NETFLIX

Summary of Netflix's Media Reform Green Paper submission

The importance of Australia's screen production industry

The Australian media sector is a significant segment of the domestic economy, employing approximately 90,000 Australians in 2018–19 and generating an estimated $47.7 billion of domestic revenue.[1]

There are a diverse range of content offerings and business models across the screen industry ecosystem. Each of these unique offerings contribute to the ecosystem in different ways, and provide different benefits.

Consumers have benefited from an explosion in the variety of content services in the Australian market - from the catch-up services offered by broadcasters, to subscription streaming entertainment services, and user generated services such as YouTube and TikTok.

Australia's content production sector has never been healthier

The recent wave of content production in Australia can be attributed to a range of factors, including , audience appetites for Australian content, our reputation for excellence as a place to make screen content, Government support through the location attraction incentives and other measures, as well as Australia's successful management of COVID-19. This has enabled Australia to position itself to become a leading destination for film and television production, showcasing Australian content both to Australians and global audiences via streaming entertainment services.

Screen Australia reports that but for the COVID-19 lockdowns, the financial year 2019/20 was on track to be the most successful year on record for the Australian screen production industry.[2]

This content boom will continue to provide significant economic and employment benefits across metro and regional and remote areas, driven by both local and international productions.

The streaming industry is a key contributor to the content ecosystem

It is still early days for Australia's streaming entertainment industry, with the majority of subscription streaming services operating in Australia for five years or less. Some services, such as Disney+ and Apple TV+, have been in Australia for just over one year.

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[1] Department of Infrastructure, Transport, Regional Development and Communications, *Media Reform Green Paper: Modernising television regulation in Australia*, p10, November 2020. *Available at:* https://www.communications.gov.au/file/51136/download?token=_QipLViF

[2] Screen Australia, *Drama Report 2019/20. Available at:* https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report

Despite being an 'infant industry' in Australia, streaming services have quickly become an integral part of Australia's screen content ecosystem. In a short time, streaming platforms have contributed significantly to the Australian screen industry through original productions, partnering with free-to-air broadcasters on co-productions, sourcing additional financing from global distributors and exporting Australian content to the world.

As a result of the investment from companies such as Netflix, there is an evolving interdependency of Australian and international production which has occurred organically.

As First Assistant Secretary, Office for the Arts, Dr Stephen Arnott, recently stated:

> *"...streaming services are showing significant Australian content regardless of the fact that there's no regulation to do so."* [3]

Further, streaming business models encourage demand for types of content that otherwise may not have found mainstream commercial success. This enables a much more diverse range of content offerings for the consumer.

The boom in production has led to challenges

However, the explosion in production activity has led to severe shortages in physical production space, and limitations on the availability of talented crew from pre production to post production work.

A recent survey by Screen Producers Australia of its members showed a high demand for experienced, skilled and qualified roles, and noted that producers are reporting Australia-wide shortages and greatly increased rates arising from the number of concurrent shoots and international productions. As CEO, Screen Producers Australia, Matthew Deaner, states:

> *"While the current employment conditions are a boon for jobs and our world-class crews, there is a tangible flow-on effect into local productions and the local production businesses who are striving to maintain sustainability in challenging economic conditions"*[4]

Given the capacity for the production industry to create employment opportunities in regional and remote areas and to drive Australia's continued economic recovery, solving critical creative arts infrastructure and skills shortages should be our primary policy focus at this time.

Australia has an important opportunity to strengthen the industry further by leveraging this record investment strategically to build more capacity and capability, as well as ensuring ongoing content production and global distribution.

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[3]Statement of Dr Stephen Arnott, First Assistant Secretary, Office for the Arts, Environment and Communications Legislation Committee, Additional Estimates hearing, transcript 23 March 2021, p17. *Available at:* https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22committees%2Festimate%2F140f26dd-8d3b-4457-a348-9baa49ecf095%2F0000%22

[4] Screen Australia Media release, *Local productions facing skills shortage*, 26 April 2021. *Available at:* https://www.screenproducers.org.au/news/local-productions-facing-skills-shortage

Netflix's growing contribution to Australian content

Netflix investments in Australian content represent a significant and growing contribution to Australia's content production ecosystem. We are the only international streaming service with a full-time content team based on the ground in Australia, and we'll continue to invest aggressively in Australian content.

The Green Paper seems to assume that streaming entertainment companies are not investing in Australian content production because they are not obliged to[5]. This is not correct. In the financial year 2019-20, the Australian Communications and Media Authority (**ACMA)** reports that the total investment on adult drama and children's content from all commercial television broadcasters was $89.7 million. In the same period Netflix's investments in Australian adult drama and children's content totalled just more than $111 million.

The Green Paper proposes a new obligation on streaming services to invest a percentage of their Australian revenue on Australian content, in the form of commissions, co-productions and acquisitions[6]. In FY 19-20 Netflix invested in over 80 titles in these categories. To provide an example of the scale of our contribution to new content production, Netflix invested over AUD$52.04 million in the recent series *Clickbait* filmed in Melbourne at Docklands studios.

Australia is an important location for Netflix's commissioned kids productions. In just the 2019/20 financial year we spent more than $33 million on first-run Australian children's content. Screen Australia reports that the total investment in children's drama in 2019/20 across all platforms was $46 million.[7]

Netflix partners with Australian creators to bring Australian content to our members around the world. We gain access to authentic local stories and world-class talent, and can bring our particular focus on audiences and exports. When working with us, broadcasters benefit from additional financing for content for their domestic audiences and substantial additional exposure, with Netflix branding in 190 countries around the world.

Licensing second-run content also provides a new window for Australians to access classic Australian content otherwise not readily available to them, and provides additional financial support to the Australian production industry. New generations of Australians will be exposed to iconic Australian titles such as *Secret City*, *Two Hands, The Dish, The Tracker, The Secret Life of Us*, *Heartbreak High, Offspring* and *Round The Twist* from their inclusion on Netflix's service.[8]

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[5] For example, Green Paper, p28

[6] Green Paper, p6

[7] Screen Australia, *Drama Report 2019/20,* p 21. *Available at: https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report*

[8] New Idea, *Clear the schedule! The Secret Life of Us set to drop on Netflix. Another Aussie classic to add to the watch list,* 20 May 2021. *Available at https://www.newidea.com.au/the-secret-life-of-us-netflix*

In addition to creating and acquiring Australian television series and movies, Netflix also relies on Australia's world famous production and post-production infrastructure and talent. This enables us to support innovation, and provide opportunities that will contribute to achieving the goals set out in Australia's Digital Economy Strategy.

All of this investment occurred prior to Netflix appointing Que Minh Luu in July 2020 to head our new local content team. Since then, Luu has commissioned major productions such as *Heartbreak High* and *Byron Baes*.

Netflix takes significant measures to feature Australian content, and to assist our members find Australian productions and stories. Netflix recommendations also work to ensure members around the world are presented with Australian produced content that they are likely to enjoy.

In 2018, 82% of Australian Netflix members and 68% of US Netflix members viewed Australian content. As First Assistant Secretary, Office for the Arts, Dr Stephen Arnott, has stated:

> *…there's significant Australian content available on streaming services, and that's finding an audience there."*[9]

There is no evidence of market failure in local content production

As well as record levels of investment across the content production sector as a whole, Netflix and other streaming entertainment providers are already making significant contributions to Australian content production. It is critically important that work on the Green Paper be informed by data from the voluntary Australian content investment reporting process that has just commenced between streaming entertainment companies and the ACMA.

It is also important to recognise that many other key data inputs for assessing the health of Australia's content ecosystem are not yet available, such as:

- evidence of the expected positive impacts of the recent welcome changes to the Producer Offset;
- the Screen Australia Drama Report for Financial Year 2020/21, which will provide a better sense of the impact on the sector from COVID-19 filming shutdowns, and subsequent boom in content production; and
- economic modelling on the impact of the Green Paper's proposals.

Assessing the Green Paper's proposals

Netflix supports the broad policy objective of creating a modern regulatory framework that will benefit Australia's content production industries. However, inflexible and overly prescriptive

[9] Statement of Dr Stephen Arnott, First Assistant Secretary, Office for the Arts, Environment and Communications Legislation Committee, Additional Estimates hearing, transcript 23 March 2021, p17. *Available at:* https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22committees%2Festimate%2F140f26dd-8d3b-4457-a348-9baa49ecf095%2F0000%22

regulatory intervention risks significant unintended consequences for the rapidly evolving streaming entertainment industry, free-to-air broadcasters, as well as the wider set of content production industries that are increasingly finding opportunities within this growing and global sector.

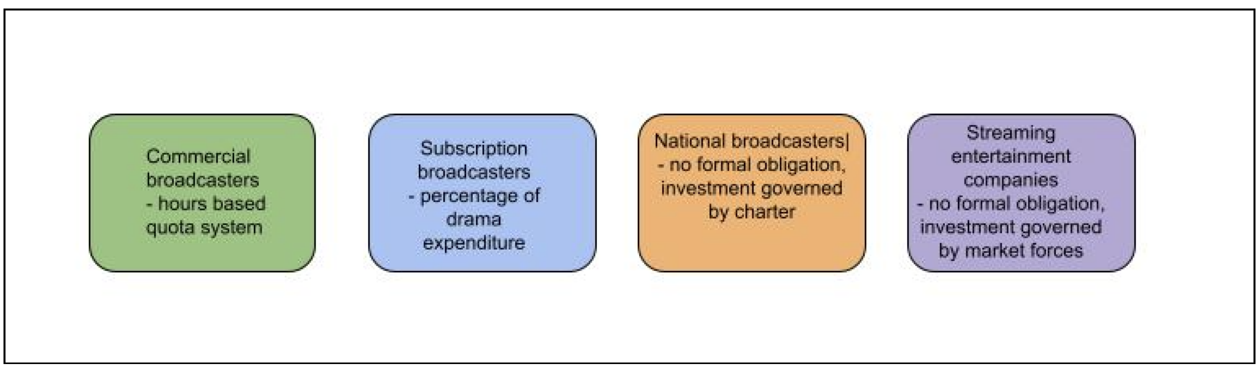
A recent report by Frontier Economics found a correlation between less restrictive policies and higher levels of investment in local content amongst OECD countries. Countries such as the United Kingdom and Germany have the highest levels of investment, yet have lower levels of policy restrictiveness.[10]

Great care must be taken to ensure that any policy interventions do not exacerbate existing capacity constraints and skills shortages, or create disincentives for emerging business models such as co-productions between streaming services and free-to-air or public broadcasters.

Achieving 'platform neutral' media regulation

The Green Paper focuses on only one element of regulatory harmonisation - local content obligations. However, if implemented, the Green Paper's proposals regarding local content would result in more inconsistency*:* both to the overall media regulatory framework, and to local content policy.

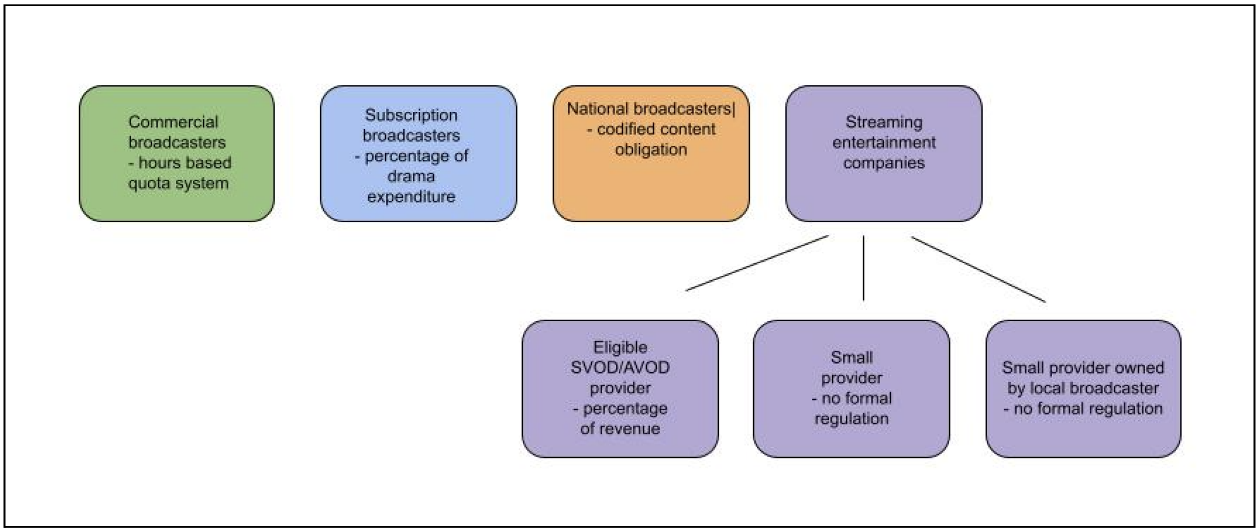
The current local content system already applies two different regulatory obligations: on commercial broadcasters (a quota system) and subscription broadcasters (a system imposing a local content obligation based on a percentage of overall program expenditure). Local content investment decisions made by the national broadcasters and streaming entertainment companies are governed by market forces.



However the following figure demonstrates that rather than moving towards a more platform neutral regulatory framework, the Green Paper's proposals would introduce three additional categories of regulation, adding further inconsistency and distortion to the media landscape.

[10] Frontier Economics, *The Economic Impact of Video on Demand Services in Korea,* May 2021. *Available at: https://www.mpa-apac.org/wp-content/uploads/2021/05/KR-Frontier-The-Economic-Impact-of-VOD-in-Korea-30.04.pdf*

Instead, the Green Paper proposes a third revenue based obligation, which would only apply to some forms of 'SVOD' and 'AVOD' providers as demonstrated and would still leave significant content providers such as Stan, Binge, YouTube and new market entrants such as Paramount+ outside the scope of the proposals.



This outcome would be inconsistent with the overarching policy goals of harmonisation established by the Green Paper. It would also result in non-equivalent treatment for local and global services, which would be inconsistent with Australia's international obligations.

Maintaining the volume, variety and quality of Australian content

As well as record levels of investment across the content production sector as a whole, it has been demonstrated that Netflix and other streaming entertainment providers are already making significant contributions to Australian content production.

This has led to an incredibly diverse range of content offerings for Australian consumers, and suggestions that Australians are 'overwhelmed for choice'.[11] Requiring all significant streaming entertainment companies to invest in the same forms of content offering could inadvertently lead to a reduction in the volume, variety and quality of Australian content, rather than increase it.

The approach set out in the Green Paper risks damaging the industry permanently as it could:

- exacerbate the current capacity and capability problems;
- create a content 'arms race' driving up prices for certain forms of content production, and adding greater costs to the free-to-air television business model (contrary to the goals of the Green Paper);
- reduce diversity of content for consumers;

[11] ABC News, *Streaming services in Australia: Are we overwhelmed for choice?*, 12 April 2020. *Available at:* *https://www.abc.net.au/news/2020-04-12/streaming-services-in-australia:-are-we-overwhelmed-for-choice/12141410*

- reduce capacity for domestic broadcasters and content providers to differentiate their services;
- reduce incentives for streaming entertainment companies to enter into co-production arrangements with commercial broadcasters, meaning fewer benefits such as enhanced budgets and content quality, and making it harder for broadcasters to meet quotas;
- incentivise content production decisions that prioritise ‘quantity over quality’; and
- set a potentially artificial cap by designating a minimum spend, encouraging a ‘tick a box’ compliance approach rather than incentivising wide-ranging ongoing investment.

Incentivising holistic contributions rather than technical metrics/revenue based approaches would help with this. Focusing on narrowly constructed local content obligations would be a missed opportunity to incentivise the widest possible range of investments, which would create a ‘virtuous circle’ leading to more content production.

Recognising the importance of co-productions to the ecosystem

Co-productions with streaming entertainment companies is an increasingly important aspect of the business model for many participants in Australia’s content production ecosystem, including broadcasters.

It is a fundamental feature of the co-production business model that while streaming companies make significant contributions to the development of high-quality Australian programming (sometimes 50 percent or more of the overall content budget), the nature of co-production arrangements mean that at least initially, the title will not be available on the local streaming service. This initial ‘exclusivity window’ provides significant benefit to broadcasters in the local market.

A number of the policy approaches or metrics explored in the Green Paper risk undermining or disincentivising investments in co-productions from streaming entertainment companies.

For example, the Green Paper:

- adopts various quantitative metrics such as the number of titles on a streaming service, or the percentage of local content in a catalogue, as a way to measure the investment by streaming content providers.
- highlights the importance of ensuring Australians are able to view programs that enhance their understanding and experience of our national culture across all media platforms.

If policy makers measure the content investments of streaming companies by reference to simplistic metrics such as the number of titles available on the service, this does not recognise the large scale investments that streaming providers make to content production in Australia.

There is a significant risk that an unintended consequence of overly prescriptive regulation would be that streaming services would choose not to enter into co-production arrangements, if these investments are not ‘counted’ in any assessment of the local content investments by streaming platforms. This would harm the entire content production ecosystem, including free-to-air broadcasters, and act contrary to the policy goals articulated in the Green Paper.

Ensuring policy decisions are made on the best available data

It is critically important that media policy decisions are informed by the voluntary reporting process that has just commenced between streaming entertainment companies and the ACMA. The evidence from this data reporting should form a key component of the ongoing policy work in this area.

It is also important to recognise that many other key data inputs for assessing the health of Australia's content ecosystem are not yet available, such as:

- evidence of the expected positive impacts of the recent welcome changes to the Producer Offset;
- the Screen Australia Drama Report for Financial Year 2020/21, which will provide a better sense of the impact on the sector from COVID-19 filming shutdowns, and subsequent boom in content production; and
- economic modelling on the impact of the Green Paper's proposals.

Netflix understands from a recent Senate Estimates hearing that this modelling has not been undertaken by the ACMA:

> *Senator Pratt: "As the regulator, have you done any modelling or forecasting in relation to the impact of the new model on content?"*
>
> *Ms O'Loughlin: "No."*[12]

If modelling has been undertaken by the Department of Infrastructure, Transport, Regional Development and Communications, the public release of this modelling would represent an important contribution to public debate on these issues.

Netflix submits that all of these sources of data, including appropriate economic modelling, should be considered before final decisions regarding the Green Paper consultation are taken.

Ensuring regulation is consistent with international best practice

Demand for quality content around the world is growing, and regulators in other markets are confronted with similar questions about how to adapt to shifts in market conditions. The Green Paper considers the examples of proposed local content obligations in other jurisdictions such as Canada and France.

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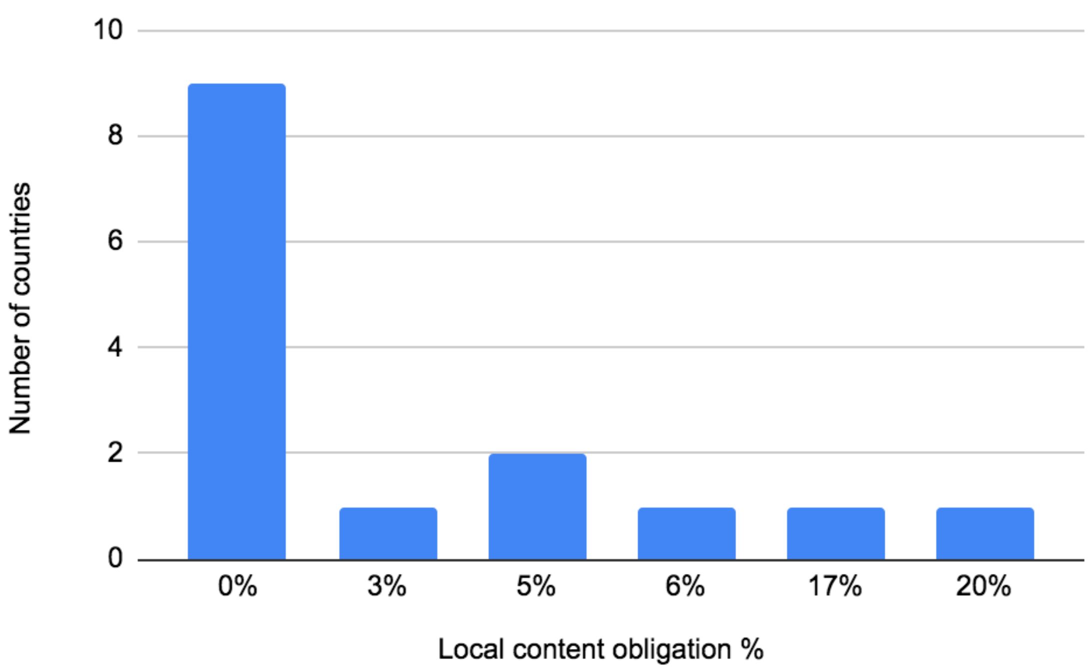
[12] Statement of Ms Nerida O'Loughlin, Chair and Agency Head, Australian Communications and Media Authority, Environment and Communications Legislation Committee, Additional Estimates hearing, transcript 23 March 2021, p90. *Available at:* *https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22committees%2Festimate%2F140f26dd-8d3b-4457-a348-9baa49ecf095%2F0000%22*

The Canadian Parliament has referred a draft Bill to a Select Committee which, if enacted, will give the local regulator the power to regulate VOD services. However it does not make any references to whether, or at what level, VOD services are required to invest in local screen content.[13]

France is currently considering implementing a 20% local content obligation, however, if implemented this would be unusual internationally and even in Europe. In fact the majority of EU Member States have no system of levies or investment obligations. Those that do have much lower thresholds than those proposed by France and its neighbour Italy (17%). Poland recently introduced a levy of 1.5% the same rate as is currently proposed by Greek legislation. Germany has an established levy of 3%, and Spain one of 5%. Belgium, Croatia and Denmark have all set their thresholds at 2%.[14]

In addition, countries such as Austria, Bulgaria, Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania and Sweden have elected not to implement a local content obligation.

Content obligations in Netflix's top 15 markets by subscribers



Source: Ampere Analysis. Subscriber data from Q2 2020, commissioning data from July 2020

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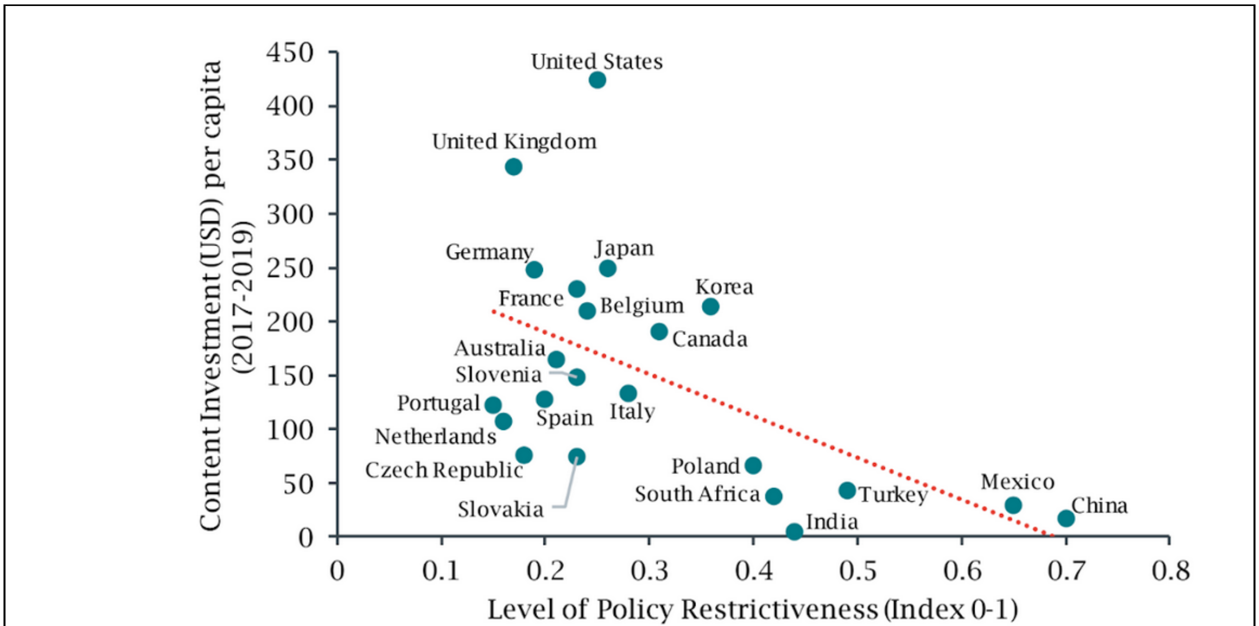
[13] Department of Justice (Canada), *Bill C-10: An Act to amend the Broadcasting Act and to make consequential amendments to other Acts, 18 November 2020. Available at:* *https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c10.html*

[14] Council of Europe, *Chart of signatures and ratifications of Treaty 132,* 18 May 2021. *Available at:* *https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/132/signatures?p_auth=5hk0XuAA*

Restrictive AV Policy correlates to lower investment (Selected OECD Countries and China)[15]



Source: Frontier analysis of Ampere and OECD data

[16]

Countries such as the United Kingdom and Germany have the highest levels of investment, yet have lower levels of policy restrictiveness.[17]

The way forward

A flexible, forward-looking policy framework should not narrowly focus on content production alone, but encourage and facilitate a range of policy considerations, including:

- ensuring a skills and employment pipeline from pre to post production;
- ensuring that Australian productions can obtain the talent and crew they need to meet the global demand for content;
- enhancing production capacity - fixing the problem of the extreme shortage of physical production space leading to capacity constraints for new productions;
- ensuring continued investment in pre-production, physical production, post and visual effects, and building on programs such as the Netflix Post Partner Program to continue to attract inbound investment;
- attracting inbound investment and building on existing foreign production investments;

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[15] Ibid p10.

[16] Ibid.

[17] Frontier Economics, *The Economic Impact of Video on Demand Services in Korea,* May 2021. *Available at:* [*https://www.mpa-apac.org/wp-content/uploads/2021/05/KR-Frontier-The-Economic-Impact-of-VOD-in-Korea-30.04.pdf*](https://www.mpa-apac.org/wp-content/uploads/2021/05/KR-Frontier-The-Economic-Impact-of-VOD-in-Korea-30.04.pdf)

- maximising the export benefits provided to creators from global entertainment services; and
- maximising the direct and indirect economic benefits that flow from a strong production sector, through job creation to wider economic benefits such as tourism and cultural affinity.