

AHEDA Submission: Response to the Broadcasting Service Exclusion Determination Consultation Paper: August 2022

8th September 2022

BACKGROUND: AHEDA

1. This Submission is lodged on behalf of the Australian Home Entertainment Distributors Association (**AHEDA**).
2. The Home Entertainment category for film and TV content in Australia includes subscription and transactional video on demand services, the packaged media and DVD sectors and is valued at over \$2.7B in 2022. AHEDA Members include the major Hollywood film studio's Home Entertainment distribution companies including Universal Sony Pictures Home Entertainment, Paramount Home Media Distribution Australia, StudioCanal, Disney and wholly-owned Australian companies such as Roadshow Entertainment, Madman Entertainment and Defiant Entertainment as well as Foxtel, Fetch and Telstra TV. AHEDA speaks and acts on behalf of its members on issues that affect the digital transactional and packaged media industry as a whole including working with government on regulatory and policy matters, collaborating with other associations on copyright and enforcement, film and TV classification, media access and convergence, creating consumer and trade campaigns to advance the industry, technological advancements, identifying solutions to industry-wide issues affecting business efficiency and by providing industry data and research findings to its members and stakeholders.

CURRENT DETERMINATION

3. The *Broadcasting Services ("Broadcasting Service" Definition—Exclusion) Determination 2019*, and its precursor instrument have operated to exclude certain types of online media services from the definition of 'broadcasting service' in the Broadcasting Services Act 1992 (**BSA**), with the effect that online television simulcasts, online radio stations, and live-streaming on social media and other digital platforms are not subject to broadcasting regulation.
4. The current Determination is set to expire on 18 September 2022.
5. The Consultation Paper proposes to remake the Determination for a further time-limited period and seeks views on various matters, including the length of any time extension, the implications if the current Determination was to expire and the possible impacts and disruptions which may arise from such proposals.

AHEDA'S RESPONSE

6. Please find below AHEDA's responses to the questions in the Consultation Paper.

Question 1: Should government make an instrument under subsection 6(2) of the BSA in effectively the same terms as the *Broadcasting Services ("Broadcasting Service" Definition—Exclusion) Determination 2019*, which excludes services that provide live-streamed content online from being considered a 'broadcasting service'?

7. AHEDA supports the government's proposal to remake the current Determination in identical terms.
8. AHEDA agrees with the government's view that Australia's current regulatory frameworks have not kept pace with changes in online and Internet Protocol – enhanced media services and that there are inconsistencies in regulatory outcomes for industry and consumers alike.

9. AHEDA believes there are significant issues that would benefit from additional time in order to ensure that any regulatory reform better reflects modern consumer expectations, as well as providing a 'level playing field' for Australian businesses operating across all platforms and international markets.
10. AHEDA refers to *Figure 2 Viewing behaviours in the past 7 days, 2017 -2021* and *Figure 4 Change in online media consumption since the Determination (2000- 2020)* in the Consultation Paper, which evidence the change in consumer behaviours and consumption levels, and notes that as some of the data has been recorded during the COVID Pandemic (2020 and onwards), it may be prudent to allow more time to evaluate consumer behaviours in the next few years.
11. AHEDA agrees that further time is needed to properly consider all stakeholder views, related legislative changes and effects, including *Classification (Publications, Films and Computer Games) Act 1995*, *Copyright Act 1968*, *Telecommunications Act 1997*, *Online Safety Act 2001*, and relevant international treaties and trade agreements.

Question 2: If the instrument is made, in an effort to provide certainty and stability to industry while broader regulatory reforms are developed and progressed, should it be remade for a duration of 3 years, 5 years, or alternative period of time?

12. AHEDA supports the government's aim to ensure that any long-term regulatory reform addresses future technology changes and market needs, and that this may be a multi-year task.
13. AHEDA recommends that the Determination is remade for 3 years.

Question 3: If the instrument is made for a duration of 3 to 5 years, what would be the regulatory and financial impact on your business?

14. If the Determination was remade for an extended duration, this would provide certainty for AHEDA members and stability in the market place, enabling longer term planning and investment in film acquisition, licensing, distribution and production.
15. If the Determination was remade for an extended duration, this would also allow time for consultations with stakeholders, individuals and relevant government bodies to properly consider the scope any regulatory reforms and their consequences, in an open and transparent process.

Question 4: If the Determination expires on 18 September 2022, with no interim solution in place, how would this impact your business or area of industry? What regulatory and financial costs do you estimate your business would incur in this scenario?

16. If the Determination were allowed to expire on 18 September 2022, this would cause uncertainty and instability for AHEDA members and result in negative financial and commercial effects in the market, including film acquisition, licensing, distribution and production.

Question 5: What are your views on the alternatives to remaking the Determination?

17. AHEDA supports the remake of the current Determination in identical terms.
18. AHEDA believes that time and resources would be better utilized in focusing on the broader regulatory reforms, engaging stakeholders and monitoring consumer usage and expectations, rather than seeking to amend the current Determination which is clear and understood in the current market by business and investors.

CONCLUSION

19. AHEDA thanks the government for the opportunity to make this submission. AHEDA looks forward to participating and engaging further with the government in respect of its reform agenda and is happy to meet and discuss these comments and any other related issues relevant to its members.