

# Screen Producers Association of Australia Welcomes Convergence Review Recommendations

Owen Johnston, writing in his capacity as a Production Executive at Screen Producers Association of Australia (SPAA), considers the recommendations made in the Convergence Review Final Report from the perspective of content producers, shedding light on some of the potential impacts for that industry.

## What was your overall impression of the Convergence Review Final Report?

The independent sector was pleased and Screen Producers Association of Australia (SPAA) supports the major findings and recommendations of the Convergence Review Final Report (**Final Report**). Given that the digital revolution is changing everything so fast – the kinds of programs we make, the way we make them, the multiple platforms and devices the programs can be screened on, and critically for our sector, the increased access Australian audiences have to programs from all over the planet – it was important to think really hard about how Australian content will survive in the new landscape, in both the short and long terms.

We have already seen how many more foreign television programs are available on Australian screens via the new digital multi channels and how the Australian story presence has been diminished in the overall media landscape since the multi channels started. This imbalance will soon be amplified by IPTV. It won't be long before you can use your remote to click between an Australian free to air channel on your smart TV and a global TV station like Google or Amazon TV, effectively on the next channel. One is currently a broadcaster with Australian content obligations, and the other is currently an IPTV broadcaster with no Australian content obligations.

The Convergence Review panel (the **Panel**) clearly identified Australian content as a major issue very early on in their consultation process and it has been a constant feature in all of the papers they have produced during the last year. Given the difficulties of the technologies and the legislation and the time it will take to construct a new regulatory environment, we agree with the Panel's recommendation of a principles based approach that is platform neutral. We certainly support the notion that that 'those who stand to make the most from the Australian market should make the greatest contribution to the achievement of public policy outcomes'. Broadly, we support the idea that Australian content obligations should be determined by the size of revenue and audience share that a platform neutral enterprise has in the Australian market.

The Panel has suggested that the qualifying measure for a Content Services Enterprise (**CSE**), which would be subject to regulation, be revenue of \$50 million and a monthly audience of 500,000. However, only those CSEs with revenue of \$200 million and 500,000 watchers every month would be subject to Australian content regulations. This effectively captures the current major players. However the current Australian Content Standard was developed in a far less spectrum abundant environment and with far fewer significant competitors. In recent times, the Internet and telecommunications providers have become significant content carriers and competitors for the entertainment audience in Australia. We had submitted that a more graduated system might more fairly

allocate responsibilities for the provision of Australian content. We think that the suggested threshold is fair for the application of Australian content quota obligations but would have preferred a model that requires significant content providers that do not meet this threshold, such as Google, Apple, and Telstra, to be subject to a reduced spending obligation, similar to what now applies to subscription television. The Panel has argued that the bar be set high in order to prevent the exposure of providers to a 'commercially unsustainable regulatory arrangement'. We agree with this and think that a graduated system could still work without endangering the sustainability of the larger Internet and Telco content providers.

## On traditional platforms, advertising revenue has always been critical to content providers and content makers. We need to be wary about the effects of the uncoupling of this relationship on media platforms in the future

The new regulator will face difficulties in dealing with the different accounting and reporting systems global businesses like Google, Apple, Facebook, Amazon et al have in comparison with Australian businesses. However, we do recognise that the proposed model allows for these giants and the Telco to rise above the threshold and generate Australian content requirements.

The Final Report recommends, in regards to IPTV, that only Australian sourced revenue from the streaming of professional media content would be considered in determining whether an entity meets the relevant revenue threshold for a CSE. We are still considering the ramifications of this as some Internet players generate enormous advertising revenue from non-professional or user generated content. We are concerned that the new platform entertainment providers like Telcos and internet companies drain advertising revenue away from traditional platforms, regardless of whether the content they show is 'professional'. On traditional platforms, advertising revenue has always been critical to content providers and content makers. We need to be wary about the effects of the uncoupling of this relationship on media platforms in the future.

SPAA endorses the staged approach to implementation suggested by the Final Report and we recognise that it will take many years to achieve this scale of reform. The challenges are equal to or even greater than the challenges faced by the introduction of radio and the introduction of television. In the case of television, it took from 1956 to around 1970 to bed down a workable Australian content regulatory and legislative environment.

## What recommendations in the Report specifically benefit content producers?

The Final Report proposes that the commercial free-to-air channels should broadcast more Australian content to offset the vast increase in foreign content on the multi-channels. The Final Report also suggests that this requirement to increase Australian content is appropriate given the benefit that is now flowing to broadcasters as a result of the availability of additional spectrum in a limited competitive environment and the consequent increase in advertising revenue.

The Final Report recommends that sub-quotas for first release adult and children's drama and documentary programming be increased by 50% to cover the multi channels. If implemented, this will benefit the independent sector and the Australian production industry more generally. We estimate, based on previous ACMA compliance figures, that such an increase would cost the free to air networks around \$22 million each per year. Given that the three channels have been given an extension on the relief from their license fees for public spectrum in excess of 300 million dollars, we think this is affordable. A 50% increase would amount roughly to around 40 more hours of quality adult television drama per channel, which is less than one extra hour per week.

## The tax offset will also be a shot in the arm for new platform producers who are producing ambitious games, Apps, and interactive web sites and again encourage Australian businesses to grow further into the international market

The increase would require the commercial networks to show an additional 10 hours of first release Australian documentary. However, the commercial networks are currently well in excess of their documentary requirements so we don't anticipate any change from the increase in sub-quotas there. It is more difficult to predict the impact on children's drama because the commercial networks have both a total hours obligation (which can include repeats) as well as a first release obligation. At a minimum, the networks would be required to show an additional 22.5 hours of first release 'C' children's drama.

The Final Report recommends that the ABC be required to match the commercial channel's obligation to show 55% Australian content between 6am and midnight. This could potentially mean a substantial boost for Australian content requiring the ABC to increase their Australian content by about 15%. While the ABC would probably love to do it, it would require an increased appropriation from government to achieve this.

The Final Report recommends that SBS be required to have an Australian content standard of half of that of the commercial channels – 22.5%. Our understanding is that they would meet this already so there would be little or no increase there.

On Pay TV, the Final Report recommends extending the obligation that currently exists for drama programs to children's and documentary channels. Pay TV channels are currently required to spend 10% of their program acquisition costs on first release Australian drama. This is a positive proposal for the independent sector as the Pay TV channels source nearly all their programming externally. We were surprised, given the enhanced market position Foxtel now has since the merger with Austar, that the review didn't recommend increasing the spend quota to 20%, which they are able to do without offending the US Free Trade Agreement. If the proposed 'uniform content scheme' becomes a reality in the future, this obligation will presumably be replaced by the new system and so we would like to see the increase to 20% occur now, particularly if the merger leads to a rationalisation of movie channels and less acquisition costs.

SPAA has lobbied hard for some time for an increase in the producer tax offset for television as a means of creating more Australian content. Given the limitations placed on local content regulation by the US Free Trade Agreement, the tax base, which is exempt, is the most viable mechanism remaining for local industry support. We were pleased with the recommendation in the Final Report that the television offset be increased from 20% to 40% for 'premium' television programming over a yet to be determined budget threshold. This could allow some high budget drama mini series, really ambitious documentaries, and international co-productions to come back into the television space.

The Final Report also acknowledges the growth of interactive media and digital games and recommended a tax offset of 30% for projects above \$500,000 and 20% for projects above \$200,000. This could make a real difference to both interactive producers and traditional platform independent producers. Traditional platform producers have been required by broadcasters to supply a range of costly digital add-ons or extensions of the program's narrative and thematic universe such as web sites, Apps, mobisodes and the like, without being adequately resourced. This measure will assist their viability and make complete program packages more competitive for international sales. These days you can't just make a television program and leave it at that. You need digital materials, an interactive website, a Facebook page, clips on YouTube etc. When Australian producers go to sell their programs overseas and earn export income, they need these materials to be competitive.

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The Final Report recommends a separate review of the independent sector and its terms of trade with broadcasters. We think this is important to ensure that the independent sector remains vibrant and that these new changes don't lead to an imbalance between independent production and in-house network production.

In our view, there is no impediment to the government introducing these measures to support Australian content almost immediately. They can all be achieved in the first stage recommended in the Final Report.

Assuming future governments continue with the plan and progress to stage two and the redrafting of the *Broadcasting Services Act*, we note that the new regulatory environment will give CSEs that have Australian content obligations the option of either investing their obligation on programming to screen themselves or contributing to a Converged Production Fund which will administer and invest the funds in Australian content. In our view, this fund should operate separately from existing federal funding arrangements and involve the marketplace in the decision making process as this is where the funds will be drawn from. This would ensure diversity and competitiveness in our Australian content funding environment. We endorse the Panel's suggestion that a portion of the sale of publicly owned spectrum be contributed to the Converged Fund. This already happens in Canada and is justifiable as the spectrum allows privileged access to Australian audiences.

We would also caution against losing the real market pressure that currently attaches to the Australian Content Standard provisions on commercial television, whereby Australian programming is required to be screened in prime time. We would argue that this market pressure has created the kind of investment in talent, production and marketing that has led to the high quality Australian programming currently enjoying high ratings. We will need to be careful that this is not unpicked in the process of moving to a regulatory model that is based on spending rather than on when programs are screened.

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