



REVIEW OF THE AUSTRALIAN CONTENT STANDARD

SUBMISSION

TO

**THE AUSTRALIAN BROADCASTING
AUTHORITY**

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TABLE OF CONTENTS

Summary of Recommendations	2
1. Context of the Review	4
1.1 Purpose of the review	4
1.2 Rationale for Australian content regulation	4
2. About the Australian Content Standard	7
3. Economic State of Broadcasting	7
3.1 The role of independent production	10
3.2 Vertical integration and competition	13
4. Adult Drama	13
4.1 Diversity of drama formats	13
4.2 Amount of drama	16
4.3 Financing of drama	17
4.4 Possible approaches to restructuring the drama sub-quota	19
4.5 Restructuring the sub-quota based on production budgets	23
5. Children’s Drama	25
5.1 The importance of children’s television	25
5.2 Ratings performance	27
5.3 Advertisers’ perspective	28
5.4 International comparisons	29
5.5 Amount of drama	30
5.6 Promotion and scheduling	30
5.7 Conclusion	31
6. Documentary	31
7. Official Co-Productions	33
8. Tradeable Quotas	35
9. Definition of Australian Programs	36

SUMMARY OF RECOMMENDATIONS

Independent 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.

Adult Drama

- The minimum amount of first release adult drama required under the Standard should be increased by 20%.
- Maintain the principle of a point score system as the mechanism to encourage new Australian adult drama.
- Recalibrate the adult drama point score system on the basis of production budgets.

Children's drama

- The ABA consider the case for an increase in the minimum licence fee required of broadcasters so that they make a greater contribution to the cost of production.
- The amount of children's drama required by the Standard be maintained.
- The Standard require the licensees to develop promotional strategy plans and report to the ABA on their implementation.

Documentary

- The ABA and the broadcasters have reported serious inaccuracies in the documentary data. Clearly this data must be correct and verifiable before meaningful analysis can be undertaken.
- The AFC reserves the right to make a supplementary submission to the ABA on documentaries, following the release of revised data on expenditure. In the meantime, we recommend that there be no reduction in the existing documentary quota.
- Questions have been raised about the monitoring of what is categorised as documentary by the broadcasters. The ABA needs to ensure that material classified as documentary meets the appropriate definition.

Co-productions

- The AFC endorses the conclusions of the Department of Communications Information Technology and the Arts (DCITA) Review of the Australian Official Co-Production Program (February 2001), that the program 'delivers net economic benefits to Australia' and that 'Australia has reaped greater benefits from the program than its partner nations, in relation to both levels of investment and creative participation'.

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- Treaty co-productions should continue to receive recognition in line with Australia's obligations under the relevant treaties. However, the ABA does need to address the potential for some treaty co-productions to be sold into the Australian market at secondary market prices. The contribution of the networks to the financing of all Australian drama should be at similar levels and there should not be any incentive to obtain quota points at secondary market prices.
 - The ABA has demonstrated that it is possible and within its powers to set a minimum licence fee for children's drama. The AFC proposes that a similar mechanism be applied to treaty co-productions.

Tradeable quotas

- Allowing the networks to trade their quota obligations assumes that content obligations are maximums, not minimums. Potentially this undermines the cultural objective of increasing levels of Australian content and the domestic market for Australian content created by the Standard.

Definition of Australian

To encourage the continued development of an Australian owned and controlled production industry contributing to the growth of our cultural capital it is proposed to add to the creative elements test a requirement that:

- The production company responsible for production is Australian owned and under the financial control of Australians.

1. CONTEXT OF THE REVIEW

1.1 Purpose of the review

This review of the Australian Content Standard was promised by the ABA after it completed the last review in 1998, which arose as a result of the High Court decision on New Zealand programs.

In the Issues Paper, the ABA describes the task:

“as a focused exercise that will serve as a stocktake to identify any pressure points on the Australian Content Standard. Commercial television is undergoing a period of change. Future structural shifts in the communications and broadcasting industries will call for a wider review of local content rules than is appropriate for current circumstances.”

While the ABA may not intend this to be a fundamental review of Australian content policy the AFC is aware that stakeholders have signaled a desire to see substantial changes to the Standard. There is also potential for structural change in the broadcasting sector to occur sooner rather than later if changes to the ownership rules take place as foreshadowed by the Government.

In any case it is clear the ABA will need to take account of some significant movements in the industry and in the policy approach of the Government. There is clearly a connection between the well-developed cultural policy of the Government and an emerging articulation by the Government of industry development policies.

1.2 Rationale for Australian content regulation

Like many nations, Australia has seen the broadcast of local content as an essential role of the television system. It is an essential public interest obligation of privately owned television in return for continued spectrum access and protection from competition. The object is to ensure that the culture of the nation is represented on our screens and to encourage the expression of creativity.

The underlying principles are:

- mass media, and television in particular, are extremely pervasive and influential and for the majority of Australians are the most significant form of cultural activity;
- Australians should have available a diverse range of broadcasting services offering entertainment, education and information;
- broadcasting services have a role in reflecting a sense of Australian identity, character and cultural diversity;
- in our society television has important social and cultural roles and cannot be seen as a purely economic activity;
- as television broadcasters receive the benefit of access to spectrum (with the consequent commercial benefits of advertising revenue), it is reasonable to impose some social and cultural responsibilities.

There is consensus in Australia, as indeed there is in comparable democratic countries, about the reasonableness and continued relevance of these principles, even as we move into a world of digital abundance.

The Issues Paper sets out the legislative framework and the policy objectives underlying the ABA's role in determining the Australian Content Standard.

The Explanatory Memorandum to the Broadcasting Services Act 1992 (the BSA) refers to the underlying policy for Australian content regulation in this manner:

"The rationale for this provision is that it is widely accepted that television is a powerful medium with the potential to influence public opinion and that television has a role to play in promoting Australians' cultural identity."

In relation to the Standard, the Memorandum also states:

"...it is intended that commercial television broadcasters broadcast Australian programming which reflects the multi-cultural nature of Australia's population, promotes Australian culture and identity and facilitates the development of the local production industry."

The words used in the Memorandum express a close connection with the BSA objectives:

(b) *facilitat[ing] the development of a broadcasting industry that is **efficient, competitive and responsive to audience needs**; and*

(e) *promot[ing] the role of broadcasting services in **developing and reflecting a sense of Australian identity, character and cultural diversity**.*

To have programs broadcast which reflect Australian cultural identity, there must be a viable Australian production industry to make them.

The importance of the content regulation to the development of the screen production industry cannot be overestimated. It not only created the opportunities for production, the development of skills and the support of infrastructure, but it also created a growing and increasingly strong domestic television market.

The existence of strong broadcasters committed to the production of Australian content has served to underpin the direct industry support initiatives by government. Our culture of popular Australian television is integral to the domestic market and has produced programs which are attractive internationally.

Production for television, including television commercials, is central to the screen production industry, representing about 80% of the value of screen production.¹ The following section will look in more detail at the size of the production sector.

As we move into the information age where the intellectual and creative capital of a nation becomes as valuable a resource as smoke stacks and mines, the health of creative industries is of paramount importance. In this context, cultural policy takes on a new dimension and a new urgency.

¹ ABS, *Film and Video Production and Distribution 1999/2000*

Professor Shalini Venturelli points out in her paper *From the Information Economy to the Creative Economy*:²

“Nation states opposed to the protection of cultural industries, whether in Europe or elsewhere, are about to discover, if they have not already, that the cultural conflict over media and audio-visual content is not a superficial, high diplomacy power play between the US and France. It is instead about the fate of a set of enterprises that form the core, the so called ‘gold’ of the Information Economy.”

Cultural policy in this context is moving beyond notions of cultural protection towards more dynamic strategies designed to encourage and constantly renew the creative and intellectual productivity of the nation.

Australia is well placed in this regard because of the programs pursued by successive governments over the last forty years to support and to grow the creative industries and in particular the film and television industry. The challenge is not to step back from these policies, but to renew and expand their relevance to the opportunities presented by the new economy.

In 2001 the ABA published a report by the Australian Key Centre for Cultural and Media Policy, *The Future for Local Content? Options for Emerging Technologies*. The Key Centre report emphasises the important relationship between industry and cultural policies:

“While a sustainable production sector is clearly necessary for the achievement of content-related screen cultural policy, cultural policy objectives cannot logically be considered a proxy for the development of the production industry.”

In the Issues Paper the ABA has said that *“the main purpose of the Standard is to promote the cultural objective’ of the BSA and that the ‘development of a local production industry...is a subsidiary purpose”*. We have argued above that the two are equally important in the interpretation of the purpose of the Standard. Development of the production industry is a subsidiary purpose only for as long as the ‘cultural objective’ is viewed in a narrow context.

Industry development is clearly assuming a greater level of importance in the cultural policy of the Government as it seeks to develop the screen content industry in Australia. The measures announced by the Government in September 2001 contain a strong industry development focus.

In particular the Creative Industries Cluster Study, initiated by Senator Alston and in which the AFC is participating, recognises that the screen production sector in Australia is part of a wider set of creative industries. There are also signs that Government policy is expanding from communications infrastructure development to consider the creation of intellectual property as an important part of the economy.

In canvassing the issues to be considered in the current review, the ABA has also begun to move beyond a narrower vision of cultural policy and confront in sharper detail the economic context in which the Standard operates. It is clear from the Issues Paper that the economics of making the Standard work is of paramount concern to both broadcasters and producers.

² Centre for Arts and Culture, Washington, www.culturalpolicy.org

This goes directly to the question of the role of the Standard in fulfilling both the cultural and industry development objectives of the BSA. In the past, the ABA has been reluctant to engage in what it has tended to characterise as economic regulation. However, the ABA must take account of how the economic environment in which the Standard operates influences its operation and effectiveness.

2. ABOUT THE AUSTRALIAN CONTENT STANDARD

Regulation to set a minimum level of Australian content was first introduced in 1960 and a specific quota for Australian drama in 1966. Since that time the overall levels of Australian content to be broadcast have gradually increased in line with the capacity of the broadcasters to commission, produce and broadcast Australian content.

In 1992 the reform of the legislative framework for broadcasting in Australia introduced a level of self-regulation for broadcasters. However, Australian content and children's programming were the two areas of content where standards must continue to be set by the regulator.

The ABA is required by the BSA to determine standards relating to the Australian content of programs broadcast by commercial television licensees.

The Standard requires 55% Australian content (6.00 am-midnight); a minimum level of first release Australian drama (80-258 hours), children's drama (32 hours), documentary (20 hours) and programs for children (260 hours).

The Standard defines an Australian program and a New Zealand program. The obligation on licensees to broadcast Australian programs is discounted to the extent that they broadcast New Zealand programs. Australian treaty co-productions are treated as Australian programs under the Standard, but New Zealand treaty co-productions with countries other than Australia are not treated as New Zealand programs.

In relation to children's programs, the Standard is to be read in conjunction with the Children's Television Standards. The Australian Content Standard sets out the obligation to broadcast Australian children's drama and Australian C and P classified programs. The Children's Television Standards set out the general criteria for classifying children's programs, the total obligation to broadcast C and P programs (including foreign programs), when they may be broadcast and the rules governing promotions and advertising. These Standards are not being reviewed at this time.

3. ECONOMIC STATE OF BROADCASTING

This review is being conducted in an environment where free-to-air broadcasting remains a successful and robust business. Despite recent warnings of a tightening advertising market and reduced earnings, all three networks are in a strong financial position after a decade of growth and reconstruction. They are protected from new entrants to the market until at least 2007 and appear to be in a good position to deal with the challenges from any economic slowdown and the growth of pay TV.

The AFC recognises that the recommendations it makes relating to increases in drama and the level of cost contribution to children's drama will have a financial impact on the broadcasters. However, this must be seen in the context of the

objectives of the Broadcasting Services Act set out above and the capacity of the broadcasters to generate revenue sufficient to support these increases in costs.

In our estimation, a significant increase in the output of drama would require an increase in revenue of less than one per cent. Commercial television revenue has grown at a greater rate than GDP over the last 20 years.³ This suggests that even if this level of growth does not continue there is the capacity of the broadcasters to absorb an additional regulatory cost – this cost being justified by the public interest in additional hours and greater diversity of Australian television drama.

In 1999/2000 the total revenue flowing to broadcasters was nearly \$5 billion across commercial, national and subscription television.⁴ The main sources of revenue were advertising, subscriptions, program sales and, in the case of the public broadcasters, direct government allocation.

The total revenue for commercial free-to-air television in that year was \$3,271 million of which \$2,821 million was advertising revenue. Expenditure was \$2,467 million producing a surplus across the sector of \$803 million, or 30%, continuing a trend of growth since the early nineties. Between 1996/1997 and 1999/2000, advertising revenue grew by 19% while expenditure, excluding interest payments, grew by 9%.⁵

Television's share of advertising expenditure in 2000 was 33.5%. This is down slightly from 34.3% in 1995.⁶ Electronic media and newspapers lost some market share in the period to magazines, outdoor and cinema advertising.

In 2000 there was a slight increase in the daily television viewing to three hours 13 minutes; the same level it was in 1991. The three commercial networks attracted nearly 82% of all viewing 6.00 pm to midnight in the five metropolitan markets. While there is competition from pay TV, free-to-air television has the substantial share of the audience. Between 6.00 pm and midnight the share of viewing in all television households for pay TV is between 9% and 15%. In homes with pay TV, free-to-air television still accounts for between 49% and 52% of viewing.⁷

Expenditure on programming is the largest single cost for commercial broadcasters. In 1999/2000 it represented 35% of expenditure, about the level it has remained since the start of the nineties.⁸ However, expenditure on programming does not represent the total value of production for television as broadcasters do not fully fund all the programs they commission. Finance comes from other sources, such as distributors, government and foreign sales or advances.

The value of film and video production in Australia has been measured by the Australian Bureau of Statistics (ABS) across the nineties. Production is broken down by the sector which produced it: television businesses (in-house) and film and video production businesses (independent). 'Television businesses' include commercial, pay TV and public broadcasters. 'Film and video businesses' include film and video production companies and pay TV channel providers.

³ ABA, *Commercial Television Industry 1978/1979 to 1998/1999*

⁴ AFC, *Get the Picture – 6th Edition*, pages 215 and 251

⁵ *Ibid.*, page 215

⁶ *Ibid.*, page 251

⁷ *Ibid.*, pages 230, 242, 253

⁸ *Ibid.*, pages 215 and 217

Total production film and television activity increased from \$1.3 billion in 1993/1994 to \$1.8 billion in 1999/2000. Television production makes up the bulk of production activity ranging from \$1 billion in 1993/1994 to \$1.3 billion in 1999/2000.

The top types of production by sector (including commercials and feature films) are:

- for television businesses - news and current affairs \$333 million, sport \$248 million, light entertainment and infotainment \$103 million.
- for the independent sector - TV drama \$277 million, commercials \$195 million, feature film \$149 million, documentaries \$60 million (AFC estimate).

While the 1996/1997 ABS survey showed an increase in television production by the independent sector (excluding commercials) over the previous three years, the 1999/2000 survey showed a decrease; their share of television production dropping from 49% (\$532 million) since 1996/1997 to 39% (\$516 million).

Components that decreased included TV drama - dropping from \$323.5 million to \$276 million. Light entertainment and infotainment production by the independents also decreased from \$42.9 million to \$35.4 million.

The increase in television production by television businesses from \$562.8 million in 1996/1997 to \$799 million 1999/2000, was largely due to increases in the production costs of sport and news and current affairs. The ABS figures for expenditure by the free-to-air broadcasters, show an increase of \$34 million in sport from 1997 to 1999, however, spending on news and current affairs dropped. Thus the increase is likely to be due to production activity by the pay TV channels in these categories. It is unlikely to be due to increased spending by public broadcasting. In-house drama production increased from \$42 to \$62 million.

In summary:

- total film and video production in Australia increased over the nineties;
- the increase is mainly due to activity by the pay TV sector (which started broadcasting early 1995);
- there has been an increase in in-house TV drama production but independents made 82% of TV drama produced in 1999/00, albeit for less dollars;
- independent production activity has decreased across most production categories. The categories which increased - sport and news - are likely to be due to pay TV activity.

The total value of production for television in Australia represents about 27% of total revenue flowing to broadcasters. In other words broadcasters apply less than a third of their revenue to the production of programs.

Relevant data is available for commercial television. In 1999/2000 all program expenditure represented 26% of revenue. Data is also available from the UK on program expenditure by terrestrial broadcasters as a percentage of revenue in 1999. This was as follows: BBC – 92%; ITV – 46%; Channel 4 – 66%; Channel 5 – 63%.⁹

As is the case in Australia, revenue to UK broadcasters has been growing. It could be argued that Australian commercial broadcasters have been more effective than their UK counterparts in keeping costs down as revenue grows.

Program rights, whether acquired or commissioned, are dramatically undervalued in Australia compared to the UK. Revenue increases to the broadcasters are not being shared with producers or distributors. Broadcasters are able to obtain increased revenue from advertisers based on performance in attracting audiences for their programs. However, producers are rarely rewarded for any increase in audience or for the ability of their programs to attract increased revenue.

It is clear that there is a continuing revenue base to sustain the current level of production, but prices are determined by what broadcasters are willing to pay. There is an undervaluing of rights, and an increasing tendency for broadcasters to seek to participate in additional rights. This has implications for the continuing health of the independent production sector in Australia, as well as for the range and quality of domestic production.

3.1 The role of independent production

The role of the Standard in promoting independent production, as distinct from that undertaken by the broadcasters, is an issue of concern in this review. The AFC has an interest in the health of independent production. Supporting the development of an independent production community in Australia is central to the Government's cultural and industry development policies for film and television. Therefore, we submit the ABA also has an interest and needs to consider the role of independent production, and the ancillary consequences of in-house production by broadcasters, in deciding the outcomes of this review.

A simple definition of an independent producer is any production company that does not have an equity or ownership link with a broadcaster.

In Australia this would include companies that vary in size from publicly listed entities like Southern Star, Beyond and Becker, which also operate distribution and/or exhibition businesses, to Grundy and Crawford, which are part of larger entities, to smaller companies like Millennium and Screentime.

There has been an independent production sector in Australia since the 1950s with Grundy and Crawford being the oldest companies. This contrasts with the UK and Europe where the independent television production sector is little more than twenty years old, brought into being by a mixture of regulatory intervention and the break up of public service broadcaster monopolies.

The focus of direct government investment in production has been on Australian independent production. Eligible production companies for Film Finance Corporation (FFC) investment are described as follows:

⁹ David Graham and Associates, *Out of the Box*, 2000

Australian producers and Australian owned, controlled and registered production companies are entitled to apply for FFC funding. These eligible production companies should:

- be incorporated in Australia;*
- have Australian-based central management and control;*
- have day to day management and control in the hands of Australians;*
- have majority Australian legal and economic ownership and Australian board membership;*
- control the development process [the FFC will not finance projects developed by a foreign company and subcontracted to an Australian producer at a later stage].*

Individual producers must be Australian citizens or residents as defined in the Tax Act. Broadcasters, pay TV channel providers and companies with significant foreign-owned international distribution infrastructure, and their related companies, are not entitled to apply for FFC funding.

The FFC thus requires applicants to be both independent of broadcasters and Australian owned and controlled. This means production companies such as, Granada and Columbia Tri-Star are ineligible.

The Commercial Television Production Fund when it existed was not designed as an initiative to assist broadcasters, but to stimulate a greater diversity of production for the commercial broadcasters by the independent production sector. Broadcasters were prevented from accessing the Fund directly, even though a commitment from a broadcaster was required to trigger funding.

The Government has consistently attempted to stimulate the growth of the independent production sector as the best means of creating an environment for the production of high quality content. Independent producers have stimulated innovation, increased diversity and promoted new talent. They have also maintained and enhanced competition in the creation of content.

There is nothing in the nature of broadcasting that requires the provider of a broadcasting service to produce any of the programs they ultimately transmit. Certainly, the BSA does not require that a broadcaster be the creator of any programs. It defines a broadcasting service as:

a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means...

The business of broadcasting involves providing programs to the public and receiving revenue for providing that service by selling advertising (commercial television), by direct government funding (national broadcasters) or by selling subscriptions (pay TV).

Production and distribution of television programming is a separate, if related, business that is created by the demand from broadcasters, who buy or commission

programs; or in the case of subscription broadcasters whole channels of programs. The suppliers of programs to broadcasters are:

- independent producers, eg Southern Star, Beyond;
- television program distributors, eg Warners Bros, Paramount;
- channel suppliers to subscription broadcasters, eg Discovery, CNN, Arena;
- advertisers providing commercials (over 90% of commercials are produced for advertisers by independent producers¹⁰); and
- broadcasters own internal production units.

The fact that broadcasters do not need to be in the business of program production was made forcibly by the Mansfield Inquiry into the Role and Functions of the ABC in 1997. This review found the significant internal production capacity of the national broadcaster was not essential to the fulfilment of its charter responsibilities. The review recommended that the ABC move to outsource the majority of non-news and current affairs television production.

The examples of Channel 4 and more recently Channel 5 in the UK demonstrate that it is not necessary to own a production facility to run successful broadcasters.

The market for television programming in Australia has expanded dramatically since the early nineties when there were only five channels. There are now over sixty channels of free-to-air and subscription broadcasting available. This has led to an increase in both the amount of programming imported and the amount of programming produced in Australia, as indicated above. Television production in Australia has also been stimulated by the rise in foreign production.

In terms of both the hours broadcast and the value of production, the largest single category of production for television in Australia appears to be by free-to-air broadcasters through their internal production units.

Looking at drama production there appears to be a growing trend towards in-house production, led chiefly by the Seven Network. Looking at total hours of drama broadcast as a measure of market share (by per cent of hours broadcast) the origin of first run hours 1997-2000 was as follows:

Origin of Drama Screened for Australian Content Points¹¹

Year	Independents	Broadcasters
1997	77%	23%
1998	72%	28%
1999	72%	28%
2000	67%	33%

The hours broadcast do not measure the value of the production originated by the independent sector, but the increase in broadcaster originated drama production has predominantly been in lower cost, high volume series and serial production (rather

¹⁰ ABS, *Film and Video Production and Distribution 1999/2000*

¹¹ Analysis of ABA compliance reports

than in telemovies and mini-series). The ABS also reports that the value of drama production decreased from \$312 million in 1996/1997 to \$276 million in 1999/2000.

This suggests that despite the growth in total television production in Australia the areas chiefly occupied by independent producers are not expanding.

3.2 Vertical integration and competition

The increasing involvement of broadcasters in both program production and in distribution of programs leads to vertical integration and potentially to a lessening of competition.

The internal production units of broadcasters compete with independent producers to supply programming to broadcasters. To the extent that internal production displaces independent, then it weakens the competitiveness of the independent sector, because the base of production contracts.

While in-house production may not reduce the level of employment of creative personnel and crew it does not encourage diversity in the origination of programming, nor diversity in the ownership of intellectual property rights.

Internal production units do not compete with each other to supply programming to other free-to-air broadcasters. By contrast in the UK, the ITV broadcasters are regional broadcasters providing local programming and competing with each other and with the independent sector to provide nationally networked programming. ITV production units also supply programming to non-ITV broadcasters. For example, the comedy drama *The Royle Family* was produced for the BBC by Granada.

In contrast the Granada/Seven Network joint production venture founded in 2001 on the apparent inability to win commissions from broadcasters other than the Seven Network.

Recommendation

- 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.

4. ADULT DRAMA

Between 5.00 pm and 11.00 pm licensees must broadcast a minimum amount of first-release Australian adult drama by meeting a points score quota. Points are scored according to the drama format type – series, serial, telemovie, mini-series, and feature film.

4.1 Diversity of drama formats

When the Australian Broadcasting Tribunal introduced the basic template of the current Standard in 1989, it moved from what had been a straight hours requirement for drama, to one intended to encourage diversity in the range of drama formats and to give broadcasters the flexibility to invest in different formats. A simple hours requirement tended to encourage the production of low cost, high volume drama while not rewarding investment in higher cost and potentially higher quality drama.

The format factors are as follows:

Series and serials produced at greater than an hour a week	1
Series and serials produced at less than an hour a week	2
Telemovies, mini-series and features	3.2

The drama point score is calculated by multiplying the program duration by the relevant format factor.

Licensees must meet a target of 775 points over three years and in any one year a minimum of 225 points. The average annual target over three years is 258 points. Depending on the format type this converts to between 80 and 258 hours annually.

This target has remained essentially the same since the current Standard was introduced twelve years ago.

The original basis for the format factors was the relativity between the licence fees paid by the broadcasters for each format in 1989, when the ABT surveyed the industry on licence fees paid. Under this scheme the licensee fee paid for a mini-series is held to be 3.2 times that paid for a serial drama.

The scheme requires the broadcasters to make a calculation between hours broadcast and dollars spent. At the extremes they can either spend more per hour and broadcast a minimum of 80 hours of features, telemovies and mini-series or spend less per hour and broadcast a minimum of 258 hours of serial drama.

The scheme also assumes that the costs of compliance for each network will be roughly the same so that there is no competitive advantage for a network that concentrates on one format. The previous Standard had tended to make compliance more difficult for a network that did not have a successful series or serial.

Are these relativities still current?

The ABA has not done research of its own on contemporary licence fees, but has relied on other sources for information on licence fees and production budgets. For licence fees it has drawn on the *Report of the Victorian Film and Television Industry Task Force*, September 2000, which published the following figures:

Serial drama	40-80,000 per hour
Series drama	150-200,000 per hour
Telemovies/mini-series	250,000 per hour

If it is assumed these licence fees are current and that broadcasters are paying at the upper ends of the ranges for serials and series, then the relativities are showing some movement. If the licence fee for a serial is \$80,000 per hour, then a licence fee of \$200,000 per hour is 2.5 times the serial drama licence fee.

This would suggest the value of series drama to the broadcasters has increased relative to serial drama. However, complicating this is the difference in cost between filmed and taped series drama and the as yet unknown cost of in-house drama production.

A licence fee of \$250,000 for telemovies and mini-series is 3.1 times the serial licence fee. This appears close to the format score of 3.2 for telemovies and mini-series.

However, it needs to be noted that the FFC minimum licence fee for telemovies and mini-series is \$350,000 an hour or 4.3 times the serial drama licence fee referred to above.

Most drama programs are commissioned by and produced for the network that broadcasts them. The network licence fee and investment is essential to the financing of production. In other words, the Australian network sale represents the primary market sale.

This is not the case with feature films and some official co-productions, which can be financed and produced without any contribution from the network. Some of these programs can be acquired for what might be regarded as secondary market prices.

The licence fees paid for Australian feature films are widely variable so that feature films without box office credentials can be acquired for very low licence fees, but still achieve the highest format factor score. This does allow such films to reach a wider audience, but it also means that the networks are acquiring points at a lower cost than for other forms of drama programming.

The same appears to be the case for some official co-productions shown in 2000, such as *Beastmaster*, as well as non-official co-productions such as *Farscape*.

The networks are not using the flexibility of the format factor to broadcast high levels of mini-series and telemovies. Appendix D of the Issues Paper has tables of first release drama by format for the three Sydney stations for the years 1998-2000. Of the total amount of first release drama broadcast in this period, serial drama accounted for 54.2%, series drama 38.7%, mini-series and telemovies 3.4% and features 3.5%.

The Standard is overwhelmingly being met by volume drama production with over half the drama broadcast being at the lowest cost per hour to the network. In 2000 the Seven Network met the minimum points requirement on the broadcast of series and serials alone. The Ten Network would have needed less than an hour of series drama to do the same. Only the Nine Network, without a serial drama, would have had difficulty meeting the quota on serials and series.

Mini-series in particular have become a relatively rare event. As the AFC drama production surveys show, there are only about two Australian adult mini-series produced each year.

Comparison between Australia and Europe shows that in Australia there is less diversity in the drama genres broadcast. The European Audiovisual Observatory 'Eurofiction' project collects data on drama broadcast in the five main European television markets – the UK, Germany, France, Italy and Spain.¹²

¹² Press release 9/10/2001 www.obs.coe.int

In 2000 it reported that the percentages of first run domestic drama hours in these markets was as follows:

Anthology/collections	2%
Serial	8%
Series	35%
Mini-series	12%
Telemovies	44%

All of this suggests that the current format factor test is not producing diversity and is not acting as sufficient incentive for increased production of mini-series and telemovies.

4.2 Amount of drama

During the last 13 years licensees have complied with the minimum drama requirements under the Standard, but the amount of Australian drama being broadcast has declined. In 2000 the three networks broadcast 498 hours of drama compared with 597 hours in 1988/1989.¹³ Despite fluctuations this represents an absolute decrease of 16.5% over the period.

The Issues Paper reports in Appendix E that between 1977 and 1987 an average annual amount of 523 hours of drama was broadcast. The amount of drama broadcast increased during the late eighties and into the early nineties reaching as high as 715 hours in 1991. From 1990 to 1994 the average annual amount of drama broadcast was 647 hours. However, hours broadcast declined to as low as 484 hours in 1995. The 498 hours broadcast in 2000 was the second lowest annual amount in 13 years, down from 574 hours in 1998. The average annual amount of drama broadcast from 1995 to 2000 was 529 hours.

The AFC's *National Survey of Feature Film and TV Drama Production 2000/01* reports that average cost per hour of Australian TV drama series has declined to under \$200,000, the lowest level in four years.

The Issues Paper also indicates that both Australian and foreign drama has declined as a percentage of primetime (6.00 pm to 10.00 pm), from 55% in the late eighties to about 40% at the present time. The Paper does not identify the causes of this decline, but it may be due to an increase in reality-based programming and a decrease in the number of feature films broadcast since the introduction of pay TV.

Increasing the rewards for high-end productions will encourage greater diversity of programming for Australian audiences. However, as the ABA points out, without an increase in the overall points requirement this may result in a decrease in the overall hours of first release drama.

The minimum amount of drama required under the Standard has not increased since 1989, over the same time the trend has been for the amount of drama being broadcast to fall.

The ABA suggests it may be timely to look at measures to increase drama levels as well as providing incentives for diversity. This will involve increasing the points score targets to halt any further decline in the amount of drama and increase the amount of drama over time.

¹³ ABA Issues Paper, Appendix E

The current points score system should be retained, but the annual score required increased by 20% to 310 points per year or 930 points over three years. This would equate to between 97 and 310 hours per year if the present scoring system were retained.

Recommendation

The minimum amount of first release adult drama points required under the Standard should be increased by 20%.

4.3 Financing of drama

In 1999/2000 the networks spent \$102.9 million on Australian adult drama and children's drama and \$250.7 million on foreign drama.¹⁴ Australian drama production in 1999/2000 across all networks was valued at \$233 million by the AFC.

This comprised:

Children's drama	\$ 65 million	92 hours
Series and Serials	\$114 million	550 hours
Mini-series	\$ 17 million	7 hours
Telemovies	\$ 37 million	23 hours

In the period between 1990-91 and 1999-00, overall Australian program expenditure increased from \$514.3 million to \$596.6 million, an average growth of 1.5% per annum. Despite this increase in expenditure the actual amount of drama broadcast has declined. Over the same period expenditure on foreign programs increased from \$250.3 million to \$267.3 million, at an average growth of 2.4% per annum.¹⁵

The ABA reports that the proportion of Australian drama as a percentage of expenditure on all Australian programs fell from 26.2% in 1990/1991 to 15.5% in 1999/2000 which indicates that the broadcasters are spending proportionately less on Australian drama.

The ABA also points out that drama program usage and amortisation has fallen by an average of 2.4% per annum since 1990-91, but that the minimum requirements for first release drama have remained static over that period. Characterised by a decline in the hours of Australian drama broadcast, the pattern of the past decade suggests a gradual settling down towards a minimum set by the Standard. The minimum is significantly below the financial and transmission capacity of the networks in 1990.

In other words, the Standard has not encouraged diversity of program formats nor growth either in investment or in the actual number of hours of Australian drama being broadcast.

The Issues Paper identifies the financing of drama, particularly higher budget drama, as a problem for producers, broadcasters and funding agencies. To a large extent this is because the broadcasters are undervaluing the rights they are acquiring, as we have argued above.

¹⁴ ABA Issues Paper, page 22

¹⁵ Ibid., page 22

If the costs of drama production are remaining static or declining it is not because inefficiencies are being eliminated, but because there is continual downward pressure on costs to meet the finance available. Australia is not the only country in which the deficit between the cost and the domestic licence fee (plus investment) available from broadcasters is growing. However, it appears to be worse in this country.

Analysis undertaken by the AFC shows that the three networks provided 44% of the finance for the drama they broadcast in the years 1999-2001. The ABA Issues Paper notes that broadcasters in the UK, Europe and the USA contribute 85% or more of budgets for local drama productions.¹⁶

First Release Australian Adult Drama for Commercial Broadcasters 1999-2001: Sources of Finance¹⁷

	Government	Free-to-air broadcasters	Distributors Production cos. Pay TV	Private	Foreign
Features	59%	1%	8%	11%	20%
Mini-series	27%	13%	0%	0%	60%
Series/serials	0%	64%	15%	2%	18%
Telemovies	32%	24%	16%	0%	28%

Over the three years some 93% of all funding from the broadcasters went to the financing of series and serials for which they provided 64% of the total finance available for this type of drama. Government funding went predominantly to financing the feature films broadcast and to mini-series and telemovies. Government and foreign investment were the main sources of investment in mini-series and telemovies. (The FFC cannot fund series and serial drama and will not fund mini-series over eight hours under its current guidelines.)

In the UK although there is starting to be a tendency towards deficit funding, it is still the case that broadcasters fully fund production, with a production fee on top and a minority share of potential future revenue. In the USA, the network licence fee will typically cover 80% of the cost of production, although vertical integration has created strong links between networks and program producers and distributors. Only in Canada does the situation appear worse than in Australia, but three producers have access to substantial domestic funding from tax credits and the Canadian Television Fund.¹⁸

The current Standard provides a regulatory imperative for a licensee to broadcast drama. However it appears to have only a marginal impact on the amounts paid by the licensees or the level of their investment in drama production.

In general the Government is using two tools to stimulate investment in new and innovative Australian drama. The first is the regulatory tool of the Standard. The second is direct investment in certain forms of television drama production through the FFC, and in the past through the Commercial Television Production Fund.

¹⁶ SPAA 1999 Conference paper, *Funding the Gap*

¹⁷ Compiled by the AFC, January 2002

¹⁸ Price Waterhouse Coopers, *Economic Impact of the Canadian Television Fund*, 2001

A Government initiative responding to the difficulties in financing drama has been an increase in the annual allocation to the FFC for television drama. In 2002/2003 the FFC will receive an additional \$7.5 million for television drama, increasing to \$10.5 million in 2003/2004. In 2000-2001 the FFC spent \$20.9 million on adult and children's drama.

These recent initiatives will provide an important new source of finance for certain forms of television drama. They need to be matched by regulatory incentives for increased investment by the broadcasters. Otherwise there is a risk that the new sources of funding from Government will simply offset a reduced level of commitment from the broadcasters.

4.4 Possible approaches to restructuring the drama sub-quota

It is clear to the AFC that the drama sub-quota needs to be restructured to stimulate investment and to encourage quality and greater diversity in program formats. As the above analysis shows, the networks appear to be reducing the number of hours of first release drama and the relative amount spent on drama. Networks still manage to comply with the Standard despite these reductions.

The Issues Paper suggests a number of possible approaches to restructuring the drama sub-quota which are discussed below. While the AFC supports the need for change to the model of awarding drama points, it considers the current underlying system is valid.

Recommendation

- Maintain the principle of a point score system as the mechanism to encourage new Australian adult drama.

4.4.1. Setting minimum licence fees for different forms of drama

This proposal would involve the ABA including in the Standard a range of minimum licence fees for Australian drama. While the Issues Paper does not make this explicit, it is assumed this would work with the existing drama point score.

A minimum licence fee requirement was considered by the ABA during the last review of the Standard in the context of dealing with New Zealand programs. The ABA argued against it on the basis that:

- a) the floor price would become a ceiling price;
- b) it would disadvantage producers who could deliver programs at a lesser licence fee than the minimum set; and
- c) there would be administrative difficulties for the ABA in monitoring compliance with the requirement.

A minimum licence fee has been in place for three years for children's drama. It is intended not so much to encourage the payment of an increased level of licence fee by the broadcasters, but to prevent New Zealand programming coming into the market at secondary market prices.

In a review of licence fee levels for children's drama in 2000, the ABA maintained that the minimum price set had no adverse effect on the range of children's drama

licensed and importantly had not prevented the FFC from demanding higher licence fees for programs in which it was investing.

The fact that the ABA was able to conduct the review of the prices paid for children's drama suggests that it is not administratively difficult for it to obtain confidential information needed to assess compliance.

Setting a minimum licence fee for adult drama would require a range of prices that reflected the variety of formats and the production costs involved in each. It would be more complex than establishing the minimum licence fee for children's drama. For example, within some drama formats, such as series drama and telemovies, there appears to be considerable variation in licence fees paid, because of the production costs involved. Therefore there may need to be more than one licence fee set in drama formats.

The ABA would also have to deal with and cost in-house drama production, which has not been an issue for children's drama, because the broadcasters do not produce children's drama in-house. To avoid complex administration the ABA could deem a price for in-house production, which to date has been in the field of series and serial production.

The licence fee would need to be indexed to take into account the movements in production costs over time.

4.4.2. Setting a minimum percentage of commercial television broadcasters' share of the production budget for different forms of drama

This proposal would involve stipulating the minimum percentage of the production budget across a range of formats and production costs. It could include both licence fees and other investment in a program and as such take account of in-house production, equity investment and the acquisition of additional rights.

The FFC currently excludes equity investment, pay TV and New Zealand rights from its calculation of the minimum presale commitment from a broadcaster and it could be argued that the Standard should do so as well. The rationale is to distinguish between what the broadcaster needs to acquire to fulfill compliance with the Standard and what it might need to meet other business plans. Since compliance with the Standard requires only the right to broadcast on free-to-air television in Australia, additional rights acquired or equity investment are superfluous to achieving this end.

These are issues relating to competition and the relative market power of broadcasters. They are relevant here because the ABA would need to consider what constitutes the broadcaster's share of the production budget. Broadcasters might argue that their total financial contribution should be recognised, while producers might argue that this constitutes an endorsement of existing market power.

If it is the case that minimum licence fees can become the maximum, then it also follows that minimum financial contributions can also become the maximum. If this were the case then there could be a greater chance of downward pressure on licence fees as a percentage of the broadcasters' total contribution.

In any case there is an increased level of administrative complexity in this option. The ABA would need to determine benchmarks and decide whether to set the current average contributions as a minimum and/or set targets to be achieved over time.

This option also has the difficulty that unless linked to an obligation to broadcast, it has the appearance of being purely an industry development measure. There would need to be a target amount to be broadcast or the percentage contribution seen as an addition to the present points system.

4.4.3. Recalibrating the relative format factors for different forms of drama production

At least one network has suggested that the current format factor for series drama does not accord enough weight to those programs shot on film with higher production values and greater network contribution.

It has also been suggested, as the analysis above shows, that the weighting given to mini-series is not sufficiently high to encourage more production or increase the level of network contribution. An increase in the format factor for these types of programs may not produce more higher budget programs, unless it was also linked to a measure that addressed the level of investment.

Any attempt to recalibrate the relative format factors requires a decision on the basis upon which the formats are valued. If the value were not to be monetary, in the form of licence fee or other contribution, then it would have to be based on some other value such as 'quality'.

The drama test needs to be an objective test that allows the licensees and producers (producers have to warrant that programs will qualify) to self assess and be certain when committing to a program that it will comply. The children's drama test involves an assessment of 'quality', but that is undertaken by the ABA itself in the process of classification before broadcast.

4.4.4. Setting quota points on the basis of licence fee paid, irrespective of drama form

There are two ways this model might operate.

The first option is rather like the rewards schemes that are attached to credit cards. The broadcasters would earn points for every dollar spent on first release Australian drama. There would need to be an annual score or target that had to be met.

In many ways this scheme is similar to setting a minimum annual expenditure on drama for each network, as is the case with the pay TV drama requirement.

A problem with this concept is that it does not necessarily result in targets for programs to be shown and simply rewards expenditure in any given year. Consequently it can be argued that it is an industry development measure but does not address the cultural objectives.

The second option is to recalibrate the format factor into a series of bands for licence fees or the total contribution paid by the broadcasters. One way of doing this would be to set bands of licence fees that reflected the ranges of current network contributions.

In this model there are five licence fee bands set.

- Band 1: would include serial drama and feature films with low licence fees, achieving a point score of 1;
- Band 2: would include series with licence fees of less than \$200,000 per hour, achieving a point score of 1.5;
- Band 3: would include series at more than \$200,000 per hour, achieving a point score of 2;
- Band 4: would include telemovies, achieving a point score of 3;
- Band 5: would include mini-series, achieving a point score of 3.5.

This system rewards the licence fee contribution of each network to the production of drama, but does not require the specification of particular drama formats. It has the same degree of flexibility as the current system, but provides more encouragement for and recognition of network investment in production.

To obtain a measure of how this model would affect the performance of the broadcasters, the AFC analysed the drama transmitted in 2000 and recalculated the point score accordingly. Assumptions were made about the licence fee band into which programs fell. Under this model, Seven would score 243.9 points (287.5 in the current system), Nine would score 259 points (281 current) and Ten 235.8 points (236.7 current).

If a new drama point score target of 310 were set, then the additional required of each network would be as follows:

Seven	66 hours in Band 1 or 44 hours in Band 2 or 33 hours in Band 3 or 22 hours in Band 4 or 18 hours in Band 5;
Nine	51 hours in Band 1 or 34 hours in Band 2 or 25 hours in Band 3 or 17 hours in Band 4 or 14 hours in Band 5;
Ten	74 hours in Band 1 or 49 hours in Band 2 or 37 hours in Band 3 or 24 hours in Band 4 or 21 hours in Band 5.

Under this model it appears the most cost effective way of increasing production to achieve points would be to produce more drama in Band 4, that is more telemovies.

The bands would also need to be adjusted from time to time in order to deal with 'bracket creep' as licence fees increased, although the bands should be sufficiently broad so as not to require this often.

4.4.5. Setting quota points on the basis of a commercial television broadcaster's share of production budget

This is a variation on option two and four. Instead of setting a straight percentage of the budget, points are awarded according to the percentage contribution. As in four, the score could be for each percentage point or be set out in percentage bands.

4.4.6 Distinguishing series by number of episodes

The AFC is aware that one model proposed involves a higher format factor for series drama comprised of up to or less than 26 episodes per year. Essentially this involves distinguishing between types of series based on the volume of production.

Under this model the point scores are as follows:

Serial drama	1
Series drama of more than 26 episodes produced at a rate of one or less per week	2
Series drama of up to 26 episodes produced at a rate of one or less per week	3
Telemovies and mini-series and feature films	4

For Nine in this model, based on the 2000 drama performance, *Stingers*, *Murder Call* and *Farscape* would score three, being less than 26 episodes, but *Water Rats* would not because it was more than 26 episodes.

4.5 Restructuring the sub-quota based on production budgets

If the objective of the Standard is to promote the diversity and quality of drama formats, the AFC proposes that a point score system based on the production budget provides the best means of ensuring both quality and diversity. Hand in hand with this proposed model would go the increase of 20% in the overall level of adult drama already mentioned.

This is the AFC's preferred model, which takes the level of expenditure on the production as a measure of quality and rewards drama formats with higher budgets. While this model does not directly regulate the amounts paid by broadcasters for drama, it will provide appropriate recognition for higher levels of expenditure.

Under this model the score for each program is reached by multiplying the 'production quality factor' by the duration. Point scores are as follows:

Serial drama	1
Series drama with a production budget under \$400,000 per hour	2
Series drama with a production budget over \$400,000 per hour	3
Telemovies and mini-series and feature films	4

The level of \$400,000 has been chosen after analysis of production budgets in 1999/2000 and 2000/2001. This level is not static so it would need regular review to ensure it is appropriate.

The AFC considers that feature films should have a significant presale commitment from a network in order to achieve the score of four.

Recommendation

- Recalibrate the adult drama point score system on the basis of production budgets.

4.5.1 Outcome

To consider the impact of this model on the past performance of the networks, the AFC analysed it in relation to the drama output of 2000. This is not necessarily a predictor of future patterns, but it does indicate what this model could produce.

Looking at the broadcast output for the three networks in 2000, the points outcome would be as follows (score under existing system is in brackets):

Seven	293 points	(287.5)
Nine	399 points	(281.3)
Ten	271 points	(236.7)

This means that all three networks would have exceeded the current annual average point score of 258.

The increase in points for Nine is due to the series *Water Rats*, *Stingers* and *Farscape* assumed to achieve a score of three an hour, plus 9.1 hours of features assumed to score 4 points an hour. (This could increase if *Murder Call* is assumed to score 3 instead of 2). Ten increases points because the series *Tales of the South Seas* is assumed to score three.

Under this model, while Nine broadcast the least amount of drama in 2000 (131.4 hours), it earns the most points because more of their programs were in the higher budget range. Ten broadcast 174.5 hours and Seven 191.4 hours. Nine was the least reliant on commissioned programming with between 60% and 74% being programs commissioned by the network, compared with 100% by the other two networks.

4.5.2 New Target

Under the production budget-based model, if the annual score was increased by 20%, in order to meet the new target of 310 points, then applying this to the results for 2000:

Nine would have achieved and exceeded the new target.

Seven would have had to broadcast 17 hours of serial drama or 8.5 hours of series drama at under \$400,000 an hour production cost; or 5.6 hours of series drama at more than \$400,000 production cost; or 4.25 hours of telemovies, mini-series or feature films. The cheapest option would have been to acquire two feature films.

Ten would have had to broadcast 39 hours of serial drama or 19.5 hours of series drama at under \$400,000 an hour production cost; or 13 hours of series drama at more than \$400,000 production cost; or 9.7 hours of telemovies, mini-series or feature films. The cheapest option again would have been to purchase more feature films.

The new target would have resulted in between 14 hours and 56 hours of new drama being broadcast by the networks; an increase of between 3% and 11% on the actual output for 2000.

Recommendations

- The minimum amount of first release adult drama required under the Standard should be increased by 20%.
- Maintain the principle of a point score system as the mechanism to encourage new Australian adult drama.
- Recalibrate the adult drama point score system on the basis of production budgets.

5. CHILDREN'S DRAMA

The AFC strongly rejects any proposal that would result in the dilution of the children's drama requirements. These have been developed to provide Australian children (under 12 years) with access to programming specific to their needs and interests. They have also assisted the development of the production industry and encouraged the export of high quality Australian drama.

The Government has been clear in its intention that commercial broadcasters be required to broadcast minimum amounts of Australian children's programming. Any discussion of the cost of fulfilling this requirement must be set against the objects of the Act and the expectations of the community. In any case the children's drama requirements are not an onerous burden on broadcasters in the context of their overall broadcasting activities. In 1999/2000 expenditure on children's drama represented 0.3% of total revenue and 1.4% of total program expenditure.¹⁹

The AFC supports the maintenance of the present system but sees the need for broadcasters to be more innovative and active in the scheduling and promotion of drama. The AFC also recognises the difficulties faced by producers in the financing of children's drama due in large part to the very low licence fees paid by broadcasters.

5.1 The importance of children's television

Content regulation for children's television is extremely important to the community. The regulatory system puts a high value on the protection of children from harmful content and the provision of high quality age-specific material.

Regulatory intervention became necessary because market forces alone were not delivering children's programs of quality and age specificity. Like much adult television, during the 1960s and 1970s almost all children's programming was from the US.

The Australian Broadcasting Tribunal introduced the Children's Television Standard in 1979 to provide a regulatory framework that would improve the quality and quantity of Australian children's television. Nonetheless, an Australian children's drama quota

¹⁹ Analysis of data in ABA Issues Paper

was not introduced until 1984 with a requirement for eight hours a year of first release children's drama per network.

In 1990, the drama requirement was increased to 12 hours, in 1991 to 16 hours and in 1996 to 32 hours.

Children's television is a particularly vulnerable area of programming if left to market forces. Broadcasters have argued that children do not watch C drama in sufficient numbers to justify the investment in production required of them or in the cost of promotion of the programs. They argue that the child audience is more attracted to programs (like *Friends* or *Big Brother*), that are not specifically designed for them.

The broadcasters wish to see changes to the Children's Standard to make it more commercially attractive, and to see the drama requirement broadened to encompass Diversity programming. At the 2001 SPAA Conference, John McAlpine of the Ten Network, argued that more magazine style C programs, which he considered to be of more interest to the children, could displace the drama requirement.

In essence the broadcasters appear to argue that despite the public interest objective in providing the current levels of Australian children's drama programming, the regulatory cost is too high. The AFC does not believe that this assertion can be supported.

In 1999/2000 the children's drama requirement cost the broadcasters \$11.9 million. It represented just under two per cent of total expenditure on Australian programming. As indicated above, 92 hours of children's drama was produced in that year with total production budgets of \$65 million. In 1999/2000 the average cost per hour of children's drama was \$706,521.

Broadcasters do not provide anywhere near the majority of the finance for children's drama production. In 1999/2000 the broadcasters expenditure on children's drama represented 18% of the value of production.²⁰ In some cases the broadcaster licence fee as a proportion of the budget may be as low as 10%.

As with mini-series and telemovies, the FFC combined with international pre-sales contributes a larger proportion of the budgets for children's drama than the broadcasters. Of all Australian drama formats, both subsidised and not, it is arguable that the broadcasters make the least contribution to the financing of children's drama.

The minimum licence fee required under the Standard is \$45,000 per half hour. The minimum licence fee required by the FFC is \$65,000 per half hour, possibly increasing in 2002.

The AFC is aware of proposals from children's producers that the minimum licence fee should be increased to \$150,000 per half hour, a 233% increase in the minimum licence fee. It would result in the networks contributing about 40% of the value of production and nearly triple the 1999/2000 level of expenditure. This proportion of investments equates to the 64% contributed to the production of series and serials by the networks.

The cost of children's drama to the networks represented 0.4% of their advertising revenue of \$2,821 million in 1999/2000. Data is not available for the amount of

²⁰ Analysis based on data in ABA Issues Paper and AFC's *National Survey of Feature Film and TV Drama Production 2000/01*.

advertising revenue generated by children's drama, but it is possible to calculate the amount of revenue needed to recoup the broadcasters' expenditure.

Advertising in C drama is restricted to 10 minutes in each hour. If networks were able to sell all the available time in children's drama (about 960 minutes across all networks in a year, given the Standard requires 32 hours each year for each of them) then they would have needed to earn an average of \$12,395 nationally a minute in 1999/2000 to pay for the cost of children's drama commitments that year. This does not account for any revenue generated by repeat screenings of drama, given that programs can be licensed for up to six runs and does not account for affiliation fees generated by capital city stations.

The AFC considers that the broadcasters need to increase the level of their contribution to the financing of Australian children's drama. If this can be achieved by an increase in the minimum licence fee without any sacrifice in the quality of the output it should be pursued. However, the AFC has not reached a conclusion as to the quantum of any increase.

Recommendation

- The ABA consider the case for an increase in the minimum licence fee required of broadcasters so that they make a greater contribution to the cost of production.

5.2 Ratings performance

The analysis of ratings data published in the ABA publication *20 Years of C* shows that C drama programs, on average, rated higher than other C programs; and during 1996/1998 (the most recent period covered by the research) the ratings for C drama programs were generally equivalent to those of non-C children's programs.

Information published by the ABA in January 2002 in *Children's Television Viewing* appears to support the argument of the broadcasters that programs designed specifically for children (5-12 years) are not the most watched programs by this age group. Ratings figures for Sydney 2000 show that the most watched programs by this age group were not age specific and were in the early evening time slots between 7.00 pm and 8.30 pm.

This reflects the availability of the child audience. The peak viewing time for children is between 6.00 pm and 9.00 pm, as it tends to be for the general audience. The availability of the child audience is affected by parental rules about when children can watch television, after school activities such as sport and homework, as well as other competing media.

The ABA research referred to above and information published in *20 Years of C* show that the commercial broadcasters have remained consistent in the scheduling of C programs over the last decade. Most C programs are scheduled on weekends (mainly Saturday) between 7.00 am and 12.00 pm and on weekdays between 4.00 pm and 5.00 pm. The broadcasters also tend to have the same time slot for C programs.

The Children's Television Standard gives broadcasters the flexibility to schedule C programs on weekdays between 4.00 pm and 8.30 pm and between 7.00 am and 8.30 pm on weekends. Therefore there is no regulatory restriction on the

broadcasters showing C programs at a time when a larger child audience is available to watch them.

Data in *20 Years of C* shows that the scheduling practices of the networks have changed since the eighties. Between 1984 and 1989 the networks scheduled 38.4% of all C Australian drama after 5.00 pm on weekdays. Since 1990 virtually no C Australian drama has been scheduled after 5.00 pm and the majority is scheduled before 5.00 pm on weekdays.

The ratings data for 2000 shows the highest rating children's programs were broadcast on the ABC, many of them after 5.00 pm. It may be that the ABC does well in this timeslot because there is little competing programming for children at that time. However, it may also be the effect of promotional practices and the place within the schedule with children's programs leading into the 5.00 pm to 6.00 pm timeslot.

The ABC has a dedicated children's viewing timeslot on weekdays between 3.00 pm and 5.00 pm which manages to attract a significant child audience. In 2001, according to OzTam figures of the 100 most watched children's programs, 75 of them were broadcast on the ABC.

The most watched Australian children's program in 2001 was the drama *Saddle Club* on the ABC. The most watched Australian children's drama was *Crash Zone 2*, broadcast by the Seven Network. As the Australian Children's Television Foundation (ACTF) notes in its submission, this program attracted 59.9% of viewers aged 5-12.

As the ACTF also points out, if C drama does not attract an audience then why is so much of it repeated beyond the minimum requirements of the Standard?

Saturday Disney on the Seven Network, which provides a consistently branded children's timeslot was the most watched children's programming on commercial television in 2001.

If children are not watching C programs, particularly C drama, in the early evening on the commercial broadcasters it is because none are being scheduled at that time. One can assume children were watching programs like *Big Brother* and *Pop Stars* because of the early evening slot and their popularity with adults. Yet in 2001 two movies with family themes – *Rugrats* and *Willy Wonka and the Chocolate Factory* - attracted higher child audiences than these reality based shows. This would suggest that the ratings performance of some C drama could be improved with scheduling at a time when a larger child audience was available.

As the ABA points out: *'In general, the lower ratings for C programs compared to regular programs is largely consistent with the lower viewing levels by children in the mornings and afternoons...'*²¹

5.3 Advertisers' perspective

The assertions of the broadcasters that children's drama fails to attract a child audience and that it is not profitable needs to be examined more closely. Further research is needed to establish what the child audience is worth and how attractive this audience is to advertisers.

²¹ ABA, *Children's Television Viewing*, 2002, page 8

The Australian Association of National Advertisers (AANA) has given the AFC some insight into how advertisers view child specific programming as a means of targeting child related products.²²

'Generally decisions on program selection are made on cost efficient delivery of the audience whether in the traditional children's programming time or in other time zones. Sometimes the program context in which the advertisers message will be seen may over ride this efficiency criteria and effectiveness will be the criteria.'

Increasingly, as the fragmentation of the kids audience accelerates, the context/programming environment will probably become more important. If the station(s) do not invest in quality children's programs then the further demise of free-to-air television as the principal media vehicle access to this important audience for both community service and commercial purposes is almost assured.

The advertisers of children's products would generally believe that programs specifically appealing to children, whether locally produced or imported, are an important part of the television offering. They are more likely to deliver the appropriate audience and they should be accessible to advertisers for the communication of their messages.'

It may be that some of the restrictions on advertising in C programs act as a disincentive to some advertisers. The AFC would support more flexibility in this regard to assist the broadcasters.

5.4 International comparisons

Regulation and funding to encourage the production and broadcast of children's television has been very successful in Australia. In many respects it has established world's best practice in this area.

In the US the declining quality of children's television provoked Congress to pass the Children's Television Act 1990, because it found there was significant market disincentives for commercial broadcasters to air educational and informational programming for children.

The Federal Communications Commission enforces compliance with the Act and requires each broadcaster as a condition of their licence to broadcast at least three hours a week of core programming for children. These must be regularly scheduled, of at least 30 minutes duration, and be broadcast between 7.00 am and 10.00 pm. Broadcasters report on a quarterly basis what they have broadcast in fulfilment of this requirement.

Children's television is the only area where specific quotas are enforced on US broadcasters.

In the UK, the Broadcasting Act requires ITV (Channel 3) and Channel 5 to broadcast a 'sufficient amount' of programs for children. A 'sufficient amount' is determined by the Independent Television Commission and is part of the undertaking given as a condition of the licence. Channel 3 undertakes to broadcast 10 hours a week and Channel 5 undertakes to broadcast 16 hours 40 minutes. There is no specific statutory requirement for Channel 4, but in practice it broadcasts as much as Channel 5.

²² Written comment from Ian Alwill, Director AANA, 17 January 2002

The BBC provides a significant amount of children's television and is a dominant force in the production of children's television in the UK. Both the BBC and ITV have plans to launch new digital children's channels to compete with the 14 speciality children's channels already on offer.

5.5 Amount of drama

While all licensees meet the quota, they rarely exceed it or do so only minimally. Raising the minimum requirement for children's drama would have an immediate effect on the amount of drama produced.

However, the AFC recognises that obligations of licensees have increased substantially in the last six years. These increases have had an effect on the ability of the domestic market place to finance children's drama. The FFC is no longer in a position to co-finance the entire slate.

Producers report that the international market for children's drama is still viable, while financing projects is getting harder, but is still possible.

Recommendation

The amount of children's drama required by the Standard be maintained.

5.6 Promotion and scheduling

The research undertaken for the ABA's report *20 Years of C* demonstrates that careful scheduling and promotion to the child audience improves the chances of a program being successful.

The ABA has suggested, *"the challenge for the commercial free-to-air television industry is to build a better relationship with the child audience rather than surrender this group of viewers to other media, in particular, the pay TV sector."*²³

To this end the ABA could build a requirement for promotional strategies into the Standard as suggested in the Issues Paper. It could require the networks to develop promotional plans and to report on their implementation.

Such plans would need to address some of the areas suggested in the submission from the ACTF:

- providing prescribed amounts of on-air promotion during children's peak viewing hours;
- providing appropriate promotion on any website maintained by the network, for a period from one month before commencement of screening of a C drama program until the date of screening of the final episode for that run;
- issuing press releases and review copies of C drama programs to appropriate media outlets; and
- scheduling C drama programs consistently.

²³ ABA, FFC and ACTF, *20 Years of C Programs – Children's television programs and regulation 1979-1999*, page 13

The ABA has also suggested that the drama requirement could be reduced by two hours a year if the amount saved by each network was spent on promotional activities. The notional amount saved being \$90,000 per network per year. However, the total value of six hours of lost production, potentially as much as \$4 million, would exceed the notional additional amount spent on promotion. The AFC strongly opposes the concept of reducing any program hour requirements on account of promotional effort.

Recommendation

The Standard require the licensees to develop promotional strategy plans and report to the ABA on their implementation.

5.7 Conclusion

Despite the introduction of subscription broadcasting services the commercial networks still have an obligation to provide a comprehensive range of programming. While undoubtedly there is competition for the child audience from specialist children's channels, as the ABA points out some 72% of households with children do not have subscription television.

Regardless of whether children's television returns a large profit to broadcasters, the community puts a high value on programming for children so it should continue to be provided at a high standard, as a cost of the television licence.

As the Productivity Commission concluded:

*'For the community as a whole, these costs are unlikely to outweigh the social cultural benefits of ensuring suitable Australian (and foreign) children's programs are available to children at suitable times and with suitable restrictions.'*²⁴

Recommendations

- The ABA consider the case for an increase in the minimum licence fee required of broadcasters so that they make a greater contribution to the cost of production.
- The amount of drama required by the Standard be maintained.
- The Standard require the licensees to develop promotional strategy plans and report to the ABA on their implementation.

6. DOCUMENTARY

The Standard requires that each network broadcast 20 hours a year of first release Australian documentary programs. The ABA's analysis shows that between 1998 and 2000 Australian documentary occupied one per cent of the hours broadcast by the networks, foreign documentaries 1.5% and other non-fiction programming (excluding news, current affairs and sport) approximately 15%.

²⁴ Productivity Commission, *Broadcasting Inquiry Report*, 3 March 2000 p.409

The Seven and Nine networks exceed the quota, whereas the Ten Network only just meets the minimum. There appears to be some regional variation in compliance in that some documentaries are not shown on all network stations.

A 'documentary program' is defined in the Standard as 'a program that is a creative treatment of actuality, other than news or current affairs, sports coverage, a magazine, infotainment or light entertainment program'. Despite this definition, it appears that some infotainment or light entertainment programs are still being classified as documentary.

These questions arise particularly with personality-based programming such as *Rex Hunt's Fishing Adventures in Thailand* or *Greg Norman's Classic Fishing Adventures*. It is unclear from the compliance reporting how the ABA and the broadcasters assessed such programs as documentaries.

The ABA reports that expenditure on Australian documentary programs has been dramatically reduced, falling from \$26.3 million in 1994-95 to \$3.4 million in 1999-2000. The AFC notes that the broadcasters have disputed this outcome and the ABA has stated that it will revise some of the data published in the Issues Paper. While expenditure on Australian documentaries has been reported to be decreasing, the number of hours broadcast has increased from 49.5 hours in 1996, when the requirement for first release documentary was introduced, to 90.5 hours in 2000. If the reported expenditure was correct, the broadcasters seem to be paying an average of \$37,500 an hour for documentaries. This amount is significantly less than the licence fee required by the FFC under its documentary accords with the national broadcasters.

A significant amount of the increase in hours seems to be taken up by in-house production. Very few of the documentaries broadcast on commercial television receive any production investment from government sources nor do they appear to rely on any foreign sources of investment to help fund production. As a consequence the focus of Australian independent documentary production is on the national broadcasters, supported significantly by the FFC, or on production in Australia for international documentary channels such as Discovery and National Geographic.

In 2000 the ABA conducted an extensive examination of the financing and broadcast of documentaries on subscription television at the direction of the Minister. The main issue to be determined was whether there should be regulation to ensure pay TV broadcast a minimum amount of Australian documentary. The ABA reported to the Minister in February 2001, but that report is yet to be released.

The AFC recommended to that review that a minimum requirement of no less than 20% of program expenditure should apply to documentary channels and that the expenditure requirement should yield a minimum of 10 hours of new documentary per channel.

The ABA's monitoring of the subscription television drama requirement has shown that there is an increasing relationship between the two sectors in the financing of drama. Little is yet known about this relationship in the area of documentary.

It would appear that there are two documentary markets operating. The first is for low cost domestically focused production, either made in-house by the broadcasters or made as a result of the FFC accords with the national broadcasters. The second is for higher cost production undertaken by independent producers that can attract international finance, and sometimes also co-funded with the FFC.

It appears that the documentary quota for commercial television is doing little to stimulate production of higher budget documentary. Since the demise of the Commercial Television Production Fund, there appears to be little incentive for commercial broadcasters to commission more adventurous and higher cost documentary programs. As a consequence the diversity of documentary available to the commercial television audience appears to have diminished.

Research commissioned from Audience Development Australia for the AFC based on their Q-score methodology suggests that there is a strong positive attitude to most Australian documentaries when they are viewed. However the biggest hurdle to improved ratings success is viewer trial, which is made more difficult when documentaries are not shown on a regular basis. There is a potential to attract larger audiences to documentary programming by using different scheduling strategies. The use of series or the packaging of documentaries, as in *The World Around Us* and *Sandra Sully Presents*, has proven very popular with commercial television audiences.

Recommendations

- The ABA and the broadcasters have reported serious inaccuracies in the documentary data. Clearly this data must be correct and verifiable before meaningful analysis can be undertaken.
- The AFC reserves the right to make a supplementary submission to the ABA on documentaries, following the release of revised data on expenditure. In the meantime, we recommend that there be no reduction in the existing documentary quota.
- Questions have been raised about the monitoring of what is categorised as documentary by the broadcasters. The ABA needs to ensure that material classified as documentary meets the appropriate definition.

7. OFFICIAL CO-PRODUCTIONS

The Standard currently allows programs that are treaty co-productions with Australia to qualify as full Australian content. This was introduced for the first time in 1996 when New Zealand and Australia/New Zealand programs were allowed to count. Prior to that there was no mechanism in the Standard, which fulfilled Australia's obligations under its various co-production treaties to accord national treatment.

At the time this change was made, the wording of the BSA obliged the ABA to take account of all Australia's international treaty obligations and not just the CER Agreement with New Zealand. Subsequently the BSA has been amended so that the only international treaty that the ABA is obliged to consider is the CER treaty.

The ABA suggests that it is no longer obliged to take account of the co-production treaties and accord automatic recognition to treaty co-productions.

The Constitution of Australia confers two different powers in relation to treaties. The first is that given to the Executive to enter into treaties and the second is that given to the Parliament to legislate in order to implement treaties.

Under international law, treaties are legal agreements that must be obeyed by the parties entering into them, unless provisions are made for exemptions to the application of the treaties or in some circumstances for denunciation of the treaty.

The conventional view is that the party to such an agreement is the Executive arm of Government and that the signing of a treaty by the Executive does not create an obligation in the domestic law of Australia until the Parliament legislates.

While there is an obligation on the Government to see that Australia adheres to the co-production treaties, the ABA would be entitled to argue that in the absence of legislation it could remove automatic recognition for treaty co-productions. It is not proposing to remove that recognition. It acknowledges the principles of reciprocity inherent in the treaties and the Government's recent re-endorsement of support for the co-production program. It is likely that some other submitters will argue for the removal of automatic recognition.

The ABA notes the concern about series drama co-productions, such as *Beastmaster*, displacing fully Australian drama. ABA monitoring shows that as yet there has been little such displacement.

The ABA suggests two options for dealing with the potential problem of displacement. The first is to eliminate recognition for series and serial drama co-productions under the Standard. The second is that the AFC could limit the application of its guidelines to eligible films under 10BA, thereby not making series and serial co-productions eligible.

The treaty co-production program is a significant mechanism for industry development. It is likely to become a more significant tool for finance as the international market becomes more complex. Restricting the application of the treaties in this way, not only goes against the spirit of reciprocity, but would be likely to raise concerns with our treaty partners. Meetings with Canadian officials and industry representatives in November 2001 indicated that such a move would be problematic for the Canadian government.

What needs to be addressed, however, is the potential for some co-productions to be sold to broadcasters at secondary market prices. A program like *Beastmaster* raised its finance entirely out of Europe and North America, not requiring any pre-sale commitment from an Australian broadcaster. That meant it could be sold into this market at a secondary market price in the vicinity of \$30,000 an hour.

Recommendation

- The AFC endorses the conclusions of the Department of Communications Information Technology and the Arts (DCITA) Review of the Australian Official Co-Production Program (February 2001), that the program 'delivers net economic benefits to Australia' and that 'Australia has reaped greater benefits from the program than its partner nations, in relation to both levels of investment and creative participation'.
- Treaty co-productions should continue to receive recognition in line with Australia's obligations under the relevant treaties. However, the ABA does need to address the potential for some treaty co-productions to be sold into the Australian market at secondary market prices. The contribution of the networks to the financing of all Australian drama should be at similar levels

and there should not be any incentive to obtain quota points at secondary market prices.

- The ABA has demonstrated that it is possible and within its powers to set a minimum licence fee for children's drama. The AFC proposes that a similar mechanism be applied to treaty co-productions.

8. TRADEABLE QUOTAS

The concept of a tradeable quota comes from environmental regulation where it originated as one of the concepts in the Kyoto Protocol on climate control. As a regulatory mechanism for environmental control it is still under development and will not apply in Australia until the Kyoto Protocol is ratified and there is international agreement on how the mechanism should work.

Under the Kyoto Protocol international greenhouse gas emission reduction targets are set. An issue of strong contention is the costs involved for individual countries and manufacturers to meet these targets. It is argued that there are substantial cost differentials between countries and manufacturers in meeting these targets and that the burden does not fall fairly on all.

To address this issue it has been proposed that the targets or quotas required for the reduction of emissions be tradeable. These quotas are issued to emitters who are then able to trade them amongst themselves. Emitters with a high cost involved in meeting emission targets could choose to fund those who have low costs in meeting the targets. The level of emissions is reduced, but at a lower cost to the emitter with a high cost of reduction, and potentially lower marginal costs overall.

Those with a high cost of reduction could purchase excess quota from those with low cost reduction and the latter could earn additional revenue from the sale of excess quota. This could particularly benefit developing countries whose greenhouse gas emissions are low.

A major difference between the regulatory aspect of climate control and that of the Australian Content Standard is that the Standard is primarily designed to *increase* the level of Australian content, whereas the climate control regulation is designed to *decrease* harmful emissions.

The levels of Australian content set by the Standard are minimum levels and not maximum levels. As the ABA points out the overall level of Australian content has traditionally been above these levels. Therefore a mechanism that encouraged broadcasters to reduce the overall level of Australian content by trading excess content runs counter to the object of the Standard.

It can also be argued that there is already enough flexibility in the Standard to allow for the costs of compliance to fall equally on all networks. Differential costs are the result of programming and scheduling strategies chosen by an individual broadcaster in line with their overall business plan.

Tradeable quotas also work against the notion of the Standard stimulating the growth of a market for Australian content in which broadcasters compete for product to meet the Standard and subsequently use this product to compete for audience share. With tradeable quotas there is a greater degree of control given to the broadcasters to

collaborate over the size and scope of the market. In these circumstances a tradeable quota system could be seen to be anti-competitive.

The ABA suggests that the only situation in which the ability to trade quota might be useful is in the area of children's programming when a children's drama fails. This becomes a problem for a broadcaster because they have traditionally only committed to fund the minimum level required. A tradeable quota in this circumstance would only work if one or more broadcasters were interested in producing such excess children's drama that could be made available to be traded.

Recommendation

- Allowing the networks to trade their quota obligations assumes that content obligations are maximums, not minimums. Potentially this undermines the cultural objective of increasing levels of Australian content and the domestic market for Australian content created by the Standard.

9. DEFINITION OF AUSTRALIAN PROGRAMS

The Standard contains a definition of Australian programs known as the 'creative elements test'. The test requires Australians in the following roles:

- producer or producers (additional non-Australian co-producers and executive producers permitted);
- either writer or director;
- at least 50% of the leading actors (including voice actors and on-screen presenters); and
- 75% of major supporting cast in a drama program.

In the case of an animated program, Australians must perform three of five additional creative roles. All programs other than Australian news, current affairs and sports programs filmed overseas must be produced and post-produced in Australia.

The creative elements test does not examine the sources of finance for the individual production nor the nationality of the company undertaking the production. This means that it is possible for companies that are owned and controlled by non-Australian entities to produce programs for the Standard. Examples of these companies currently producing Australian content are Granada Media, Columbia Tri-Star and Grundy.

Under the investment guidelines of the FFC these companies are ineligible to apply directly for funding, unless they co-produce with an Australian production company.

In Canada, the Canadian Radio-Television and Communications Commission that administers the Canadian Content Standard examines the nationality of the production company providing content to the broadcasters. In part this is because Canadian broadcasting legislation has an explicit brief to develop the independent production sector. The Canadian Television Fund and the Canadian Audio-visual Certification Office also require that the programs they administer to support Canadian content are undertaken by Canadian companies.

The UK and Europe also have measures in place to ensure that national or pan-European companies receive the primary benefits of government intervention.

If the combination of regulation and direct investment is designed to produce both a cultural and an industry development outcome, then the industry development measures should favour Australian-owned companies. If Australian companies are strengthened because of their eligibility for access to direct and indirect assistance, this strengthens the competitiveness of the Australian industry internationally. Moreover it assists in retaining the benefits of intellectual property created by Australians.

This is consistent with a strategy that is aimed at encouraging the growth and expansion of content creation and increasing the cultural capital of the nation.

In this regard the ABA also needs to consider potential changes to the media ownership landscape in Australia. The Government has indicated that it will consider changes to the rules governing foreign ownership and cross media ownership. There is potential for such changes to affect the way media industries develop in Australia.

The UK Government is proposing to change its rules relating to media ownership. These were outlined in a paper released by the UK Government in December 2001.²⁵ At present there is a restriction on the ownership of ITV licences – no company may own more than one of the London licences and no company can own licences that would give it more than 15% of the television audience. There is also a restriction on the ownership of television licences by companies outside the European Economic Area.

The UK Government proposes to abolish the rules relating to the ownership of ITV licences. It is likely to permit further concentration of ownership, to the extent of permitting one company to own all the ITV licences. This is likely to provoke the long sought merger of Granada and Carlton, the two largest ITV companies. The Government will retain the restriction on foreign ownership.

If the Australian government were to change the laws relating to foreign ownership this could facilitate increased investment in Australian broadcasters at the same time as UK media companies are poised to take advantage of international expansion. Granada already has an ownership interest in the Seven Network and a production company, as does Pearson, part owner of Channel 5. Carlton and the Nine Network have announced an agreement to jointly develop program concepts for the Australian market. Columbia Tri-Star and Fox are also producing television in Australia.

It is not unrealistic to envision a scenario where a vertically integrated foreign-owned broadcaster and program producer was operating in Australia. If that were to be the case, the benefits of intellectual property creation would not be retained by Australia, even if there were to be no net change to the level of employment of Australian creative personnel.

Recommendation

To encourage the continued development of an Australian owned and controlled production industry contributing to the growth of our cultural capital it is proposed to add to the creative elements test a requirement that:

²⁵ UK Department of Media, Culture and Sport, *Consultation on Media Ownership Rules*

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- The production company responsible for production is Australian owned and under the financial control of Australians.