

Sub v. 110  
ID no. 1525



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A S S O C I A T I O N  
L I M I T E D  
A.C.N. 002 294 920

7 June 1999

Professor Richard Snape  
Commissioner  
Productivity Commission  
Locked Bag 2  
Collins St Post Office  
Melbourne VIC 8003



Dear Professor Snape,

The Australian Screen Directors Association welcomes the opportunity of making a submission to the public inquiry being conducted by the Productivity Commission into the Broadcasting Services Act and related legislation.

ASDA is the professional association which represents film and television directors throughout Australia. Its members include directors of feature film, TV programs, animations and documentaries. Given that almost all of these forms of production are eventually screened on television, all of these directors are affected by cultural regulation of the broadcasting sector.

I apologise for the lateness of this submission, but I have only recently returned from overseas. Given this, I will sketch a few of the most salient points of ASDA's position regarding the BSA and competition policy.

#### *Scope of the Inquiry*

ASDA notes that the Productivity Commission must consider in line with the Competition Principles Agreement's requirements that the provisions of the BSA should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and,
- the objectives of the BSA can only be achieved by restricting competition.

However, ASDA also notes that the Productivity Commission should focus particular attention on (as well as other things):

- balancing the social, cultural and economic dimensions of the public interest

This last point is crucial to the Australian Screen Directors Association, and we believe crucial for Australian consumers, as without an evaluation of these factors Australian audiences will be denied access to programs which they desire to watch.

### *Australian Content*

The main focus of this submission is on the need for adequate Australian content regulation. ASDA believes that without such regulation, the ability of Australian audiences to have access to Australian voices, stories and characters would be greatly diminished.

There has been bi-partisan Government support for the notion of Australian content for over thirty years, and it has been recognised as important that Australian audiences have access to Australian stories.

The fundamental rationale for assistance in this area is the economic reality of the broadcasting market. For small countries such as Australia it is difficult to compete with the mass of product which is produced by North America, and essentially dumped in the Australian broadcast market at a fraction of its production price. Audiovisual goods do not have the same types of physical restrictions as tangible goods, which means that they can be easily traded on a world market without ongoing production costs. In this equation, the domestic market – the primary market - is the key for producers, and the size of the American market means that budgets can be recovered well before they start creaming the profits of the international marketplace.

The end result of this is that American programs such as Seinfeld, which are produced for millions of dollars per episode in the USA, can be sold to Australia for \$25,000 (est). Australian programs, on the other hand, which range from anywhere between \$90K and \$1.8M per hour, are not expensive in terms of their production (they average between \$250-450,000 for an hour of prime time drama, compared with say Canada which averages \$800,000-\$1M per hour). However, they cannot compete with this form of "dumping". So the relative "competitiveness" of Australia's production industry bears little relation to its capacity to compete in its domestic market with foreign productions. Australia's domestic market, without regulation, would simply not be prepared to provide enough licence fees for producers to be able to recover their budgets.

This would not be a problem for the Australian Government if Australian programs were not popular with audiences, or if Australian consumers did not support the notion of "Australian content". However, all of the evidence is otherwise. Australian programs such as Blue Heelers, Water Rats and Murder Call have consistently rated at or near the top of the ratings in recent years, as have other Australian dramas, mini-series and telemovies. Without some form of assistance it is unlikely that many of these would have been produced.

Furthermore, audience research has consistently supported the Australian content quota, even when it is acknowledged that a quota has costs down the chain, as can be seen in the Bureau of Transport and Communications Economics report released a few years ago.

### ***Commercial Networks***

The position for television program makers, without some form of regulation, would also be made difficult by the fact the three networks hold a privileged "oligopoly" of transmission, reinforced by policies of equalisation introduced during the early 1990s.

This three network structure, which resulted because of the technological realities of the spectrum in the 1950s and 1960s, was actually part of the rationale behind the introduction of the Australian content standard. The anti-competitive nature of the broadcasting system was to be softened by the requirement to screen Australian programs.

The technological reasons for "oligopoly" have become increasingly redundant in recent years, with the development of digital television and other service technologies, and the introduction of pay services. However, there may still remain a "public interest" in maintaining a certain restriction on the number of free-to-air licences in the short to medium term.

Whatever the Government decides, it is important that the Government maintains regulation to ensure that Australian audiences have access to Australian programs.

### ***Licence Fees***

The current downside of the oligopolistic structure for program makers is that this privileged market position has been used to force down or freeze licence fees. This is despite the fact that advertising revenues have been increasing for high rating series, and that production costs have also increased.

Producers in recent years have increasingly needed to access overseas markets in order to recoup their production budgets, but many of these markets have recently become "softer" and this has further increased the pressure of Australian production.

Broadcasters in the late 1980s and early 1990s froze licence fees because they were faced with instability due to ownership challenges and abnormal losses. However, in recent years they have drastically increased their profitability without passing this on to the production sector despite the rise in budgets over the same period.

These budget increases have occurred because of particular increases in fixed costs – such as equipment, stock etc – plus the rise in wages for certain crew members who have industrial coverage. The major losers have been the key creative elements such as directors and writers (as I am sure the Writers Guild submission will attest). Director's

fees have marginally increased on some programs in the last six months, having remained static or gone backwards for the last ten years, while directors' general conditions on television production have deteriorated markedly over the course of this decade.

This impact of the three-network structure is worthy of the inquiry's attention, as it affects the creative heart of the Australian television production sector, and could have long term impacts on the viability of an industry which is so reliant on creative capital.

### ***The Content Standard***

ASDA argues that of all of the assistance mechanisms, that the content quota is the most effective in achieving the "public interest" goals of the BSA, and actually delivering Australian programs to Australian audiences.

The quota is effective, because as opposed to other assistance mechanisms such as direct subsidy, the quota system ensures that Australian programs are actually seen by Australian consumers. The onus is on the broadcasters to ensure that these programs go to air and are promoted. In this way, the quota achieves the cultural objective that it is intending to satisfy.

The only downside for makers is that there is no attention to price (as discussed earlier). This is also an issue for consumers. Some recognition of minimum pricing could both address this situation, as well as provide transparency for consumers by alerting them to the real costs of such a Standard. There is currently a minimum licence fee level set for children's programming, and there is no reason why such a scheme could not be extended to include other forms of drama and documentary programming.

### ***Pay TV***

The expenditure requirement has been largely redundant over the last four years, partly because of enforcement and partly because of confusion over who is responsible for spending money. The end result has been that, from a mechanisms which was supposed to inject much needed capital into the industry, there have been few additional programs made and a continuing dearth of Australian documentaries and dramas on Australian pay TV services.

This underscore ASDA's position that any system of regulation of broadcast or pay TV needs to include some form of quota, in order to ensure that programs actually make it to the screen for Australian audiences.

### ***International Treaty Obligations***

ASDA is concerned about the potential impacts of international treaties on domestic legislation, particularly in regard to audiovisual production.

## *CER*

The most obvious case is the CER treaty, and the adoption of a new Content Standard which recognises New Zealand programs. Without going into detail, it should be made clear that it is a clear anomaly (some may say an absurdity) for NZ to be included in a Standard aimed at achieving domestic cultural objectives. We do not agree that the new standard somehow balances trade and cultural imperatives – a task that we argued was impossible for the ABA to achieve.

To include NZ in our standard gives NZ a privileged position over not only international companies, but also over Australian companies as they can access Australia as a secondary in the manner in the manner described earlier. NZ can recoup their main production costs in NZ, and then access the Australian secondary market for a greatly reduced fee, thereby unfairly undercutting Australian program prices.

ASDA supports the Senate Committee's recent bi-partisan recommendations on this matter.

## *Other Treaties*

More broadly, ASDA believes that Australia's domestic cultural policy should not be held accountable to international treaty obligations. We believe the two to be incompatible by definition. The Australian Government must make a regular assessment as to whether Australian content and culture is worth protecting, as then consider what the best mechanisms exist to achieve their objectives in this area.

However, it is important that Australia not be held ransom to obligations negotiated possibly completely out of context – whether they be imposed by a multilateral agreement on investment, or through the World Trade Organisation.

In this matter ASDA agrees again with the Senate Committee, which recommended that Australia seek a general cultural exemption at the beginning of each treaty discussion. ASDA also notes that there has been an idea floated, initially by Canada, that there could be a multilateral agreement to exempt culture from all international treaty negotiations.

## *Conclusion*

ASDA welcomes the Productivity Commission's examination of these issues. While ASDA believes wholeheartedly that there are sufficient cultural and social arguments to support assistance arrangements to the film and television production sector, it recognises that there are important elements of competition policy which could assist the industry's continued strength.

ASDA argues against the type of anti-competitive behaviour which is often undertaken by Australian broadcasters and pay TV operators, and would welcome the Commission's ongoing examination of the market power and practices of these organisations.

**I apologise for the brevity and slightly rushed nature of this submission, but I hope I will be able to shed light on some of the issues I have raised, as well as any others that you may be interested in, at the hearing on June 9 in Melbourne.**

**Yours sincerely,**

**Richard Harris  
Executive Director**