



Australia and Children's Screen Content Review
Department of Communications and the Arts
GPO Box 2154
Canberra ACT 2601

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Submission of Stan Entertainment Pty Ltd

Executive Summary

Stan is the leading local SVOD service in Australia and is at the forefront of changing how Australians consume video content. We are also the home of Stan Originals. We have commissioned eight local productions to date, and have doubled our investment in producing original content each year since our launch in January 2015. We are uniquely placed as the leading local SVOD service, with a strong track record in original productions. We have expanded the demand for Australian content at home and overseas, and it is our intention to continue growing our investment in producing Australian content. We believe Stan will play an increasingly important role in Australian production, and our growth will continue to benefit the industry.

We believe strongly in Government support for culturally significant content production, but we believe that policies need to be aimed at achieving a more holistic industry support framework. Consideration must be given to the producer side and the commissioner side in equal measure. Stan's ability to maximise its contribution to Australian production is dependent upon the implementation of fair and reasonable policy settings for the whole industry.

Properly structured support is essential due to the relatively small size of the Australian market and the cost and cash flow requirements of Australian productions, but we believe additional regulation of digital content production and distribution would be a mistake. While we have been successful in establishing Stan within the Australian SVOD market, our business is yet to turn a profit. Stan's original production division operates at a significant commercial disadvantage to (i) our competitors who operate on a global scale and amortise huge content budgets across hundreds of markets, and (ii) our locally based free-to-air and Pay TV competitors who operate completely different business models with significantly larger scale, higher margins and shorter timeframes within which to monetise content. We commission high quality drama which is extremely expensive to produce and requires significant cash flow commitments. We rely largely on international sales to defray our costs of commissioning local productions, but we are hamstrung in our ability to maximise this value by the current system.

Stan Entertainment Pty Ltd



Content production and distribution is a global market and the Australian regulatory environment needs to support local players in that market. We are at the forefront of expanding consumer choice through increased content availability and platform accessibility, as well as content innovation made possible by on demand distribution. On these points, we are aligned with our global SVOD competitors. However, as an Australian company we are focussed on serving Australian audiences first, and our programming decisions are tied to the fabric of this country's culture in a way that could never be replicated by an international platform.

Response to Questions posed by the Review

Are the policy objectives and design principles articulated in the discussion paper appropriate?

Objective: 'secure quality content that promotes Australian identity and culture'

1. We believe there is a deep and talented creative industry in Australia. We agree that the industry should be supported and harnessed to produce content that promotes Australian identity and culture.
2. Stan's original production strategy is testament to our support for this objective. Producing original content is a core part of Stan's business. Each of the local productions that we have commissioned since our launch tell Australian stories and give unique and complex insights into our culture. Stan has sold two of its productions, which have been nominated for and won Australian awards¹, to major overseas broadcasters and entertainment companies. Stan's *Wolf Creek* series was sold to Lionsgate in North America and Latin America, and to FOX UK in Britain last year. The format rights to its comedy series, *No Activity*, were sold to United States SVOD service CBS All Access this year. The program is being produced by Will Ferrell's production company Funny or Die, *No Activity* founding producer Jungle, and features a mix of high calibre US and Australian creative talent on both sides of the camera. This demonstrates the high quality of Stan's commissions and their saleability overseas.

Objective: 'drive sustainable Australian Content Industries'

3. Australia is a high cost market with a relatively small population. Government support is required to incentivise commercial operators to commission Australian content. Support helps to make the production of Australian content more cost-competitive compared with acquiring international programming. At this time, it would not be commercially viable for Stan to commission Australian content without support and a continuation of current support settings will hamper our ability to boost our investment. We believe current government support initiatives do not address many of the core commercial issues for

¹ AACTA Award-winning and Logie Award-nominated series *No Activity* and the critically acclaimed AACTA Award-winning and Logie Award-nominated drama series *Wolf Creek*, http://www.imdb.com/title/tt4651812/awards?ref_=tt_awd



commissioning platforms and are unlikely to lead to increased investment in quality Australian productions. The SVOD category is growing at a rate of 30% year on year². However, for Stan to continue to contribute to Australian production in a sustainable manner, the commercial realities for SVOD commissioners need to be considered. Driving a sustainable content industry is an appropriate objective for the Review. To meet this objective, the Review needs to address the full content ecosystem rather than just the talent and production side of the equation.

4. Support has historically been tailored towards traditional mediums that have been highly profitable. In seeking sustainability, more consideration now needs to be given to local digital business models and the increasingly competitive landscape that includes global tech/media organisations.
5. Stan invests in its own high quality local productions even though it is far more economical to licence premium content from the United States and other international markets. The sustainability of Stan's ongoing investment in local production, and ability to grow that investment, is uncertain under the current system which limits our ability to create finance models that enable recoupment of costs from international sales. SVOD services are generally only viable as commissioning platforms when they can defray or amortise costs via international distribution. While our original content is made for Australian audiences, it has also proved highly saleable overseas. We believe this is due to its high quality and the flexibility associated with SVOD commissions, which allow creators to explore subject matter more deeply without the pressure to attract mass overnight audiences. However, due to the many restrictions on our ability to appropriately structure the financing and commercialisation of our own productions, Stan currently spends around [x%] of its content budget on local production. If support structures were adjusted appropriately to create a more sustainable cost and recoupment structure, this would allow Stan to allocate more of its budget to Australian content creation.
6. Stan is a local player in a global market. The world's leading media companies operate internationally and are increasingly partnering on productions with Australian companies³. This presents more opportunity to export Australian stories around the world but it also sees local broadcasters and platforms competing against international giants that have huge content budgets at their disposal. For local drama, comedy and documentaries to remain relevant and commercially viable in this environment, support models for Australian productions must evolve to become more sustainable. The commissioner needs to be able to share in a production's success, particularly when it is the primary funder. It is only by sharing cost and recouping expenditure via robust international distribution that a local SVOD platform such as Stan will be able to compete with the global business models of its competitors in original productions.

² <https://www.telsyte.com.au/announcements/2017/8/8/streaming-vod-a-hit-in-australia-subscribers-up-30-per-cent>

³ Examples; Netflix and ABC; Glitch, and Stan and CBS; No Activity Format.



Stan's view on the policy principles:

7. We largely agree with the Review's policy principles, although we believe there are limitations to the notion that content regulation should be platform agnostic. This is largely due to the different environments and circumstance in which platforms operate. Free-to-air networks, for instance, have access to broadcast spectrum, Foxtel has a monopoly over the multi-billion dollar⁴ Pay TV market, while Stan competes in a digital environment which is subject to unmitigated market forces.
8. We believe the last principle, which references the need for the system to be "forward-looking" and "nimble", is particularly pertinent. The risk when undertaking media reform of any kind is that regulatory changes will be superseded by the time they are agreed to and implemented – such is the pace of the technological, commercial and cultural change in the media industry. We encourage the Review to develop a strategy to ensure that the emerging Australian businesses leading the way in content production and digital consumption can invest in local productions in a manner which allows them to achieve their full potential.

What Australian content types or formats is the market likely to deliver and/or fail to deliver in the absence of Government support?

9. The most popular content categories viewed on free-to-air networks are sport, news and reality programming⁵, which are all designed to attract mass overnight audiences and advertising revenues. These content types dominate free-to-air schedules largely without Government support, with the exception of reality TV which qualifies for some tax offsets. Free-to-air networks also invest in other genres, such as drama, with the intention of attracting broad and large scale audiences, while Stan can pursue more targeted audiences through the projects it develops because it monetises content via subscriptions over a longer period. Even though many platforms finance drama, comedy and documentaries, we believe that investment in these genres would likely fall in the absence of Government support. From Stan's perspective, this is due to the significant costs of commissioning local content compared to the costs of licencing programs from international distributors. In fact, the net cost to Stan of commissioning local productions is at least five to six times the price of licencing premium international content. This mismatch is not a new issue. At a panel discussion hosted by ASTRA in 2014, a former deputy chairman of Screen Australia told the discussion that network executives have a responsibility to their shareholders to:

"maximise the revenue for each hour of the day at minimum cost. So, if I can choose between a high-quality drama from another country, being America or England, that will be very popular with the audience...that I can acquire that for a license fee of \$200,000

⁴ <https://www.ibisworld.com.au/industry-trends/market-research-reports/information-media-telecommunications/broadcasting-except-internet/pay-television.html>

⁵ <http://www.adnews.com.au/news/adnews-analysis-the-top-50-tv-programs-of-2016>



an hour, and to get something comparable made in Australia it's going to cost me \$1 million an hour, which one am I going to do?" he said. "And therein lies the problem".⁶

Moreover, these kinds of licencing agreements are generally paid over a three to five-year period, while finance plans for production require significant up-front payments, presenting pressure in terms of business cash flow.

10. It would be an undesirable outcome to see investment in quality Australian drama, comedy and documentaries fall significantly. Not only are these genres central to shaping and celebrating Australian culture and identity, but they also provide jobs for local talent, crews, producers and other peripheral services. Stan's investment in local productions has contributed significantly to the industry and Australian economy more broadly. Already, Stan has been responsible for employment, and expenditure on goods and services, benefiting thousands of Australians in the production and ancillary sectors, including media and marketing, hospitality, transport, IT, and professional services. Each Stan Original production directly and indirectly employs many hundreds of people, from the principal cast and creatives all the way through to daily extras.
11. The ability of the Australian television and film industry to compete on the world stage is dependent upon the consistent commissioning of quality productions.
12. The report notes that (page 3) the '*total income of subscription broadcasters and channel providers including SVOD in 2015/2016 was \$5.4 billion, exceeding the income of the commercial free to air broadcasters*'. While this speaks volumes about subscription television (both in terms of Pay TV and SVOD) as a category, it should be noted that individual subscription television operators are in vastly different financial positions. Netflix is a \$US78⁷ billion global giant, while Foxtel recorded earnings of \$754 million last financial year, more than the rest of the Australian television sector combined. Stan, on the other hand, is yet to grow to the scale that allows it to turn a profit. SVOD is a high volume, low margin business, which is quite distinct from more traditional subscription and advertising-supported television businesses. Several local SVOD players⁸ have been unable to develop sustainable business models amid significant competition from global operators and highly profitable local players. Reforms to production support models must, therefore, be undertaken with the realities of new media business operating models in mind.

What types of Australian screen content should be supported by Australian Government incentives and/or regulation?

⁶ <https://mumbrella.com.au/panel-249709>

⁷ https://ycharts.com/companies/NFLX/market_cap

⁸ Presto ceased operations in January of this year, and Quickflix went into administration in 2016; <https://www.cnet.com/au/news/foxtel-presto-streaming-service-officially-shuts-down/>, <https://insolvencynotices.asic.gov.au/browsesearch-notices/notice-details/Quickflix-Limited-Administrators-Appointed-102459358/bdc302e1-f44f-4677-9a32-b1b98aa0c3fa>



13. We believe investment in quality Australian drama, comedies and documentaries is unlikely to grow under current policy settings. This is largely due to the high costs of production, particularly in quality drama, and the structural and commercial restrictions. Due to the aforementioned benefits to Australian industry, culture and identity, Stan believes the government should continue to support these productions.

The current system of support for screen content involves quotas, minimum expenditure requirements, tax incentives and funding (see Attachment B). What are the strengths and weaknesses of the current system? What reforms would you suggest?

Strengths:

14. The Screen Australia Investment and slate management principles⁹ are governed by the Screen Australia Act 2008. The principles that apply include consultation with Producers and commissioning platforms about the year's upcoming priorities, recognition of the commissioning platform's expertise in connecting with audiences, and the right to make investment decisions based on an emphasis on programs with a high level of artistic and cultural merit. Stan believes these values are all relevant and should be identified as a strength today.
15. Many expensive and culturally important projects that could not happen without Government support can be produced.
16. As previously mentioned, in a country where production costs are high, the tax incentives regime is crucial in ensuring the continued viability of production of content.

Weaknesses:

17. The current system does not reflect the reality of producing content for a digital audience. It requires that commissioning platforms such as Stan invest significant sums of money to commission Australian productions with a heavily front loaded finance plan. As a result, without investing even more money, we are unable to secure any equity or expand on the pre-defined set of distribution rights.
18. For general drama production, Screen Australia requires a local presale of at least \$440,000 per broadcast hour from a commissioning platform to qualify for funding, and this presale is heavily restricted in terms of the rights and the license period that can be exploited. This is an overbearing, and often prohibitive expense for Stan and, when compared to the cost of acquiring equivalent programming from overseas, offers little to no incentive to produce local content. We cannot secure any equity in a production we commission for \$440,000 an hour, yet we can buy premium US and international content, with significantly higher budgets and production values, for less than half the cost of this

⁹ <https://www.screenaustralia.gov.au/funding-and-support/television-and-online/production/general-tv-svod-production>



hourly fee. This underlines the deficiencies in the current system's ability to stimulate investment in Australian productions.

19. Equally, it is crucial for the commissioning platform to be able to monetise content successfully. SVOD content is monetised through long licence periods where the program builds its audience over time, which is vastly different to free-to-air TV where the objective is to recoup the cost of a production by the time it premieres, either through advertising sponsorships or the spot market. For Stan, international sales present the most meaningful opportunity for production cost recoupment, given the Australian market's limited size.
20. The design of the current system, in the way that grant funding and the Producer Offset operates, is such that the level of investment of each of the involved parties is not reflected in the way that the equity is apportioned. As an SVOD commissioner Stan bears enormous (and economically unviable) costs in funding the content's production, and is not entitled to any equity for the majority of these costs. It is extremely difficult to recoup costs under the current system and unless more material opportunities to recoup are created, Stan will not be able to grow its investment in local production.
21. A mix of exclusivity and/or holdbacks against certain rights, including free-to-air, Pay TV and Home Entertainment, for a significant period is also essential to the SVOD business model, yet to 'buy out' these rights requires additional expenditure over and above the \$440,000 pre-sale. Clearly, equity and balanced distribution rights are essential to Stan's ability to sustainably fund local content production.
22. The Producer Offset tax incentive is capped at 20% of Qualifying Australian Production Expenditure (QAPE) for television, compared to 40% of QAPE for film. Each of these mediums drive the same benefits in terms of jobs, income and contribution to Australian culture and identity so they should not be treated differently.

Suggested reforms:

23. Where Australian produced content has international appeal, Stan believes that some form of support for international distribution would be extremely beneficial and a significant step towards making content creation sustainable. One possible support structure could involve the Government underwriting the amount of international income that it estimates a project will deliver. This would relieve the pressure on commissioners that rely on international sales, as they would have more time to address the pre-sale of international rights and/or distribution guarantees to complete the finance plan. This would see the producer and the commissioner benefit from the opportunity to more diligently assess the international sale options and, therefore, maximise the value for those rights. Increased international sales also have the added benefit of helping to



export Australian stories, and subsequently allowing for re-investment in Australian content.

24. From Stan's perspective, the minimum licence fee and related requirements/restrictions to qualify for Screen Australia funding have compromised the intended purpose of the support system, which is to encourage investment in quality local productions. Stan recommends that there should either be no minimum licence fee or, if there must be a pre-set fee, it should reflect the current market rate for acquisitions. Any shortfall in the finance plan for a production that is left by such a change would be made up in equity contributions from the investing parties. This would encourage more investment in quality Australian drama as the production costs relative to alternative forms of content fall.
25. The Producer Offset rates for film and TV should be harmonised so they are both set at 40%.
26. The equity splits in a program should more fairly reflect the levels of investment made by each of the parties, thereby enabling the commissioning party to fairly monetize the content.
27. Potentially as an alternative, or in addition, to the assistance which is provided to Producers, a form of loan facility for SVOD commissioning platforms would help to stimulate investment in Australian productions. As previously mentioned, a key issue for Stan with commissioning local productions is that all the costs must be paid upfront, rather than over a multi-year period (which would more accurately reflect how SVOD platforms generate value from the programming). To make commissioning local productions more attractive compared with licencing overseas content, Stan recommends that the Government assess the merits of providing financing at attractive rates to platforms funding qualifying Australian productions.
28. It is equally critical to the Australian content industry that local commissioners are supported as well as local producers.

What types and level of Australian Government support or regulation are appropriate for the different types of content and why?

29. As referenced above, Stan believes that Government support should be extended to assist commissioners in addition to producers, with the goal of building an ecosystem that can not only sustainably produce content, but also sustainably commission it. Without such measures, we do not believe we can sustainably continue to fund quality Australian content in the long term.
30. Stan has doubled its investment in Australian productions each year since its launch in January 2015 without any quotas or requirements to do so. We believe that introducing



new regulation of this nature to the SVOD sector would only serve to stifle innovation and creativity at a time when Stan needs to be as nimble as possible to compete with an influx of global tech/media organisations into the market. Stan is not yet profitable and simply cannot afford to have the allocation of its content budget governed by quotas. Our intention to invest more in local production is evidenced by our record. However, we need to maintain flexibility over our own budget in order to compete with some of the world's biggest media companies. Stan will not be able to reach its full potential if we are restricted and inhibited by content quotas. We believe applying quotas to SVOD platforms would only serve to reduce sustainable investment in Australian production as it will restrict the creative and commercial capabilities of one of this country's most exciting and innovative media companies. Stan is not able to access broadcast spectrum or special government subsidies for sport. Instead, Stan competes in a global and largely unregulated market against organisations that are often not constrained by corporate tax or employment expenses in Australia. We cannot continue to invest in quality local content, or provide employment opportunities for Australians in one of the world's most exciting industries, if we are inhibited by content quotas.

What factors constrain or encourage access by Australians and international audiences to Australian content? What evidence supports your answer?

31. For paid content, the price point is a factor that may encourage or constrain Australian audiences to access Australian content. Stan believes that Australians are now well placed to access a variety of content, given the mixture of Free, Pay TV and SVOD options that are available. The increased volume of content available, however, means that there is an increasing likelihood that Australian content may become less accessible if it does not 'stand out'. As the leading local SVOD player Stan offers more Australia TV and movies than any other SVOD service in Australia¹⁰. Furthermore, we ensure that this content is clearly identified through 'Australian' labelled feeds and editorial. It is vital that quality Australian programming continues to be produced to compete against the large volumes of overseas content available in Australia, which probably requires comparable budgets in Australia to those overseas, and Australian commissioners need to be able to create this material sustainably.
32. Stan and other on-demand digital services are making content more accessible to Australians. The on-demand nature of the content and the range of devices upon which it can be viewed is certainly a factor that is encouraging Australian audiences to access more local content. In addition to the main screen in the living room, consumers expect access to content while on the move, via laptops, tablets and phones at times of their choosing.

¹⁰ Stan commissioned a benchmark report in May 2016 from Gyde which reported that Stan had more hours of Australian TV and film available than any other SVOD platform available in Australia.



33. International audiences will be encouraged to access high quality Australian content that attracts a strong and loyal audience, and receives critical acclaim. Stan has proven itself to be a creator of Australian content which is in demand overseas. Our content does not need to attract mass overnight audiences. Stan believes its shows are likely to be in high demand overseas because they are highly targeted, designed to engage deeply with an audience, and free of some of the commercial restraints that apply when demand for advertising must be considered. To compete with international competitors, Stan needs to make world class shows with world class budgets. If the Government wishes to promote and encourage access to Australian content internationally it should ensure that its policy settings foster the production of this content that is in demand overseas. Therefore, Stan would suggest the Government implement the previously mentioned changes to its support structures to ensure the production of internationally sought-after Australian content remains commercially viable.

What would the Government need to consider in transitioning to new policy settings?

34. The Government needs to consider the pace of change in content distribution and consumption models, to ensure new policy settings do not become outdated in a short period, and to recognise that the policy should be applicable to the content industry in general, rather than just the production sector.

Is there anything else that you would like the Government to consider that has not been addressed in your responses already?

35. The abolition of free-to-air television licence fees this year was intended to allow those broadcasters to adapt and compete with the 'digital disruptors', many of whom are global tech/media organisations. At the same time, Fox Sports was granted a special \$30 million subsidy to support the broadcast of niche and women's sports. These initiatives assist Australian commercial free-to-air and Pay TV broadcasters to compete with the global tech/media companies who monetize content in Australia. Stan would like the Government to consider that there has been no equivalent support/reduction in costs for the rest of the local video broadcast industry, even though these services also compete in the same market. Support is required for those innovative Australian companies, which are pioneering the market, to compete with global media giants plying their trade in Australia.