

Convergence Review

Supplementary Submission

ARC Centre of Excellence for Creative Industries and Innovation (CCI)

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This supplementary submission addresses the 'Emerging issues for the review' relating to **Australian and local content** as detailed on p. 23 of the Emerging Issues Paper.

Q1: In a convergent environment, are content quotas still an appropriate mechanism for Australian content, including music, and children's and local content?

The Australian content quotas for free to air (FTA) commercial television broadcasters have been directly responsible for both the diverse range of Australian programming and, through the system of sub-quotas, for high levels of particular program genres. These quotas were imposed on the FTA broadcasters principally because of the degree of reach and influence of FTA television and thus their crucial role in shaping national identity, and their privileged and protected access to a scarce public resource, the spectrum. Although the audiovisual market is considerably more competitive than in years past, with more choices of content source available to audiences, FTA commercial broadcasters retain an unrivalled capacity to aggregate large audiences across all demographics. Indeed, as figures provided to the Review by Free TV indicate, time spent viewing television has actually increased in recent years. This suggests that retention of the content quota system will assist in achieving the cultural objective of ensuring the wide availability of a diverse range of Australian programming. Similarly, the local content requirements for Australian commercial radio remain extremely important, as they assist Australian music to find its local audience.

Several submissions to the Review have noted that the top 40 television programs of 2010 were all Australian-made. And recent data released by ACMA shows that the commercial FTA broadcasters have all exceeded the minimum Australian content requirements in recent years; with Australian content comprising on average over 60% of all programming on all three of the commercial networks from 6am-midnight in the period 2002-2010.¹ These facts have led some to argue that the content quotas are no longer necessary. The question should be, however, whether such overall levels and popularity of Australian programming would be maintained without the quotas. In relation to overall levels of Australian content, an indication of the likely situation should the quotas be removed is given by the levels of Australian content on the FTA digital multichannels

¹ ACMA (2011) *Comparison of Compliance Results - Metropolitan Commercial Television Networks* 9 June 2011. Available online at http://www.acma.gov.au/webwr/aba/tv/content/requirements/australian/documents/comparison-2002_to_2010_compliance_results.pdf. Accessed 12 August 2011.

which currently are not subject to content quotas. While exact figures for the commercial FTA multichannels have not been made public, analysis of program schedules indicates that ONE HD had the highest level of Australian content in the first half of 2011 as a result of the various sports events it held licences for, but with the recent change in programming strategy this level will drop significantly. Of the other channels, 7Two, Go, and Eleven all screen about 5% Australian content, with virtually none at all on Gem or 7Mate. The conclusion: in situations in which the commercial FTA broadcasters are not required to screen Australian content, they don't, so if quotas are removed from the main channels it is reasonable to assume that overall levels will decline dramatically as broadcasters screen cheaper imported or archival programming rather than commissioning and producing new Australian programming.

A further indication of the likely scenario in a future without content quotas on broadcast television can be gleaned from the New Zealand experience. As a result of commitments made by the then-New Zealand government under the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO) in the early 1990s, New Zealand is unable to impose content quotas of any kind. In its annual Local Content report for 2010,² the national funding agency NZ On Air found the following:

- The average number of hours of NZ programming each year on free to air television has declined from 2158 hours for each of the three FTA channels in 2003-04, to 1813 for each of the six FTA channels in 2009-10. That is, as competition increases, local programming levels decline.
- The proportion of prime time hours (6-10pm) that are NZ programming has declined from 43% in 2006 to 35% in 2010
- First-run hours decreased by 3% to 8,221 hours, following a 5% decrease in 2009. Falls due mainly to decrease in Children's, Drama/comedy, entertainment and News/Caff.
- Drama/comedy hours have fallen from 711 in 2008 to 516 in 2010 (fall of 27%)
- Children's program hours have fallen from 1035 in 2008 to 850 in 2010 (fall of 18%), although Children's drama has risen from 12 in 2008 to 35 hours in 2010.

In relation to Children's programming, the Emerging Issues paper notes that 'public broadcasters, notably the ABC, have assumed a significant role in delivering children's programs'. But should the production of Australian children's content only be the responsibility of the public service broadcasters?

In the 2001 report, *The Future for Local Content*,³ it was noted that quotas have the advantage of 'political and collection friendliness'. The system is settled and familiar to all players, and there is an established system of assessment and monitoring.

Are there alternative mechanisms which would more effectively encourage the production and distribution of this content to the Australian public?

In addition to content quotas on the commercial FTA broadcasters, there are several other means by which Government can support the production and distribution of Australian and local content:

- Direct subsidies to producers and commercial players, through mechanisms such as the former Commercial Television Production Fund, which operated between 1995 and 1997. In

² NZ On Air (2011) *2010 Local Content New Zealand Television*. Available online at http://www.nzonair.govt.nz/media/54207/nzoa_local%20content%202010_fa.pdf. Accessed 12 August 2011.

³ Ben Goldsmith, Julian Thomas, Tom O'Regan and Stuart Cunningham (2001) *The Future for Local Content: Options for Emerging Technologies*, Sydney: Australian Broadcasting Authority.

our previous submission, we suggested the creation of an Australian Content Innovation Fund to support the distribution of Australian content.

- Indirect subsidies, through tax incentives, or hypothecation of licence fees or proportions of the revenue of broadcasters, telecommunications providers, or other service providers;
 - One relevant international example is the Canadian Local Programming Improvement Fund.⁴ The LPIF is funded from a levy of 1.5% of the gross broadcasting revenues of cable and satellite companies. The fund is available to terrestrial (or ‘conventional’) broadcasters in non-metropolitan markets for production of local programming.
 - In our previous submission to the Review we noted the following option: “A portion of the licence fees paid to government by broadcasting service licensees could be made available for Australian content production for commercial TV and radio. The latest support from government for commercial free-to-air licensees’ transition to digital was accompanied by stated expectations that they should maintain their commitment to Australian content, although no specific targets were set initially. Minister Conroy’s decision to extend the licence fee rebates until the end of the Convergence Review, announced on 10 June 2011, did not place any conditions on the licensees. If, as some commentators have suggested,⁵ the commercial free-to-air licence holders will lobby in their submissions to the Convergence Review for a permanent reduction in fees, and if this is entertained as a serious possibility by policymakers, we **recommend** that such a reduction be conditional on further support for Australian content”. This could be the source of funding for an Australian Content Innovation Fund.
- Expansion of the role and function of government-funded agencies such as the public service broadcasters (of which more below).
 - Examples of innovative measures in other countries include NZ On Screen (<http://www.nzonscreen.com/>) a web portal funded initially by NZ On Air and established as a charitable trust, which sources and digitises New Zealand films, television programs, and music videos, many of which were previously funded by NZ On Air. Non-exclusive licences are then negotiated with copyright holders, including broadcasters, none of whom are remunerated for having their content on the site. Approximately 98% of the site’s content is non-geo-blocked or without restrictions on viewing (that is, it is available to anyone in the world with an internet connection).
 - A similar example is the National Film Board of Canada’s ‘over-the-top’ service NFB.ca (<http://www.nfb.ca>). The site was launched in January 2009 with an initial offer of over 500 short and feature length films available to be streamed for free. In July 2010, this had increased to over 2000 films and original interactive works, with the site recording over 10 million views in its first 18 months of operation. The NFB also has branded channels on sites such as YouTube and Dailymotion, which have attracted an additional 10 million views. The NFB is currently working on developing a fully transactional service. The Board identifies several benefits of ‘over the top’ services compared with broadcasting: the site offers a broader range of Canadian programming than the broadcasters, including a much broader range of niche programming; there is greater exploitation of back-catalogues of Canadian programming that otherwise would be lost to view; and there is access to new

⁴ For information on the LPIF, see http://www.crtc.gc.ca/eng/info_sht/tv13.htm. Accessed 12 August 2011.

⁵ James Chessell (2011) ‘New \$100m Handout for TV Networks as Conroy Extends Licence Rebates’ *The Australian* 10 June 2011, <http://www.theaustralian.com.au/business/media/new-100m-handout-for-tv-networks-as-conroy-extends-licence-rebates/story-e6frg8mf-1226072620807> Accessed 10 June 2011.

programming types such as original interactive works. The NFB has developed apps for iPhone, iPad, Android phones and is working on an app for internet-connected televisions.⁶

- Expansion of the role of community broadcasting, along the lines of the UK proposal to establish a number of new 'Local TV' stations around the country. The UK government has announced its intention to issue the first licenses in summer 2012, with 10-20 services up and running by 2015. £40m has been allocated from the 2010 BBC Licence Fee Settlement to finance the capital and engineering costs of establishing these services.⁷

Are there measures which will encourage development of new forms of Australian, children's and local content such as local apps, online content and new media forms?

We refer the committee to our previous submission, in which we suggested the creation of an Australian Content Innovation Fund to support the distribution of Australian content. We argue that the key here is to focus on innovations in distribution and aggregation, encouraging and facilitating the viability of new players in the highly competitive attention economy of online audiovisual.

The National Film Board of Canada example, noted above, is also relevant here.

Measures to support training and skills development of transmedia producers in particular would encourage the development of new forms of content and new applications.

Should content rules apply to:

- **terrestrial digital TV multichannels**
- **public broadcasters like the ABC and SBS**
- **other content delivery platforms**

As noted in response to Q1 above, the absence of content rules has resulted in very low levels of Australian content on terrestrial digital television multichannels. While it clearly makes financial sense for broadcasters to buy in cheaper imported programming than to commission or produce Australian content, this does not achieve the cultural objectives of broadcasting regulation.

Expanding the role of the public service broadcasters, including via imposition of minimum content quotas would have a number of advantages including transparency; costs borne by entire community rather than by commercial broadcasters; opportunity to update and refocus the charters. However, there are also disadvantages: public service broadcasters are not funded at level to support high proportion of Australian content; their charters do not suggest that this should be their exclusive task; removing the quotas on the commercial free to air broadcasters and imposing them on the public service broadcasters would trade-off of one cultural policy objective against another; public service broadcasters attract smaller audiences than the commercial broadcasters, thus potentially limiting the reach of Australian content.

In relation to other content delivery platforms, we refer the committee to the section of our previous submission (pp.8-9) in which we argue that:

⁶ Information taken from National Film Board of Canada Intervention, 'CRTC fact-finding exercise on the over-the-top programming services in the Canadian broadcasting system', Broadcasting and Telecom Notice of Consultation CRTC 2011-344. Available online at <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=1586527>. Accessed 12 August 2011.

⁷ See Department for Culture, Media and Sport, 'Local Television' http://www.culture.gov.uk/what_we_do/broadcasting/7235.aspx Accessed 9 June 2011.

Emerging platforms such as IPTV should not at present be regulated in the same way as free-to-air or subscription television. IPTV has the potential, over time, to compete against the incumbent broadcasters on an even footing, but this is still some way off. Following Trevor Barr's typology of broadband services, IPTV is not 'like' conventional television services.⁸ While it is now common for both free-to-air and subscription broadcasters to make programs available via the Internet (so-called 'catch-up TV'), the kind of video on demand service offered by the ninemsn, yahoo7, the Ten Network, Foxtel, ABC iView and SBS are what Barr calls 'open' or 'unmanaged' services, meaning they are available on the open internet and 'the network supplier does not manage their content or make decisions about what is available'.⁹ By contrast, IPTV is better understood as a 'managed service'. In other countries, such as France, where such services are more widely available, IPTV is 'offered by the broadband supplier as [an] additional tiered [service] charged at their determined rates', typically supplied using a closed network, and often bundled with other services such as Internet access, and Voice Over Internet Protocol telephony.¹⁰ Barr argues that while commercial broadband suppliers 'can offer customers the familiar "open" Internet services as we have known them, they also need proprietary or "closed" systems that run fee-for-service programs to enable them to get adequate returns on investment'.¹¹ Barr specifically identifies IPTV as 'a possible innovation leader of managed services that run through the network of NBN Co'.¹² But this potential for innovation, and the potential to enhance competition in the provision of video services over the Internet could be stifled by any decision to regulate IPTV and free-to-air/subscription television as 'like services', because of the cost and administrative burden that would be imposed on IPTV service providers. In addition, IPTV services may need additional protections from possible anti-competitive practices by incumbent players such as efforts to lock up certain forms of content by striking deals with content producers that limit the ability of IPTV services to license rights to content. At a later date, once the industry has become established, the question of regulation to support Australian content, for example, could be revisited. There is a precedent here in the treatment of subscription television services. When subscription television was introduced in Australia in the mid-1990s, the new services were not made subject to the same regulations as free to air broadcasters in part because it was recognised that the regulatory burden could stifle the emerging industry and inhibit the development of innovative services and content. Some years later, an expenditure quota was imposed on channels screening drama as a means to support Australian content. In a recent speech responding to the announcement of a Communications Review in the UK, the chief executive of BSkyB advised policymakers 'to resist the temptation to heap regulation on to emerging platforms in an attempt to replicate the way in which TV has historically been regulated. Over time, we see the potential for hybrid or standalone IP-based platforms – offering on-demand, catch-up and linear services – to make a growing contribution to content investment. To be successful, those platforms will need to grow to scale and stay agile in the face of strong, often global competition. A disproportionate regulatory burden would undermine their growth potential and, ultimately, their future role in the content value chain.'¹³

⁸ Trevor Barr (2010) 'A Broadband Services Typology' *Australian Economic Review* 43.2, pp. 187-93.

⁹ Ibid. p.188.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Jeremy Darroch speech at an event organised by the thinktank Reform, London, 8 June 2011. Full text of the speech is available at http://www.guardian.co.uk/media/2011/jun/08/bskyb-jeremy-darroch-speech?CMP=twf_fd Accessed 9 June 2011.