

Response to ACMA Consultation Paper – Changes to Australian Content Standards or... Putting a value on “Meaningful”.

Submission from Nick Murray

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7 December 2020

I appreciate the opportunity to give feed back on the proposed content standards.

I acknowledge that ACMA must follow the Minister’s Direction dated 2 November 2020.

However I also note that there is an unintentional but serious flaw in the proposed method of calculating the points earned for various types of drama production.

In our response to the original discussion paper, we proposed awarding drama points based on the financial input of the network. The proposed new standards grant points based only on the budget. We maintain a licence fee or investment basis for the calculation is a fairer system and one which will have the effect of stimulating production through new commissions rather than having broadcast licence holders simply piggyback on productions that would have proceeded without their input.

The risk with the proposed 1-7 points system set out in the ACMA Consultation Paper is that the broadcasters would be able to claim maximum points on a program which is actually being commissioned by another platform. At the heart of this issue is defining what is a “meaningful” contribution to the budget. To be honest, anything upwards of 5% of a budget is valuable and could be argued is “meaningful”. But to take a simple scenario, what happens when Netflix commissions a program on a \$1.4 million per hour budget and a broadcaster puts in \$80,000 an episode? There is no incremental rise in total hours of drama produced, but both the streamer and the broadcaster will be able to claim commissioned program qudos or quota (respectively) for the same program. A small, opportunistic contribution to another platforms’ program could deliver a bonanza in drama points. We doubt this is the intended effect of the Minister’s Direction.

The policy is also discriminatory towards scripted comedy programs which have traditionally been lower budget but majority funded by an Australian licence fee. Because they are lower budget, the points awarded under the new system are significantly lower – comedies are generally \$400 - \$700,000 per hour, so they only get 1.5 or 4 points, despite needing higher input from broadcasters.

Comedy requires about 70% of the budget from the broadcaster via licence fee because comedies often attract no agency funding and even popular Australian comedies do not usually attract meaningful foreign pre-sales.

Let's look at an example of a comedy program with a budget of less than \$450K an hour. It would attract only 1.5 points despite the network paying a high licence fee of \$400,000 an hour or \$200,000 an episode. (Note the points score would inexplicably jump to 4 if the budget was marginally higher.) Contrast this to a drama series with a budget over \$1.4 million an hour commissioned by Netflix but with an added \$80,000 licence fee from a broadcaster.

Table 1: Comparison of points for a \$400,000 spend on drama or comedy

Type of scripted program	Budget per hour	Format factor (points per hour)	Network licence fee per hour	Points earned for \$400,000 spend	Reaction from comedy producers
Drama	\$1.4 million per hour	7	\$80,000	35	WTF!
Comedy	\$450,000 per hour	1.5	\$400,000	1.5	Huh?

In the drama example, the broadcaster gets 7 points an hour despite contributing only 5% of the budget. If the deal were for a 5 hour program, it potentially nets the broadcaster 35 points for a spend of \$400,000 - but only 1.5 points for an identical spend on comedy! **That is 23 times the points for the same money.**

This disparity is absurd and again, we doubt this is the intent of the Minister.

It would be a terrible and unexpected result of the new system if it actively worked against the commissioning of this important genre or other lower cost drama. Many of our biggest stars and active production companies grew out of comedy which earned full drama points under the old system. Eric Bana, Rebel Wilson, Working Dog, Gina Riley and Jane Turner (Kath & Kim), Shaun Micallef, Glenn Robbins, Daina Reid (former comedy performer now internationally acclaimed director), Andrew Knight (writer), Magda Szubanski and this company, CJZ. All of these people and groups emerged from comedy production and are now responsible for significant production activity and employment. The opportunities we all had to start productive careers, will be lost to new generations because a whole genre may be lost due to the operation of the new system.

The question we pose is why is the new system "scaled to incentivise higher budget commissioned programming"? (ACMA Consultation Paper: para 2 page 9)

Crucially, the new system needs to be tweaked to give some incentive and benefit to networks for paying higher licence fees. Instead of it being linked solely to production budgets – allowing effective double dipping by multiple platforms, the points should be tied to licence fees – not budgets. This will maintain the viability of more nimble and economically produced programs.

The definition of "meaningful" needs to take account of the potential for any double dipping undermining the aim of this regulation. The new system as proposed seems to have the aim of having the broadcasters subsidise the streamers' commissioning

model with free points for broadcasters, piggybacking on shows already in the pipeline.

As the Minister observed at the CAMLA function last week, the pre-existing expenditure based model has worked extremely well for subscription television services for nearly 25 years and has resulted in Foxtel commissioning and broadcasting some truly outstanding local drama.

So we propose overlaying an additional scale to operate in conjunction with the 1-7 scale in the Minister's Direction. Under my proposal, in order to get 7 points for a \$1.4 million production, the broadcaster would need to pay a licence fee of over \$500,000. But if they piggyback with a low licence fee of \$80,000 they get 2.1 points.

So the proposal is – **let's put a value on "meaningful"** as follows.....

Table 2: Meaningful multiplier by network licence fee

Licence Fee Range	Meaningful multiplier
Up to \$150,000 per hour	0.3
\$150,001 to \$250,000 per hour	0.4
\$250,001 to \$350,000 per hour	0.6
\$350,001 to \$500,000 per hour	0.8
Over \$500,000 per hour	1

Here is a table overlaying the above "Meaningful" Multiplier on the 1-7 points table to arrive at a final value using the multiplier in conjunction with the new points system.

Table 3: New points per genre category with "meaningful multiplier" overlaid

Type of program	Specifications	Raw Points	M0.3	M0.4	M0.6	M0.8	M1
Commissioned first release Australian drama programs	production budget of more than \$1,400,000 per hour	7	2.1	2.8	4.2	5.6	7
	production budget of more than \$1,000,000 up to \$1,400,000 p/h	6	1.8	2.4	3.6	4.8	6
	production budget of more than \$700,000 to \$1,000,000 per hour	5	1.5	2	3	4	5
	production budget of more than \$450,000 up to \$700,000 per hour	4	1.2	1.6	2.4	3.2	4
	production budget of less than or equal to \$450,000 per hour	1.5	0.45	0.6	0.9	1.2	1.5

This probably doesn't go far enough because the lower point score is so far away from the highest. But it's a starting point. I would be happy to discuss this further.

But the point is, please do not hurry this system into place (without further analysis using actual examples) in a way that will almost certainly discriminate against the commissioning of lower budget scripted programming such as comedy.

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