SCREEN PRODUCERS' ASSOCIATION OF AUSTRALIA – SUPPLEMENTARY SUBMISSION

In this submission we will deal with the following specific issues which have arisen from the public hearings:

1. Models for Australian content
   - assessment of different approaches

2. Extremes of deregulation - the New Zealand model

3. Imbalance of market power [Confidential]

The main submission from the Screen Producers Association of Australia dealt with the public policy rationale for Government intervention in the broadcasting market. The reasons are :

- economic: free-to-air broadcasters have access to a limited resource and have gained the ability to profit from what remains a limited oligopoly
- social: broadcasting remains one of the most powerful influences over Australian society
- cultural: broadcasting, and television in particular, is the major way most Australians access their own culture

Regulation of Content

There is a basic acceptance that these (above) are good public policy reasons for regulating for local content. The question then becomes what are options for such regulation?

1. *Quotas*

Under this mechanism broadcasters are set quota targets to achieve.

a) Transmission quota - This sets a basic base level of local programming across all genres. It can provide maximum flexibility to broadcasters to meet the transmission quota.

Transmission quotas can be made more restrictive than is currently the case by measuring the quota over periods shorter than a year, such as a day, month or week. Variations of this have been tried in the past in Australia; for example in the sixties and seventies the quota level used to be measured over a month.

The quota level can be a percentage of transmission time or a flat hourly requirement. Up until 1990, for example, the standard required 104 hours of drama per year.

Transmission quotas can also be genre specific as we have at the moment with the children's drama quota and the documentary quota.

b) Points system - In this values are assigned to the factors which one wishes to encourage eg “Australianness”, genre, quality. A scoring system that provides incentives for the most desired qualities is then constructed.

Australia has had two versions of a points system; one devised in 1972-73 which applied up until 1989-90 and the current points system for drama. There are also versions of the nationality points system in the AFC Coproduction guidelines and in the advertising standard.

It should be noted that regulation has increased the level of Australian content from 35-55% over 10 years. This is without any significant impact on the profitability of the networks.

The current standard is designed primarily to produce a cultural outcome; that is, Australians are assured of a minimum level of Australian culture on their television screens.

The system is designed to provide easily measurable outcomes in terms of what is broadcast and what is seen on the screen

The fact that it also has the effect of encouraging production is a by product, but an essential support to the existence of this cultural industry.

2. Subsidy

Subsidy support mechanisms involve direct financial support by Government for broadcasters to produce local content. Australia currently provides subsidy through the Australian Film Finance Corporation (FFC) and the Australian Film Commission (AFC) and through State agencies to defray some of the costs of production. This subsidy is usually directed at higher budget Australian television.

At present however, it seems that independent producers are providing a significant subsidy to broadcasters by way of revenue forgone through deficit funding arrangements. Broadcasters do not pay for the whole of their quota obligations, and increasingly independent producers, who are significantly less profitable than the networks, are forced to shoulder a disproportionate amount of the regulatory burden.

Subsidy arrangements in other countries usually require matched commitments by the broadcaster. The New Zealand On Air model (discussed further below) and the Canadian licence fee supplementation model are current international methods of providing subsidy, while the now defunct Australian Commercial Television Production Fund provides an Australian approach to this method of ensuring Australian content on television.

The economic cost of such a model can be easily quantified. However, on its own it does not necessarily stimulate an increase in the amount of local content broadcast. Both Australia and Canada use subsidy as a supplement to the principal mechanism that supports local content - quotas. New Zealand uses subsidy as its principal method.

Australia and Canada have seen broadcasters increase the level of local content as a proportion of transmission, whereas in New Zealand the proportion has remained static over the last decade.

If the Australian Government were to attempt to use subsidy alone to maintain the levels of Australian production currently screened on commercial broadcasters it would find that it was a very costly exercise. Australian programs are significantly more expensive to the broadcaster than international programs and the Government would have to shoulder of significant level of costs which would dwarf that currently available from sources like the FFC to maintain current levels of Australian programming. We would argue that these costs should be borne by the broadcaster in exchange for their control of broadcasting spectrum.

3. Concessional Arrangements

These involve providing tax concessions or rebates for investment in the programs which one wants to encourage. It includes models such as 10BA, Film Licensed Investment Corporations and Sale and Leaseback arrangements in the UK.

These kinds of taxation arrangements do provide direct market stimulation through seed financing which must be matched by market commitments. In this way, it ensures that their is a significant level of private investment in television production.

The cost of this approach is quantifiable to both the broadcasters and the public. However there is no guarantee that it will lead to an increase (or maintenance) in levels of Australian content, particularly as it is unlikely that private investors would be willing to invest without the support of a sale to a broadcaster. It also does not overcome the issue of secondary markets by which the programs would remain more expensive in Australia than foreign produced programming. Unless tax incentives were especially large (which could encourage rorting), they would not overcome the cost disincentive of Australian programming.

4. Expenditure Requirement

This type of regulation requires minimum levels of expenditure on selected program genres or nationality, or on the level of licence fees paid for individual programs.

Currently in Australia expenditure requirement models are applied in Pay TV and for children's drama. Pay TV drama channels are required to spend a minium of 10 per cent of their expenditure on Australian programming. This is not yet legally enforceable, although legislation to change this should be soon before the Parliament.

The changes to the Australian Content Standard that took effect from 1 March 1999 included the introduction of a minimum level of licence fee for children's drama.

While this kind of regulation provides a straightforward equation of costs to the broadcaster it would be complex regulation requiring detailed economic monitoring and assessment, particularly with respect to the Pay TV model. In-house production and accounting methods could be used to disguise the actual levels of expenditure and for these reasons a close level of scrutiny would be adopted.

Minimum licence fees also remain something of a dilemma. The current requirement for children's drama has provoked some debate in the industry, where in many cases it now represents a maximum rather than merely a minimum price. For this reason it could be viewed as a competitive distortion.

5. Close Supervision

Versions of this include the C Classification process which requires programs to be submitted for approval before broadcast and the old UK system abolished in 1990 which required the regulator, the IBA, to approve <u>all</u> programs before broadcast.

While this system is effective in regulating the standard of content screened, it is not an effective method of ensuring a level of content on television, except when coupled with a quota.

Conclusion

At present the Australian system contains a combination of these regulatory methods. While primarily based on the Australian Content Standard, additional forms of regulation add to its on-going effectiveness.

It must be noted that the current system of regulation, while not perfect, is effective in ensuring a high level of Australian content which spans a broad range of television program types and genres. This system is a result of long development, negotiation and experimentation with alternate regulatory methods. Since the introduction of this form of regulation there has been a gradual move from heavier to lighter forms of legislation.

This year all commercial stations screened over 55 per cent Australian content. They also screened in excess of their minimum drama requirement. These results indicate that regulation in this area is clearly achieving its goals.

New Zealand

We have noted that there has been a significant amount of discussion regarding New Zealand in both submissions to the Inquiry and during the public hearings. We wished to provide a fresh perspective on this issue.

For well over a decade New Zealand has pursued an extreme deregulatory approach to broadcasting. In 1989 it turned the national broadcaster, TVNZ into a State owned enterprise and introduced a third privately owned network. TVNZ receives no direct government support and must return a dividend to its shareholder, the government.

As you are aware there is no equivalent regulation to the Australian Content Standard for commercial broadcasters in New Zealand. Instead, content is funded through New

Zealand On Air which derives all its funding from the licence fee paid by households for the ownership of television and radio receivers. The “Purpose” of New Zealand On Air, according to its website includes the following:

> NZ On Air's role is to help fund a range of locally-made programmes and to ensure that there is diversity on television and radio. In particular, NZ On Air television funding is allocated to the production of 'at risk' categories such as drama and documentaries, and to programmes catering to the interests of women, children, persons with disabilities and minorities in the community including ethnic minorities.
>
> NZ On Air funds New Zealand television programmes, made either by television broadcasters themselves or by independent producers for broadcast nationally.[1]

In 1997/98, New Zealand On Air invested NZ$44.3 million in New Zealand programming resulting in 801 hours of local content being produced and screened in New Zealand. While not all New Zealand content is funded through New Zealand On Air, drama, documentary and children’s programming generally is. As stated in the 1998 Annual Report:

> NZ On Air's focus is on what may be seen as the endangered species in a commercial broadcasting environment – local drama and comedy, documentaries and programmes for special interest audiences like children and minorities in the community – programmes which can't easily be justified in commercial terms but which are needed to ensure that New Zealanders have access to a rich and diverse television diet that reflects and develops our own culture.

In New Zealand, drama, an expensive television form, suffers in particular. During 1997/98 New Zealand On Air supported 60 hours of locally produced first release drama programs (see attached list) at a cost of around $14 million. This is less than the minimum 80 hours of first release drama required by each commercial broadcaster in Australia, achieved at a minimal cost to the taxpayer[2].

There were 406 hours in total of drama and comedy programming shown on New Zealand channels in 1998. The majority of this is made up of repeated programs. In comparison, Australian Broadcasting Authority (ABA) figures show that over 575 hours of *first release* Australian drama were shown on Australian television in 1998[3].

First release programming on TV2 consisted of a daily first run screening of *Shortland Street* (equivalent of *Neighbours* or *Home and Away*), a comedy series called *Newsflash* and a miniseries. This is significantly less first release drama than any of the Australian commercial broadcasters, despite being several times the level of first release drama shown on any other New Zealand channel.

[1] New Zealand On Air website *http://www.nzonair.govt.nz/purpose/purpose.html*
[2] Miniseries, telemovies and feature films which count towards total drama hours may have been produced with Government subsidies
[3] Australian Broadcasting Commission *Compliance - Australian content and children’s television in 1998* ABA Trends and Issues No 6 August 1998 p5

Interestingly, TV One showed less first run drama and comedy in 1998 than 1997 with a total of both repeats and first run of just over 35 hours. This is less than half the minimum required by the Australian Content Standard for first release drama. While TV3 had several new comedy series, its only first release drama for 1998 was one telemovie called *Tiger Country*.[4]

This cannot be explained by lack of demand. In New Zealand there is a strong and growing group campaigning for local content requirements to be introduced. This group is not organised or led by the New Zealand industry (who have for the past several years been focussed on gaining access to the Australian Content quota). Rather it is a broad community based grouping who have now been joined by elements of the industry. Indeed, the strength of this demand is reflected by the fact that the New Zealand Labour Party have adopted the introduction of local content quotas as one of their policy platforms.

At present their demands are reasonably modest and are outlined on their website:

> The Green Ribbon campaign is asking for an achievable level of content with particular emphasis on children and young people. We are calling for 30% on television (already in the 20's), plus a level of 10% New Zealand music on radio (currently 8%).[5]

The movement has been gaining substantial support and should a Labor Government be elected it is quite likely formal quotas will be introduced.

The example of New Zealand can be shown to demonstrate two things:

1. In the absence of local content requirements, commercial networks are generally unwilling to invest heavily in local drama which is costly, particularly for new and untested programs. In order to achieve anything vaguely equivalent, the New Zealand government has had to require heavy taxpayer investment in the industry, spending over NZ $44 million in 1997/98.

2. Strong community demand is not enough to ensure that local content will appear on television. Despite clear indications of a demand for New Zealand made television programs, this demand has remained significantly unmet. In this area, the broadcasting market does not act entirely rationally. Consumers will generally watch television, and have little outlet for making their demands clear to stations. Commercial broadcasters are responsive to ratings, but as a significant proportion of the population will watch whatever is on television, even if it is a matter of choosing the least worst program to view, commercial broadcasters choose the best from what is already being shown. There is little way for the consumer to indicate a preference for a program not screening (particularly "potential" programs which have not already had an on-screen life). And even if the demand is recognisable, if that demand is significantly more expensive than programs which are already

[4] The preceding information on New Zealand programming can be found at the NZ On Air website *http://www.nzonair.govt.nz/research98*

[5] Green Ribbon Trust website *http://www.greenribbon.org.nz/about.html*

screening and gaining reasonable ratings, there is no need for a change – even if the consumer would ultimately prefer a different type of program. If Australian or New Zealand consumers turned off their televisions entirely until they achieved their goal of increased local content, this would impact on the networks, but otherwise there is little way to make that demand compelling to broadcasters.