



**DOCUMENTARY GUIDELINES – DRAFT: INTERPRETATION OF
'DOCUMENTARY FOR THE AUSTRALIAN CONTENT STANDARD**

SUBMISSION TO THE AUSTRALIAN BROADCASTING AUTHORITY

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Introduction

The Australian Film Commission (AFC) welcomes this opportunity for formal consultation with the Australian Broadcasting Authority (ABA) on the Draft Documentary Guidelines and it acknowledges the thoughtful approach of the ABA to a somewhat complex topic. In commenting on the proposed guidelines the AFC's main concern is to ensure the guide to interpretation is clear and does not produce an outcome where competitive reality television infiltrates the small number of hours allocated to documentary. The AFC would also like to suggest the utilisation of an alternative approach by amending the definition in the Standard.

The AFC has been advised that amendments to the United States Free Trade Agreement (USFTA), which require changes to the Content Standard to be made by Parliament, would still allow the ABA to amend sub-quota definitions.

The Current State of Documentary in Australia

The AFC has recently undertaken considerable work on the state of documentary making in Australia. The report *Documentary Production and Funding in Australia: A discussion paper prepared by the Australian Film Commission* we said:

Documentary making in Australia has always been tough, particularly for entry level and consolidating practitioners. But what is noticeable in the current environment is that even those larger and more established entities considered success stories by the whole of the documentary industry are finding it increasingly difficult to survive, and are talking of not being able to continue.

This is the inevitable result of developments during the last 15 years or so, which have left documentary production, unlike drama production, in a comparatively unsupported position.

Australian documentary has never had the benefit, as has television drama production, of subsidy accompanied by effective regulatory support, though it is a form extremely vulnerable to replacement by cheaper imported programs.¹

The AFC has also published an extensive collection of data and analysis on documentary which is available on our website at <http://www.afc.gov.au/gtp/docos/index.html>. In part this data shows that the hours and value of documentary production in Australia is in decline and that on all free to air television channel more hours of foreign documentary are shown than Australian.

The Australian Content Standard is now a crucial element in the support for Australian documentary production, particularly since there is no similar regulatory incentive for documentary on subscription television. If the definition of documentary was to be widened so that competitive reality style programming was recognised this would further undermine the production of documentary.

¹ *Documentary Production and Funding in Australia: A discussion paper prepared by the Australian Film Commission*, p.3 at www.afc.gov.au/downloads/docodiscussfinal_04.pdf

Meaning of documentary

The current definition of documentary in the Standard is:

'a program that is a creative treatment of actuality other than a news, current affairs, sports coverage, magazine, infotainment or light entertainment program.'

This is not the ordinary meaning of 'documentary' as contained in the following dictionary definitions:

Factual, realistic; applied especially to a film etc that depicts real happenings.
Oxford English Dictionary

A factual presentation of a real event, person's life etc., in a television or radio program, film etc. Macquarie Dictionary

The ordinary meaning of documentary would therefore include a whole range of factual programming which the Standard is specifically intended to exclude, such as news or current affairs programs.

The word documentary in the sense of relating to documents has been in the English language for about two hundred years, but it did not begin to have a meaning in English related to films until after the First World War. However, as a descriptor it is actually as old as the cinema itself. Louis Lumiere and other early French filmmakers referred to their films as *documentaires* (documentaries). This was because they believed in the cinematograph camera as a kind of scientific tool and what they were doing was making a record of life and events.

The term 'documentary' came to be used to refer to a kind of non-fiction film when the writer and filmmaker John Grierson in the mid twenties used it to describe the films made by John Flaherty (*Nanook of the North, Moana*). It was Grierson who described the documentary as 'a creative treatment of actuality' to signify that there was an element of art involved in the capturing and construction of images from actuality into a coherent work with an argument and a point of view. Grierson's own particular view of the purpose of documentary was to use it as a tool of information and education, rather than as a form of popular entertainment.

This view of the role of documentary has been highly influential in Australia. It can be seen in the work of the Commonwealth Film Unit (the precursor to Film Australia) under the leadership of Stanley Hawes, a colleague of Grierson, and continues today in the National Interest Program managed by Film Australia. It can also be seen in the strong tradition of documentary filmmaking in Australia that engages with social or political commentary both in the cinema and on television. We argue that it is this sense of documentary as informative and educative that is its most important social and cultural aspect.

Documentary in the Australian Content Standard

From the early seventies, when the points system was introduced documentaries were one of the types of Australian programs that could count towards licensees meeting their overall points target.

The Grierson definition of documentary entered the lexicon of regulation in 1989 when the Australian Broadcasting Tribunal (ABT) determined a Standard that

included an incentive for the broadcast of 'social documentaries'. These it defined as "...a program which is a creative treatment of actuality which deals with a single issue, subject or theme..."² They were intended to be "...detailed studies, by Australians, of real people and/or events."³

The ABT chose the Grierson definition of documentary in part because it wanted to convey the sense that the kind of programming which the regulation was intended to encourage was that which was educative or informative.

Social documentaries were part of a group of six program types chosen to receive regulatory incentive because they were under represented on commercial television, they were culturally specific or they were funded by government agencies for their cultural importance. There was no specific sub-quota for these programs, but they could be used to meet the overall points score.

The definition of 'social documentary' caused some uncertainty for licensees and led the ABT to issue a series of interpretative decisions on particular programs. It found that travel, nature and wildlife programs were not social documentaries because they did not deal with a single issue, subject or theme and that the documentaries of the charity World Vision were not social because they were primarily designed to promote the charity. The ABT also slightly amended the definition in 1990 so that it read "...a program which is a creative treatment of actuality which deals with a single social issue, subject or theme..."⁴

In 1996 the ABA, having reviewed the operation of the Standard, decided the diversity category was not meeting the objective envisaged by the ABT and dispensed with it. Instead it introduced a specific sub-quota for documentaries and adopted the 'creative treatment of actuality' definition for the kind of programs it was intending to encourage. Importantly the definition also excluded news, current affairs and magazine programs, but it did mean that travel, nature and wildlife documentaries would count towards the fulfillment of the sub-quota.

The review of the Standard in 1999 modified this definition by adding to the excluded programs sports and light entertainment programs. Thus the ABA has been gradually refining the definition by describing those programs that are excluded.

Status of the Guidelines

The ABA is proposing that it use these guidelines 'to give direction as to the ABA's interpretation of documentary for the purposes of the administration of the Australian Content Standard.' Our understanding is that the guidelines are not intended to form part of the Standard itself, but will be extrinsic material to which the ABA and others may turn to assist in interpreting the Standard.

It is the AFC's understanding that the Standard has the status of delegated legislation in that the Parliament has given to the ABA power to make the Standard. It is also the AFC's understanding that the usual practice with statutory interpretation is that extrinsic material is turned to when the provision is ambiguous, obscure or that the ordinary meaning of the words would lead to an interpretation that is absurd or unreasonable.

² ABT 1991, *'Oz Content: An inquiry into Australian content on commercial television'*, Vol. One, Sydney, p.43

³ *Ibid*, p.41

⁴ *Ibid*, p.74

It appears to us that what the ABA is attempting to address is not a question of obscurity or ambiguity but rather, as it indicates in the opening paragraphs of the Guidelines, the fact that the genre of programs which is being defined as documentary is undergoing change and development.

This raises the question as to whether it might be a better approach to amend the Standard to more clearly delineate what is being regulated, rather than to have a discursive set of guidelines.

The Guidelines are structured in two parts. The first part attempts to amplify what is meant by 'creative treatment'. On page 4 of the guidelines the ABA has set out a series of 'characteristics' it sees as part of the documentary. The most important of these appear to be the notions that the documentary will be 'interpretative', that it intends to be informative or educative and that it does not contain an element of competition.

The ABA has suggested that reality television involves a convergence of program types and that some reality programs may not be distinguishable from documentaries. In fact 'reality' television is not a new phenomenon and we would suggest that it encompasses both documentary and non-documentary types of programs and consists of four types.

The first is a development from the observational style of 'cinema verite' documentaries in which the lives of real people are recorded with minimal intervention from the producers of the program. *Sylvania Waters* was an earlier example in which the subject matter is the world of ordinary people. One variation on this is where the workplace is the subject matter such as *RPA*. Another variation, which demonstrates that seriousness of purpose is not necessary, is where celebrities are the subject matter such as *The Osbournes*. Most of these would be regarded as documentaries.

The second type is where people are observed by a hidden camera such as in *Candid Camera*. However, these programs consist of segments that are linked by a studio presenter and would not be regarded as documentaries.

The third type is those programs that involve placing people in a created situation such as the examples used in the Guidelines, *1900's House* etc. The intention of these programs is usually informative or educative, contains no element of competition and would be regarded as documentary. However, from the examples given this does not seem to be a type of program attractive to commercial television as all of them have been broadcast on the ABC and the SBS.

The fourth type again involves placing real people in a created situation but this time with a strong element of competition, such as *Big Brother* and *Survivor*. This is the type of reality program most often seen on commercial television. The primary purpose of these programs is entertainment, and although they may reveal aspects of human psychology and behaviour, they are not primarily intended to be informative or educative. However the AFC considers the most important distinction to be the element of competition.

The second part of the guidelines amplifies what is meant by the excluded program categories. The ABA notes that infotainment programs are defined in Schedule 6 of the *Broadcasting Services Act 1992* in relation to datacasting. We note the same section of the Act also contains definitions of news and current affairs programs and

sports programs which may be useful to refer to either in the Guidelines or in the Standard.

The ABA may still wish to have some form of guideline to accompany the Standard but the AFC would suggest that their length could be greatly reduced if the Standard was amended so a documentary was defined as:

'a program that is a creative and interpretative treatment of actuality intended to inform or educate and that does not contain an element of competition. It does not include news, current affairs, sports coverage, magazine, infotainment or light entertainment programs.'

This definition includes specific references to interpretation, information and education which appears to be a major part of what the ABA is trying to achieve with the Guidelines. The AFC does not propose that reality television should be an excluded category because for the reasons cited above it will include some documentaries. Instead, the AFC considers it would be better to exclude those programs that contain an element of competition.