







3 July 2020

Department of Infrastructure, Transport, Regional Development and Communications Content Options Consultation

Via email: contentoptionspaper@communications.gov.au

Supporting Australian stories on our screens

This submission is made on behalf of Australia's subscription streaming entertainment industry:

- Disney+
- Netflix
- Prime Video
- Stan.

We welcome the opportunity to present these views in response to the Options Paper *Supporting Australian Stories on our screens* (**Options Paper**). Our companies look forward to engaging constructively with the Government as it considers the appropriate regulatory framework to support Australia's content production industries.

Australia's subscription streaming industry

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 less than one year. The industry is rapidly evolving, with Foxtel's Binge service launching within the last month. More entrants are still possible, given the early stage of the industry's development.

We support the broad policy objective of creating a modern regulatory framework that will benefit Australia's content production industries. However, in our view this objective is more likely to be achieved by modernising legacy frameworks to encourage investment, rather than shifting legacy regulation to emerging technologies. We believe that inflexible and overly prescriptive regulatory intervention at this stage risks significant unintended consequences for the rapidly evolving streaming entertainment industry, as well as the wider set of content production industries that are increasingly finding opportunities within this growing and global sector.

The Options Paper refers to "subscription streaming services, the primary purpose of which is to commission and/or acquire narrative content". This definition is a useful construct for defining the range of companies to which the policy options may apply. In developing the detail of any regulatory option, it is critically important to recognise that even within this range of subscription streaming services, there are an array of very different business models. This is illustrated below, with a description of the services offered by our organisations in Australia.

The contribution of streaming services to Australia's screen industries

Even though it is early days for the streaming industry in Australia, we are proud of the incredible contribution our companies have made to Australia's growing content production sector.

Recent research shows that the overall screen production industry is healthy and growing, and streaming services are playing an important part in this industry growth.

The Screen Australia Drama Report

Screen Australia's latest drama report¹ (regarding financial year 2018-2019) found that expenditure on drama production in Australia exceeded \$1.17 billion. The expenditure on Australian titles was the highest in the report's 29 year history, driven by an all-time record spend on Australian television and a five-year high spend on Australian features.² This includes record expenditure of \$768 million on Australian stories, including official coproductions. There was also increased foreign production spend of \$410 million.

It is important to note that due to the way that Screen Australia measures and categorises production spend, investment made by the streaming industry in co-productions is often not captured in the report. Also, due to the lumpy nature of large-scale production investment, and the fact these figures are now one to two years old, the report understates the total value of productions commissioned by the streaming sector on an annual basis. For example, although the drama report identifies \$40 million worth of Australian production spend attributed to the online sector, Stan alone commissioned five local productions with budgets totalling \$65m in fiscal year 2020.

² https://www.screenaustralia.gov.au/sa/media-centre/news/2019/10-31-drama-report-2018-19-australian-titles

¹ Screen Australia *The Drama Report 2018-19* https://www.screenaustralia.gov.au/fact-finders/reports-and-key-issues/reports-and-discussion-papers/drama-report

Our sector invests heavily in co-productions with national and commercial broadcasters. This investment played an important part in the record expenditure on Australian TV drama recorded in 2018/19, as the total \$334 million spent on TV drama titles included co-productions made with a significant investment from streaming companies in that period on titles such as *The Letdown* and *Glitch*. However, in calculating expenditure figures, Screen Australia classifies titles that have simultaneous TV broadcast and online release as 'TV drama'³, rather than online investment. For example, on a co-production such as *The Letdown* between Netflix and the ABC, the total investment on that project is counted by Screen Australia as 'TV' investment, despite the significant contribution made by the streaming service to that project.

This approach means that significant investments from our sector in co-productions are recorded as 'TV' expenditure for official figures, rather than counted as contributions made to Australia's production sector from streaming services.

This anomaly is also true for the way the report analyses investments in children's content. Financial year 2018/19 marked the highest children's TV drama spend since 08/09⁴, with \$52 million spent on original children's programming. However this figure does not recognise that several of these new productions such as *The Inbestigators* and *The Unlisted* were coproductions with streaming entertainment services, some of which may not have been financed without the contribution of streaming partners.

As such, while the Drama Report acknowledges that the streaming entertainment companies and other online content providers invested \$40 million in Australian programming in 2018-19⁵, this figure is in fact significantly higher when you account for the investments made in co-productions and other investments across the content production ecosystem.

Olsberg SPI economic research

Olsberg SPI published a *Study on the Economic Contribution of the Motion Picture and Television Industry in Australia*⁶ on behalf of the Australia New Zealand Screen Association and the Motion Picture Association in February 2020. The study found that:

- The overall Australian screen industry grew 15% to a gross value-add (GVA) of \$9.186 billion.
- The home entertainment segment of the industry (which includes streaming video services) made a 36% growth in GVA contribution.⁷

"Growth in the home entertainment sector reflects the changing shape of the media market in Australia, with physical sales declining rapidly, and physical rental almost entirely disappearing. In their place, VOD (particularly SVOD) services have proven

⁴ Ibid p17.

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³ Ibid p18.

⁵ Ibid p18.

⁶ Olsberg SPI Study on the Economic Contribution of the Motion Picture and Television Industry in Australia February 2020. https://anzsa.film/wp-content/uploads/2020/02/Study-on-the-Economic-Contribution-of-the-Motion-Picture-and-Television-Industry-in-Australia Final-Report.pdf

⁷ Ibid p5

highly popular, providing an ever-increasing selection of content to Australian audiences, and delivering much stronger GVA returns to the economy than the physical home media models they have replaced."

 Confidence in the continued growth in the content production industry is high, with Olsberg SPI predicting an increase in total production spend in Australia, which is anticipated to reach A\$3.92 billion by 2021-22, an increase of 26% from 2017-18.8

Contributions beyond direct investments in content production

As well as the content investments discussed above, it is important to recognise that subscription streaming entertainment companies also invest significantly in the Australian screen content production industry over and beyond commissioning content or investing in co-productions. This can be via acquiring content licences and providing global export opportunities to Australian producers, or heavily investing in production capacity, skills and training. Subscription streaming companies also make significant use of Australia's world class post and visual effects sector.

These significant contributions demonstrate the enormous opportunities across the production sector arising from streaming entertainment services, including:

- Enhancing global audiences for Australian content;
- Investing in physical production capacity
- Providing second run revenue and licensing opportunities;
- Investing in direct employment and skills development, including pathways and attachments;
- Encouraging crew depth and talent availability;
- Contributing to Australia's PDV innovation; and
- Attracting foreign investment into Australia.

Each of our companies already makes a significant contribution to Australia's screen production industry, even though we are at such an early stage of the Australian streaming entertainment industry's development. For more information on each of our companies' contributions please see the Attachment.

All of this significant investment has occurred from an emerging sector, without any regulatory compulsion to invest.

Assessing the policy options considered in the Options Paper

As we have discussed above, all available data indicates that high quality Australian content across a range of genres is readily available to Australian viewers across a wide range of services. And that the subscription streaming services industry is playing a significant and growing role in Australia's production ecosystem. This suggests that there is no market failure supporting regulatory intervention, and it would be entirely reasonable to adopt a deregulatory approach.

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⁸ lbid p8

Although there is compelling evidence to show that subscription streaming services already provide significant investments in Australian content and across the Australian screen content sector, we do understand that there is some unease with the lack of regulatory underpinnings.

Whilst we believe that industry-based solutions should be preferred as a general approach, in recognition of these concerns - and in recognition of our commitment to the Australian screen content production industry - we suggest the following broader policy option for consideration.

Our suggested approach

Although we recognise the careful thought that has gone into the development of the Options Paper, in considering how best to reach the important policy goals of ensuring the ongoing creation of Australian content and the health of the content production industries, it is worth exploring a broader framing of the contribution that our industry makes to the overall content production sector.

In our view, policy solutions must recognise the fact that Australia's streaming video industry is at an early stage and evolving quickly. It is also critical that any approach is flexible enough to reflect the diversity of business models adopted by subscription streaming services, including the different operating margins and economics applicable across the different services. Any approach must also recognise and incentivise the holistic value of the contribution of subscription streaming services to the wider sector ecosystem.

Guiding principles for reform

As we discussed above, we strongly believe that there is no market failure to address. Investment in Australian productions is growing strongly, with streaming services playing a key role in driving this growth. This investment is occurring in a holistic manner across the entire content production ecosystem. There is evidentiary support for a policy approach of engaging streaming services on a voluntary basis.

Notwithstanding the absence of any market failure, if the Government is minded to adopt a policy approach, then in our view it should provide a broad set of guiding principles outlining that streaming services should be making a meaningful contribution to the development and production of Australian content. The Government could then provide specific feedback to companies if it were determined that a company is not meeting the broad intent of the principles.

With the sector at such an early stage, and evolving so quickly, flexibility must be retained in order to keep up with changing technologies, business models and wider industry dynamics. The streaming services sector must be allowed to develop, grow and invest organically, to achieve the best possible outcome for all stakeholders in the Australian content industry.

This is critical to avoid unintended and damaging consequences from regulatory intervention. As a result, adherence to the principles should be voluntary, with a government

review built in to assess whether any fine tuning or additional regulation is required.

We submit that the following considerations should guide the development of policy principles articulated by the Government regarding investment contributions from streaming companies:

- 1. The guiding policy principles should reflect that all streaming companies have vastly different business models, with different operating margins and economics.
- The principles should recognise that companies with different business models
 contribute to Australia's creative industries and to the content production sector in
 different ways. These diverse investments meet the wide range of policy objectives
 that lead to the continued growth and success of Australia's screen content
 production industry.
- 3. The guiding principles would articulate that the expected meaningful contributions to Australia's screen content industry could be made across a range of categories, at the discretion of the provider, including but not limited to:
 - a. commissioning productions (recognising total production value);
 - b. investment in co-productions;
 - c. licencing Australian content;
 - d. international productions filmed in Australia;
 - e. foreign export of Australian productions;
 - f. investment in direct employment, skills and talent development in the Australian screen content, production and media industries;
 - g. the nature and volume of local third-party commercial partnerships; and
 - h. investment in production capacity.
- 4. Each streaming service would be required to advise the Government-of its investments and contributions to the Australian screen content production industry, provided on an annual basis over a three to five year period of time in recognition of near and mid-term investment plans. This advice should be able to be made in confidence where appropriate (for example, to maintain confidential licensing terms or where disclosure would damage a provider's competitive position in the industry).
- 5. If it is determined that any company is not meeting these investment expectations, the Government should provide specific feedback to the company about where those expectations are not being met.
- 6. The Government would take into account all of the investment made by the streaming sector over an initial multi year cycle to monitor and assess whether companies were continuing to make a meaningful contribution to Australian content and creative industries, or whether more action was required. Government action could range from feedback to individual companies about their contribution (which could be given during the cycle if necessary), or a detailed industry review into whether regulation is required.

- 7. The reporting methodologies discussed above should be updated, to ensure meaningful and relevant data about the contribution from streaming companies to content production and the broader content ecosystem is accurately captured.
- 8. If the system is meeting its objectives it could remain in place, otherwise further regulatory action may be proposed following broad industry consultation.

In conjunction with incentives, this approach would achieve numerous public policy objectives, including:

- Cultural policy objectives ensuring Australian stories are told on our screens
- Economic objectives maximising the direct and indirect economic benefits that flow from a strong production sector, through job creation to wider economic benefits such as tourism.
- Skills and training objectives ensuring a skills and employment pipeline from pre to post production.
- Enhancing production capacity fixing the problem of the extreme shortage of production space in this country.
- Export, trade and 'soft diplomacy' objectives taking quality Australian content to the world.
- Ensuring continued investment in pre-production, physical production, post and visual effects.

Adopting a policy solution that achieves all of these objectives is imperative if we are to have a thriving and growing content production industry into the future.

Our sector appreciates the opportunity to consult and discuss with the Government on the development and implementation of these guiding principles, and to be consulted on any other policy proposals going forward. We look forward to working constructively with the Government to achieve a policy framework and outcome that is supportive of the Australian content and creative industries, in a manner that is flexible and reflects our diverse business models.

Incentives

Incentives are an important part of the content production ecosystem described above. In the same way as we suggest that policy outcomes should incentivise the broad range of investment required for Australia to grow the entire production industry, we believe that incentives should be modernised and harmonised to reflect the breadth of content investment and formats being produced in Australia.

Incentives must be treated as a critical component of the health of the overall content sector, irrespective of which policy option is ultimately adopted. It is essential that Australia's mix of incentives is flexible and globally competitive. Incentives need to provide certainty for investment and should be updated to reflect current and future content distribution models.

Conclusion

We look forward to continuing discussions on these important policy issues, and the role our companies will continue to play in supporting a thriving and dynamic screen content ecosystem.

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Attachment



Commencement: 2015

As the leading local streaming service, Stan makes a significant and broad contribution to the Australian content and creative industries, and has been doing so since its launch in January 2015. Stan, wholly owned by Nine Entertainment, commissioned its first local production within two months of its launch and has now commissioned 17 local drama and comedy series.

Stan Originals

As Stan has grown, so too its investment in the local content industry. In fiscal year 2020, the streaming service has commissioned five local productions with budgets totalling \$65 million. This sort of production investment has translated into some of the most significant television series ever made in Australia, such as *The Commons*, filmed in Sydney, *The Gloaming*, filmed in Tasmania, and upcoming dramas, *The Tourist*, which will be shot in the South Australian outback, and *Eden*, to be filmed in Byron Bay on NSW's north coast.

Exporting Australian Stories to the World

Through its production partnerships, Stan has also been successful in exporting premium Australian content to the world. *The Commons* was produced by Playmaker in association with Sony Pictures Television, which is handling the international distribution of the series, while *The Gloaming* will be sold overseas by Disney's ABC Studios International. All of Stan's Australian original productions have been sold internationally. This includes *Bloom* to Hulu in the United States and Channel 5 in the United Kingdom, *Romper Stomper* to the BBC in the UK and SundanceTV in the US, and *Wolf Creek* through Lionsgate in the US and FOX UK in Britain.

Development

Further demonstrating its commitment to local productions, Stan has launched innovative development funds with Film Victoria and Screen Queensland. Stan currently has 26 productions in development or production.

Critical Acclaim

Stan's original productions have attracted widespread acclaim and won multiple awards. *Bloom* won two Logie Awards last year; Most Outstanding Miniseries or Telemovie and Most Outstanding Supporting Actress, won by Jacki Weaver. Stan became the first streaming service to win a Logie Award through *Romper Stomper*, which was recognized with the awards, Most Outstanding Miniseries and Most Outstanding Supporting Actress (Jacqueline McKenzie) in 2018. Stan has also won several AACTA Awards for Original productions including *Wolf Creek* and *No Activity*.

Supporting Local Content and Creative Industries during COVID-19

During these unprecedented times, Stan has sought out opportunities to support creative industries which have been heavily impacted by the outbreak of COVID 19. Due to the cancellation of many of Australia's top comedy festivals, Stan moved quickly to commission the Australian Lockdown Comedy Festival which launched in May and featured many artists that had been scheduled to perform at those cancelled events. Stan

has also worked collaboratively and constructively with our screen organisation and international distribution partners to maintain full production levels across its slate of Originals through this period. At the same time, Stan has increased its investment in development for future commissions.

NETFLIX

Commencement: 2015

Since our Australian launch Netflix has been - and will continue to be - an active investor in television series and movies made in Australia. Netflix offers a growing catalogue of original content from Australia and distributes second-run Australian content to our global membership.

Netflix Originals

We have commissioned several Australian Netflix Originals productions, such as *Tidelands*, *The White Rabbit Project*, *Lunatics*, and *The New Legends of Monkey*. Hannah Gadsby's *Nanette* special captured the hearts and minds of viewers around the world, which led to her successful follow up special, *Douglas*, launched this month.

To provide an example of the scale of our contribution to Australian content production, Netflix invested over \$54.5 million dollars in our most recently announced original production *Clickbait*. Netflix Originals have been filmed all over Australia, including in Queensland, South Australia, the Northern Territory, Victoria and New South Wales.

Netflix commitment to Australian children's content

Australian children's content on Netflix entertains, educates, and showcases Australian creative talent and culture to children around the world.

Netflix invests heavily in Australian children's content because parents find value in Netflix as a source of quality children's entertainment. Netflix has invested in a kid-friendly user interface and parental controls so our members can feel confident that their kids are watching content that is appropriate for them.

Australia is one of our top locations for Netflix's original kids' productions for both animated and live action programming. Netflix Originals and co-productions include The New Legends of Monkey, Motown Magic, Beat Bugs, Kazoops!, the inBESTigators, Mako Mermaids: An H20 Adventure, the Unlisted and our recently announced co-production with the Nine Network Alien TV.

Investing in co-productions

We have also invested heavily in co-productions with our Australian broadcast partners - all commercial broadcasters and the ABC. These investments have helped create quality shows such as *Cargo*, *Secret City*, *The Letdown*, *Glitch*, *Zumbo's Just Desserts* and *Pine Gap*.

When we partner on productions in Australia, we gain access to quality stories and talent, and can bring our particular focus on audiences and exports. Broadcasters benefit from better-financed content for their domestic audiences. Australian producers, creators and talent gain substantial additional exposure, with Netflix Original branding in 190 markets around the world.

Exporting Australian content to the world

Netflix partners with Australian creators to bring both original and second-run Australian content to our members around the world. Some Australian titles that have gained significant exposure on our service include *I Am Mother*, *Redfern Now*, *The Sapphires*, *Lion*, *Rake*, *Offspring*, *Wentworth*, *Miss Fisher's Murder Mysteries* and *Jack Irish*.

Acquisition of second-run Australian content provides financial support to the Australian production industry, as well as increased global distribution of Australian stories.

Post-production and visual effects

Netflix also relies on Australia's world famous production and post-production infrastructure and talent. For example, Netflix original feature films such as *The King, Casting JonBenet, First They Killed My Father* and *Bright* have all used Australian post-production services.

Australia's world class content production industry is a rich source of the stories loved by our members both in Australia and globally. As our Chief Content Officer, Ted Sarandos, said when committing to sourcing Netflix Originals content in Australia:

"Australia has such a rich production infrastructure and great talent, both in front and behind the camera."9

Australian content has been - and will continue to be - an important part of the Netflix catalogue for our members in Australia and around the world.

⁹ The Sydney Morning Herald, *Netflix content boss Ted Sarandos open to ideas for original Australian shows*, June 11 2016.



Commencement - December 2016

Prime Video is Amazon's subscription streaming service. Prime Video offers thousands of movies and TV shows, including third party licensed content and critically-acclaimed and award-winning Amazon Originals.

In December 2016, Amazon made its Amazon Original series and a small selection of Hollywood films and television content available to customers in Australia.

Amazon Prime

Since June 2018 Prime Video has been available to Australian customers as a benefit in their Amazon Prime membership. Amazon Prime is a subscription membership that provides members with a range of benefits in addition to Prime Video, including free delivery on millions of local and international items, Prime Music, Prime Reading and exclusive early access to select retail deals.

Investing in original Australian content

Since the launch of Amazon Prime, Prime Video has demonstrated a strong commitment to supporting and investing in the creation and distribution of Australian content.

In August 2019, Prime Video announced its first Australian Original, the comedy series *LOL: Last One Laughing* (LOL), which is hosted by Rebel Wilson and produced by local production company Endemol Shine Australia. In addition to releasing LOL, Prime Video has released: a docuseries titled *The Test: A New Era for Australia's Team*, which follows the Australian Men's Cricket Team during the 2018 / 19 cricket season; and 10 Australian stand-up comedy specials filmed locally in Melbourne and featuring popular Australian comedians including Tom Gleeson and Judith Lucy. The specials were produced with local production company Guesswork.

Prime Video has also announced:

- the forthcoming release of scripted Australian Amazon Original series, Back to the Rafters. Back to the Rafters is a revival of the beloved Australian TV family drama/comedy Packed to the Rafters. Back to the Rafters is being produced by Seven Studios on behalf of Amazon Studios; and
- the production with the Australian Football League (AFL) on a brand new docuseries that follows six key players from six teams during their 2020 season. The series is being produced by the Australian production company Jam TV Australia, in conjunction with Amazon Studios and AFL Media.

One of the reasons we produce Australian content is to ensure that we have content that appeals to our Australian audience. As James Farrell, Vice President of International Originals at Amazon Studios said, "as we continue to increase production of Australian Amazon Original series, our goal is to tell local stories that resonate with our Prime members".

Exporting Australian content to the world

As well as commissioning original Australian content, Prime Video continues to offer a wide range of Australian films and television shows to its more than 150MM Amazon

Prime members around the world. For example, McLeod's Daughters is a favourite of Prime Video's global audience.

In the United States, Prime Video directly licensed popular Australian TV series The Kettering Incident and Picnic at Hanging Rock, which have been popular with its American audience. And Australian films such as Palm Beach, Storm Boy, The Dressmaker, Danger Close: The Battle of Long Tan and Ride Like a Girl, have all performed well on Prime Video.



Commencement: 2019 for Disney+

The Walt Disney Company further expanded is significant investment to Australia with launch of **Disney+** in November 2019. The service consists of content from five Disneyowned brands: **Disney, Pixar, Marvel, Star Wars and National Geographic**. Originals related to these brands are also a key part of the service.

The Walt Disney Company's overall investment in Australia's content production ecosystem is longstanding, significant and increasing. Highlights are as follows

Investment in Physical production capacity

The Walt Disney Company wholly owns the **Fox Studios Australia** (FSA) in Sydney which is the largest production facility in the Southern Hemisphere. It is a full working studio facility on a 32-acre site with 60,000 square metres of floor space over 45 buildings including nine sound stages covering a total of 15,000 square meters.

The FSA site also includes an industry ecosystem of 60 third party Australian businesses employing roughly 2,000 people. It comprises heritage buildings, purpose built facilities and backlot areas and is the largest production facility in the Southern Hemisphere. Adjacent to the studio is the Australian Film Television & Radio School which enables strong industry links and training opportunities for future generations of screen professionals.

Investment in Post, Digital and Visual Effects

The Walt Disney Company wholly owns **Industrial Light & Magic** (ILM) which was founded in 1975 by George Lucas to enable the effects in the first *Star Wars* movie. ILM remains the world's leading visual effects company, with five global hubs including Sydney along with San Francisco, London, Vancouver and Singapore. Globally, ILM is responsible for the visual effects in more than 350 feature films including *The Avengers*, *Pirates of the Caribbean and Aladdin*.

Sydney is the newest of the ILM hubs, announced in July of 2019 and currently situated on the Fox Studios Lot with plans to grow into a major studio of up to 500 staff over the next

two to three years

Investment in Content Production

The Walt Disney Company wholly owns **Marvel Studios**, **Disney Feature Films** and the American Broadcasting Company (ABC) Studios International. Each invests heavily in Australia, now and in the recent past for example as follows.

Marvel filmed *Thor Ragnorak* in the Gold Coast in 2016 with a US \$180mil budget and 2,000 people employed directly. In addition, *Thor, Love & Thunder* and *Shang-Chi & the Legend of Ten Rings* commenced shooting back to back at Fox Studios Australia in Sydney in 2020 and hopes to soon resume. With a combined US \$340 M budget, these two films will employ 2,500 employed directly over a three-year period.

Disney Feature Films made *Pirates of the Caribbean* in Queensland in 2015 with a US \$250M budget and 2,300 people employed directly.

American Broadcasting Company (ABC) Studios International is invested in *Harrow*, a drama filmed in Brisbane that is entering its third season and airs on Australia's ABC and the Disney owned Hulu platform in the US. Production is a partnership of Disney's ABC, working with Hoodlum Entertainment and Australia's ABC. In addition, in 2018 ABC Studios International filmed *Reef Break* in Queensland, a 13-episode drama airing on Disney's ABC in the US.

Investment in Skills Development

The Walt Disney Company is invested in skill development in Australia, with plans to establish "Jedi Academy" training programs to help develop local jobs and skills.

In addition, the Fox Studios Australia lot in Sydney is home to the Australian Film Television & Radio School and each Marvel feature filmed in Australia incudes a trainee component to further develop the New South Wales workforce across various areas of expertise.