President Jan Sardi Emeritus President David Williamson

Level 4, 70 Pitt Street Sydney NSW 2000

t. 02 9319 0339 f. 02 9223 8933 admin@awg.com.au www.awg.com.au ABN. 38 002 563 500

Australian Writers' Guild

Submission to the

House Standing Committee on Communications and the Arts

inquiry into the Australian film and television industry:

Factors contributing to the growth and sustainability of the Australian film and television industry.

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This document is not confidential

Introduction

The Australian Writers' Guild (AWG) protects and promotes writer's rights – on screen, on stage and on air. On behalf of its members, the AWG works to improve professional standards, conditions and remuneration, to protect and advance creative rights and to promote the Australian cultural voice in all its diversity.

The AWG appreciates the House of Representatives Standing Committee on Communications and the Arts' interest in the Australian film and television industry and look forward to offering our assistance where possible.

During your inquiry, we would ask you to consider the following:

1. preserving existing local content quotas for scripted television; and
2. ensure any future refund of licensing fees to the commercial networks come with an obligation to spend it on local scripted content; and
3. introducing a tax on new streaming services tied to local content quotas and investment in local scripted television production; and
4. increasing the producer's offset for television from 20% to 40%; and
5. rejecting the proposed amendments to the copyright law which threaten the livelihoods of Australian writers and dis-incetivize creation and innovation.

We sincerely hope that there is an appetite for positive change within this current government and that through consultation and collaboration we can work towards a stronger and more sustainable film and television industry and allow all Australians engaged in the film and television industry (not just producers who are already well supported by Screen Australia and the state funding bodies) to better compete for investment and success on the global stage.

Local content quotas

Scripted Drama – telling Australian stories – is the most expensive audio-visual content to produce with average budgets of AUD$1.1 million per hour, yet it is arguably the most important content to support if we are to compete for investment with overseas producers who have the benefit of a market which sustains itself commercially with little to no government intervention and access to production budgets, populations, hundreds of channels and online streaming services, advanced technology and internet capabilities which Australians can only dream of.

The stark reality is that we will never be competing on a level playing field commercially with the international English language content market which is dominated by the United States. However, we can regulate and legislate to ensure that Australian stories continue to be a part of the conversation.

We cannot forget that, unlike the behemoth of the United States and many of our other competitors in the space, the Australian industry is also driven by a cultural imperative which must be considered and sit above motivations of market protectionism or commercial considerations such as an increases in the location offset or PDV offset, which incentivise our competitors to come here and make their stories at the expense of Australian taxpayers, creatives and audiences who will lose the opportunity to see themselves participate in the process and be reflected on screen.

There is no doubt that the Australian public supports the existing policy of local content quotas both as a policy option and in its viewing habits. Screen Australia's 2016 *Screen Currency* Report ("the Report") found that Australians expressed a preference for Australian content over foreign screen content. It was found that even amongst the most avid online viewers (who subscribe to streaming services like *Netflix* and *Stan*), Australian content was favoured. This has been a trend for many years now, notwithstanding the increased presence of providers with huge selections of American, British and other international content available. With audiences making this choice, it becomes clear that Australians place an extremely high value on Australian content. Australians have an appetite for seeing shows created in Australia which reflect their experience of living in Australia and what it means to be Australian. If we continue to feed this hunger, the industry will not only survive but will thrive.

The AWG submits that content regulation in the form of enforceable local content quotas for scripted television is the cornerstone to preserving quality Australian audio-visual content on our screens. Without such regulation to achieve targeted outcomes, it is likely that Australian content would completely disappear from our screens.

It is a well-documented fact that Australian broadcasters and streaming services can buy a critically acclaimed, quality scripted drama from the United States that cost AUD$6 million per hour for a fraction of what that show cost to make and a fraction of what it would cost for them to make a locally produced scripted drama. In a commercial broadcast context, it would make absolutely no sense for a broadcaster to spend over AUD $13 million producing a local scripted drama which would have little saleability overseas, declining advertising revenue and would be unlikely to recoup its costs let alone see a profit.

The Report also stated that all screen content under Australian creative control generated AUD $2.6 billion and 20,158 FTE jobs. If local content quotas were to be reduced, the space these programs occupy in the market would inevitably be filled by cheaply purchased international content or offshore productions attracted by the location or PDV offset which may bring employment for some actors, directors, extras, crew and post production personel but have no mandatory requirements to employ Australian writers or other key creatives. While this may have short term financial benefits for Australia's commercial television networks, long term, this would decimate the Australian film and television industry, have a negative impact on employment and GDP. The productions purchased from overseas would be made by foreign actors, writers, producers, directors and distributors, taking employment away from their Australian counterparts. To add salt to the wound, those seeking to work in a thriving film and television industry would be drawn away from Australian shores. This would have an enormous impact on the industry economically. Perhaps more significantly though, future generations of creators will not have an industry in which to earn their stripes. Without this initial industry experience, it is unlikely they will be able to get meaningful jobs, even in the offshore film and television industries.

There are also significant financial benefits that Australian scripted content brings to other Australian industries which would also be at risk if local content quotas were relaxed or removed. According to the Report, *"Screen content attracts around 230,000 international tourists to Australia each year, driving an estimated $725 million in tourism expenditure."*

The AWG is also aware that the federal government recently returned AUD$160 million in licence fees to the commercial networks without imposing any requirement that they spend that money on local scripted content. The AWG recommends that any future refund to the commercial networks come with an obligation to spend it on local scripted content to ensure that it delivers on its mandate to support the growth and sustainability of the screen industry.

The AWG supports regulatory parity for digital content that is platform neutral. New foreign entrants to the market, such as Netflix, are not bound by local content quotas. They enter the Australian market with huge existing content libraries, often acquired cheaply or at zero marginal cost, in worldwide distribution deals. As discussed above, there is no economic incentive for them to commission expensive local television drama or to acquire it nor are they operating on any cultural imperative to commission or acquire the content of a foreign country. Local networks and content providers are under increased pressure to compete with these internet streaming services who are not operating under the same rules and restrictions as they are. A possible solution that has been proposed several times by various bodies, is that instead of reducing local quotas to deal with international streaming competition, streaming services should have some local content requirements placed on them. We understand that this may require a gradual addition of regulation, and recommend that market share be used as a guide in introducing regulations to each platform.

We would also support the proposition that internet streaming services and new market entrants should be compelled to provide a greater contribution to the Australian film and television industry through their tax and GST payments which could be put towards financing local production of scripted drama and ensure that the industry could continue to grow. It would also ensure streaming services make a contribution to the market that they are currently exploiting and exploiting well with a 2016 report from Roy Morgan stating that over 5 million Australians are now subscribers to Netflix and 891,000 Australians subscribing to STAN. With base level subscriptions costing $8.99 per month and $10 per month respectively there is a significant revenue base to draw from.

The AWG recommends: Preserving existing local content quotas for scripted television across all genres, ensuring any future refund of licensing fees to the commercial networks come with an obligation to spend it on local scripted content and introducing a tax on new streaming services tied to local content quotas and investment in local scripted television production.

INCREASE PRODUCER'S OFFSET FOR TELEVISION:

Under the current system, Australian feature films attract a producer's offset of 40%, which is double what is offered to qualifying television productions. We understand this disparity was originally put in place because the budgets for feature film were comparatively higher than television and feature film finance harder for producers to raise. However, with current Australian television drama budgets sitting around AUD$1.1 million per hour and with many series consisting of 6 to 12 episodes per season the budgets are now comparable, and in most cases, exceed the budgets for Australian feature films.

Australia is also facing intense competition for television productions from regional neighbours such as New Zealand and Malaysia who each have a 40% and 30% offset for television respectively. Many large productions are now choosing to shoot in New Zealand instead of Australia to take advantage of the larger offset and this is costing Australians opportunities for employment, skill development and costing the Australian economy money in lost revenue.

To date, we understand that the producer offset has been extremely effective in driving high-quality, scripted drama production which is in demand with both local and international audiences and, with its qualifying requirements insisting on the key creatives such as writers being Australian, ensures professional opportunities for Australian writers and other key creatives and guarantees Australian audiences on-going access to Australian content.

Research by Price Waterhouse Coopers ("the PWC report") which was commissioned by the production and pay TV industries estimates that over AUD $100 million in economic activity would be created if the producer's offset for television production was doubled and that the cost to the federal government would only be *"a maximum of $15.5 million in foregone tax revenue."* The PWC report estimated that 360 new television production jobs would be created and said Australia's international competitiveness in the global screen production and finance industry would be *"significantly enhanced".*

The AWG supports the increase in the producer's offset for television over any increase in the location offset as those productions do not have to satisfy the "significant Australian content test" which ensures that Australian stories can continue to be told by Australian writers for global audiences. The beneficiaries of the location offset also tend to be large, wealthy US production companies who don't need the Australian taxpayers to prop them up and are not compelled to (and do not choose to) employ as many Australians as productions compelled to meet the significant Australian content test under the producer's offset for television. Further, the location offset only addresses economics whereas increasing the producer's offset for television meets economic and cultural drivers of government intervention in markets that would otherwise be free.

Whilst many of the factors which make Australian TV uncompetitive in a global market are beyond our control there are many simple things we can do which will dramatically improve the quality of our shows and increase the chances of them being critically and financially successful both here and abroad.

It has long been established that the key contributing factor to the new golden age of television in the United States, which is marked by quality scripted drama received well by critics and audiences alike, is placing creative control in the hands of the writer. We have writers in Australia who have demonstrated, against all odds, that they can compete with US writers creating quality content and finding audiences here and overseas for the shows that they have created. Recent success stories such as *Please Like Me, The Code, The Slap* and *Rake* show that Australian stories matter and are capable of competing with foreign projects for international investment. Increasing the producers offset for television and insisting that Australian content meet the significant Australian content tests ensures that these writers can keep writing quality scripts and creating Australian content into the future. This is one of the cheapest changes we can make and it will have a huge positive impact.

AWG recommendation: Increase the producer's offset for television to 40%

Copyright Law

For the film and television industry to be sustainable, there must be a steady and reliable stream of income for creators. This income enables creators to continue to work in this often unpredictable industry. For creators, and writers in particular, royalties for use of their copyright material make up a significant portion of this steady and sustainable income. To guarantee the future growth and sustainability of the industry, revenue streams like this must be safeguarded.

The Productivity Commission recently proposed changes to the intellectual property laws. These recommendations, if made into law, would weaken intellectual property law to the point of obscurity. The proposed changes would force small Australian creative industries to compete with mammoth global "tech" companies, which would have shattering effects of the Australian film and television industry. Remuneration would go offshore, instead of into the hands of those creating content. Such changes would allow content to be shared online more easily, the term of copyright to be shortened dramatically and international distributors could more easily exploit the Australian market for selfish, economic gain. These proposals for intellectual property and copyright law would have a stifling effect on the Australian film and television industry. Without adequate remuneration, there is no incentive to create and the industry cannot function and it certainly cannot grow.

Specifically, writing would become a hobby instead of a legitimate profession of craft as writers would not be able to support themselves whilst they write the Australian stories that have become so entrenched in our culture. *Kath and Kim*, *Summer Heights High*, *Please Like Me, The Code, Rake, Shine, The Sapphires, The Castle, Priscilla: Queen of the Desert* and *Muriel's Wedding* exist because of the safeguards protecting the Australian film and television industry, like copyright protection and fair remuneration.

Additionally, the "fair use" proposal put forward by the Productivity Commission is likely to increase the need for content creators and owners to litigate. This is because the court will need to test what constitutes a "fair use" of work, once an action has been brought by a copyright owner. The AWG opposes any recommendations that would put such a burden on its members. Litigations would take a significant emotional and financial toll on writers. Furthermore, few people have the necessary resources to sustain a litigation, especially a litigation against multi-billion dollar multi-national companies and especially Australian writers whose average income is less than AUD $40,000 per annum.

In this time of Netflix, Stan, YouTube, Google, Spotify, SoundCloud and a myriad of other online content providers, the AWG sees a sustainable industry coming from increased copyright protections and not the reverse.

Copyright reform would be welcomed if it could play a meaningful role in ensuring fair remuneration for copyright creators and withstand today's changing intellectual property landscape. Improving intellectual property law in Australia would attract creative industries, innovative thinking, and create jobs. This would have a significant social and economic benefit and would ensure Australian voices continue to be heard in Australia and throughout the world.

AWG recommendation: reject the proposed amendments to the copyright law which threaten the livelihoods of Australian writers and dis-incetivize creation and innovation.

Yours sincerely,

Wendy Howell
Manager, Industrial Affairs
Australian Writers' Guild