



**Variation to the Broadcasting (Australian
Content) Standard**

**Submission to the Australian Broadcasting
Authority**

April 2004

1. ISSUE: DEFINITION OF INDEPENDENT PRODUCER

1.1 Proposed change

The ABA proposes to change the definition of independent producer for the purpose of meeting the drama score requirement so that a production company that is related to a broadcaster or a network may qualify as an independent producer if they are not producing for the broadcaster or network to which they are related.

The AFC understands the reason for the proposed variation is the changed circumstances of Southern Star, which is the subject of acquisition by Southern Cross Broadcasting. Southern Cross broadcasting has television licenses in regional Australia, which are variously affiliated with the TEN, Seven and Nine Networks.

Crawfords has also for some years been wholly owned by WIN Corporation, another regional television broadcaster that is variously affiliated with the Nine and TEN networks.

The current standard provides that if a broadcaster acquires a new Australian drama series or serial program from an independent producer then they are entitled to a higher format factor score of 3, rather than the alternative 2.5.

The current definition means that an independent producer cannot be a commercial television or subscription television licensee, a commercial television network that supplies programs to a licensee or a related body corporate¹ of any of these entities. It is our understanding that neither WIN Television nor Southern Cross Broadcasting would be considered a program supplier as defined in the standard as they are not supplying programs to other licensees.

The effect of the current standard is that any production carried on by the related entities of licensees and commercial network program suppliers is regarded as if it were in-house production by the network.

Should the ABA amend the standard as proposed, in the example of Crawfords, as long as it was not dealing with any of the licensees owned or controlled by WIN Television it would be considered as an independent

¹ Section 50 of the *Corporations Act 2001* states that:

Where a body corporate is:

- (a) a holding company of another body corporate; or*
- (b) a subsidiary of another body corporate; or*
- (c) a subsidiary of a holding company of another body corporate;*

the first-mentioned body and the other body are related to each other.

producer for the purpose of dealing with other licensee or network program suppliers.

1.2 Independent Production

In the AFC's submission to the 2001 Australian Content Review the AFC supported the role of independent producers in stimulating innovation, increasing diversity and promoting new talent. The AFC argued that the ABA needed to further investigate the changing circumstances of the independent production sector and the consequences of increasing in-house production:

“Given the importance of independent production to the Government’s cultural and industry development policies, and the implications of vertical integration for competition, the ABA needs to investigate the role of independent production and the consequences of in-house production.”²

The ABA declined to pursue this but did state that it would continue to monitor independent production. To date the results have not been published.

The AFC also notes that there are no compliance results published yet by the ABA that would allow for an assessment of any changes made to the behaviour of the commercial broadcasters as a result of the operation of the independent producer incentive in the standard. This makes it extremely difficult to comment on the proposed change and the effect that it might have on the operation of the standard in general.

The AFC firmly believes that the ABA needs to give greater priority to the collection, analysis and publication of compliance data in order to carry out its responsibilities effectively.

To get some sense of the state of independent production, the AFC has looked at its own surveys of production and the ABA's compliance results for 2002.

The AFC's National Survey of Feature Film and TV Drama Production for 2002/03 (NPS) showed there was a decline in the amount of new Australian drama produced from 660 hours in 2000/01 to 545 hours in 2002/03. This is production of new drama for the commercial networks, national broadcasters and subscription television.

The ABA compliance results for 2002 show that there were nearly 500 hours of new Australian series, serials, telemovies and mini-series broadcast by the commercial networks. This was a decline from the previous year, when there were 596 hours broadcast.

The producers and the hours produced in 2002 are set out in Table 1.

² AFC submission to the ABA Review of the Australian Content Standard, February 2002

Producer	Hours
Seven Network	196
Grundy	117.8
Southern Star	85
Beyond Simpson Le Mesurier	38
Millennium	28
Knapman Wyld	17
Coote Hayes	6
Nine Network	2
Other	9.8
Total	499.6

Source: ABA Compliance Results 2002 and Get the Picture

During the 2001 review of the standard the ABA analysed independent production and reported that between 1996/97 and 1999/00 the independent sector's share of television drama/ comedy declined from 89 per cent to 82 per cent.³ In house production by networks accounted for almost 40 per cent of the new drama broadcast by them in 2002, with almost all of that by the Seven Network, meaning that the independent sector's market share declined to around 60 per cent.

The 2003 compliance results may show an improvement in the independent sector's share, since the NPS shows that hours of in-house production declined in 2002/03 as series such as *Marshall's Law* and *Always Greener* were not renewed. However, this may be balanced by the non-renewal of independent productions *White Collar Blue* and *Young Lions*.

In 2002 three independent producers accounted for 48 per cent of the drama hours broadcast - Grundy (*Neighbours*) with 24 per cent, Southern Star (*Blue Heelers*, *Young Lions*, *The Secret Life of Us*) with 17 per cent and Beyond Simpson Le Mesurier (*Halifax*, *Stingers*) with 7 per cent. The remaining independent producers shared 12 per cent of drama hours with Millennium (*McLeod's Daughters*) and Knapman Wyld (*White Collar Blue*) responsible for most of those hours.

Southern Star was the only company to produce drama for all three networks and with Beyond Simpson Le Mesurier and Coote Hayes the only company to produce more than one drama broadcast during the year.

Grundy, Southern Star and Beyond Simpson Le Mesurier produce drama on a more consistent basis than most other independent producers. Between 1999/00 and 2002/03 there were more than twenty companies that produced

³ Appendix, Table G.2 at http://www.aba.gov.au/tv/content/ozcont/review_2001/pdfs/prop_appC-H.pdf

new drama for the commercial networks. However, in those four years only Grundy, Southern Star and Beyond Simpson Le Mesurier were consistently active, producing new drama each year.

To understand this pattern more fully and the implications for the future it would be necessary to study the independent sector and its relationship to the commercial networks in more detail, looking at such factors as the resources available to independent producers, the commissioning habits of the networks and terms of trade between networks and independent producers.

1.3 The Independent Producer Quota in the UK

The AFC understands that the Independent Producer Quota in the UK, which has been in existence for some time is much stricter than those in Australia.

The independent producer quota in the UK arises from the need to comply with the requirements of the European Union. In the Television Without Frontiers Directive (89/552/EEC) of 3 October 1989, EU member countries were required to make provision in their broadcast law for at least ten per cent of transmission time (excluding news, sports, games, advertising and teletext) to be '*created by producers who are independent of broadcasters*'. In the UK this is given effect to by the *Broadcasting Act 1990* and the Broadcasting (Independent Productions) Order 1991 and 2003. The latter orders are necessary because the UK Act requires that the term 'independent producer' be defined by regulation. The level is set at 25 per cent of qualifying transmission time.

The 1991 Order defined an independent producer as a producer:

- (a) who is not an employee (whether or not on temporary leave of absence) of a broadcaster;*
- (b) who does not have a shareholding greater than 15 per cent in a broadcaster; and*
- (c) which is not a body corporate in which a broadcaster has a shareholding greater than 15 per cent.*

In this definition broadcaster and producer are also taken to mean any persons who control or are associated with the broadcaster. This makes it stricter than the current Australian content standard test in that the relationship of entities need not be one of ownership.

In 2003 the definition was changed to deal with the fact that some UK based independent producers were controlled by or associated with broadcasters located within the European Union, but not within the UK itself. The Minister for Tourism, Films and Broadcasting, Dr Kim Howells, explained the change as follows:

*The order makes amendments that will apply the existing restrictions on share ownership of a producer only in respect of those broadcasters who provide a television service intended for reception in, or in any area in, the United Kingdom, whether or not that service is also intended for reception elsewhere, rather than on broadcasters generally. If a producer is more than 25 per cent owned by a broadcaster that does not aim any of its services at the UK, that producer will therefore qualify as an independent producer.*⁴

In other words only production companies controlled or associated with UK broadcasters would be prevented from qualifying as independent producers.

The UK broadcasting industry and particularly the independent sector, is much larger than the sector in Australia. In such a small industry as Australia's, including related entities as Independent Producers may make sense. However, this should be considered in the context of the compliance results for the current standard and the effectiveness of the independent production incentive.

Therefore the AFC believes it is premature to vary the definition of Independent Producer under the current standard. The AFC cannot support any variation to the definition without, at the very least, examining the performance of the independent producer format factor's first year of operation and it's success in supporting the broadcast of independent production.

2. ISSUE: BROADCAST HOURS OF DOCUMENTARIES

The variation provides that documentary programs may only be counted towards the quota for Australian first release documentaries if they are broadcast between 6 am and midnight. Currently, documentary programs can be screened at any time including between midnight and 6am and some networks have been doing this. This change brings the provision relating to documentaries into line with other program formats making up the Australian transmission quota.

The AFC supports this amendment.

3. ISSUE: LICENSEE REPORTS ON COMPLIANCE

This variation proposed will allow the ABA to determine the form and the times in which compliance information must be provided to the ABA.

The AFC supports this amendment.

⁴ House of Commons, 19 May 2003, At <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmstand/deleg1/st030519/30519s01.htm> Accessed 13 April 2004