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# Changes to the Australian content and children's television standards- consultation 35/2020

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SUBMISSION BY: Samuel Loy  
Doctoral Candidate, Swinburne University of Technology

DECEMBER 7, 2020  
SWINBURNE UNIVERSITY OF TECHNOLOGY  
[sloy@swin.edu.au](mailto:sloy@swin.edu.au)

## Introduction

The changes to Australia's television policy and regulation are as stated "to support Australian content on our screens". In the contemporary landscape, and projected future landscape, television regulation should begin to move to a platform agnostic position. Despite this due to issues around accessibility and the cost of digital infrastructure these changes need to both enable investment into the Australian television industry as well as continue to defend the existing television culture of Australia. The suggested policy instrument of the consultation paper and the drafted Broadcasting Services (Australian Content and Children's Television) Standards 2020 are appropriate in general. However, the numerical assignment of points per hour broadcast create an incentive system in which Australian drama programming is not rewarded for raising their budget. This policy document is a move toward regulatory parity between television distribution methods within Australia.

Chief among the suggested changes is the reconceptualization of the minimum Drama and Documentary programming expenditure for Australian broadcasters. This policy instrument is in many regards similar to existing policy, however, the value proposition for expenditure presented does not offer certain strategic options to broadcasters. There is also potential for this system to move incentives away from strategic investment which can seek further rewards in the global rights market. Opening the system to different levels of drama content investment is an additional option that can be provided to broadcasters through the deregulatory process. This response chiefly deals with the relationship between points and programming budget. While the stated policy offers opportunity to broadcasters via deregulation the strategic and value per dollar implications of the proposed system may operate in contrary to their internal strategic goals.

The proposed changes also add terminology to the producer / distributor relationship via the addition of the term 'Commissioned'. There are potential implications for this terminology. These terms offer future utility in the management of 'Distributor to Distributor' production arrangements. This change offers clarity to funding arrangements, however, the formal recognition of internet television distributors may require the additional recognition of 'Non-Distributor Content Producers' to offer further utility to regulators in the future.

## Points System

The below explores the incentives of the proposed changes regarding expenditure per hour of television. If the regulatory positions of the different distributors are to be normalized broadcasters could be offered a full spectrum of strategic choice in their investment. Such regulatory normalization can create an opportunity for larger per-hour investment in programming. Linear channels such as broadcasters often trade on viewers consumption at particular times, and this 'appointment viewing' can be a significant strategic choice for these organisations. The cultural and industry goals of Australian television regulation may also overlap with the fostering of high-end productions. Australian talent leaving for more active markets can be seen as an issue in the industry, as can capital flight. This submission demonstrates the value properties of the suggested

policy instruments to explore broadcaster's ability to fulfill their minimum obligations under the expenditure brackets.

The policy in force lowers the points reward for multi-hour per week programming. This is perhaps the largest change to the programming requirements along with an effectively lower requirement for broadcasters due to the increase in points per hour. The \$450,000 to \$700,000 category is the highest value category per dollar spent as presented below. It is notable that the average cost per hour of in-house production fell into this category in 2019/2020 (Screen Australia, 2020) at an average cost of \$566,000 per hour. However, this was likely due to the impact of covid-19 as these average costs ranged between \$702,000 and \$751,000 over the previous four years peaking in 2018/2019 and as such there are likely productions which will fall into the 4 and 5 point categories.

Expenditure Category	Points Reward	Range of points per \$10,000
with a production budget of more than \$1,400,000 per hour	7	0.05 – (downward exponentially)
with a production budget of more than \$1,000,000 up to \$1,400,000 per hour	6	0.06 - 0.042857142857143
with a production budget of more than \$700,000 up to \$1,000,000 per hour	5	0.071428571428571 - 0.05
with a production budget of more than \$450,000 up to \$700,000 per hour	4	0.08888 - 0.057142857142857
with a production budget of less than or equal to \$450,000 per hour	1.5	.03333 - 0.0

Figure 1. Points per \$10,000

Notable changes to this system is that it may be rewarding to leverage previously disincentivized weekday melodramas such as 'Neighbors' and 'Home and Away' which are currently awarded 1 point per hour. Drama content with an hourly budget underneath \$450,000 is unlikely to be desirable not only because of these incentives but also due to the difficulty in hitting these budgets.

This change and increase in points reward go a long way to allowing broadcasters to attribute capital as they choose for their programming. It is notable that this does not remove requirements for overall Australian content, just the minimum drama expenditure. Despite these overall positive moves the system incentives should move towards equal systemic rewards for higher end investment. These requirements can be viewed as malleable to policy makers through the ability to change the points reward per hour and the 250-hour minimum.

Despite some variance at different budgeted price points the highest value per dollar method to fill the 250 points quota is to take advantage of the 4-point category with 62.5 hours of programming. Despite this due to production costs this is likely to be split between this and the 5-point category.

To prevent the concentration of expenditure within these two categories and to open rewards in higher expenditure categories there is an opportunity to create further points rewards in these categories. The suggested 6- and 7-point categories can be awarded higher value to normalize the value for higher cost programming. An example of how a change like this can affect the value for expenditure is presented below.

Expenditure Category	Points Reward	Range of points per \$10,000
with a production budget of more than \$1,400,000 per hour	10	0.0714285714285714 – (downward exponentially)
with a production budget of more than \$1,000,000 up to \$1,400,000 per hour	7	0.07 - 0.05
with a production budget of more than \$700,000 up to \$1,000,000 per hour	5	0.071428571428571 - 0.05
with a production budget of more than \$450,000 up to \$700,000 per hour	4	0.08888 - 0.057142857142857
with a production budget of less than or equal to \$450,000 per hour	1.5	.03333 - 0.0

Figure 2. Example adjusted points per \$10,000

While this example retains clear value within budget ranges, it also provides an incentive for increasing budgets into a higher category rather than the suggested system which may reward cutting budgets. As an example, under the suggested system a \$900,000 per hour budget becomes better value to the broadcaster for every dollar removed from the budget. With these rewards normalized there becomes a benefit to instead increase this budget to the minimum cost of the next tier, in this case \$1,000,000. This additional expenditure may also raise the quality of the product should it afford the production additional resources. Due to the average expense of Australian drama, allowing broadcasters to raise their budget may offer broadcasters further strategic choices and bring them closer to the conditions of Pay TV and potentially future proof regulation if changes are made to internet distributors after the data collection period.

## Commissioned Programming

The acquisition of content is a key component of programming requirements. The addition of 'commissioned' to the terminology around acquisition offers clarity to the process by which this content may be used by broadcasters towards their content requirement. While not explicitly stated in this document co production agreements between internet distributors and broadcasters has emerged as a trend internationally and has become leveraged in Australia between the ABC and Netflix for programs such as Pine Gap (Slessor & Bogle, 2018). The programming minimums presented here, whether for broadcasters or pay TV, outline a contribution to Australia's television culture through financial commitment to the local television production industry. Clear terminology here affords these organisations a clear statement of their requirements. However, the lack of distinction between television distributors and non-distributor producers inhibits regulators from altering the interaction between these organizational types independently. Should the activities of distributor to distributor relationships become problematic this creates a risk of unnecessary regulation to non-distributor producers.

Additional terminology in the style of the United Kingdom's 'Qualifying independent production company' can be instructive to how this may work in practice.

"Article 3(4) defines an independent producer as a producer:-

- who is not employed by a broadcaster;
- who does not have a shareholding greater than 25% in a broadcaster; or
- in which any one UK broadcaster has a shareholding greater than 25% or any two or more" (Ofcom, 2014).

While this has additional implications for the country's regulation it provides a tested example of how these entities can be defined. Non-distributor producers require investment certainty due to their lack of immediate access to a distribution platform. Additionally, these entities need to be able to seek a return on their investment from the distributor market to remain viable, and these activities may be unintentionally suppressed through regulatory controls on distributors. As such their ability to access the distribution market should be partially decoupled from the regulatory environment which governs distributor to distributor relationships. The addition of terminology affords regulators the ability to adjust the existing policy instruments without treating industry organisations as identical participants.

## Conclusion

The suggested changes represent an overall positive move toward platform equality in Australian television. Despite this, additional points for higher expenditure content would be a further positive step towards these goals. Additionally, adding language to the document which recognizes non-distributor producers should protect against possible future changes to regulation and give policy makers more choice in their approach to the Australian television industry.

## CITATIONS

Ofcom, 2014, “EXPLANATORY MEMORANDUM TO THE BROADCASTING (INDEPENDENT PRODUCTIONS) (AMENDMENT) ORDER 2014”

Screen Australia, 2020, *Screen Australia Drama Report Production of feature films, TV and online drama in Australia 2019/20*, <https://www.screenaustralia.gov.au/getmedia/f87c32c8-3d5d-4d99-95ad-224931812f49/Drama-Report-2019-2020.pdf>

Slessor, C Bogle, I 2018 “*Netflix series filmed in Adelaide 'the beginning' of content creation for streaming services*”, ABC NEWS, <https://www.abc.net.au/news/2018-04-05/pine-gap-netflix-drama-series-filmed-in-sa/9621320>