



Prominence Framework for Connected Television Devices Proposals Paper - Netflix Submission

Netflix welcomes this opportunity to contribute to the Government's proposed prominence framework for connected television devices as part of its broader media reform agenda.

Below is Netflix's submission in response to the Prominence Framework for Connected Television Devices Proposals Paper.

Executive Summary

Netflix is supportive of a competitive broadcasting and media ecosystem that ensures consumers have access to diverse content, including local news programming and Australian content. The availability of local television networks is necessary to serve this purpose.

Internet delivery of content has caused a paradigm shift in how consumers access television content. The prominence of television services is no longer exclusive to those that hold a broadcast spectrum licence. Today, Australian consumers are able to access a wide variety of television content – including local and international television services – on nearly any connected device giving Australians more content choices than ever before. Notwithstanding this, the latest *Communications and media Australia: How we watch and listen to content* report indicates that the number of adults who reported watching free-to-air television (including catch up television) in a given week increased from 64 per cent in 2021 to 70 per cent in June 2022.¹ Think TV research also shows that the combined linear and BVOD audience reach had increased to 76 per cent by November 2022.²

Regulatory proposals to require prominence of certain television services must take into account that consumers are ultimately in control of what content they watch and how they want to watch it. We encourage prominence measures that ensure services are accessible for those viewers looking to access them, but not to supplant competition or consumer choice.

In light of this, we make the following recommendations:

1. Australian broadcasters should be afforded a guarantee of availability on streaming devices to ensure access to a diverse range of local content. We do not believe there are clear policy objectives to support more prescriptive regulation which could stifle competition and innovation.

¹<https://www.acma.gov.au/publications/2023-02/report/communications-and-media-australia-how-we-watch-and-listen-content>

² <https://virtualoz.com.au/report/total-tv-reach/>

2. Any positioning measures should respect consumer convenience by acknowledging that hardware manufacturers generally optimise their user interfaces and hardware in a way that best serves their customers' needs. The ability of a user to customise placement of applications on their device UI for convenience and personal viewing preference should be protected.
3. Any prominence regulations implemented by the Government should aim for consistency with its broader media reforms to ensure clarity and that an equitable approach is taken.

Part 1 - Subscription services invest in the partnerships ecosystem which improves the overall platform performance of video streaming.

Netflix provides a subscription digital entertainment service. For a fixed monthly fee, Netflix members have access to a wide array of content including television shows, films, documentaries and games created, commissioned and/or acquired by Netflix. Different Netflix subscription plans are available to provide consumers with choice over factors such as price, downloads, video quality and resolution.

Netflix is available in over 190 countries and has offered its service in Australia since 2015. We have built an audience - in Australia and globally - by finding and creating the best stories, including Australian stories such as *Heartbreak High* and *Surviving Summer*, and offering unlimited viewing to our members on any screen. Members can cancel and rejoin at any time, so Netflix must continually provide a variety of compelling content, both local and global, to keep its members satisfied.

Netflix works to make its service available on a broad array of internet connected devices, including via web browsers. Like many of our competitors³, Netflix has non-exclusive commercial arrangements in place with various third parties that manufacture and/or distribute connected devices, including:

- smart TVs (example of Netflix partners: Samsung, LG and Sony);
- streaming media players (example of Netflix partners: Amazon and Google); and
- operator set-top-boxes (example of Netflix partners: Telstra, Fetch and Foxtel).

These commercial arrangements can include technical collaboration to integrate the Netflix application on partner devices to improve the reliability of the Netflix application and customer acquisition. Netflix partners place access to the Netflix application at agreed upon UI integration points on the relevant device as part of a wider value exchange. Device integration is a win-win for hardware manufacturers and operators as it allows Netflix members to conveniently watch Netflix on a connected device. This process also sets performance standards which help to improve overall platform performance benefiting the industry as a whole.

Device integration is a technical and complex issue, with many considerations supporting the value exchange for customers (higher quality experience) and hardware manufacturers and operators (certification and reliability of technology). We would be happy to answer any questions the Department may have about these issues if this would be of assistance.

³ See <https://www.disney.com.au/news/foxtel-iq-customers-can-access-disney-plus-app-intergration>

Part 2 - There is value in ensuring Australian broadcasters are available on streaming devices but more prescriptive regulation is not needed in a thriving Australian media ecosystem.

Australians have more entertainment options than ever before. Traditional linear television providers as well as national broadcasters and their on-demand services (e.g. Tenplay, 9Now, ABC iview, SBS On Demand) compete with Netflix alongside numerous other media providers which include other global streaming services (e.g. Disney+, Amazon Prime Video, Apple TV+), the OTT offerings of existing local media players (e.g. Stan, BINGE, Paramount+, Kayo), non-local OTT services made available in Australia (e.g. Hayu, BritBox), audio streaming services (e.g. Spotify, Audible) and health and lifestyle content providers (e.g. Peloton, Calm, Headspace).

As a result of this competition, the local content industry in Australia is thriving. The Australian Communications and Media Authority (ACMA) reported that in FY 2020-21, Netflix, Stan, Disney+ and Amazon Prime Video collectively invested \$628 million on Australian and Australian-related content. These four streaming services alone provided over 6,000 hours of Australian content on their local entertainment services in FY 2020-21, across more than 2,000 titles, averaging 1,504 hours of Australian content per service.⁴ This is a substantial contribution, when put into the context of the expenditure of commercial broadcasters on drama, childrens' and documentary programs, which was a combined \$81.7 million in FY 2020-21.⁵

As Screen Australia's Head of Online, Lee Naimo, said:

*"There's no denying we're seeing a golden age of online content production in Australia and local creators capitalising on opportunities to reach new audiences."*⁶

Streamers invest millions of dollars in Australian content each year⁷ and should not be disadvantaged if the Government seeks to broadly regulate prominence. Netflix has been investing in Australian stories since 2014.⁸ Our local production footprint spans more than 70 movies and shows filmed across the country and Netflix currently has a catalogue of over 300 Australian films and shows available on its service.⁹ We commission and licence new and library Australian content across a variety of genres and invest in the wider ecosystem including through

⁴ The FY 2021-22 Australian content expenditure data for SVOD service providers published by ACMA (which includes a fifth service, Paramount+) shows a year-over-year increase in total expenditure on Australian and Australian-related titles, the total number of Australian programs available across providers and the average hours of available Australian content per service. See <https://www.acma.gov.au/articles/2022-11/acma-publishes-australian-content-expenditure-subscription-video-demand-2021-22>.

⁵ <https://www.acma.gov.au/commercial-tv-program-expenditure>. ACMA has yet to publish commercial television program expenditure for FY 2021-22.

⁶ Screen Australia Media Release, 3 August 2022.

⁷ With such investment expected to become a statutory obligation in 2024 as recently announced by the Government in its new cultural policy "*Revive: a place for every story, a story for every place*".

⁸ Netflix's first Australian co-commission was *Mako Mermaids*, the children's series spin-off of the smash hit *H2O – Just Add Water*.

⁹ This is as of June 2022 and includes new and library licensed content.

studio facilities and infrastructure.¹⁰ Netflix invests in Australian content not because of any regulatory obligation but because our members demand it.

We support the Government's intention to promote competition by ensuring Australian broadcasters are available on connected devices. A "must carry" obligation will adequately address the Government's policy objective to ensure the availability of diverse Australian programming. In the context of a thriving market where both streamers and broadcasters are investing in Australian stories, there is no demonstrable need for more prescriptive regulation to ensure Australian content is available to Australian audiences.

Any prominence objective in relation to content, in addition to any focus on mere availability of services, should also be competitively neutral. A prominence regime that supports Australian stories and voices should therefore apply broadly to all providers of Australian content that contribute to national culture. This should be irrespective of whether that content is made available by a broadcaster or other services.

Part 3 – Prominence regulations should not interfere with consumer choice and convenience, a consumer's right to customisation or UI design innovation.

Customers want and expect the convenience of having easy access to the services they most use.¹¹ Flexibility and the consumer experience should be key considerations in the Government's design of a prominence framework. This is critical to ensure that regulation does not diminish consumer choice and freedom.

The device market is incredibly competitive. Only the most appealing UIs will win out so subverting consumer choice to promote certain less popular applications would undermine their ability to compete. Hardware manufacturers engage with popular applications, such as Netflix and Disney+, in part to provide an optimal consumer experience and improve the appeal of their device. Preserving the option for hardware manufacturers to develop and design their UIs ensures that Australians that pay for access to digital services can easily locate relevant applications.

Competition in the device market stimulates rapid innovation in UI design resulting in frequent changes and upgrades to device UIs and the corresponding user experience. Annexure A illustrates the variety of approaches to UI design that some of our partners take in Australia, with there being no "one size fits all" approach. There is also a growing trend towards personalised functionalities that employ a dynamic arrangement of UI elements (both applications and individual content titles) based on consumer preferences and usage.

User customisation of the ordering of applications in UI interfaces is now a market standard and should not be limited by a prominence framework. In fact, the Government's proposed prominence framework provides an opportunity to formally recognise a consumer's right to customisation in Australia. This will ensure that these important consumer rights are protected and future-proofed,

¹⁰ Netflix has invested more than \$2.5 million in supporting the next generation of Australian talent, including partnerships with AFTRS, Screenworks and the Bunya Indigenous Talent Hub.

¹¹ According to the latest *Communications and media Australia: How we watch and listen to content* report, 86 per cent of Australians watch an online video service. See <https://www.acma.gov.au/publications/2023-02/report/communications-and-media-australia-how-we-watch-and-listen-content>

and users can remain in control of their device UIs, irrespective of commercial agreements or regulatory obligations.

Limiting the prominence framework to a guarantee of availability for those providers in scope will preserve hardware manufacturers ability to continue to provide a convenient and appealing service to their customers.

If the Government decides that regulation on positioning is justified, any regulation should not interfere with the ability of consumers to easily find the services they are looking for. In the UK, Ofcom highlighted in its recommendations to the government¹² that giving identical prominence to all public service broadcaster services may not be practical or possible in light of the limits to how many applications or tiles can fit within the same area of a homescreen. To address this, Ofcom suggested that all public service broadcaster applications be accessed from a single tile on the UI. A unified access point could ensure prominent positioning without unduly limiting the choice of Australian consumers, noting that the existing Freeview Australia¹³ branding could potentially be utilised for such purpose.

Hardware is another area of innovation whereby hardware manufacturers ensure consumers have convenient access to popular services. Mandating a requirement for prescribed shortcut buttons on remote control units would curtail much of this innovation and the existing supply chain. Consumer electronics manufacturers typically use the same remote control design for smart television devices globally to benefit from economies of scale. Product life cycles can also be long (6-10 years) and there are considerable design and manufacturing constraints that must be navigated for the inclusion of a service-specific button.

Part 4 - Any proposal should aim for consistency with the Government's broader media reforms to ensure clarity and that an equitable approach is taken.

The Government has communicated that its proposed prominence framework forms part of a broader media reform agenda through which it is seeking to modernise Australia's media regulations to ensure they are fit for purpose. As stated in the Prominence Framework for Connected TV Devices Proposals Paper:

*"The design and implementation of a legislated prominence framework will not be undertaken in isolation. This forms part of a broader program of systemic reform and modernisation."*¹⁴

In light of this evolving regulatory landscape, it's important to ensure that the Government takes a holistic and consistent approach to this new dawn of Australian media regulations, including its proposed prominence framework. For example, if the provision of Australian content is a key objective of media policy in Australia, the introduction of local content regulations on streaming services (as announced in the Government's cultural policy¹⁵) means that any framework designed

¹²https://www.ofcom.org.uk/__data/assets/pdf_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf

¹³https://freeview.com.au/?gclid=CjwKCAiA9NGfBhBvEiwAq5vSyybhtqkvJhnKHALmaK7GxjdN9JkIJ9666HPwQzisEPzPJGuw2GAOUhoChIEQAvD_BwE

¹⁴ Prominence Framework for Connected Television Devices Proposals Paper, December 2022, page 5.

¹⁵ <https://www.arts.gov.au/have-your-say/revive-place-every-story-story-every-place>

to ensure accessibility of Australian voices and stories should also apply to all regulated streaming services.

Frameworks ensuring the availability of Australian content will ultimately help ensure that consumers have access to diverse content that they find compelling, which will further the broader objectives of media reform. However, media reforms should carefully balance support for the Australian media sector with giving audiences what they want to watch. A considered holistic approach will ensure clarity and equity across the industry and enable the golden age of Australian content to continue to flourish.

Annexure A - Netflix Partner UI Design

Samsung



Hisense Vidaa



LG



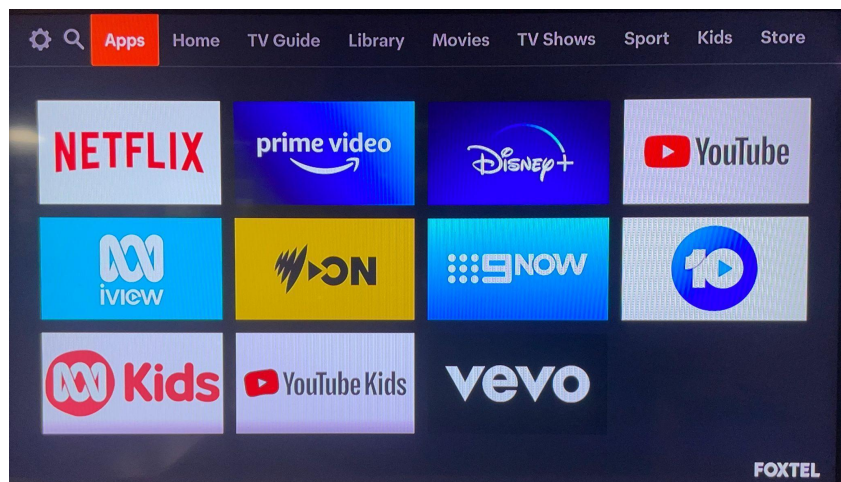
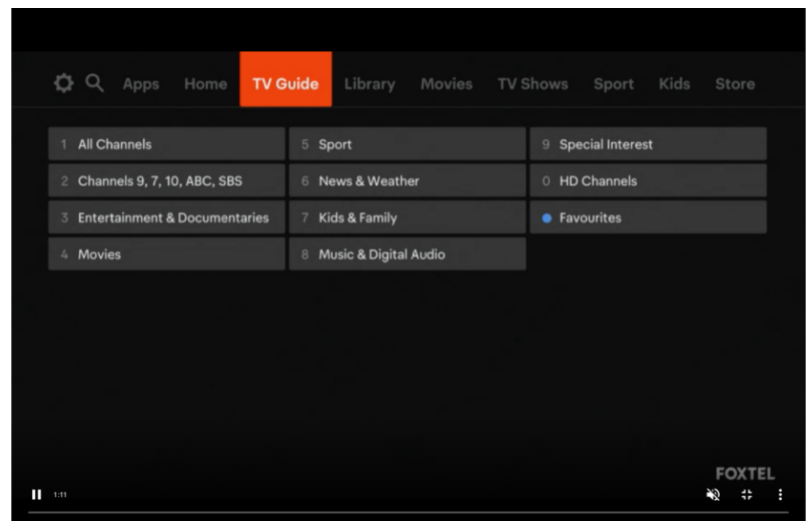
Google Chromecast



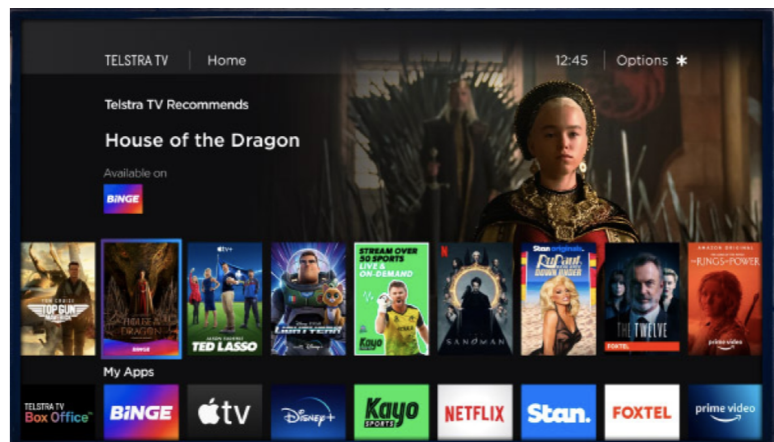
Amazon Fire TV Stick



Foxtel



Telstra TV



Fetch

