the best value for money. However, and as discussed above, the current market structure may not provide this incentive – and could therefore lead to a diminution in programme quality. For example, broadcasters may use the option to commission in-house in order to enhance their bargaining position with external producers. Moreover, given the limitations of effective competition between broadcasters and the existence of potential synergies – and therefore efficiencies – in producing in-house, there may be a natural tendency for vertically-integrated broadcasters to commission in-house. Whilst this may be commercially rational, it may ultimately damage the diversity and plurality of television production

Geographic concentration: television production, commissioning and broadcasting tend to be concentrated in London – this may be the outcome of well-functioning market forces, but it may have a damaging impact on the diversity of content available. It could therefore be undesirable from the perspective of viewers.

ACMA Powers

- SPAA does not oppose transfer of power from ACMA to the Government to award broadcasting licenses.

Anti-siphoning

- Whilst SPAA is not opposed to the proposed revision of the anti-siphoning rules, there could be implications for the overall diversity and quality of the Australian content quota on FTA services.

Changing the anti-siphoning rules, whilst not having a direct impact on SPAA members, could potentially impact on content diversity and quality on FTA services. If a 'use it or lose it' clause is introduced into the FTA's conditions of access to sports coverage, it will potentially change the market forces and content priorities of the FTA broadcasters and provide additional incentives to increase sport broadcasting priorities over other Australian content.

Fourth Network

SPAA continues to recommend the introduction of a fourth network as being both sustainable and an effective use of available spectrum and a potential catalyst for digital switch over.

A fourth network is readily understood and accessible to consumers and is the model best positioned to deliver real and commercially sustainable viewer benefits. It is preferred to the proposed introduction of Channel A & B.

A fourth network should not emulate the existing FTA services. SPAA believes a new FTA service should be allowed to transmit both analogue and digital broadcast until 2010, with analogue switch off at that time (two years ahead of the other networks). A recasting of the content sub-quota requirements can assist in shaping a new accessible service. In addition, introduction of original digital program content requirements as well as a shorter timeline to digital switch-over, would provide impetus for consumer digital take-up i.e. consumers would realise that at a point in time (2010) a service previously available would only continue to be available if they make the switch to digital.

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