



Response to the 2010 Review of the Independent Production Sector

May 2010

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ADN 10 051 051 003

Introduction

ASTRA welcomes the opportunity to comment on the Department of Environment, Water, Heritage and the Arts' (the Department) Discussion Paper '2010 Review of the Australian Independent Production Sector' (the Paper).

About ASTRA

ASTRA is the peak industry body for subscription television in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major subscription television operators, as well as channels that provide programming to these platforms. A list of members is attached at Annexure A.

The subscription TV industry is the undisputed market leader of digital broadcasting. A dynamic sector that is constantly evolving and growing, it is received nationally by 34% of Australians through their homes and many more through hotels, clubs and other entertainment and business venues.

Since its inception, over \$A9 billion dollars has been invested in infrastructure, capital, facilities, productions, programs and services in order to establish and develop the subscription TV industry. ASTRA's members are responsible for the bulk of this investment which has been distributed throughout metropolitan, regional and remote markets. Consequently, the sector has created an enormous number of jobs, investment, infrastructure and production content throughout Australia. The industry continues to invest heavily in its own growth and the growth of the Australian film and television broadcast sectors including the continuing investment in television programming and production.

Viability of the Independent Production Sector

ASTRA is supportive of the Government's commitment to assist in the development of a sustainable, independent production sector. ASTRA is aware of the difficulties that independent producers may experience in acquiring financing in order for a production to be made.

The subscription television industry seeks to assist the independent production community, along with Government, to generate economic activity and create excellent Australian productions.

However, due to differences in the regulation of Australian content production for subscription television and free-to-air television, independent producers working in the subscription television industry are disadvantaged by current Government funding models. As outlined later in this submission, the one-size-fits-all approach to funding of television productions acts as a disincentive to the subscription television sector to fund productions with the assistance of Government funding bodies.

ASTRA's members seek to collaborate with Government bodies to achieve a more balanced opportunity to drive the development of successful productions on subscription television. In ASTRA's view, this will assist to ensure the long-term viability of the independent production sector.

The Role of the Australian Subscription Television Industry (STV)

Television production is an essential element of the production industry and provides skills and training for individuals involved across all aspects of the industry.

ASTRA's members play a critical role in the development of film and television productions. Subscription television:

- promotes diversity and choice of programming in a variety of genres available to Australian audiences;
- facilitates the development of the Australian broadcasting and production industry through its investment in productions; and
- develops and reflects the Australian identity, character and diversity of Australian culture like no other medium through its niche programming.

The subscription television industry plays an integral part in supporting the independent production sector by providing the platform to allow producers to develop and hone their skills as well as create screen based productions. Television funding – such as that provided by subscription television - is essential to sustaining a viable independent production sector.

The subscription television drama expenditure scheme, contained in Division 2A of Part 7 of the *Broadcasting Services Act 1992*, requires that subscription television licensees spend at least 10 per cent of total program expenditure on new Australian (and New Zealand) drama programs in each financial year. ASTRA's members invest hundreds of millions of dollars annually in the film and television production sector, creating all forms of Australian content. For example, in meeting its obligations under the new eligible drama expenditure scheme, the subscription television industry spent \$28.47 million on Australian and New Zealand drama programs in the 2008-09 financial year¹. In addition to drama, STV generates an immense amount of Australian content across all genres including sport, news; and light entertainment/lifestyle programming.

The independent production community has and will continue to have a crucial role to fulfil in supplying product to the subscription television industry as evidenced by the historical and current levels of involvement and production.

In ASTRA's view, a viable independent screen production sector and the subscription television sector are complementary and necessary.

The Producer Offset

ASTRA will not comment on the operation of the producer offset except to state that:

- ASTRA is aware that timing of producer offset cash flow tied to financial year recoupment causes difficulties for independent producers. Given the production cycle, the high cost of finance and current parameters as to when funding is available, grouping productions at particular times of the year is undesirable. It also impacts the ability to resource projects. ASTRA believes that this should be made more flexible and encourages the Department to recommend to Treasury that changes be made to the

¹ Australian Communications and Media Authority, Australian Content and Pay TV, http://www.acma.gov.au/WEB/STANDARD/pc=PC_310687

relevant legislation to facilitate greater fluidity in the ability of producers to finance and produce their programs.

- The Qualifying Australian Production Expenditure (QAPE) threshold per hour is, in the majority of cases, too high to act as a form of incentive for STV. For example, ASTRA's members advise that a documentary may cost approximately \$100,000 per hour to produce. Notwithstanding the fact that different documentaries may include a range of variable costs, most productions do not even reach the trigger of \$250,000 per hour to qualify for any funding. ASTRA would support a decrease in the threshold.

The Location Offset

ASTRA concurs with the Paper that the Australian market has not been competitive of late because of the strength of the Australian dollar coupled with the global financial crisis. ASTRA also believes that Australia's competitive position is affected by other countries offering more attractive incentives for American studios (in particular where more favourable exchange rates exist). ASTRA is supportive of the consideration of a more responsive system which would allow Australia to be competitive at all times (eg: floating triggers referable to exchange rates) and to ensure that the Location Offset is economically attractive to foreign producers in light of offsets provided by other countries.

The Post Digital and Visual Effects Offset (PDV Offset)

The PDV Offset is an example of how tax advantages can be effective. The PDV offset allows Australia to be competitive internationally and encourages/enhances our talent and technical expertise.

Government Support Programs

ASTRA is supportive of Government assistance measures which serve to encourage a viable independent screen production sector.

However, ASTRA has concerns that some direct and indirect Government assistance currently distorts the operation of the market by discouraging co-investments with Government funding bodies. Given the significance of the subscription television industry on the health and viability of the independent production sector – as outlined above - ASTRA supports an examination of the outcomes achieved by Government funding and whether these support an independent production sector and correspond with the intention of funding.

ASTRA submits that the level of distortion in the market reduces the ability for some sectors – such as the subscription television sector - to complement Government assistance through investment. There is a need to recognise the differences in the commercial structures of various players in the industry to ensure that Government funding enhances, rather than hinders, the willingness of organisations to invest.

Screen Australia

ASTRA is supportive of Screen Australia's intent to *“support and promote the development of a highly creative, innovative and commercially sustainable Australian screen production industry².”*

² Screen Australia, http://www.screenaustralia.gov.au/industry_support/GW_Overview.asp

Subscription television and free-to-air broadcasters have different economic and regulatory structures that in turn create differences in the models for the financing of television productions. To date, Screen Australia has adopted a 'one size fits all' approach to the financing of television drama. The requirements in Screen Australia's Guidelines and terms of trade create barriers for subscription television to work to create beneficial outcomes.

The Difference between Subscription Television (STV) and Free-to-air Television (FTA)

The mass appeal and mass target market of FTV and the niche nature of STV create a fundamental difference that impacts the way each industry operates, is regulated and meets the needs of its audience.

In broad terms, the FTA targets the mass market with broad appeal programs that are attractive to a broad range of advertisers. FTA has no direct relationship with its viewers. STV targets specific audiences with a variety of programming choices in order to maintain the support of subscribers, and many television drama programs contain no advertising at all, features that allow a greater freedom on the part of producers to create challenging and innovative programming that has gained significant industry recognition and provide a genuinely important contribution to the cultural life of Australians.

This economic difference is seen in the type of programming that is commissioned and the funding that is available. As a result, the rate of return on these productions is not as high as FTA programs, making them less attractive to Screen Australia, and in turn opportunities for funding.

Access to Screen Australia Funding –

Different content regulatory regimes

In order for FTA or STV productions to be considered for funding partnerships through Screen Australia, they must be quota-eligible under their respective Australian content standards in the *Broadcasting Services Act 1992*. STV and FTA operate under different regulatory regimes: FTA under the "quota" and STV under the "expenditure obligation". The current regulatory regime requires that – if it receives funding from Screen Australia - a co-produced FTA/STV TV drama series must run first on FTA and then second on STV (in order that it may satisfy both the FTA quota obligation that includes Australian drama, and, the STV new eligible Australian drama expenditure rules). This regulation provides a significant, if not absolute, disincentive, for STV to seek co-funding with FTA networks on projects designated for Screen Australia funding, as it will always require STV to cede first run broadcast rights to a FTA network. Rather, ASTRA believes that Screen Australia's Guidelines should not reference this requirement, but allow FTA and STV broadcasters to negotiate the commercial terms of broadcast rights. The FTA and STV broadcasters would still remain liable to meet their obligations under the *Broadcasting Services Act* but may, in any particular project, agree that a program will not form part of one or both their Australian content standards. This allows a flexible, rational market place to operate and achieve collaborative financing arrangements for the film and television community, and would actually increase the amount of Australian content being produced.

License Fee Model

In addition, the Production Financing section of Screen Australia's Guidelines makes no distinction between the value of STV and FTA licence fees as a proportion of the total budget. This ignores the significant differences that exist between the STV and FTA licencing frameworks. STV licences are based on a high number of multiple or unlimited exhibitions over a period of time relative to FTA, meaning each individual exhibition of a program is significantly less expensive than FTA licensing. FTA licenses usually only permit a

limited number of exhibitions, where the potential audience for the program is significantly larger due to almost 100% viewer penetration. Screen Australia's requirements that a television pre-sale is not less than a percentage of the budget – whether FTA or STV - does not represent the economics of the STV market place.

ASTRA makes the general comment that the industry goal is to generate economic activity and create and maintain the related environment for continued and increased production. There is a need to create clarity of the fundamental difference between STV and FTA which should be recognised in Screen Australia's Guidelines and terms of trade.

The Funding of the Australian Broadcasting Corporation (the ABC) and the Special Broadcasting Service (SBS)

The current national broadcasters (the ABC and SBS) have a valuable role to play in providing Australians with a universally available media service, funded by all Australians through their taxes.

The current system of funding the ABC and SBS ensures access through a number of direct and indirect Government funding sources, including:

- an annual appropriation from Government;
- eligibility for funding from bodies such as Screen Australia, the various State Agencies, The Children's Television Foundation;
- specific "tied" appropriations (eg: drama funding to the ABC); and
- their status as tax free organisations.

The role of the national broadcasters should be examined in the context of an evolving media landscape, where Australians are served by many and varied services. The current charters of both organisations remain relevant. Currently, the ABC must take account of *"the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system"*³.

Therefore, a key rationale for public funding of much of the programming and operations of the national broadcasters is that there is a 'market failure' and that without public funding certain services would not be provided.

In a digital environment, other broadcasters, such as subscription broadcasters are in a position to provide diverse and innovative content services. The Government's national broadband network (NBN) initiative will extend the ease of access to such services to even more Australians.

In the 2009/10 Budget in which the ABC received additional funding Senator Conroy stated that *"the ABC and SBS play an important role reflecting our culture by telling Australian stories"*. ASTRA is supportive of the ABC achieving this goal.

However, in the case of the ABC, ASTRA does have concerns when it appears to be using its additional funding to set up competing services to those existing in the subscription television market – that is, a children's station and a 24 hour news channel. Further, ASTRA is concerned that the ABC is requiring significant holdbacks, or even complete exclusivity, over programming it funds using public money thereby preventing further exploitation of these programs on STV channels and reducing the potential audience.

³ *Australian Broadcasting Corporation Act 1983*, Section 6 – Charter of the Corporation, <http://www.abc.net.au/corp/pubs/ABCcharter.htm>

ASTRA would argue that if the intention of providing additional funding to the ABC was, in part, to support the independent screen production sector, then there should be a close examination as to whether this outcome is being achieved.

In addition, ASTRA asserts that more innovative models for funding children's television production would have beneficial outcomes, promoting choice and diversity of content. The current system of funding is rooted in the preschool ("P") and children's ("C") programming model and its associated commercial FTA children's programming quotas, making it harder for production companies to work with STV channels and claim the offset. The existing funding structure also allows the government-funded ABC3 several layers of additional funding for every commission.

Conclusion

Subscription television has been and will continue to be a crucial contributor to the commercial viability of the Australian film and television industry. ASTRA's members remain supportive of the independent production sector, which continues to supply the subscription television industry's commissioned drama content.

ASTRA is supportive of any changes to current funding models that will allow subscription television to partner with Government bodies and to drive the development of successful Australian productions. This will assist to ensure the long-term viability of the independent production sector.

Annexure A

List of ASTRA Members

Subscription Television Platforms

AUSTAR
FOXTEL
Optus
Telstra

Program Channel Providers

Aurora
Australian Christian Channel
Australian News Channel
BBC Worldwide
Bloomberg Television
CNBC
Discovery Networks
E! Entertainment
ESPN
Eurosport
Expo Network
KidsCo
MCN
Multi Channel Networks
National Geographic
NBC Universal (Hallmark)
Nickelodeon
PAN TV
Premier Media Group
Premium Movie Partnership
Satellite Music Australia
Setanta Sports Australia
STVDIO
Sky Channel Pty Ltd
The Walt Disney Company (Australia) Pty Ltd
Time Warner
Turner International (Australia)
TV1
TVN
TVSN
VH1/MTV
XYZnetworks Pty Ltd

Communications Companies and Other Associate Members

AI Media
Cath Ward Media Services
Full Circle Media
Intelsat
Multiview Analytics
The Playroom Sydney/Omnilab

Affiliate Members

Minter Ellison
TressCox Lawyers
Baker and McKenzie