Australian Film Finance Corporation Limited
Australian Film Commission

SUBMISSION

to
Australian Broadcasting Authority's

Investigation into Expenditure Requirement for Pay TV Documentary Channels

October 2000

EXECUTIVE SUMMARY

Joint FFC/AFC Recommendations:

1. A minimum expenditure requirement of no less than 20 per cent should apply to pay TV documentary channels.

2. The 20 per cent expenditure requirement should yield a minimum of 10 hours of new eligible programming per documentary channel, moving to 20 hours by 2003-04.

3. ‘New eligible’ programming should refer to programs new to television.

4. Administration of the requirement by the ABA should be transparent.

This submission follows the order of the questions raised in the discussion paper issued by the ABA as part of its Investigation into Expenditure Requirement for Pay TV Documentary Channels.

1 What is the role of documentary channels in relation to the objectives of local content regulation for pay TV?

Pay TV documentary channels have the ability to play a significant role in achieving the aims of local content legislation and contributing to the important objectives of the Broadcasting Services Act (BSA). These objectives include:

- the promotion and availability of a diverse range of radio and television services offering entertainment, education and information - s.3(a)
- the provision of a regulatory environment to facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs – s.3(b)
- the promotion of the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity - s.3(e)
- the provision of high quality and innovative programming by providers of broadcasting services - s.3(f)

In addition to these cultural objectives, the Government considers industry support a key objective in regulating pay TV: 'The Government's aim in setting Australian content regulation for subscription satellite services is to send a signal to the industry that it has a role to play in the development of the Australian film and television industry.' (Senate Hansard, 4 June 1992)

In his letter accompanying the directive to the ABA to undertake this Investigation, the Minister wrote: 'The Government recognises the important cultural role of the documentary genre, and that the ABA's Australian content standard requires commercial television licensees to meet an annual documentary quota.'

Also, legislation enacted in 1992 for the introduction of pay TV included a requirement that drama channel licensees spend at least 10 per cent of their annual expenditure on new Australian programs.

As an important player in our media environment, pay TV documentary channels should be subject to content regulation by the same rationale that applies to pay TV drama channels and free-to-air broadcasters.

2 What are the implications of the amount of Australian documentary programming currently provided by pay TV channels?

According to the ABA's Discussion Paper, expenditure across the pay TV documentary sector on 'new eligible'[1] documentaries represented 5.6 per cent of total program expenditure − $274,500 − in 1998/99.

Unfortunately the background document provides only this aggregate figure, not a breakdown per channel, which limits our capacity to analyse the data.

This expenditure translates into a low number of broadcast hours, particularly given that these channels transmit documentary only. In 1998/99, Discovery had the highest level, at 2.2 per cent (189 hours) of total broadcast time, and National Geographic had the lowest, at 0.12 per cent (10.5 hours).

These figures reflect minimal support for new Australian documentaries. Local programming on these pay TV channels is built around high levels of repeat screenings.

In its 1997 report on Australian Content on Pay TV, the ABA expressed agreement with the suggestion that, 'the ABA should reserve the right to monitor Discovery and any new documentary channels closely and impose expenditure requirements should actual Australian content not live up to predicted levels' (NSW Government submission).

We note that the ABA News Release of 11/9/00 stated that, 'levels of support for new Australian or New Zealand documentaries have been slowly increasing'.

This claim infers an increase across the pay TV documentary channels as a group, however, the figures in the ABA's Discussion Paper do not support this. The figures indicate that the Discovery Channel was the only channel to report an increase (from 1.5 per cent of total expenditure in 1996/96 to 3.5 per cent in 1999/00)

It is now obvious that pay TV has failed to live up to any anticipated levels of local documentary content. The implication of the current levels of new Australian documentaries broadcast is that self-regulation cannot be relied upon and legislation is needed to ensure the representation of Australian content.

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[1] 'New' programs are those that have not been broadcast on any form of television in Australia or New Zealand, at the time expenditure is incurred. 'Eligible' documentary programs are those that are Australian, New Zealand or official Australian co-productions, as defined by the same creative control test used for free-to-air.

3 What is the financial capability of the channels to increase support for new eligible documentary programming?

The information provided by the ABA does not allow for any assessment of the financial capabilities of the pay TV industry.

However, it can no longer be claimed that pay television is a newly emerging industry still struggling to become established in Australia. Subscriber numbers have grown rapidly since pay TV started up in 1995.

The penetration rate (measured by subscriber numbers as a percentage of homes passed) at the end of March 2000 was 16 per cent for Austar; 13 per cent for Foxtel and 10 per cent for Optus Television. The Australian Subscription Television and Radio Association (ASTRA) submitted to the Productivity Commission Broadcasting Inquiry (May 1999) that this penetration was high by world standards.

Other statistics further demonstrate the growth in pay TV:

- Pay TV was more popular than free-to-air television in homes connected either to cable or satellite over the two-month non-rating period last summer. It attracted 57 per cent share of viewing in pay TV homes. *(Daily Telegraph citing AC Nielsen data, 25 February 2000.)*

- According to the chief executive of media buyer Multi Channel Network, pay TV advertising revenue will rise by 92 per cent to $40 million this year. *(The Age, quoting Mr Leigh Monti, 13 June 2000)*

Despite increasing revenues from both subscriptions and advertising, the pay TV documentary channels have expressed, in discussions with the FFC, an unwillingness to collaborate in the co-financing of Australian documentaries, saying that they have little or no real budget to do so.

It appears that their overseas-based parent companies frequently control the commissioning budgets of these subsidiary channels and are unwilling for them to invest in local production.

If this is the case, it provides another reason for introducing legislation as it would leave the parent companies no option but to free up an appropriate level of resources to support the local production industry.

4 What is the capacity of the local documentary sector to provide material that fits the needs of the channels and the interests of their audiences?

The local documentary production sector has the capacity to provide an ample amount of documentary material suitable for the pay TV audience − in all genres of documentary.

We have a vibrant production sector in Australia making, on average, 600 hours of documentary annually, on a wide range of subjects encompassing all the program niches sought by pay TV channels.

The capacity of the production sector to meet the needs of pay TV can be demonstrated through a variety of facts:

- Australian documentaries are internationally acclaimed and sell to the world's major cable and free-to-air broadcasters, including the BBC and Channel Four (UK), ZDF and Arte (Germany), PBS (US) and NHK (Japan).
- Australian documentaries have the potential to rate highly with Australian audiences. Series documentaries such as *Railway Adventures Across Australia*, *Diving School* and *The Human Journey* have achieved particularly high audience levels, peaking at 1.5 to 2 million viewers each.
- Australia has a considerable documentary slate in development. In their September 2000 funding rounds alone, both the ABC and SBS received over 50 proposals competing for the three pre-sales each channel had on offer.
- The amount of Australian documentary screened on free-to-air television increased last year by an additional 88 hours. There has been no difficulty on the part of the production industry in meeting the extra demand.

The ABA's Discussion Paper refers to a statement by National Geographic that it had run focus groups in which participants had expressed no interest in seeing additional local documentary programming on the channel.

We question the validity of this market research and wonder about its rigour. Evidence from free-to-air channels indicates strong audience appreciation for local documentary programs and there is no reason why this interest in documentary should be confined to free-to-air viewing.

5 Would the benefits of an expenditure requirement outweigh the administrative and other costs associated with regulation?

Implementing and monitoring broadcasting regulation will always entail a cost for the ABA.

The cost factor is no reason to abandon regulation in the case of pay TV documentary channels, just as it is not a rationale for abandoning regulation in any other area under the ABA's jurisdiction.

6 Are there alternative approaches that would better achieve the policy objectives?

We do not believe so. The ABA's Discussion Paper cites examples of pay TV support for the local documentary production sector such as sponsorship of the Documentary Conference and support for the Documentary Foundation.

It should be made clear that these are largely marketing and public relations initiatives and make no real contribution to the levels of Australian documentary on pay TV. They should not be seen as alternatives to minimum content requirements, enforceable through legislation, which we believe are essential.

7 If legislation was to be implemented, would some other form of regulation be more appropriate than an expenditure requirement?

We support the conclusion of the ABA's 1997 report that an expenditure model is the most appropriate form of content regulation for pay TV. We agree with the reasons outlined in the Paper for supporting an expenditure requirement.

An expenditure requirement would be the most straightforward in terms of monitoring and enforcement and would be consistent with the form of regulation for pay TV drama channels. As with drama, the mechanism used to apply the regulation should preferably be the Broadcasting Services Act. By enshrining the requirement in legislation, the ABA would not have to develop, monitor and enforce compliance with a standard.

The main drawback of an expenditure model is that the reported program acquisition budgets are very low, allowing for only very small amounts of Australian content to be commissioned.

8 If an expenditure requirement is considered appropriate, at what level should this be set?

- *the minimum expenditure requirement should be no less than 20 per cent.*

Given the ABA's advice that total expenditure by all documentary channels is presently just under $5 million, a ten per cent requirement based on 1998-99 reported expenditure would yield only $500,000 from all the channels. This would only allow for between four to eight pre-sales and so yield only about eight extra hours of Australian documentary.

Even a minimum expenditure requirement set at 20 per cent would only provide an additional $1 million dollars for the purchase of local documentaries. We therefore recommend that the minimum expenditure requirement be no less than 20 per cent.

- *the 20 per cent expenditure requirement should yield a minimum of 10 hours per documentary channel, moving to 20 hours by 2003-04*

We are concerned that the degree of integration of the Australian subsidiaries with their multinational parents allows for the possibility of internal trading, rather than payment of realistic market prices for content. There is, therefore, a risk that the annual expenditure of the pay TV documentary channels will be significantly under-estimated through the use of internal pricing mechanisms.

To protect against this, we recommend that if the 20 per cent expenditure requirement is not generating a minimum of 20 hours of new eligible documentary programming per channel by 2003-2004, the ABA review the requirement with a view to increasing the percentage.

- *'new eligible' programming should refer to programs new to television*

If the expenditure requirement is to achieve the Government's cultural and industry support objectives − ie for the pay licensees to contribute to the production of new programs − the 20 per cent spent by the licensees should be on programming that is new to television (ie that has not screened on free-to-air television first).

NB: The definition of 'new' proposed above should apply to documentary programming only. In reference to the pay TV drama channels, we recommend the current definition of 'new' be retained.

- *we call for transparency in administration of the requirement*

In addition, we consider it vital that compliance with broadcasting regulation is transparent and readily verifiable by interested parties.

We are greatly concerned by the lack of data from the ABA about pay TV performance − in particular, the absence of a breakdown of expenditure by the various channels. This breakdown is provided by the commercial broadcasters and by the pay TV operators in relation to drama, so it should be available for documentary.

Submissions from Government film agencies and the production sector raised concerns about the lack of adequate data in relation to Australian content on pay TV in 1997 and it is disappointing that this situation has not improved.

FFC-AFC RECOMMENDATIONS

1. The minimum expenditure requirement should be no less than 20 per cent.

2. The 20 per cent expenditure requirement should yield a minimum of 10 hours of new eligible programming per documentary channel, moving to 20 hours by 2003-04.

3. ‘New eligible’ programming should refer to programs new to television.

4. Administration of the requirement by the ABA should be transparent.

<u>Contingency</u>

In the event that the ABA rules against recommendation three − that ‘new eligible’ programming should refer to programs new to television − we would recommend that ‘new eligible’ programming refer to *programs produced by the independent (ie non-network) production industry*.

While this is not our preferred position, we would accept this as a second preference on the basis that it is vital that funds yielded through regulation of the pay TV licensees should not be used by the commercial networks to contribute to the cost of their in-house production.