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Review of Broadcasting Legislation

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AUSTRALIAN FILM COMMISSION (AFC)
AUSTRALIAN FILM FINANCE CORPORATION LTD (FFC)
FILM AUSTRALIA LTD (Film Australia)

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1. EXECUTIVE SUMMARY

This submission by the AFC, FFC and Film Australia primarily addresses the Australian content aspects of the Broadcasting Services Act.

We are mindful that in its terms of reference the Productivity Commission is directed to, amongst other things:

- report on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services;
- focus particular attention on balancing the social, cultural and economic dimensions of the public interest; and
- take into account the technological change in broadcasting services, particularly the phenomenon of convergence.

We have addressed the following terms of reference:

a) the nature and magnitude of the social and economic problems that the legislation seeks to address;
b) the objectives of the legislation;
c) whether and to what extent the legislation restricts competition; and
d) possible alternatives to the current approach.

We argue:

- there is broad consensus that because of their nature as a public good and their influence and role in society there is a continuing need for regulation of broadcasting services in the public interest;

- it is reasonable and necessary to place social and cultural obligations on broadcasters given;
  - the benefits they receive by accessing the spectrum; and
  - the potential conflict between social and cultural objectives and the commercial imperatives of broadcasting organisations;

- content regulation is important to achieving the cultural and social objectives the community expects of the broadcasting system. In particular it is necessary to achieve diversity of programming by ensuring there is a place for Australian programs alongside foreign programs;

- the content requirements placed on free-to-air and subscription broadcasters are modest and do not place onerous burdens on them;

- the cultural and social benefits of content regulation outweigh the costs involved;

- the new technologies and potential convergence do not of themselves make regulation unnecessary or impossible, but may demand new, more appropriate forms of regulation;

- it appears free-to-air television will continue as a very significant aspect of the broadcasting environment; and

- alternatives to regulation such as replacing the current content system with a direct subsidy regime, or placing all obligations for Australian content in the areas of drama, children's programs and documentary on the national broadcasters, appear impractical given the cost implications. Further they are less desirable alternatives as they would serve to reduce the diversity, cultural relevance and accessibility of the broadcasting system.

2. INTRODUCTION

This submission is made on behalf of the Australian Film Commission (AFC), the Australian Film Finance Corporation Limited (FFC) and Film Australia Limited (Film Australia).

The AFC, established in 1975 is the Commonwealth's primary development agency for the film, television and interactive media sectors.

Film Australia is a Commonwealth-owned production and distribution company which manages the National Interest Program, a five year agreement with the Federal Government to devise, produce, distribute and market 100 Australian documentary programs.

The FFC is the Australian Government's main agency for investing in eligible Australian feature films, television drama and documentary programs. It was established in 1988 as a wholly owned government company.

More information on each of these agencies is included in Appendix 1.

This submission focuses on television content issues, particularly focussing on adult and children's drama and documentary programs. These program forms are the areas of broadcasting most directly relevant to the roles and responsibilities of the three agencies. Further, they are the forms of programming most vulnerable to replacement by other program formats and/or imported programs.

We consider:

-the public interest and the objectives of broadcasting policy
-the economics of broadcasting
-current content regulation and possible alternatives
-international agreements and

-the changing nature of broadcasting.

One of the major roles of the Broadcasting Services Act (Act) is to balance the commercial imperatives of private broadcasters with the public interest. Content regulation is a key strategy towards achieving this.

The principles underlying this are:

- the 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.

> *"Television is a most important medium for reflecting the tastes, concerns and aspirations of a society and as such, It is the main means of transmitting that society's culture through the stories portrayed through the medium."*
>
> Senate Committee Report, February 1999, p 1.[1]

The Explanatory Memorandum to the BSA Bill 1992 referring to the underlying policy for Australian content regulation, advises

"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."

1 Senate Environment, Communications, Information Technology and the Arts Legislation Committee, *Australian Content Standard for Television and Paragraph 160(d) of the Broadcasting Services Act*, February 1999.

and further that

"It is intended that commercial broadcasters broadcast Australian programming which:
- *reflects the multicultural nature of Australia's population*
- *promotes Australians' cultural identity*
- *facilitates the development of the local production industry, and includes a requirement for Australian programming for children."*[2]

The Memorandum recognised the close connection between objects (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;*** of the Act. To have programs which reflect Australian cultural identity there must be a viable Australian production industry to make them.

The 1992 Bill and the 1996 revised content standard represented a significant shift from the previous form of regulation with an increase in flexibility provided to broadcasters in relation to how they can meet their content obligation and by self regulatory codes of conduct in areas of taste and decency.

The Parliament, however, considered it was still necessary to maintain mandatory standards with regulation and monitoring by an independent authority for Australian content and children's programming. Our submission argues that this remains unchanged and that this issue is too important to be relegated to self regulation.

The 1992 legislation also mandated the introduction of pay television in Australia establishing mandatory Australian content requirements for these services. The form of regulation adopted for pay recognised the different form of delivery which pay provides.

Parliament again reaffirmed the need to regulate for Australian content in the 1998 Digital Conversion Act which maintains the content requirements for digital television.

The Explanatory Memorandum to the Digital Conversion Bill included the following in the objectives of regulation:

"To increase viewer choice and diversity of product (recognising the role of community television services and Australian content in this regard)."

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2 ABA, *Review of the Australian Content Standard - Discussion Paper*, July 1998 p.13.

"The Commonwealth provides this support in order to achieve its cultural objectives and to enrich the cultural life of all Australians.

Film and television productions are an integral part of Australian life. At the end of the 20th century, they have emerged as the most accessible of all cultural activities and a medium in which Australian creators are able to reach the world."

Gonski Report [3]

2.1 Television's Reach

Because of the pervasiveness, accessibility and popularity of television, the requirement for Australian content is the most far reaching of the various forms of cultural support the government provides to the community.

Television is the most popular form of entertainment enjoyed by Australians and is the most influential means of communication. The 1997 AC Neilson survey of viewing trends shows that average daily viewing time for most Australians has remained unchanged since 1991 - in metropolitan areas 3 hours and 13 minutes and in regional areas, 3 hours and 23 minutes.[4]

ABS studies show the most popular recreation and leisure time activity is use of audio-visual media which includes watching TV and video, and listening to the radio, CDs and tapes. In 1997, Australians spent 4 hours and 17 minutes a day on these activities.[5]

While studies show that support for other forms of cultural activity supported by government such as concert music, theatre and opera has increased, these are often not readily accessible to all Australians for a variety of reasons including geography and affordability.

The content system supports a diversity of program types - series, serials, telemovies, mini-series, children's programs and documentaries. Feature films and telemovies are also supported by the pay requirement.

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3 David Gonski, *Review of Commonwealth Assistance of the Film Industry*, Department of Communications and the Arts, 1997, pp 5-6.

4 A.C. Neilson, *TV Trends*, 1998.

5 ABS 1997 Time Use on Culture/Leisure Activities Catalogue No. 4173.0 The term 'audio-visual media' includes two components-watching TV and video, and listening to the radio, CDs and tapes. The 1992 study showed that watching television and video was the most popular activity. The 1997 survey did not provide a breakdown between the two components.

2.2 The Nature of Cultural Goods

> *"Most of the culture that people acquire today comes from cultural goods produced for a mass market .... cultural goods convey information which helps to varying degrees to shape people's opinions, values and tastes. Access to and participation in culture imply issues related to freedom of expression and opinion and its extension, people's right to know. These rights and freedoms are intimately linked to the vitality of democracies."*
>
> Centre for Media Studies, Universite Laval, Quebec[6]

Cultural goods are different to pure commodities.

Successive Australian governments have accepted that without government intervention it is extremely difficult for small countries like Australia to produce domestic programming presenting local perspectives, views and concerns.

Australian content requirements for free-to-air and to a lesser extent for subscription television ensure Australian viewers have choice between foreign and Australian programs. These requirements have a major part to play, in concert with other aspects of audio-visual policy, in ensuring the representation and expression of a diversity of dramatic and documentary forms on Australian television.

Over the years Australians have been able to watch a wide range of 'home grown' programs. There has been growing recognition of the key role films and television programs play in our social and cultural life, and in the growing national maturity and sense of identity that has marked the last thirty years.

The Gonski Report described this role in the following terms:

"A vibrant Australian film and television industry can play a key role in:

- *defining and exploring what it is to be Australian;*
- *encouraging national maturity and independence through a developed awareness of self and the capacity to honestly appraise that self image;*
- *recognising and exploring our own diversity;*
- *promoting a more inquisitive, imaginative and thoughtful society;*
- *projecting diverse images of Australia both nationally and internationally; and*

6 Media Studies Centre, Université Laval, Quebec, Background Paper for Seminar on Cultural Goods and Services and Trade Negotiations 1999.

- *providing for current and future generations an historical record of contemporary issues and events that illustrate life in Australia."*[7]

In addition, the stories told through films and television programs play an important unifying role for a society like Australia. By sharing the same viewing experiences we communicate concerns and ideas and come to a sense of our diverse but shared community.

The Government has endorsed the broad thrust of the Gonski Report:

- that there is a continuing need for public support to achieve the government's cultural objectives; and
- that the mix of support measures, combining direct and indirect funding measures and Australian content requirements is effective and should continue.

2.3 Cultural Diversity

Local content rules in general and certain program categories in particular (such as drama, documentary, children's drama and other children's programming) are based on cultural policy objectives of diversity. It is not about privileging certain program forms over others, but ensuring a wider range of programs are available in schedules than would otherwise occur.

The ultimate objective is to provide a choice for Australian audiences between a greater range of program formats, genres, sources of information and entertainment.

Cultural diversity has generally been considered an important policy objective. In terms of broadcasting, diversity usually refers to the following :

- ideas and opinions
- ownership of broadcasting institutions
- media institutions and broadcasting services (structural diversity - commercial free-to-air, subscription, national and community services)
- program types (content diversity)
- sources of information and entertainment.

The pursuit of policy strategies designed to further these goals is linked to a continuing notion that "holding a broadcasting licence is a form of public trust"[8] carrying an obligation to contribute to certain social and cultural aspects of society.

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7 Gonski, p.15.

8 T. Flew, *Pay TV and Broadcasting Diversity in Australia*, Media International Australia, No 77, August 1995. Australian Film, Television and Radio School, p.130.

3. THE AUSTRALIAN CONTENT SYSTEM[9]

The relevant objects of the Act are:

(b) to provide a regulatory environment that will facilitate the development of a broadcasting industry that is **efficient, competitive** and **responsive to audience needs;**

(e) to promote the role of broadcasting services in **developing and reflecting a sense of Australian identity, character and cultural diversity**; and

(f) **to promote the provision of high quality and innovative programming by providers of broadcasting services**.

The content rules play a vital role in meeting these objects.

Free-to-air television is required to meet a transmission quota that 55% of all programming broadcast between 6 am and 12 midnight must be Australian and to meet minimum levels of adult drama, documentaries, children's drama and other children's programming (sub-quotas).

The content requirement for subscription television requires, in the case of predominantly drama channels, that 10% of program expenditure is devoted to Australian drama programs. The scheme is currently unenforceable because the legislation did not anticipate the structure of the industry. The Government has announced it will introduce legislation in the near future to correct this.

In both cases the precise nature of the requirements are subject to periodic review and the ABA's processes mean there is considerable opportunity for community and industry input. The outcome is one that represents a balance between the public interest and the commercial interests of broadcasters.

It is the sub-quota areas of adult drama, children's drama and documentary which are particularly vulnerable to replacement by lower cost imported programming. The relationship between costs of production and level of demand ensures some level of protection for the other areas which make up the bulk of the transmission quota - news, current affairs, sports, and light entertainment where production costs are lower and where it would not make sense to broadcast large amounts of foreign programming.

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9 Since April 1 1999 New Zealand programs can count towards Australian content as a result of the High Court decision in the Project Blue Sky case.

Content regulations are not designed to protect the production industry but to ensure an Australian supplement as "imports continue[d] to dominate prime-time and off prime-time in the drama category."[10]

The Australian independent production industry delivers content to broadcasters and is in international terms extremely competitive and cost efficient. An independent analysis undertaken for the United Kingdom Secretary of State for Scotland compared production and post-production costs for eight selected countries in eleven key cost areas. Australia was substantially lower than major international production countries: United States, United Kingdom, Canada and Germany in six of the eleven key cost areas and competitive in all other areas.[11]

The following table shows the share of total programming occupied by Australian drama, documentary and children's programming.

SHARE OF HOURS BROADCAST 1997 6am - midnight[12]

	ALL PROGRAMMING		FIRST RELEASE AUSTRALIAN PROGRAMMING		
CATEGORY	Hours Broadcast[13]	% Share of Hours Broadcast	Hours Broadcast[14]	% Share of Hours Broadcast for Category	% Share of Total Hours
DRAMA	1577	24%	174	11%	2.6%
CHILDREN'S	788	12%	263.6	33.4%	4.0%
DOCUMENTARIES	394	6%	23	5.8%	0.35%

Mandatory requirements in the sub-quota areas are minimal. For example, the drama requirement provided an average of 174 hours of first release Australian drama per network in 1997, or

- less than half an hour a day;
- 11% of all drama programming; and
- a mere 2.6% of all programming from 6 am to 12 midnight or 8.5% of total prime time programming.

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10 Tom O'Regan, *The Janus Face of Australian Television*; Local and Imported programming, in A Moran (ed), *Film Policy: An Australian Reader* 1994 p.100.

11 Hydra & Associates, *Scotland on Screen*, 1994, pp.164-175.

12 Average per capital city broadcaster - total hours all categories are 6570 ie 18 hours x 365 days.

13 AC Nielson, TV Trends 1997.

14 ABA Compliance Results, 1997.

The documentary requirement provided in 1997 an average 23 hours of first release Australian documentary per network, or

- less than 4 mins per day;
- 6% of all documentary programming; and
- a mere 1% of all programming from 6am to midnight.

The Australian share of children's programming is higher than the other two categories because of the requirement that 130 hours of C programs broadcast and 130 hours of P programs broadcast must be Australian.

(See Appendix 2 for more detail on network compliance with the content standard). At the time of writing compliance results for 1998 had not yet been released.

4. WHY IS REGULATION NEEDED?

Successive governments have accepted that without regulation there was a very real danger that levels of local content would fall to unacceptably low levels.

> *"An appropriate regulatory framework is required to enable Australian television audiences to have access to Australian film and television product."*
>
> Senator Richard Alston[15]

The recent Senate Committee report on the Australian Content Standard stated:

"The implication of such statements (on the influence of television) is that transmission of Australian culture through television should be encouraged beyond what the private market would supply; or at least is too important a matter to be left to the vagaries of the unfettered market."[16]

This is primarily because of the economics of television markets internationally and the wide disparity of prices obtainable in primary and secondary markets. Television producers aim to recover all or most of their production costs from their home market. Sales to secondary markets are made at a level which the market can bear (rather than with reference to the initial production cost) since the cost of duplicating the program is a fraction of the cost of creating the original.

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15 Address to 1997 Screen Producers Association of Australia (SPAA) Conference.
16 Senate Committee Report, p 1.

4.1 The Economics of Television

We refer the Commission to the AFC's submission to the Senate Inquiry into the Australian Content Standard and to the section on the Economics of Television in the ABA July 1998 Discussion paper.[17]

Broadcasters pay licence fees for the right to broadcast programs. The licence fee usually covers an initial broadcast and an agreed number of repeats within a specified period.

The analysis of primary and secondary markets in television is widely accepted and not in dispute between producers and broadcasters. Audio-visual production sectors in countries such as Australia operate in an international media environment where overseas programs can be placed in domestic markets at a fraction of their development and production costs.

This essentially creates two domestic markets: where the difference in price between the local and imported (or secondary market) programs is substantial.

The price differential stems not from relative efficiencies between local and overseas industries but because programs recover their costs in their home market and sell at a much reduced price into secondary markets. For example, high budget US drama programs made for more than US$1 million per hour are sold to Australia for between A$11,000 and A$40,000 per hour.[18]

The price differential for programs selling in their second and subsequent markets compared to the cost of producing similar local programs varies between 10:1 and 400:1 depending on the particular country, the specific program type and the type of broadcasting service (free-to-air or pay). What does not vary is the fact that it is always cheaper for a local broadcaster to purchase imported programs than to commission or make a local program.

This basic structure underpins the global television industry.

Consequently, imported programming is always significantly cheaper for broadcasters anywhere to purchase. High rating American programs such as *Friends* (the number 1 rating program on Australian television at the time of writing and costing US$3.75 million per hour to produce) and *Jesse* (the number 2 and costing US$795,000 per hour to produce) sell into

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17 ABA Discussion Paper, pp.20-23. The AFC's submission is available on the AFC's website at http://www.afc.gov.au/about/whowe/viewpoint.html. Another useful source is S. Molloy and B. Burgan, *The Economics of Film and Television in Australia*, Australian Film Commission, 1993. This is still one of the most useful and comprehensive studies of the subject.

18 TBI Yearbook 99, Television Business International, 1999, p.444.

Australia at prices ranging from A$11,000 to A$40,000 an hour - a fraction of their production cost and a fraction of the cost of producing similar programs in Australia.

Australian serials, the cheapest form of drama, such as *Neighbours* and *Home and Away* cost approximately A$100,000 to A$120,000 per hour to produce and series such as *Water Rats, Murder Call* and *Blue Heelers* cost between A$300,000 to A$500,000 an hour.

Further, as the Senate Committee report noted:

"the cost structure of television production is distinctive in that the fixed costs of producing programs and maintaining transmission facilities are relatively high but, once the fixed costs have been incurred, the extra marginal cost of selling a program in another market, or broadcasting it to extra viewers, is very low. Thus there is a strong incentive to show a program in as many places as possible."[19]

Quoting the ABA, the report described the outcome in the following terms:

''The result is that 'despite the popularity of Australian programs, the comparative cost of making local, versus buying imported programs means that ratings alone are insufficient to ensure high levels of Australian content on commercial television.' In other words even if a foreign program rates poorly, it could still be an attractive proposition for a broadcaster (particularly outside prime time)."

4.2 Market Size

The size of the domestic market influences the level of revenues and the capacity to return on production costs.

The United States has almost 100 million television households; Europe has 145 million; the United Kingdom has 23 million while Australia has 6.8 million.

The domestic market in countries like Australia is simply too small to generate sufficient revenue to cover the costs of production of a sufficient number and diversity of higher budget programs like drama, documentary and children's programming.

For example, Australian commercial free-to-air television broadcast revenues in 1997-98 were $2,755.8 million (a 7.7% increase on the previous year's $2,558.4 million). Advertising revenue made up the bulk of this

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19 Senate Committee Report, p 1.

being $2,540 million or 92.2% of total revenue).[20] Revenues have increased substantially over the past six years, with total revenues increasing by 62% from A$1.7 billion in 1990-91.

Despite this, Australian advertising revenues are significantly less than those of other countries such as:

• United States	US$	41.2 billion per annum,[21]
• United Kingdom	US$	5.5 million per annum,
• France	US$	5.5 million per annum, and
• Germany	US$	6.5 billion per annum.[22]

These revenues allow countries with much larger audiences to spend greater amounts on local programming. In 1998 the pre-sale paid by major US networks for US drama programs included the following examples:[23]

• *ER*	US$	13,000,000 per hour
• *Home Improvement*	US$	3,680,000 per hour
• *Friends*	US$	3,250,000 per hour
• *NYPD Blue*	US$	1,850,000 per hour
• *The X Files*	US$	1,750,000 per hour
• *Ally McBeal*	US$	1,475,000 per hour
• *Melrose Place*	US$	1,350,000 per hour

Even though other less popular programs are paid lesser amounts, in the US$500,000 range, they are far above the average licence fee paid in Australia.

Current Australian licence fees are approximately:

• Series drama	A$	200,000 - 250,000 per hour
• Telemovies, mini-series	A$	250,000 - 300,000 per hour
• Children's drama	A$	40,000 - 55,000 per half-hour

These figures highlight the second major disadvantage confronting television producers from relatively small countries. In the US the licence fees paid by the local broadcaster commissioning the program amount to an average of 75 to 85% of the total production cost, with a significant number of program licence fees for drama covering the full cost of production (39 of 92 drama programs screening in the United States "fall Schedule" were full financed by licence fees). In those cases where the production is not full financed by the licence fee, on average the producer

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20 ABA Financial Results, Commercial Broadcasters 1997-98.

21 TBI (Television Business International) Yearbook 1998. All television advertising revenue estimates are for 1997.

22 The Hollywood Reporter, 28/4-4/5 1998, p.59.

23 The Hollywood Reporter, September 1998, *Primetime Fall Schedule*, pp.16-31.

has to seek between 15 and 25% of the budget from other financing sources.

In the United Kingdom there is a similar phenomenon where both the commercial sector, ITV and public sector broadcasters (BBC and Channel 4) fully finance a significant number of new drama programs such as the *Inspector Morse* and the Lynda La Plante mini-series (*Prime Suspect* and others). A UK Broadcasting Act requirement for a specified level of independent production has enabled producers to negotiate agreements where between 70 and 80% of production budgets are met by the broadcasters as payment for a licence fee. This leaves the producers needing to raise between 20 to 30% of the budget through overseas sales or other investment.

The Australian Content Standard has enabled local program makers to attract licence fees that meet a much larger proportion of the budget for serials than for series and 30 - 40% percent for children's drama leaving a higher proportion of budgets compared to competitors, to be raised through other mechanisms.

There is a large and widening gap between Australian free-to-air licence fees and production costs for drama. Licence fees have dropped so significantly, in real terms over the past decade, that producers are often having to deficit finance up to 80% of production budgets.

Both direct and indirect subsidy via 10BA are available only for feature films, television mini-series, telemovies, children's mini-series and documentary programs <u>but not series nor serial drama</u>.

The gap between licence fees and production costs is much higher for mini-series and telemovies. Licence fees paid for Australian mini-series range from A$200,000 to A$300,000 per hour while production costs in recent years have been closer to A$750,000 to A$1 million.

The more expensive forms of drama are often funded through a combination of direct subsidy or indirectly via 10BA tax concessions and the content rules.

The documentary sector also demonstrates the features outlined above. Production costs in Australia range from A$200,000 to A$300,000 per hour, and licence fees from commercial broadcasters for Australian documentaries from A$30,000 to A$40,000 per hour. Licence fees for imported documentaries range from US$5,000 to US$20,000.[24]

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24 TV World 1998 Guide to Programme Prices and Finance.

5. WHAT IT MEANS FOR BROADCASTERS

5.1 A Flexible Mechanism

We believe the current requirements are not onerous to broadcasters and provide them with considerable flexibility.

The current system has its basis in the 1996 standard which was considerably revised and simplified from the previous 1990 standard.

The 1999 standard made some changes in addition to including New Zealand programs. However, these do not substantially change the nature of the system. Indeed in some ways they add to its flexibility. For example, telemovies which have already been broadcast on pay television can now be counted towards quota for free-to-air television.

The sub-quotas do not operate to enforce particular genres on broadcasters. All networks employ a mix of program categories including drama, children's and documentary as do free-to-air services internationally. The content system is not about forcing networks to program certain categories but rather to require that within existing program categories diversity is maintained through the inclusion of Australian programs.

The adult drama quota has considerable flexibility and means a broadcaster can choose between the various drama formats of series, serials, mini-series, telemovies and feature films. This is reflected in the Australian programs shown by each network.[25] Animated drama and dramatised documentary may also be included.

The following is a summary of how each network made up its adult drama quota in 1997.

7 Network - 1 serial - *Home and Away*
4 series/format factor 2 (3 of which were comedies) - *Blue Heelers, Bulpitt!, Eric, Full Frontal*
2 feature films

9 Network - 1 serial - *Pacific Drive*
3 series - *Good Guys Bad Guys, Murder Call, Water Rats*
25 feature films
1 telemovie - *Halifax f.p.: Deja Vu*

10 Network - 1 serial - *Neighbours*
4 series/format factor 2 - *Big Sky, Medivac, State Coroner, Ocean Girl*

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25 The ABA compliance results published each year include the list of programs each network has submitted pursuant to their content obligations.

There is no attempt in the standard to influence genres within these broad program categories and networks have total flexibility to support and broadcast programs aimed at their particular demographic. An example of this is Channel 10's program *Breakers* developed specifically for its target youth audience.

The ABA review process provides the opportunity to amend the standard in response to market developments. Some previous examples of this include:

- the recognition of telemovies previously shown on pay referred to earlier
- the inclusion of sketch comedy in the drama category in 1996 and
- the inclusion of animated drama and dramatised documentary in the definition of drama.

5.2 What is Australian?

The mechanism for determining Australian content has been an assessment of the "creative elements" involved in making the program. Alternatives to this approach have been canvassed previously. For example, the Australian Broadcasting Tribunal (ABT) in its review of the local content Standard (TPS 14)[26] considered the use of "on screen" indicators of "Australianness" such as accent, look and perspective. The recent ABA review of the Australian Content Standard, in the light of the High Court decision in the Project Blue Sky decision, also considered the "look test". In rejecting this approach the ABA noted "practical administrative issues in operating a potentially uncertain test"[27], noting also that the ABT and ABA have previously rejected a "look test" on policy and administrative grounds.

The ABA also noted the High Court's Herald Sun decision in 1985 which required that "Standards must establish general criteria which are fixed in advance and certain in their meaning and application"[28]. It was acknowledged that establishing general criteria would leave the ABA with significant discretion, while not providing certainty to broadcasters and producers in advance as to which kind of programs met the requirement.

An adequate look test definition would also need to allow for a program which tells a story that occurs outside Australia, for example, the feature films *The Year of Living Dangerously* , *Gallipoli* and *Breaker Morant*, the

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26 See Australian Broadcasting Tribunal, Inquiry into Australian Content, 1991.

27 Australian Broadcasting Authority, Regulatory Impact Statement, Review of Australian Content Standard, p.15.

28 Australian Broadcasting Authority, Regulatory Impact Statement, Review of Australian Content Standard, p.16.

series *Embassy* or the mini-series *Bangkok Hilton, Barlow and Chambers* and *A Town like Alice.*

To meet the definition of Australian content, it has been accepted that the creative people involved have to be primarily Australian just as Australian novels could only be written by Australian authors.

Because film is a collaborative cultural product, creative input is more complex to define. For the purposes of a clear and certain regulation upon which broadcasters and producers can rely, the general language above is inadequate and a more precise definition has developed.

The ABA's approach which is similar to other jurisdictions, is that the character of a program is essentially determined by those in creative control. The standard encapsulates this in the following terms:

"The object of this standard is to promote the role of commercial television broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community's access to television programs produced under Australian creative control."

While one or two people may be responsible for an original idea and for developing this to the stage where it is ready for production, it is the collaborative work of those in the key creative positions that shapes the result.

As the ABA discussion paper commented "if eligible programs were determined by means of an on-screen test alone, the nationality of those making the programs would not matter and programs from anywhere in the world would be eligible. "

In recent years there has been significant levels of foreign production taking place in Australia to the extent that a campaign has recently been mounted in Los Angeles to bring off-shore US production home. Much of this foreign production while shot in Australia is designed to appear as if it were shot elsewhere or is set in a non-naturalistic world.

However, some foreign projects may and still do 'look' Australian.

The current test does not prohibit foreign involvement in a project. For example, the standard does not use source of finance as a criterion. Television programs and feature films are increasingly accessing international finance by way of presales and distribution guarantees. The test also provides flexibility in the cast area recognising that at times foreign actors may be required for feature films and the more expensive forms of television drama by a financier or to meet special casting requirements such as ethnicity.

The current creative elements test is very flexible and any further loosening would in our view detract from the objects of the standard and the Act.

6. QUOTA OR DEMAND DRIVEN?

There has been debate about the extent to which the growth of Australian drama has been due to quota protection or audience demand. Some commentators point to the ratings successes of certain programs and argue that regulation is no longer needed as Australian drama content is now audience driven. This same argument is regularly made by the commercial networks.

The weakness of this argument - that audience popularity as measured by ratings will by itself guarantee reasonable levels of Australian content is demonstrated by the *State Coroner* case.

State Coroner was initially developed and produced as a telemovie with participation by the 10 Network in 1996-97 under the Commercial Television Production Fund. Subsequently Channel 10 ran two series over two years. The program was one of the Ten Network's highest rating drama programs and the highest program overall in Melbourne. It was discontinued towards the end of 1998 because, as we understand, of a failure to secure adequate international sales.[29]

Consistently high ratings are only achieved by some Australian programs. There are also geographic differences in the ratings of particular programs between say, Sydney and Melbourne.[30]

Ratings and the consequent ability to chase high advertising rates do not apply to children's programming. It is generally agreed that without quotas there would be virtually no quality Australian children's drama on television.

While Australian programs often rate well so do foreign programs. Of the twenty top drama programs on Sydney television in 1996, two, *Blue Heelers* and *Water Rats* were Australian. In 1997, four out of twenty-nine were Australian - *Blue Heelers, Water Rats, Murder Call* and the mini-series *Kangaroo Palace*.

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29 Some other recent examples of programs which rated well but which were discontinued are *Murder Call* and *Good Guys, Bad Guys*.

30 The AFC publication *Get the Picture: Essential Data on Australian Film, Television, Video and New Media* includes information on ratings. The 5th edition has, for example, lists of the top rating Australian mini-series since 1978 and the top rating Australian films since 1980 along with top rating programs in all categories for 1996 and 1997. The generally accepted measure of a good rating is 15 and above.

Many Australian drama programs which ultimately achieve high ratings start out slowly. This was the case with *Prisoner, Sons and Daughters, A Country Practice, Blue Heelers, Neighbours, Home and Away* and *Water Rats*.

A 1998 Australian Broadcasting Tribunal study highlighted the example of Neighbours.[31] The program first screened on Channel 7 in 1985 in the 5.30 to 6.00 pm slot and was dropped because of poor ratings. It was then acquired by Channel 10 and broadcast in the 7.00 to 7.30 pm time slot where it initially trailed behind 7 and 9. It started to gain ground in Melbourne in 1986, and in Sydney in 1987, going on to become one of the most successful Australian drama series domestically and internationally earning significant export dollars.

The history of the minimum drama requirements under the ABT/ABA content rules is set out in Appendix 3.

An examination of the relationship between quota levels and amounts of drama broadcast since the early days of content regulation, indicates a close relationship between the two. We have concluded:

- there is a close connection between the introduction of a drama requirement in 1967 (and subsequent increases in 1974, 1976 and 1990) and the growth in the amount of drama screened by commercial television from the mid sixties to the late seventies/early eighties;

- there has been a clear connection between the introduction of specific quotas for children's drama in 1984 (and subsequent increases in 1990 and again in 1996) and the growth in the production of such programs; and

- the current drama requirements operate as a very important safety net especially in the period since the late 1980s when actual levels have declined.

Molloy and Burgan and others have commented that the demand for Australian programs was 'ratcheted up' by the availability of local material over the last fifteen years.

"However it must be pointed out that the television networks must take into account the cost of programs as well as ratings, and it is quite possible that the 'ratchet' is not a perfect one and that, under cost pressure, networks might decrease the level of Australian content resulting in a fall in the Australian cultural content of Australian television programs which would obviously represent a frustration of government's cultural objectives. In the absence of Australian content requirements it is possible

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31 ABT Australian Content Inquiry Discussion paper, Ratings of Australian Drama Series, Mini-Series, Films and Telemovies, March 1988.

that at least one network might find that the lower cost of foreign programming might offset the reduced ratings associated with switching to all foreign programming."[32]

As the ABA put it in 1994 "Australian content regulation has helped create an environment within which the preference for and popularity of Australian programs has been fostered and given an opportunity to be demonstrated."[33]

7. WHY REGULATION IS STILL NEEDED

The Gonski review concluded that without support mechanisms there would still probably be some Australian drama but it would be restricted to low cost series and serials.[34]

The ABA's view is that

"Experience with the current and previous Australian content standard shows that without regulatory requirements the subquota areas of first release drama, documentary, C drama and C and P programs are most vulnerable to replacement by imported programs."[35]

The compliance results for 1996 and 1997 continue to illustrate this point. While all three networks exceeded their adult drama points in both years, they just met the children's drama quota in 1996.

In 1997, two networks were in the same position in respect of children's drama, and one, Seven was half an hour under the minimum requirements.

Further, the Ten Network only just met the minimum 10 hour documentary requirement in both years.

The following are some examples of non-compliance from earlier periods[36]

- In 1977-78, three years after an Australian content requirement was introduced, 8 of the 15 metropolitan stations just met the minimum 104 hours requirement.

- An ABT survey of six capital city stations showed that between 1979-80 and 1986-87 prime-time drama decreased on three stations and increased marginally on the other three.

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32 Molloy & Burgan, op cit, p.112.
33 ABA, 1994 Discussion Paper, p.14.
34 Gonski, p.57.
35 ABA, 1998, op cit, p.24.
36 ABT. Annual Reports.

- In 1983-84 QTQ9 and GTV9 failed to meet the prime time drama requirement screening a mere 38 and 52 hours respectively. They both ended up satisfying the minimum 104 hours requirement by obtaining the agreement of the ABT to count non-prime-time programs. Again in 1984-85 Channel 9 only met quota by being able to include 20 hours of non-prime-time programs.

- From 1993 to 1995 :
  - one network was in excess of the quota points required;
  - one network did not comply; and
  - one network increased its levels of drama to achieve the quota.[37]

The fact that broadcasters have just met or are just below quota levels is compelling evidence of the continued relevance of the quotas.

The decline in expenditure on Australian drama and in hours broadcast also counters the view that network response to audience demand is sufficient to ensure adequate levels of local drama.

- Despite an increase, 1997-98 expenditure levels on Australian drama were $6.7 million less than in 1992-93, a reduction of 7.5%.

- Over the same period expenditure on foreign drama increased by 32%.

- While expenditure on Australian drama rose from 1996-97 by $8.5 million or 11.5% in 1997-98 it appears at least a proportion of the apparent increase was due to the change in definition of Australian drama introduced in 1996. From 1 January 1996, sketch comedy has been eligible for Australian drama points; allowing a program format that had screened previously to count. This did not represent therefore, additional expenditure on Australian drama programs. In 1996-97 the increase in expenditure on both Australian and foreign drama programming was similar - 11.5% for Australian and 12.6% for foreign.

- From 1995-96 to 1996-97 network expenditure on Australian drama dropped by 4.4% while expenditure on foreign drama increased by 14.6%.

(See Appendix 4 for further information on expenditure by commercial networks on Australian programs.)

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37 Gonski, p.56.

The following table shows average hours of first release adult and children's drama -screened from 1989-90 to 1997 and demonstrates hours of adult drama have been declining since the late eighties.

Average Hours of First Release Drama Broadcast 1988/89 to 1997

	Adult	Children's	Total
1997	174	28	202
1996	183	24	207
1995	162	18	180
1994	180	19	199
1993	195	18	213
1992	206	21	227
1991	221	17	238
1990	221	15	236
1988 - 1989	206	n/a	n/a

Source: ABA Compliance results

This is not caused by a shift from 'quantity to quality' encouraged by the higher weighting given to more expensive forms of drama by the ABA standard.[38] Expenditure has also declined over this period and fewer mini-series and telemovies have been screened.

Moreover, this decline in adult drama occurred over a period when a number of Australian drama series and other programs have enjoyed consistently high ratings.

Aggregate figures in the AFC's 1997-98 National Production Survey show an increase in the value of Australian independent drama produced since 1994-95. But these include programs produced for the ABC and SBS and projects supported through the Commercial Television Production Fund - a three year fund which provided direct subsidy and was administered by the AFC. See Appendix 5 for more details on the CTPF.

The table in Appendix 6 shows independent productions levels from 1988-89 to 1997-98 (excluding programs made for ABC and SBS) and indicating CTPF projects separately.

The following conclusions can be drawn from this table:

- Once CTPF projects are excluded the total number of television productions in the last 2-3 years has remained unchanged since the late eighties. Except for 1994-95 there has been no or minimal increase.

38 This applied to the 1990, and 1996 standard and now the 1999 standard.

- The increase in total number of programs produced over the last three years is due to CTPF projects;

- There has been a modest increase in the number of adult series and serials over the total period;

- This has been balanced by a reduction in the number of adult mini-series from the late eighties and some reduction in telemovies in the last three years;

- Increases in total series and serials are mainly due to the increase in children's programs in this category which reflects the increases in the minimum children's drama requirements in 1990 and again in 1996.

7.1 International Sales

Australian television programs have had increased success in the international market since 1992-93. The value of royalties from television programs increased from $39 million in 1992-93 to $117 million in 1996-97.

There is still an overall trade deficit in television programs and in the broader category of "film, television and video" royalties.[39] In 1996-97 Australia spent three times as much importing film, television programs and video as it earned from exports of those it produced itself.

It is clearly the Australianness of the programs that has appealed to the international audience. Experience in Australia and overseas has demonstrated that copying another style, for example, that of the United States, is not the way to gain inroads in international film and television markets.[40] It is programs with a distinctly national flavour that show one country to another, that are successful.

As international sales have grown, Australian programs have been increasingly funded by a combination of licence fee or network equity investment and overseas presales and distribution guarantees, supplemented in the case of telemovies, mini-series and children's drama by direct funding primarily through the FFC and in the case of documentaries, Film Australia.

While the increase in overseas sales is positive, it should not be seen as a basis for relaxing content rules. Moreover, it is not a particularly secure source of funding. There have been reports in the last year or so of

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39 Detailed information on Australia's audio-visual trade can be found at Chapter 6 of *Get the Picture*, 5th edition. The deficit in film, TV and video royalties in 1996-97 was $328 million .

40 The strategy of aiming for the international market by making 'international' (mid-pacific) films was followed by sections of the film industry in the mid-eighties with poor artistic and commercial results.

Australian programs having difficulties in securing overseas sales. We are expecting to have figures very soon on the latest Balance of Payments figures for the year 1997-98, and will make these available to the Commission when received.

8. ALTERNATIVES

The current content quota system means the broadcasters meet a substantial part of the cost of providing Australian programs. In the case of mini-series and telemovies, children's drama, and to some extent documentary, the network contribution meets a smaller portion of the production costs and direct funding is also required primarily through the FFC (and for documentary, Film Australia).

8.1 Direct Funding

We understand an alternative the Commission wishes to explore is whether it would be more efficient for Australian content to be delivered by way of subsidy rather than regulation. We assume the proposition would be to subsidise the sub-quota areas - adult and children's drama and documentary.

Network expenditure in 1997-98 (see Appendix 4) on the sub-quota areas was:

	$	
Adult drama	82.9	million
Children's drama	11.8	million
Documentaries	6.3	million
Total	101.0	million

This cost currently represents 3.7% of the total revenue ($2,755.8 million) for the 47 commercial licensees.

The expenditure of the pay television industry on Australian programs for 1997-98 was $8,173,504 -if the 10% minimum requirement had been met the amount would have been just over $10 million.

Assuming $10 million for pay, the total expenditure by free-to-air and subscription television would be $111 million.

The Commonwealth Government's total allocation to film agencies in the 1999-00 year is $113.68 million.[41]

41 Includes funding to the Australian Film, Television and Radio School, The National Film and Sound Archive, the Australian Children's Television Foundation and SBS Independent, in addition to the AFC, FFC and Film Australia.

Commonwealth funding to the film industry has been static or declining in recent years. Forward Estimates indicate this is expected to continue in the near future.

A realistic assessment is that it is most unlikely that the Commonwealth Government would feel it is in a position to significantly increase current funding levels to the audio-visual sector to cover programs currently supported by the commercial sector.

Could we rely on the commercial sector to continue to support the less expensive forms of Australian programming (for example, serial drama such as *Neighbours, Home and Away, and Breakers)* leaving series, mini-series, telemovies, children's drama and documentaries to be supported by direct funding?

There are a number of difficulties with this proposition:

- The amount of additional public funding required would still be significant. We estimate that excluding serial drama, network expenditure on television drama is still around $59 million per year.[42] Providing this amount by direct subsidy would require a 52% increase in current funding levels.

- The experience of the CTPF indicated there was some reluctance on the part of the networks to purchase programs which were not eligible for content requirements. The CTPF required minimum network commitments. These were never or rarely exceeded. While minimal compared to production costs, these were still more than the licence fee paid for top rating American programs.

The experience of the New Zealand industry is relevant when considering the issues arising with a direct funding model.

In New Zealand local content is primarily supported through NZ On Air, established by the Broadcasting Act 1989 to collect the Public Broadcasting Fee and fund a range of broadcasting services not likely to be provided on a fully commercial basis. This Act saw substantial deregulation of the broadcasting industry including the transformation of Television New Zealand (TVNZ), the then public broadcaster into a State Owned Enterprise, the establishment of a third free-to-air channel -TV3 owned by CanWest and the entry of the pay service Sky Television. There are currently three free-to-air channels.

42 There are currently three serials on commercial television. Network expenditure on these has been estimated at $24 million reached by multiplying the total hours per year - 100 per program (40 weeks by 30 minutes over 5 nights per week) by the average licence fee, 300 X $80,000 per hour.

NZ On Air's prime responsibility is "to reflect and develop New Zealand identity and culture by enhancing the range of New Zealand-made programming."[43]

For a program to receive NZ On Air funding there has to be a written commitment from a broadcaster to screen the program and a financial contribution. However the financial contribution required by the broadcaster is not great and particularly in the case of more expensive forms of drama, documentary, children's and young persons programming the majority of the funding is provided through NZ On Air. Concerns about the current arrangements have been increasingly voiced by NZ On Air and others in recent years. In the 1999 NZ On Air 1998 Local Content Report, Chairman David Beatson said:

> *"New Zealand has a remarkably low level of locally produced programming by world standards. Our total local hours hover at around 24% compared to over 55% in Australia, 60% in Canada, over 80% in Britain and 95% in the United States. These countries have a quota to protect their local content and/or sizeable domestic markets.*
>
> *Our latest survey shows an overall increase in local content-from 21% to 24% in 1998. While this is, on the surface, a positive result, the increase is primarily due to more News, coverage of the Commonwealth Games and more repeats. Four years ago repeats comprised 16% of total hours; in 1998 the repeat level was 26%.*
>
> *First run figures in other genres are also of concern: the quantity of first run children's programming has been dropping consistently for four consecutive years and first run drama output is wavering."*

Mr Beatson went on to outline the following "which have policy implications for the general television environment." In summary:

- an increasing emphasis on repeated and semi-infommercial programmes, and a change from the more expensive and/or high risk programmes to cheaper, commercially attractive material sometimes with little New Zealand resonance;

- Diversity of local programs is on the wane with less opportunity for documentaries of substance, current affairs, drama and children's programmes; and

- Diversity is not enhanced by the proliferation of new channels. "While these channels are often trumpeted as delivering more choices to viewers... such choice relates predominantly to foreign culture. The

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43 NZ On Air, *Local Content '98*, p 1. The Public Broadcasting fee is $110 per household including GST of $12.22 and has not increased since 1989. It generated $94.6 million in 1997-98. Radio programmes and NZ Music Projects are also supported (NZ On Air Annual Report).

> new channels have virtually no first run New Zealand content, except for the TAB-funded racing channel and Sky Sport with its heavy outlay on sporting rights.[44]

The situation could presumably be improved by either an increase in the broadcasting fee paid by New Zealanders or by an allocation of direct funding through the budget to augment existing NZ On Air resources. However, our understanding is that neither of these options is considered practical or likely to be implemented.

There has been increased debate in New Zealand about the need to move to the Australian model - a mix of content requirements to be met by broadcasters together with subsidy for more expensive forms of programming.

8.2 Funding the National Broadcasters

We understand an alternative that the Commission also wishes to explore is that of placing the primary responsibility for local content, and particularly for drama, children's programs and documentary, on the national broadcasters.

We have a number of concerns about such a proposal.

Firstly, it appears unlikely that the Commonwealth would provide the level of additional funding that would be required. The trend in recent years has been to decrease, not increase funding to the ABC, although both the ABC and SBS are receiving additional funding to assist with the capital costs of the transition to digital television, Government having accepted that they would otherwise be left behind.

The ABC is experiencing great difficulties maintaining its existing levels of Australian drama and other specialised Australian programming. For example, the children's department can only afford to make 100 of the 1700 hours the unit broadcasts each year.

Despite the critical success and demonstrated audience appeal, a decision was made at the end of last year not to continue the innovative drama *Wildside*, because overseas sales could not be secured to help meet production costs.

In policy terms the proposal also seems undesirable, committing Australian drama, documentary and children's programming to a minority form of programming. The commercial stations attract the bulk of television viewing. During 1997, the three commercial networks together accounted for just under 83% of all viewing in the five

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44 NZ On Air, 1998 pp.1-2.

metropolitan markets. Over the ten years from 1988 to 1997 the average figure per year was 84.3%.[45]

The ABC and SBS have specific mandates to cater for audiences with special needs. Because of its multicultural focus, SBS carries fairly high amounts of specialised foreign programming.

Even if Government were prepared to commit substantially increased funding to the ABC and SBS for local content, our other concerns would still remain in a multi-channelled environment.

Multi-channelling will provide a major expansion of content opportunities. It therefore seems reasonable for the community to expect access to more Australian content overall as new services come on stream such as pay per view, new subscription channels and enhanced services. If the outcome were only that existing levels of Australian content were delivered on additional ABC channels and existing and new commercial services primarily providing foreign content, the proportion of Australian content would be significantly reduced as would diversity in broadcasting and viewer choice.

9. SUBSCRIPTION TELEVISION

While currently not as pervasive as free-to-air broadcasting, pay is clearly building its market with an uptake rate of around 14% of all households. Despite problems with meeting the required levels, the Australian content requirement is nevertheless supporting the broadcast of Australian programs, albeit, drama only at this point. Given the considerable amounts of drama available on pay channels as well as an increase in factual programming (5 documentary channels, 2 learning channels, a number of lifestyle channels and many news and current affairs channels), it is important there is some viewer choice between Australian and foreign programming.

The system of local content for subscription services is an expenditure model which currently applies only to predominantly drama channels.

There was broad agreement in 1992 that given the nature of pay television services, that it was not appropriate to apply the free-to-air local content model.

A major review of the requirement carried out by the ABA in 1996 reaffirmed the appropriateness of the expenditure based model.[46]

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45 *Get the Picture*, 5th edition, AFC p164.

46 ABA, *Australian Content on Pay TV, Report to the Minister for Communications and the Arts*, Sydney, May 1997.

The review considered, amongst other things, whether the minimum requirement for Australian programming should be increased to 20%.

The ABA concluded that increasing the minimum requirement at that time could lead to financial problems for the drama channels and recommended that the minimum requirement remain at 10%.

In response, the Government decided:

- the content obligation would continue to apply to drama channels only and require 10% expenditure on new Australian drama;
- the Act would be amended to ensure the requirement was enforceable; and
- the operation of the requirement would be assessed in three years.

9.1 Why Have Content Regulation on Pay?

The content regulations for pay television, like those for free-to-air are there for primarily cultural reasons. While the Explanatory Memorandum to the 1992 Bill focussed on the opportunities for the drama production industry to provide new material, it is clear the intended outcome is new Australian programs for viewers. The language used is a reflection of the fact that the achievement of the cultural objective relies on the development and maintenance of a local industry able to make quality Australian programs.

The ABA reported that "there was broad agreement that pay TV, as an increasingly important sector of Australian broadcasting, has a responsibility to contribute to the achievements of broadcasting policy. These include the development of a sense of Australian identity, character and cultural diversity."[47]

The ABA report endorsed the need for a specific drama requirement based on:

- the importance of the narrative form, and its expression in film and television in shaping the sense of identity, character and cultural diversity; and
- the economics of local production and the cost differentials between Australian and foreign programming meaning Australian drama is most vulnerable to import replacement.[48]

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47 ABA 1997, p.32.

48 As above. See also p 33 for further discussion on the need for the mandatory drama requirement.

The experience with the pay industry demonstrates that mandatory requirements are needed to ensure even modest support for Australian programs. Despite undertakings to the ABA that it would comply with the intent of the legislation (given its current unenforceability), the available results covering a three year period show that the 10% new Australian drama obligation has not been met. The ABA's compliance results revealed:

- expenditure on new Australian drama in 1997-98 represented 8.1% of total program expenditure by the 16 drama channels;[49]

- in 1996-97 the aggregate expenditure of 15 predominantly drama channels was 5.02%; and

- in 1995-96 the result from 11 predominantly drama channels was aggregate expenditure of 7.1%.

Total program expenditure in 1996-97 was just over $64.5 million and 5.02% represented $3,242,754. The results for 1997-98 while still below compliance level did represent a significant improvement. Total programming expenditure for 1997-98 of the 16 predominantly drama channels was $100,806,940 of which $8,173, 504 was spent on new Australian drama. Only 4 of the 16 drama channels met the 10% requirement in what is effectively a self-regulating environment.

The need for regulation to overcome the economic disadvantage from imported programs applies equally to pay services.

The ABA report discussed the cost of new Australian drama and imported programming in some detail.[50]

As Foxtel advised the ABA :

> *"One hour of Australian drama costs FOXTEL at least $150,000 as in the previous reporting year as compared with US$2000-3000 for premium first run exclusive [foreign] product"*

and

> *"New Australian content costs between $10,000 per hour for hostings, wraps and some forms of long form shows, to $70,000-$100,000 for other forms of long shows to $150,000-$400,000 for drama. Imported programming starts at less than $1000 and rarely costs more than $3000."*

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49 ABA News Release and Backgrounder 19 May, 1999.

50 ABA p.55 ff.

The economics are compelling when the hourly difference in cost of no less than $7000 is multiplied by 24 hours across 365 days per year and over 50 channels.

The cost of licensing completed first run Australian feature films is also considerably higher than the average cost of imported programming.

9.2 A Modest Flexible Requirement

The current requirement is very flexible - there is no must carry obligation, though the evidence is that in most cases the programs supported are then screened.

Content supported must be new to television - that is, not previously shown on either free-to-air or pay. This means the requirement can be satisfied in a number of ways:

- by buying the rights for pay from the pool of existing programs such as feature films which will then have their first television release on pay;[51]

- by investing in the production of new programs and acquiring the rights for first television release; or

- by investing in partnership with free-to-air broadcasters and/or independent producers in programs such as feature films or telemovies, which will also be released on free-to-air.[52]

In particular, the requirement acknowledges the difficulty of screening Australian material in some circumstances. For example:

- where the channel provider is based outside Australia and provides programming to the broadcaster on a non-exclusive, often global basis; or

- where a channel's format may not easily accommodate Australian drama such as a channel which provides re-runs of American sitcoms.

In these circumstances channel providers can support programs which will be screened on other channels.

At present, expenditure primarily supports feature films and to a lesser extent telemovies. This reflects the situation that of the predominantly

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51 The accepted order of distribution for feature films in Australia is now theatrical (cinema) release, pay television and then free-to-air.

52 Under the free-to-air standard, telemovies and feature films which have already been shown on pay television can still count for content quota on free-to-air.

drama channels, the new movie channels are incurring significant expenditure on programming.

Pay television is moving out of the loss situation that characterised its start-up phase where delivery infrastructure and subscriber systems were being set-up. Media analysts have predicted that the renegotiation of output deals with US studios which saw a substantial decrease in the prices paid by Australian channels and the increase in the uptake of subscribers will move the industry into profit.[53]

Its reach in metropolitan areas is growing with the introduction of satellite services - Foxtel started its satellite service in February this year and Optus is expected to follow suit soon.[54]

It seems almost one in six Australian homes has pay TV[55] - the penetration rate in October 1998 was 12.3% of households. In February 1999 a pay executive estimated this had increased to 14%.[56] The growth in uptake has been rapidly increasing from 65,000 subscribers in December 1995 to 840,000 in October 1998.[57]

The subscriber numbers appear to be meeting the lower to middle projections of the Bureau of Transport and Communications Economics estimates contained in their Report on Australian Content on Pay Television.[58] If BTCE estimates hold in this range, it could be anticipated that pay television will have something in the region of 2.5 million subscription households or approximately 35% of all television households.

Commenting on the tendency of industry executives to talk the outlook for pay up and that of financial journalists to talk it down, Bruce Elder's view is that,

"There is a fortune to be made but not in the short term... The newer channels, and particularly the documentary channels are offering hundreds of hours of interesting and innovative television. ...
It is starting to make a contribution to the larger picture of television and it is obviously here to stay."[59]

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53 The AFR reported on 5/1/99 that Austar expects to be cash flow positive by the third quarter of 1999. The Australian concluded that "the pay TV sector ends 1998 in far stronger shape than it began the year." 29/12/98.
All three operators Foxtel, Optus and Austar have been renegotiating programming agreements, regarded as involving very high costs, with their US program suppliers. In Foxtel's case it was reported that its new arrangement will mean savings of at least US$1.75 billion during the next 23 years - The Australian 29/12/98.

54 Austar covers rural areas via the Optus B3 satellite.

55 Bruce Elder, *The Year We Pay* in the Sydney Morning Herald Guide, February 22-28, p.4.

56 As above.

57 AFC, Get the Picture, p.177.

58 BTCE, Report 31, May 1997, Report on Australian Content on Pay Television, p.7.

59 as above.

Another commentator concluded his study of pay television as follows:

"With the industry having undergone a major period of consolidation in 1998 and penetration rates amongst the highest in the world for a start-up industry, Australia's pay operators are looking to a reasonably healthy but challenging future."[60]

9.3 Alternatives

The ABA report considered a number of alternatives to the expenditure model, that is, a pay TV production fund, a code of practice, and industry development plans.

A pay TV production fund was proposed by FACTS. It was not supported by the pay TV industry, which argued it would reduce their existing ability to decide how funds for Australian programs are used. The ABA pointed to legal and administrative difficulties with the proposal and concluded that it would not yield better policy outcomes.

The code of practice proposal made by ARIA related to Australian content on music channels. The ABA took the view that content regulation was not appropriate for music channels at that time. The ABA also reaffirmed the view, based on its experience with the voluntary conditions, that where content requirements were in place for pay, a mandatory system was needed.

The ABA concluded:

"The existing approach of regulation based on program expenditure allows the production of Australian programs which reflect the nature of individual pay TV channels, available budget and perceived subscriber needs. It can also be applied to drama channels whose formats preclude the broadcast of Australian programs."[61]

The review of the content regulation for pay demonstrates how the current approach strikes a balance between social and cultural objectives and the nature and needs of the industry.

This was emphasised by the ABA when outlining its reasons for not recommending in its 1996 report increased regulation for the sector, such as increasing the 10% requirement and extending a local content requirement to non-drama channels.

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60 Pip Bulbeck in *Get the Picture*, 5th edition, AFC p.176.

61 ABA Pay Report, p.18.

For instance, the report concluded that it was not appropriate to make predominantly documentary channels subject to Australian content regulation given "the present state of documentary channels on the Australian scene" including, that there was then only one documentary channel. The ABA felt the requirement should remain the same and be monitored in the future.

There are now five documentary channels. After movies channels, the documentary and children's channels have proved to be the most popular with viewers.

10. THE FUTURE

"(We) must develop a framework to ensure that the public interest remains vibrant and meaningful in the digital age," wrote William Kennard, Chair of the US Federal Communications Commission, January 1998.[62]

10.1 The Impact of Digital Technology on Production

Digital technology is changing the way in which content providers interact with the market and challenging the conduct of business for the film and television industries. The digital environment has seen a proliferation of new delivery systems and outlets (satellite, cable, free-to-air terrestrial, digital video discs, video on demand, pay per view, enhanced cinema).

These changes include:

- new deal structures and technological innovations which alter negotiating positions especially regarding the acquisition of rights;

- an increasing range of opportunities for the exploitation of audio-visual assets; and

- new business models based on diversified program licence fees and development and production financing resulting from the introduction of new distribution and licensing models to the recoupment cycle.

The most common comment in relation to the impact of digitisation on financing is the "fragmentation of revenues". While producers have greater outlets for sales, the technological developments have been accompanied by the bundling of rights where (often vertically integrated) companies purchase more and more rights for either the same or only marginally increased rates of payment.

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62 Quoted in Jock Given, The *Death of Broadcasting- Media's Digital Future*, UNSW press, Sydney 1998, p63. Kennard was commenting on the generous allocation to broadcasters of spectrum for the transition to digital television.

The fragmentation of revenues has occurred as major distribution companies have secured large "outlet deals" with broadcasters, locking up major blocks of program time. The combined impact in Australia is that independent producers are seeking greater levels of deficit finance from public sector agencies to secure production.

10.2 Convergence

The free-to-air television industry occupies a dominant position in terms of its audience share and continues to enjoy a major share of the overall advertising market. With a 34% per cent share in 1998, free-to-air television occupies the second largest share of total (ie national and local) advertising in main media after newspapers.

In the case of national only, advertising television continues to occupy the largest share, as it has since 1967. In 1997 the share was 52.9% and in 1998 it was 53%.[63] Further details are provided in Appendix 7.

Free-to-air broadcasting has been under some competitive pressure from pay both in advertising and audience terms. Advertising has been permitted on pay channels since July 1997. The CEASA figures above exclude advertising revenue for subscription services. CEASA estimates this to be $25 million in 1998. This compares with revenue of $2,399.5 million for free-to-air television.[64]

A subscription licence is subject to the condition that subscription fees will continue to be the predominant form of revenue. While viewing figures for pay TV are not yet publicly available it does seem there has been some loss of audience to pay. However, to our knowledge there are no reliable figures on the extent to which this has occurred.[65]

Free-to-air broadcasters have been given protection from competition to facilitate the introduction of digital television with a freeze on new free-to-air licences until the end of 2006.

Further, under the digital policy announced in mid 1998 any new services on the expanded spectrum made available by digitalisation will be confined to data-casting services.

Free-to-air operators are being given considerable protection from full exposure to competition to cushion them from cost pressures which could

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63 Commercial Economic Advisory Service of Australia (CEASA), *Advertising Expenditure in Main Media 1998*.

64 The CEASA figures on television exclude pay but include SBS advertising revenue. We understand this to be relatively insignificant.

65 AC Nielson has been measuring the three services but the figures have not been publicly released.

arise from an increase in the number of players in the limited market, leading to a reduction in the quality of service provided to the community.

While the increase in the uptake of pay television will continue it is unlikely the growth of pay and multi-channelling with the advent of digital television will lead to the demise or major downgrading of free-to-air television services.

Jock Given points to the two broad strategies available to the free-to-air broadcasters to respond to competition from specialist channels. [66] Firstly, they could challenge them directly by adapting their broadcast schedules and concentrating on particular areas such as live sport, hit drama, sit-coms and infotainment, Australian programs, that do not migrate so well to pay.

Secondly, they could join them, supplementing the business of broadcasting by participating in the commercial success of specialist channels. He points out that all the US networks are now part of corporate groups which include substantial broadcast, cable and production interests.

The two approaches are not mutually exclusive, although the Australian networks appear to have opted for the latter. In Australia, the Nine and Seven networks provide in conjunction with BSky B, the only Australian-based news channel on Pay TV. PBL has been heavily involved in pay for some time, and now has a 25% share in Foxtel.[67]

Julian Mounter, the Chief Executive of the Seven Network describing that channel's approach commented:

"We're expanding into Pay television, we've recently taken C7 our Pay sports channel on to Austar; we're in negotiations to get it on to Foxtel; we have a new strategy for expanding that Pay service; we're looking at new channels and offering them to the Pay services;we're working on an internet strategy which ultimately may be another delivery system for programming."[68]

Further, existing broadcasters are positioning themselves to take up other opportunities provided by the advent of digital television such as enhanced services and data-casting.

There is no doubt the media is going through very significant changes. However, it is not our view that convergence and related changes are eroding the social and cultural roles of broadcasting and other media and the justification for regulatory controls.

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66 Given, p.53.

67 See Communications Law Centre, *Communications Update*, February 1999 for media ownership patterns as at December 1998.

68 Transcript of Interview on "The Media Report" ABC Radio National 20/5/99.

There is still strong community support that given their influence and reach, the media needs to be regulated in the public interest. This applies equally to traditional and new forms of media as shown by recent developments in Australia and overseas. For example, recent debates and legislative amendments relating to pornography on the internet, violence on new and traditional forms of media, and sex on free-to-air television.

When commenting on the generous allocation to broadcasters of spectrum for digital television, US FCC Chair Bill Kennard commented in 1998 that it is clear though the specifics may change, there will still be rules relating to entry into certain media markets and ownership of media services.

Many analysts conclude that free-to-air type services that provide to a mass audience primarily passive forms of entertainment and information programs will continue to be a major feature of the media for the foreseeable future.

Internationally, there is a strong view led by the EU and Canada that countries should not be abandoning cultural support measures in the face of convergence and globalisation.

Indeed, the predominant view is that the new information age could lead to a greater concentration of the media and domination by US interests and product unless others are smart and develop strategies to ensure local voices can still exist.

11. INTERNATIONAL AGREEMENTS

In recent years there has been considerable focus in international forums on the question of whether cultural support mechanisms should be subject to free trade disciplines.

In brief, the argument to exclude these is borne out of the reason support mechanisms were first required. If countries like Australia do not reserve the right to implement cultural support mechanisms they are in danger of losing their distinct national cultures as expressed in films, television programs and other audio-visual products. The outcome, would inevitably be increased domination of the mass media/entertainment industries by foreign (primarily US) product.

11.1 GATS - WTO

The Uruguay Round which led to the establishment of the WTO and the General Agreement on Trade in Services (GATS) recognised the right to maintain cultural support measures.

Australia, along with the majority of WTO members, exercised this right by not making any commitments to liberalise audio-visual measures.[69]

The issue is about to be debated again with the commencement of WTO negotiations on a number of issues including services beginning in 2000. The AFC and Film Australia have recently made a submission on this issue endorsed by the FFC in response to the call from the Department of Foreign Affairs and Trade for comment on the approach Australia should adopt.

A copy is enclosed (with our hard copy of this submission) and is also available from the AFC's website.[70]

The submission argues there are strong imperatives for the Government to insist on maintaining the right to support measures for cultural purposes. These include:

- a growing international recognition that culture is different from other products and services and that it is not in the national interest of small countries like Australia for it to be considered tradeable in international trade negotiations;

- since 1993-94 Australia has participated in the increasing internationalisation of the audio-visual sector and maintains a very open approach to foreign product and participation;

- that the support mechanisms that do exist, such as direct and indirect financial support and content provisions are extremely modest. They do not operate to exclude foreign product but are designed to ensure an Australian presence; and

- Australia's ability to participate effectively in the media, communications and information industries of the future is crucial to our economic future and our social and cultural well being as a society.

The Senate Committee Report on the Australian Content Standard recommended that an exclusion for cultural industries should be inserted into all future trade agreements. In announcing the Government's response to the report, Senator Alston said that the Government would ensure that Australia's cultural objectives are taken into account in negotiating future trade agreements.[71]

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69 While 125 countries are covered by GATS, only 14 made specific commitments in the audio-visual area.

70 http://www.afc.gov.au/about/whowe/viewpoint.html

71 Senator Richard Alston, Media Release, *Australian Content on Australian Television*, 19 March 1999.

11.2 Closer Economic Relations Agreement

The three agencies have considerable concerns about the ramifications of treating New Zealand programming as Australian content. These are detailed in our respective submissions to the Senate Committee Inquiry and can be summarised as:

- New Zealand and Australia are two different nations with different cultures. Including New Zealand programs in the Australian content quotas undermines the objective of "developing and reflecting a sense of Australian identity, character and cultural diversity";

- It is too early to assess the impact of the revised standard on levels of Australian content. However, over time it is likely broadcasters will be attracted to using inevitably cheaper New Zealand programs to fill content requirements, particularly on the fringes of peak viewing times;

- Prior to the revised standard New Zealand programs were free to compete with other forms of imported programming in the Australian market. The issue is not about market access but about gaining access to the support mechanisms that have been established to ensure the production and broadcast of Australian programs;

- The inclusion of New Zealand programs is likely to exert downward pressure on the licence fees paid by broadcasters in both countries. This was acknowledged by the Federation of Commercial Television Stations at the Senate Committee hearing;

- There is no basis for the argument that the inclusion of New Zealand programs in Australian content quotas will somehow benefit the industries in both countries. Our analysis is that on the 'best case' scenario -that is, an increase in production in New Zealand rather than existing New Zealand productions being sold to Australian networks, the outcomes would be as follows:

    - no change in the combined value of the Australian/New Zealand industries;

    - no increase in the quantity of local programs broadcast in the two countries taken together; and

    - likely downward pressure on licence fees in both countries;

- By having to accommodate New Zealand programs in the Australian standard the ABA was faced with the difficult task of reconciling the irreconcilable. The ABA made some changes in an attempt to maintain existing levels of Australian content, while at the same time complying with the requirements of the CER Services Protocol to provide no less favourable treatment to New Zealand programs; and

- New Zealand has no comparable local content system. Therefore reciprocal treatment cannot given to Australian programs in New Zealand.

Australian programs are reasonably successful in the New Zealand market. They successfully complete at secondary prices with programs from other international jurisdictions such as the US and the UK. [72] Given the lack of local content quotas in New Zealand, Australian programs provide commercially attractive alternatives to broadcasters to supporting more New Zealand programs.

The inclusion of New Zealand programs in the Australian content arrangements will not therefore lead to increased opportunities for Australian programming in the New Zealand market.

Further, as a number of New Zealand commentators have pointed out, were New Zealand to consider the introduction of local content quotas in the future, the likely result would be that the Australian programs currently shown there would just move into the local content 'space'. There would again be no expansion of opportunities for Australian programming, and, there would be no gain for New Zealand audiences as Australian programs would occupy a very substantial proportion (if not the total) of any local quota scheme.

11.3 The Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials (The Florence Agreement)

This agreement came into force generally in 1952 and Australia became a signatory in 1992.

Contracting states agree not to apply customs duties or charges on 'educational, scientific and cultural materials' including 'film of a cultural character.' The agreement primarily appears to relate to importation of films for non-commercial purposes. It does envisage that broadcasting organisations might be importing films of a cultural character.

While we are still making inquiries our understanding is that the agreement has little relevance to the issues being considered by the Productivity Commission.

72 Licence fees for foreign programs (including Australian) sold in New Zealand range from US$1,000 - $10,000 per hour. *TV World - Guide to Programming Prices and Finance 1998.*

12. CONCLUSION

Content regulation should be a continuing option for policy makers in a multi-channel environment, given the propensity for new services to replicate the structure and approach of existing ones.

Increased channel capacity does not, of itself, guarantee increased diversity of program forms and opportunities for locally produced programming. The pursuit of commercial viability reinforces certain programming approaches and decisions. The experience, even with niche program services, is the pursuit of mass audiences, "with an increase in the number of channels offering mass appeal content" given "the centralising economics of communications industries with their tendencies towards economies of scales and 'excessive sameness' in programming"[73].

In such an environment, it is likely that public sector intervention will be necessary to ensure that broadcasters continue to make a financial contribution to the production of Australian programs. Further, without a requirement for the broadcast of locally made programs, it is extremely likely that there would be a reduced diversity and amount of such programs. This is especially the case for program formats, such as adult and children's drama and documentary, that are more expensive to produce.

In the medium term it is clear that free-to-air, analogue and digital terrestrial services will continue to operate. Cultural and social policy obligations in terms of local content can and should be maintained as part of the broadcaster's licence obligations. Niche, subscription services also have the capacity to make a contribution to the level and diversity of local programming.

Operating in a complementary manner to direct and indirect public investment and the operation of national services, local content rules can provide an ongoing mechanism to ensure Australian audiences are able to choose between a greater range of programming than would otherwise be available.

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73 T. Flew, "Pay TV and Broadcasting in Australia", Media International Australia, No 77 August, 1995. Australian, Film, Television and Radio School, p.131.

APPENDIX 1 – OPERATIONS OF THE FILM AGENCIES

The FFC's operations

The mission of the FFC is:

To realise the Commonwealth's objective of ensuring the Australian film industry contributes to the diverse images of Australia locally and overseas by direct investment in film and television.

The Government provides funding to the FFC to subsidise the corporation's investments in "qualifying Australian films" as defined by Division 10BA of the Income Tax Assessment Act (1936). Qualifying Australian films include feature films, telemovies, adult mini-series, children's mini-series and documentaries with significant Australian content.[76]

In 1997-98 the FFC received a Commonwealth appropriation of $48.015 million. With its partners in the public and private sectors the FFC supported 58 new productions worth $127.3 million.

The FFC is required to have a minimum level of private sector participation before financing a project and aims to secure 35% per year across its supported production slate. Private sector participation is primarily provided by various Australian and international market participants and takes the form of distribution guarantees/distribution advances and equity investment from distributors/sales agents and presales and equity from broadcasters.

The FFC's ability to support the quantity and range of production it does is underpinned by the content regulation for free-to-air and pay television. In 1997-98 the FFC 's production slate comprised:

- 13 feature films with total budgets of $57.8 million; and
- 4 adult television drama projects with total budgets of $19.9 million;
- 6 children's television drama projects with total budgets of $137.9 million.

To receive FFC funding, television programs are expected to have a financial commitment from a local broadcaster. Of the 10 television programs in the 1997-98 slate, three were with the ABC and the remainder were supported by commercial broadcasters.

In recent years the pay television industry has increasingly been investing in Australian feature film production, pursuant to the expenditure based content requirement under s 102 of the Broadcasting Services Act. Of the thirteen feature films supported by the FFC in 1997-98, eight had support primarily by way of distribution agreements from pay television channel providers.

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76 Films are certified as qualifying by the Minister for Communications, Information Technology and the Arts, taking into account criteria set out in the Income Tax Assessment Act.

The AFC's Operations

Established under the Australian Film Commission Act 1975, the AFC is the Commonwealth's primary development agency for the film, television and interactive media industries in Australia.

In 1998-99 the AFC received a Commonwealth appropriation of $15.6 million. This is supplemented by revenue earned mostly from film investments.

Professional and industry development are supported through a range of measures including:

- funding project development through script and other pre-production assistance and funding production of low budget feature films, documentaries, animation, experimental and short drama programs;
- marketing support and advice and promotion of Australian film and television internationally;
- infrastructure support to industry organisations;
- support for interactive media projects and cultural development;
- Indigenous film and television development including support for Indigenous program makers;
- monitoring film, video, television and multimedia industry performance and providing information, analysis and research; and
- administering Australia's Official Co-production Program.

Film Australia's Operations

Film Australia Limited is one of the nation's largest producers of television documentaries and educational programs. Though an integral part of the Commonwealth Government's film program, Film Australia is neither a funding agency nor broadcaster.

It is a Commonwealth-owned production and distribution company. Its core function is to devise, produce and distribute programs dealing with matters of national interest or designed to illustrate or interpret aspects of Australian life. Under the current five-year National Interest Program agreement with the Federal Government, 100 programs will produced. In 1998-99 the Federal Government appropriation for the National Interest Program was $6.549 million.

Film Australia is a significant creator and keeper of the on-going national record. The library houses a unique collection of titles spanning 85 years of Australia's history.

Film Australia acts as the executive producer of productions in the national interest. However, all Film Australia's creative and technical personnel work on a project-by-project basis and are drawn from the ranks of freelancers who constitute Australia's independent documentary production industry.

Film Australia also operates a world-wide distribution service for its own productions and those of many independent Australian documentary producers. Most Film Australia programs are broadcast in Australia and overseas and all are actively distributed to schools, universities and community groups throughout Australia.

APPENDIX 2

NETWORK COMPLIANCE WITH THE AUSTRALIAN CONTENT STANDARD 1996 AND 1997										
	Transmission Quota %		**Australian Drama** total annual score in points		total hours		**Australian Documentary** total hours of 1st release		**Australian C Drama** total hours of 1st release	
Minimum annual requirement	**50%**		**225 - 258**		**hours**		**10hrs**		**24hrs**	**28hrs**
Station	1996	1997	1996	1997	1996	1997	1996	1997	1996	1997
7 Network										
ATN	56.4	52.7	335.69	263.93	253	188.17	20	34	24	27.5
HSV	57.35	56.01	334.63	259.93	244.9	186.17	20	42	24	27.5
BTQ	57.61	53.86	331.69	268.43	251	189.95	19	32.5	24	27.5
SAS	60.98	61.08	324.29	261.48	233.25	186.68	17	34.5	24	27.5
TVW	60.54	58.95	327.69	267.82	245.15	190.13	19	35	24	27.5
9 Network										
TCN	60.6	62.9	268.7	272	149.6	124.8	19.5	24	24	28
GTV	59.1	60.0	271.7	269.6	149.9	124	19.5	23	24	28
QTQ	62.5	63.5	270.8	270.8	148.8	124.2	19.5	27	24	28
10 Network										
TEN	51.32	50.9	248.4	266.5	183	189.5	10	10.5	24.25	28
ATV	51.32	50.9	248.4	266.5	183	189.5	10	10.5	24.25	28
TVQ	51.32	50.9	248.4	266.5	183	189.5	10	10.5	24.25	28
ADS	51.32	50.9	248.4	266.5	183	189.5	10	10.5	24.25	28
NEW	51.32	50.9	248.4	266.5	183	189.5	10	10.5	24.25	28

Source: ABA Discussion Paper: Review of the Australian Content Standard. July 1998 Attachment C

NOTE: In 1997, the Seven Network and regional station STQ failed to comply with the minimum annual quota for the broadcast of first release Australian C drama and repeat C drama programs. The licensee's have undertaken to commission and broadcast additional programs to compensate for the shortfalls.

APPENDIX 3

AUSTRALIAN CONTENT - MINIMUM DRAMA REQUIREMENTS - 1967 - 1999

1967 26 hours per year
1971 78 hours per year
1974 74 hours per year
1976 104 hours per year

1984 8 hours of children's drama introduced - attracted a bonus of 50% and counted as part of the 104 hours, so 8 actual hours = 12 hours .

1990 points system - involved small increases in adult drama and a more substantial increase in children's drama.
A minimum requirement of around 16 hours for children's drama.

1996 Adult drama - 225 points -can be from 80 to 225 hours depending on type of program.
Children's drama - 24 hours first release going to 32 hours in 1988.

1999 As for 1996 but including New Zealand programs.

Source: Franco Papandrea, *Cultural Regulation of Australian Television Programs,* BTCE Occasional Paper 114, 1997. Appendix 1.

APPENDIX 4

EXPENDITURE BY COMMERCIAL TELEVISION ON AUSTRALIAN PROGRAMS 1992-93 to 1997-98 ($m)

	92 / 93	93 / 94	94 / 95	95 / 96	96 / 97	97 / 98	% change 96/97 - 97/98
Australian Drama	89.0	72.6	72.8	77.2	73.8	82.3	11.5 %
Children's Drama	4.4	3.0	4.4	7.0	7.8	11.2	44.0 %
Children's Other		10.7	8.0	6.6	10.2	11.8	15.8 %
Documentaries	17.9	19.3	24.0	24.0	13.3	6.3	- 52.8 %
Total Australian	**517.6**	**469.9**	**477.4**	**504.0**	**549.6**	**566.1**	**3.0 %**
Foreign Drama	164.9	160.9	183.4	174.2	199.6	217.6	9.0 %
Foreign Other	18.3	23.2	17.2	22.4	15.3	17.2	12.6 %
Total Foreign	**183.2**	**184.1**	**200.6**	**196.5**	**214.9**	**234.8**	**9.3 %**
Total Spending	**700.7**	**654.0**	**678.0**	**700.6**	**764.5**	**801.1**	**4.8 %**

Source: ABA Broadcasting Financial Results

Note:
The figures for children's drama since 1995/96 reflect the increases in the children's drama quota introduced then. Prior to 1996 the requirement for first release children's drama was 16 hours and there was no requirement, as there is now, for 8 hours of repeat children's drama.

APPENDIX 5

THE COMMERCIAL TELEVISION PRODUCTION FUND

The CTPF was a fund set up in October 1994 to "support high quality Australian television in a way that will increase the amount, diversity and quality of Australian television drama, documentaries and children's drama programs." Consequently, the fund supported telemovies, miniseries, children's drama and documentaries but not series and serials.

45% of the program's funds were divided equally between the three networks and 45% were made available to independent producers. The remaining 10% was for children's programs which could be produced by either. In practice, a number of projects were produced as joint projects between a network and an independent producer.

All projects seeking support from the fund had to have a pre-sale from a television network for at least the following amounts:

adult drama	$50,000 per hour
children's drama	$25,000 per half hour
documentary	$25,000 per hour

In the case of network projects this meant the network had to commit the pre-sale amount with the remainder of the budget coming from the fund.

APPENDIX 6

INDEPENDENT TELEVISION DRAMA PRODUCTION 1988-89 to 1997-98 (excluding ABC/SBS)

	Series & Serials			Mini-Series	Telemovies	Total	of which CTPF	Total without CTPF
	Adult	Kids	Total					
1997 - 98	15	7	22	5 (4)	7	34	9	25
1996 - 97	13	4	17	6 (3)	10	33	12	21
1995 - 96	8	6	14	8 (5)	12	34	12	22
1994 - 95	9	2	11	8 (7)	18	37		37
1993 - 94	11	0	11	1 (1)	10	22		22
1992 - 93	9	0	9	11 (7)	3	23		23
1991 - 92	13	3	16	5 (all kids)	4	25		25
1990 - 91	11	0	11	11 (6)	2	24		24
1989 - 90	8	0	8	12 (6)	6	26		26
1988 - 89	6	0	6	11 (3)	6	23		23
				Note: figures in brackets are children's mini-series.	Note: there are no children's telemovies made.		Note: excludes feature films supported - there was 1 each year.	

Source: AFC Research and Information

APPENDIX 7

SHARE OF TOTAL ADVERTISING EXPENDITURE RECEIVED BY VARIOUS MEDIA, 1962 - 98

Share (%)

	Television[1]	Newspapers	Radio	Magazines[2]	Other[3]
1962	18.3	46.5	11.5	12.0	
1967	24.7	42.3	10.3	11.5	11.2
1972	26.5	39.1	10.0	11.9	12.5
1977	28.6	40.9	10.3	9.2	11.0
1982	33.0	41.4	8.8	9.2	7.6
1987	34.3	40.1	9.2	7.9	8.5
1992	36.0	42.0	8.6	6.5	6.9
1997	34.2	41.8	8.2	11.1	4.7
1998	34.0	42.6	7.9	10.9	4.6

SHARE OF NATIONAL ADVERTISING EXPENDITURE RECEIVED BY VARIOUS MEDIA, 1962 - 98

Share (%)

	Television[1]	Newspapers	Radio	Magazines[2]	Other[3]
1962	27.9	28.7	9.8	15.9	17.7
1967	36.9	23.6	9.1	13.8	16.6
1972	37.0	22.8	8.2	17.2	14.8
1977	40.3	21.9	6.8	9.8	21.2
1982	48.7	21.0	5.9	8.7	15.7
1987	51.3	19.4	5.6	11.8	11.9
1992	53.9	19.7	7.4	9.8	9.2
1997	52.9	20.4	7.1	15.4	4.2
1998	53.0	20.9	7.0	15.0	4.1

Source: Commercial Economic Advisory Service of Australia: Advertising Expenditure in Main Media, excluding Directories

Notes:

[1] Includes advertising carried on SBS Television, but excludes pay television.

[2] Magazines include business and rural publications.

[3] 'Other' includes outdoor and cinema.