

8 June 2016

## Screen Producers Australia's submission to the Productivity Commission's draft report into Intellectual Property Arrangements

Screen Producers Australia was formed by the screen industry to represent large and small enterprises across a diverse production slate of feature film, television and interactive content.

As the peak industry and trade body, we consult with a membership of more than 400 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ hundreds of producers, thousands of related practitioners and drive more than \$1.7 billion worth of annual production activity from the independent sector.

On behalf of these businesses we are focused on delivering a healthy commercial environment through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content have been met.

**Screen Producers Australia welcomes this opportunity to response to the Productivity Commission's draft report into Intellectual Property Arrangements. Our submission addresses the proposed changes to the following:**

- **Copyright term**
- **Geoblocking technology**
- **Fair use**

The Productivity Commission has made some very concerning recommendations that Screen Producers Australia believe will harm the production sector, threatening inward investment, jobs and innovation. This is a shared across the production community broadly, including the Australian Copyright Council of which we are a member.

### Contact details

For further information about this submission please contact Matthew Hancock, Manager, Strategy and Operations

## Recommendation 4.2:

***While hard to pinpoint an optimal copyright term, a more reasonable estimate would be closer to 15 to 25 years after creation; considerably less than 70 years after death***

Screen Producers Australia rejects this recommendation. It shows little understanding of the commercial environment in which screen production occurs, one which is characterised by both a long development cycle and a long tail of financial returns across various distribution platforms.

We cite the Australian Copyright Council's submission which questions the integrity of data used by the Productivity Commission in making this assertion. It is clear that the Productivity Commission must consider a broader range of data, much of which is publicly available.

For example, a recent report called 'When Do TV Sales Translate Into Profit?' by Screen Australia, the Federal Government's support agency, provides a valuable overview of the complex of financing and distribution arrangements that form basis of screen production.<sup>1</sup>

In addition, an earlier report 'Staying Power: The Enduring Footprint of Australian Film',<sup>2</sup> provides a more direct response claims by the Productivity Commission that 'the evidence (and indeed logic) suggests that the duration of copyright protection is far more than is needed... particularly when the commercial life of most works is less than five years.'<sup>3</sup>

In this report Screen Australian highlight three 'stand out' feature films release more than 20 years ago: *The Adventures of Priscilla, Queen of the Desert*, *Muriel's Wedding* and *Napoleon*.

This report from 2012 found that 'all three of these films reached profit. *Muriel's Wedding* was the fastest, taking less than a year once released, followed by *The Adventures of Priscilla, Queen of the Desert*, which took around two years, and *Napoleon*, which took five years. But importantly, their earnings haven't dried up, with the three films combined returning more than \$2.5 million to investors over the last five years.

These titles sold across many territories, with sales typically including a mixture of rights. Such international sources of revenue can be very lucrative to a film's investor. In the case of *The Adventures of Priscilla, Queen of the Desert*, for example, foreign returns have accounted for 88 per cent of all revenues over the life of the project, while for *Napoleon* it is 77 per cent and *Muriel's Wedding* 60 per cent.<sup>4</sup>

There are other case studies available, including those cited by the Australian Children's Television Foundation submission. But further, there are structural considerations that need to be considered in the context of the commercial value attributed to the copyright term.

At the same time that the Productivity Commission is taking this short sighted view, the industry is negotiating generational reforms that will remove impediments to the relicensing of local television drama.<sup>5</sup>

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<sup>1</sup> <http://thescreenblog.com/screenintel/when-do-tv-sales-translate-into-profit/>

<sup>2</sup> <https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/staying-power>

<sup>3</sup> <http://www.pc.gov.au/inquiries/current/intellectual-property/draft/intellectual-property-draft.pdf> (pg 17)

<sup>4</sup> <https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/staying-power> (pg 3)

<sup>5</sup> <http://www.screenproducers.org.au/assets/Uploads/PAYING-PERFORMERS-IN-THE-DIGITAL-AGE.pdf>

This is being done in response to a growing array of new primary and ancillary platforms entering the market. Each bringing with it the potential to extend the commercial life of older screen productions.

Screen Producers Australia also notes that the Minister for Communications and the Arts Mitch Fifield has indicated that the Coalition Government has no plans to reduce the life of copyright saying that 'this is not something the Government has considered, proposed or intends to do.'<sup>6</sup>

## **Recommendation 5.2:**

***The Australian Government should implement the recommendation made in the House of Representatives Committee report 'At What Cost? IT pricing and the Australia tax to amend the Copyright Act 1968 (Cth)' to make clear that it is not an infringement for consumers to circumvent geoblocking technology***

As noted, rights management is a critical factor in financing a production with international presales and acquisition a vital piece in the puzzle.

Screen Producers Australia is very concerned that the Productivity Commission is advocating for a damaging reform that will undermine the business models of Australian-based content services. It would retard the growth occurring in new online platforms, it would reduce the number of services operating in our market and it would ultimately reduce investment in local content.

Importantly, the effect of this regulation shows no regard for broader cultural policy that must be weighed up alongside economic policy by government.

Furthermore, the Productivity Commission seems to have ignored the interests of international rights holders who have made a commercial decision to licence their work into this territory rather than distribute it themselves. We agree with the Australian Copyright Council that address this point in detail in their submission.

In it they state that 'market-based mechanisms are the best way of addressing geographic price discrimination. For example, Netflix is now making its original content (*Orange is the New Black*, *House of Cards*) available at the same time all over the world. The quid pro quo of this is that it is only available through Netflix and no other distribution channels. It is our expectation that issues in relation to price and availability will continue to dissipate over time as online business models mature.'<sup>7</sup>

## **Recommendation 5.3:**

***The Australian Government should amend the Copyright Act 1968 (Cth) (Copyright Act) to replace the current fair dealing exceptions with a broad exception for fair use***

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<sup>6</sup> <http://www.mitchfifield.com/Media/MediaReleases/tabid/70/articleType/ArticleView/articleId/1179/Conjecture-on-copyright-changes-unfounded.aspx>

<sup>7</sup> Submission in response to Productivity Commission Draft Report on Intellectual Property Arrangements, June 2016, Australian Copyright Council

Screen Producers Australia has long articulated concerns about a potential move to 'fair use' policy.

As indicated in 2013, as part of our Australian Law Reform Commission response, the current system of 'fair dealing' in Australia is not fundamentally broken. It is widely understood through longstanding commercial practice and there is not a weight of evidence that indicates that the existing exceptions and statutory licences are disadvantaging fair access.<sup>8</sup>

There appears to be no new evidence, arguments or cost benefit analysis presented by the Productivity Commission to alter our view. In fact, we note that the Productivity Commission's proposed 'fair use' amendments are more flexible than those proposed by the Australian Law Reform Commission and would be unlike any other territory.

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<sup>8</sup> <https://www.screenproducers.org.au/assets/Uploads/SPAA-Submission-to-the-Australian-Law-Reform-Commissions-Copyright-and-the-Digital-Economy-Discussion-Paper.pdf>