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SCREEN PRODUCERS ASSOCIATION OF AUSTRALIA

A SUBMISSION TO THE

PRODUCTIVITY COMMISSION

BROADCASTING DRAFT REPORT

November 1999

The Screen Producers Association of Australia is the industry association of Australian independent film and television producers. The Association represents some 520 companies involved in the production and marketing of audio-visual programs, including feature film, all forms of television, commercials and corporate video. It is also the industry's peak employer association.

The Association aims to provide Australian producers with the means to have an effective say in government decisions and in industrial relations. It represents the interests of all producers on issues which affect the business of audio-visual production and aims to create and maintain the environment and conditions under which a vigorous independent production industry can thrive in Australia.

CONTENTS

Executive Summary

The Screen Producers Association of Australia (SPAA) commends the Commission on its body of work which has provided a detailed framework to discuss a myriad of broadcast policy issues.

SPAA's submission addresses recommendations within our specific area of advocacy and expertise, in particular *Chapter 9: Content regulation, consumers and competition.*

SPAA strongly supports the retention of the subquotas for drama, children's programs and documentary.

SPAA disagrees with the elimination of the overall transmission quota and the advertising content quota.

SPAA disagrees with the opening up of the children's P category to non-Australian product.

SPAA disagrees with the loosening of the 'creative elements test'. We believe it should be tightened.

SPAA advocates an strong emphasis on Australian content quota and expenditure applying across all platforms and delivery systems in the future as essential to the culture of Australia.

Fundamental in our belief for strong Australian content regulations is the intrinsic conclusion that a vibrant cultural industry needs a strong production industry and the two can not be separated.

1.0 Introduction

WHY IS THIS CREATIVE CULTURAL INDUSTRY SO IMPORTANT?

> *"Stories and images are among the principal means by which human society has always transmitted its values and beliefs, from generation to generation and community to community. Movies, along with all the other activities driven by stories and the images and characters that flow from them, are now at the very heart of the way we run our economies and live our lives.*
>
> *If we fail to use them responsibly and creatively, if we treat them simply as so many consumer industries rather than as complex cultural phenomena, then we are likely to damage irreversibly the health and vitality of our own society."* - David Puttnam

The culture of a nation is "the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group" (*UNESCO World Conference on Cultural Policies, Mexico 1982*). It is both the representation of its identity and character and the making of those representations by the people of the nation.

Consequently the culture of a nation cannot be made elsewhere and must be firmly rooted in the land and people that comprise the nation. Unless the people of the nation participate in the creation of cultural products then the nation does not own its culture.

As a nation Australia has placed a high value on the development of a distinctive Australian culture and identity allowing Australians to speak confidently to themselves and to the world. Successive Australian governments have introduced policies and programs and allocated resources designed to support and enhance cultural development.

It is a continuous undertaking, particularly as Australia faces the challenges of globalisation in the world economy and the profound transformations occurring in the information era. Like many nations Australia seeks to benefit from the potential of new global networks in trade and commerce, at the same time as we strive to maintain those aspects of our culture that make us unique in the world.

The Productivity Commission's survey of broadcasting and the digital future highlights the importance of public policy settings that provide a framework for growth and adaptive change that meet the social, cultural and economic objectives of the nation.

SPAA argues from the point of view of those engaged in the creation of Australian culture for Australian television. Our industry's product matters to everybody. What the industry makes contributes to the social reality in which we live. It is still a medium for the masses.

Watching information and entertainment on television is a big part of people's lives. It affects how people see themselves, how they fit in, what they feel like and how they act as part of their community. For children, their first wider view of society emerges on the television screen.

Consequently we see the place of broadcasting as central to delivering the cultural outcomes desired by the nation. The nature of the domestic and international market has required regulatory intervention to achieve these outcomes. But, as the markets change the regulatory response needs to change to meet the challenges of new circumstances.

The rationale for Australian quota is cultural and social, and the production of this culture is inexorably linked to the existence of a cultural industry. This is an industry that encourages economic growth in Australia. The by-product is an efficient and dynamic industry. Production of local and overseas television programs, advertising and films utilises Australian resources and boosts the economy.

The broader economic benefits of the screen production industry include:

- increasing *employment* in the film, television and other related industries;
- increasing *demand for Australian goods through international exposure* for Australia;
- increasing awareness of Australian creative talent and abilities;
- increasing *foreign investment* in Australia;
- increasing exports of Australian products;
- increasing tourism expenditure; and
- increasing Australia's skills base.

The Global Media Market

The market context in which the industry operates is already heavily global.

The idea that the whole world is ultimately the market place is not itself new, just as competition for new markets around the world is not new.

The term globalisation is currently being used to define the new equation in which technology unlocks the potential of reaching mass audiences on a scale that can be most effectively exploited by multinational companies or joint venturers. Eventually, these companies dominate the means of production and distribution to the point where local output is either co-opted or forced out of business. This threatens local content.

So, a process that began earlier this century with cinema distributors vertically integrating their operations down the "value chain" to form studios has now reached the point where those same studios are themselves integrated inside media conglomerates. They exploit the potential of their intellectual capital across the full spectrum of consumer outlets, from books to web based channels via everything in between.

The seven major Hollywood studios have expanded from their domestic market to dominate international markets as well. They now produce over 80% of feature films and 70% of fiction television world wide (Martin Dale, *The Movie Game*, 1997). They each belong to multi-national conglomerates which offer enormous advantages in cross-promoting and cross selling product.

THE BIG 7	REVENUES	COMPANIES
Time Warner	$26.8 Billion Dollars	Warner Brothers, Time Inc, CNN, Home Box Office, New Line, Turner Entertainment, Warner Music Group (Atlantic, Elektra, Warner Bros), Warner Books, Little, Brown, theme parks, retailing, product licensing
Walt Disney	$22.5 Billion Dollars	Disney, Buena Vista (International, Music, Internet, Sales), Touchstone, Miramax, Capital/Cities/ABC TV network, Go Network, Mammoth Records, Hollywood Records, Hollywood Pictures, theme parks, resorts, sports teams, retailing, product licensing
Sony	$15.9* Billion Dollars *Sony Corp of America	Sony, Columbia Tri-Star (Motion Pictures, Television, Home Video), Columbia Records, Epic Records, Sony Disc Manufacturing, Sony Computer Entertainment, Sony Life Insurance, electronics, games
Seagram	$15.4 Billion Dollars	Universal (Studios, Television, Pictures), Working Title Films, PolyGram, universal Music (Decca, Deutsche Grammaphon, MCA Records, theme parks, retailing, product licensing, internet
Bertelmann	$14.3 Billion Dollars	Random House, Doubleday, BMG, BCA, RTL (Television and Radio), RCA Records, AOL Compuserve Europe, UFA Film & Television Production, CLT-UFA
Viacom	$13.2* Billion Dollars (*not incl. CBS)	Paramount (Pictures, Parks, Television), Nickelodeon, CBS (TV network, cable), Spelling Television, UIP, Viacom, Showtime, UPN, MTV, Blockbuster, Simon & Schuster
News Corp	$12.9 Billion Dollars	Fox Broadcasting, Fox Studios, Fox Television, Fox 2000, Fox Searchlight, Fox Music, Foxtel, Twentieth Century Fox, BSkyB, HarperCollins Publishers, News Interactive, Festival Records, Mushroom Records, newspapers, magazines, airline

(From AFC/FFC: Report on the film and television production industry, 1999)

These vertically-integrated companies can promote their product through their film studios, television networks, cable/satellite/pay tv, record companies, magazines, newspapers, internet sites, radio, book publishers - even in-flight entertainment on their airlines.

Each month the market becomes more, not less, concentrated. Rather than promoting an open global market there is a growing trend towards vertical integration and market concentration rather than greater diversity. In this environment it is not only difficult for smaller firms to compete but it is difficult for any one country to act alone to promote free trade. As a result the unilateral removal of all regulations will not necessarily increase domestic competition; instead it may lead to a greater domination.

Digital Television and Content in the Digital Age

Australia is moving to a digital television broadcasting system for technological and economic reasons, not for cultural or social reasons. While there are particular technological and economic changes that this migration will bring, they do not necessarily negate the cultural and social objectives of our current broadcasting system.

SPAA strongly advocates a technological system that places access and cost for the Australian consumer as the highest priority. Furthermore, the users most reliant on television as their primary media are often the more disadvantaged, ie, rural Australians. The prospect of 'blank screens' for those citizens unable to afford the Rolls Royce of technology is unacceptable and does not mesh with the goals of successive Australian governments.

Equally the spectrum should be made available to explore uses that increase the level of access of all the population to information. The new information technologies have the potential to promote greater freedom of expression and access to information and education. For example, digital broadcasting can be used not just to provide high quality images but can be used to facilitate access to information through datacasting or low cost internet access. These opportunities should be opened up rather than being closed off.

Broadcast television is destined to remain the most dominant form of mass media in Australia for the foreseeable future (as outlined in pages 11-22 of the *Broadcasting Draft Report*). The audience for broadcast television is likely to remain large and therefore continue to be attractive to mass market advertisers. Consequently broadcasters will have access to significant revenue to support the cost of transition to digital and the fulfilment of their cultural and social obligations.

Our members, both program makers and facility providers (editing facilities, film processing, sound, equipment hire) have also been upgrading to digital, with substantial costs involved in doing so. This needs to be recognised in the cost structures imposed by broadcasters in producing for digital television and in the opportunities that are opened up in the digital environment. There should be no diminution of Australian content requirements for HDTV.

The creation and management of content will be a key feature of the future for independent producers in the digital environment. Recognising this SPAA commissioned Mr Malcolm Long, Communications Strategies and Management Ltd, to prepare a report for SPAA on the impact of digital technology on independent television production. A version of the report was presented by Mr Long at the recent SPAA Conference. A copy of that presentation is attached at Appendix 1.

In the digital age, SPAA will continue to campaign for Australian content as the base of cultural policy decisions on the media. Independent producers make the content. They invest and develop talent, a very risky business. We are committed to ensuring that Australian's efficient and creative producers will be able to find a fair market and price for their product, therefore delivering the government's objectives to the people.

2.0 Australian Content

> "Restricted entry has long been justified by the industry on the grounds that it is necessary to enable it to meet the higher costs of local content programming required for cultural policy purposes. The Commission is not satisfied that such compensation is justified: many industries are required to incur higher costs to meet various policy objectives, from health (pharmaceuticals) to environmental standards. Furthermore, the relatively small value of the higher program costs does not appear to be commensurate with the high value of restricted entry, as indicated by the value of the broadcasting licenses."
>
> *Broadcasting Draft Report*, p. xxxvi

For decades the free-to-air networks have had control of a very highly valued commodity, broadcast spectrum, in return for which they are to meet social and cultural obligations set for them by Parliament.

We argue that the oligopoly, while making generous profits year after year, barely meets its level of obligation.

We therefore commend the Commission's recognition and commitment to maintain drama, documentary and most of the children's subquota.

SPAA feels that not only should these quotas be maintained, but also that the drama subquota in particular should be raised incrementally over the next two years.

The recent AFC/FFC Report to the Minister for the Arts highlights some of the challenges facing the independent production sector in creating programs that meet the cultural objectives of broadcasting.

Despite an overall increase in television drama production in Australia there has been a decline in the number and value of Australian originated drama production. In 1998/99 the total value of this production dropped by $60 million from the previous year. In real terms the 1998/99 figure was 13% below the average per annum over the four years from 1995/96.

The prospect is that this level of Australian production will not increase in the current financial year. The consequence is that Australian audiences will start to see less drama on commercial television. This at a time when new Australian drama represents only 8% of prime time transmission across all free to air channels.

It has become harder for independent producers to finance domestic drama. At the 1999 SPAA Conference, sessions on "Funding the Gap" which presented policy papers and panel discussions on the difficulties of financing Australian television, were the highest attended (over 450 people) - demonstrating the strong sense of urgency and concern in the industry. SPAA has subsequently had three specific television forums for its members, and again the response has been overwhelming.

Following is a summary of the issues as identified by SPAA and its members to act as a background against which SPAA has come to its recommendations to the Productivity

- Australian television licence fees, in real terms are declining. In some cases licence fees, in dollar terms, are also declining. Eight years ago, the 1991 Australian Broadcasting Tribunal's Inquiry into Australian Content on Commercial Television wrote about accepted industry average purchase prices per hour for the various drama program formats. In October 1999 the FACTS Submission to the Productivity Commission's Inquiry into Broadcasting reported that average licence fees were virtually the same or even lower.

Program type	**1991 Averages**	**1999 Averages**
Serial	$110,000	$40,000- $80,000
Series	$220,000	$150,000 - $200,000
Telemovie/Miniseries:	$350,000	$250,000 - $350,000

- Australian licence fees are a smaller proportion of the cost of production than in most comparable countries. A sample of 26 Australian drama productions in 1998/99 revealed that licence fees as proportion of the total budget were approximately:

Children's:	15%
Telemovie/Miniseries:	15-25%
Series on tape:	80-100%
Series on Film	60-70%
Serial:	35%

- The Film Licenced Investment Companies (FLIC's) have not been a success. They are unable to provide a new source of investment therefore leaving a further gap in production funding.

- The Film Finance Corporation is unable to fund, due to limited resources and increasing demands, anything other than telemovies and mini series.

- Television worldwide is becoming more local, leaving less opportunities for the sale of Australian shows overseas. There has been a softening for adult television drama internationally triggered by a rise in local production in European markets. In those markets there is a preference to buy completed television programs making it harder for Australian producers to find deficit finance.

- The large vertically-integrated media companies are fighting the move to local production by setting up local subsidiaries to produce local content and forming alliances with domestic broadcasters.

- The US studios, via their output deals, continue to limit opportunities for Australian drama in foreign broadcaster's schedules. Under US antitrust law they are exempt from any action for carrying on activities offshore that would be illegal in the domestic market. At the same time all foreign producers "dump" their domestic production in offshore markets. For television there is no equivalent because the WTO endorsed anti-dumping regime does not apply to intellectual property.

- In the Australian Network's schedules locally produced drama can be market competitive for audience, but cannot be price competitive against imported programs.

- Pay television, with a few notable exceptions, has not supported Australian drama production and legislation has not passed yet to underwrite the requirement for support.

- More sophisticated Terms of Trade are available in other markets to enable concurrent exploitation of drama in free-to-air, pay and digital windows. For example, in the United Kingdom.

- Australian producers/production companies have been taken over by large offshore companies with distribution infrastructures, making it more difficult for the independent producers/independent production companies to compete.

- Producers witness the leakage of Australian content quota to foreign vertically integrated companies. Local network joint venture deals with companies such as Hallmark, Fox, New World, and now Granada are affecting prices and timeslots available and putting pressure on the Australian Content Standard.

This difficult trading situation is against a background where network profitability continues to rise. The Productivity Commission in its analysis of the financial performance has shown that the return on asset performance of the commercial networks has consistently exceeded the long term bond rate for the last decade and that there is prima facie evidence of above normal profits.

License adjusted rates of return of commercial free to air television stations (excluding television license values and fees) and the 10 year bond rate, 1986-87 to 1997-98. (Page 42.)

Year	Major Capital Cities	All Regional	10 Year Bond Rate
	%	%	%
1986-87	8.6	28.0	12.8
1987-88	14.7	31.6	12.0
1988-89	8.4	33.2	13.5
1989-90	9.3	37.8	13.4
1990-91	2.1	14.5	11.2
1991-92	27.5	12.1	8.9
1992-93	24.6	12.4	7.4
1993-94	30.8	14.3	9.7
1994-95	31.0	15.3	9.2
1995-96	34.2	16.1	8.9
1996-97	30.0	14.5	7.1
1997-98	20.2	10.2	5.6

The Productivity Commission is also suggesting that the spectrum rental paid by the networks through their licence fees is undervalued for this reason and when compared with what the market is prepared to pay for spectrum for other uses. At the same time the independent producer is concerned that the dominant market power of the networks is being used to force terms of trade that are excessive.

Against the background of globalisation and concentration of media, Australian quota is essential to allow citizens to see their culture in a diverse range of programming aimed at the very diverse Australian audiences.

Around the world, governments are facing the erosion of screen production industries and local faces and voices on their television screens and in cinemas. The power of the multi-national conglomerates and the increasing number of media delivery mechanisms poses very real threats to local cultures.

It is a deceptively simple thesis that a free marketplace provides the greatest number of choices for consumers and the greatest efficiency for industry. In the area of media however, it is rarely as simple as soap.

What is becoming increasing obviously in more mature media markets than ours, is that instead of new content diversity, there is merely more places to see the same product. And that product is often American and usually repeats.

Governments are fighting back with a variety of measures to combat this globalisation and give local audiences the programming they want. These measures, some of which are detailed in the Report's Appendix 6 include:

- overall transmission quotas
- sub-quota content: drama, children's, indigenous, documentary, language-specific
- tariffs/levies/taxes: on television sets, cinema tickets, broadcaster revenues, pay-tv revenues

The networks claim that because their Australian programs rate highly and draw substantial advertising revenue and critical and popular acclaim for the networks they will keep buying them. That may be true up to a point. But the contraction in volume purchased and the decrease in license fees paid appears to indicate a diminishing level of commitment.

The essential economic criteria for the networks remains returning shareholder value by cost reduction and increases in revenue.

2.1 Critical Mass

SPAA believes that the elimination of the 55% percent overall quota and the 80% advertising television commercial quota would lead to a further contraction of the industry and loss of the critical mass necessary to support the cultural objectives of the nation.

Without a level of economic activity across all sectors of production, the ability of the industry to produce those films and television programs with the highest cultural values is reduced. The existence of the transmission quota and of a quota for commercials therefore acts as a kind of cross-subsidisation for this cultural activity. In order to have Australian stories on screen there must be an industry to physically produce the programs.

The change in the advertising quota in 1992 from the 100% quota to 80% has already had a serious effect on the production industry, and in particular facilities and post-production. The abolition of the quota would be devastating and have serious ramifications for the entire production industry.

The film and television industry features a highly mobile and highly skilled workforce that generally works on a freelance basis. Editors, actors, producers, writers, directors, sound, art department, composers, cinematographers - all work on a project to project basis throughout the year.

These projects encompass film, television, advertising and corporate and music video, and there is constant and consistent crossover from project to project.

If there is not a strong industry across all formats of screen production, the ability to maintain a skilled workforce dissipates rapidly. The proposed changes would have an enormous impact on the ability of a largely freelance workforce to endure long stretches of unemployment.

A recent survey of members of the Australian Screen Editors Guild, showed the downturn in screen production is already impacting on employment. Nine percent of those surveyed were considering leaving the industry due to the extreme difficulty in attaining work over the last year, even though they had previously worked on high profile productions, and were well qualified to do their jobs. There is no room for new people to enter the industry.

Furthermore,

55% of Editors and assistants surveyed had less work this year than last year.
9% of Editors and assistants surveyed had no work at all in the last year.
84% of Editors surveyed expect the amount of work to decrease again in the next year.
39% of Editors work had shifted "down" from what they had done the previous year, eg from features to documentary, from television series to corporate production.
9% were considering, or had made the decision, to leave the industry.

SPAA surveyed a representative panel of facilities providers to the Australian film and television industry regarding their views on the current state and future of the industry. Participants included duplication and other post production, special effects, editing and mixing services, film/video/equipment suppliers, legal, financial and insurance providers, casting agencies, stock footage suppliers, etc.

Respondents were asked to indicate the percentage of their business devoted to particular types of production. The results do give an accurate idea of the scope of the industry, and the importance of television commercials, followed by Australian feature film and television drama and documentary as the overwhelmingly main income sources for the industry - not offshore production, which is only approximately 15% of clients' activity.

Type of Project	1998	1999	2000+
Feature Film (offshore)	6%	7%	8%
Feature Film (Australian)	21%	18%	17%
Television Drama (offshore)	3%	8%	8%
Television drama (Australian)	13%	12%	16%
Documentary	12%	13%	12%
Television Commercials	36%	33%	32%
Other (specify) (corporate, multi-media, shorts, broadcast design, home video)	9%	9%	8%

Seventy percent of Australian facilities providers expect their business to either decrease or remain the same in 2000.

The only area widely anticipated to grow in 2000 was offshore television drama (73% of respondents believed it would increase). However, as this is currently only 8% of facilities' work, it will not have a large impact on most companies' bottom line.

Television commercials, documentary, and Australian feature film were estimated by over a third of the respondents to show lower levels of activity in the future. As these represent two-thirds of facilities' slate of work, this is of some concern.

The post-production industry in particular is vulnerable to any scaling back of the creative elements test. It is already disadvantaged by the off-shore industry, which while providing some employment to production cast and crew, often takes post production back to the home country. In addition to which the companies also have to invest in digital technology to meet the advent of digital television.

2.3 Creative Elements Test

In screen industries worldwide, the nationality of creatives, the origin of the program, and location of filming are part of the definition of national broadcasting. Throughout the world individual countries are tightening their definitions of local product to ensure local industries survive and are competitive - both culturally and economically. Dismantling aspects of the creative elements test does not advance the cultural objective. Instead SPAA believes the test should be strengthened to ensure there is clear encouragement for Australian originated programming utilising the full range of creative talent available in this country.

SPAA also questions where the call to change the creative elements test comes from. It appears to contradict the government's quest for a vibrant Australian production industry and existing trade, employment and immigration policies.

By changing the criteria of the creative elements test, the Commission appears to believe that a handful of producers, directors and lead actors will always be available to make television with a mystery set of crew sourced from overseas. This is contrary to Australian immigration and employment policy which encourages full employment for Australians before business migration is allowed.

By eroding the skills base and critical mass of the Australian production workforce, Australia will eventually lose its attraction as a location for offshore production. The loss of offshore production in turn, limits opportunities for further development. It could become a vicious circle of decline.

3.0 Children's programming

P Programs

We are pleased that the Commission has recognised the importance of children's television.

We support the recommendation that children's drama quota be maintained. However we are concerned about the proposal to reduce the amount of Australian pre-school programming.

Preschool children are arguably the most vulnerable viewers of television. Their development and language are directly affected by television. It is vital to require Australian programming for this age group.

We reject the submissions which claim that the criteria for C and P programs has led to a lack of diversity and quality. The Australian industry has built a pool of talented and creative independent children's television producers, who are critical and popular successes in Australia and overseas.

While SPAA does not disagree that there are excellent "P" programs made by overseas producers, there is no impediment for Australian networks screening such critically lauded programs in addition to Australian-made programs.

3.1 The Role of the National Broadcasters and Pay Television

SPAA firmly believes that diversity in children's programming is as important as in adult programming. Therefore, content rules should apply for children's programming on Pay TV. SPAA supports the draft legislation currently before Parliament requiring a 10% expenditure for all drama channels, which includes Nickelodeon, the Disney Channel, The Cartoon Network and Fox Kids.

There has been discussion that the popularity of children's programming on pay-tv and on the ABC should relieve the commercial broadcasters of their obligation to broadcast Australian quota programs.

Despite pay-tv's growth, it still only reaches approximately 16% of households, and the take-up figures are strongly linked to household income. The pay-tv networks are showing very little new Australian children's programming and the 10% expenditure requirement will not drastically change this profile.

The ABC is a leader in children's television because it places creative and financial resources in this sector. However, the ABC's charter is to provide mainstream services to all Australians, not niche programming.

The commercial networks have the capital and the capacity to provide diverse and innovative children's programs. They choose not to for financial reasons. They should not be able to avoid their responsibilities under the Broadcasting Services Act. Children deserve a variety of sources of programming and all platforms should give them this opportunity for choice.

4.0 Discussion of other recommendations

4.1 Regulatory restriction on entry into broadcasting

The Commission has recommended the repeal of the restriction on the allocation of new commercial television services before 2007, (Recommendation 7.1). The difficulty with this recommendation is that while it would certainly encourage increased competition between the commercial broadcasters it would not necessarily result in an increase in the diversity of programming available to the public. Nor would it necessarily increase the opportunities for Australian program producers.

During the last twenty years the number of commercial radio broadcasters has increased through the issuing of new licences, without increasing the diversity of programming available to the public. This is because broadcasters aiming to maximise their audience tend compete in a fairly narrow range of formats, rather than finding minority audience needs to be met. In contrast these minority tastes have been met by the non-commercial national and community broadcasters, who are not driven by the same commercial drive towards the common denominator.

International experience has shown that new channels tend to fragment the market for advertising, increase reliance upon imported programming and promote cheaper, but not necessarily better quality, locally made programs. Rather than extending and strengthening the primary market for programs this market is diluted and the secondary market extended.

Aside from the providers of imported programming the main beneficiaries of this increased competition are the owners of sporting rights who have seen the value of their franchises increase dramatically as channels compete fiercely for access to these rights. For example, the CBS network in the USA recently paid $US6.2 billion for the rights to college basketball, almost tripling the value of these rights in one deal.

The introduction of multi-channel pay television in Australia created a large secondary market for predominantly imported programs and a very small primary market for Australian programs. This repeated the same scenario in Europe as the number of channels expanded through the nineties.

In any case Australian networks usually insist on retaining subscription television rights as part of the acquisition price for a new program, thus preventing the Australian producer from gaining any benefit from this secondary market.

License fees, already at a breaking point, could be driven lower by the introduction of a fourth commercial network in an unregulated content environment.

SPAA could only support a fourth channel if existing overall transmission quota was maintained, the drama quota raised, and the creative elements test tightened. While we do believe the production industry has the capacity currently, we would be sceptical of the benefits of new channel(s) if was coupled with loss of quota.

4.2 Tradeable quotas

Tradeable quotas may reduce the cost of complying with regulation for individual broadcasters, but it is difficult to see what other cultural or economic benefits would result from this recommendation.

If the system was such as to allow those broadcasters who did not want to meet their obligations to pay another broadcaster to do so for them, what would this do to the nature of the competitive environment for programs? The broadcaster who wanted to offload their responsibility would be operating in a buyers market where the broadcaster who took the responsibility on could demand a premium for doing so. However, it would provide no incentive for that broadcaster to increase the amount they paid to the independent producer to make the program.

The broadcaster would have an incentive to keep the profit they made in fulfilling their competitors obligation so that creating a market in quota points could increase the overall cost of compliance, without actually improving the quality of programming.

4.3 Subsidy vs. Quota

The combination of content regulation and direct government subsidy has been a successful application of strategies to fulfil the cultural policy objectives of the nation. The screen production industry and its ability to provide the Australian audience with a diverse range of cultural products has grown from an almost zero base in the last thirty years. The screen production industry got to this point through:

a) The establishment of an infrastructure to support creativity.
Crucial to this was:

- Broadcasting and the role of local content rules.
- Television commercial production.
- Independent filmmaking and a commitment to screen culture.
- Training and professional development.

b) The partnership of government and private sector investment in content creation through mechanisms such as the AFC, FFC and investment incentives.

Generally the combination of both is working well and Australian public policy in this area is seen as a model to be adopted by other nations, rather than being some form of structure to be dismantled.

4.4 Pay Television

SPAA is strongly of the opinion that pay television as it currently is broadcast, and any future broadcast mechanisms, should have Australian content regulations for the same cultural and social reasons as free-to-air.

In fact, given the number of current pay television channels available, and the prospect of further expansion, SPAA believes it is vital to review this requirement often.

SPAA supports the current legislation due to come before Parliament in December 1999 to legislate and enforce the goal of 10% of expenditure requirement for drama and (if amended) documentary channels to go to producing Australian content.

NAVIGATING THE REVENUE STREAM

The Impact of Digital on Independent Television Production

PRESENTED BY
MALCOLM LONG
COMMUNICATIONS STRATEGIES & MANAGEMENT

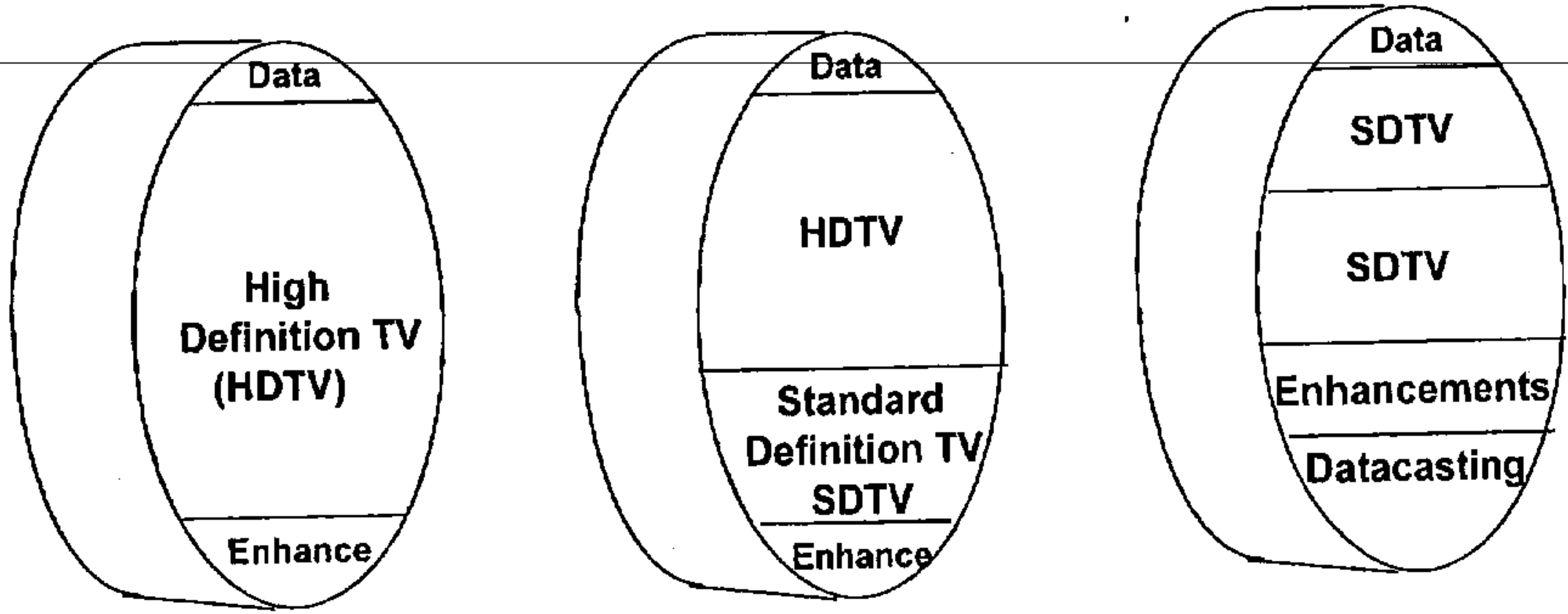
NOVEMBER 1999

By law, digital terrestrial TV will begin eighteen months from now - 1 January 2001

- Free-to-air metropolitan stations begin simulcast 1 Jan 2001. Regional stations no later than 1 Jan 2004. Simulcasting must continue for at least eight years.
- Each TV station loaned extra 7MHz of broadcasting spectrum.
- Australia will use European MPEG-2 digital system - DVB. US has ATSC.
- Commercials will spend $1 billion on digital. Extra money to the ABC & SBS.
- No new commercial TV licences before 31 December 2006.
- Spare spectrum to be competitively allocated to new players - datacasting only
- Cable pay TV services likely to convert to digital around the same time as free-to-air. Foxtel and Austar are already digital on satellite.
- Govt reviewing limits of HDTV, datacast, enhancements & multichannels.

Essentially, each TV network will have a flexible digital pipe to deliver a range of services:

The Digital 'Pipe'



Broadcast Channel
7 MHz = 19.3 Megabits/second

Digital programs will be delivered in either standard definition or high definition format:

- Networks will broadcast their main TV service simultaneously in analog and digital.
- Standard definition digital pictures will be noticeably sharper than analog. True HDTV with surround-sound will be better still.
- All networks say they will transmit high levels of HDTV.
- The standard HDTV aspect ratio is likely to be 16:9. Station policies on aspect ratios are being developed and will vary between networks.
- Government has yet to decide if a specific HDTV format will be mandated & if a minimum amount of HDTV airtime will be required of the networks.

Multichanneling should increasingly provide some additional outlets for programs:

- Scheduling.
- Genre services - outlets for new specialist material, long-form versions & repeat runs

AUSTRALIA: ABC - 24-hour news & information channel, a part-time learning channel & regional channels combining video and text.

SBS is likely to broadcast an international news bulletin channel & perhaps a program repeat stream.

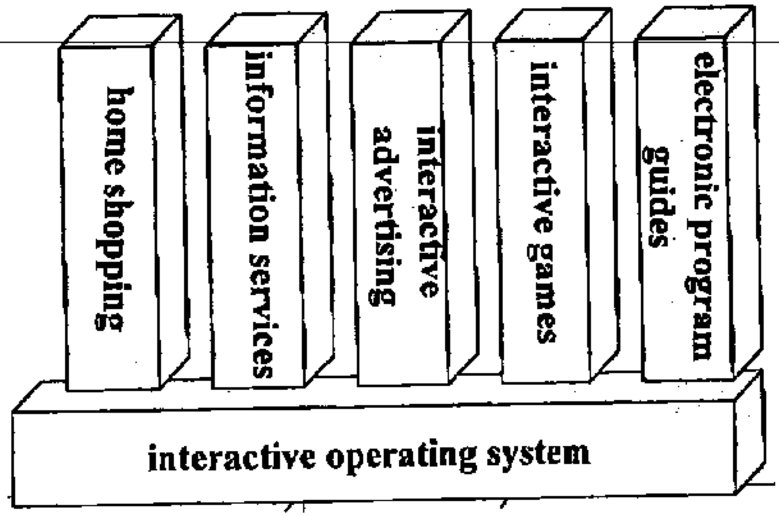
UNITED KINGDOM: BBC - *BBC Choice* & *BBC Knowledge*. ***ITV*** *2* is an entertainment channel. **Channel 4** & **BBC** have pay TV multichannels.

UNITED STATES: Fox developing multicasts of different programming to different regional markets.

PBS may multicast four channels during the day: *PBS Kids*, *Arts & Performance*, *Lifelong Learning* and a *Public Affairs Channel*.

Paxton TV and other smaller networks are also looking at multichannels.

All networks can datacast, along with the new licensed datacasters:

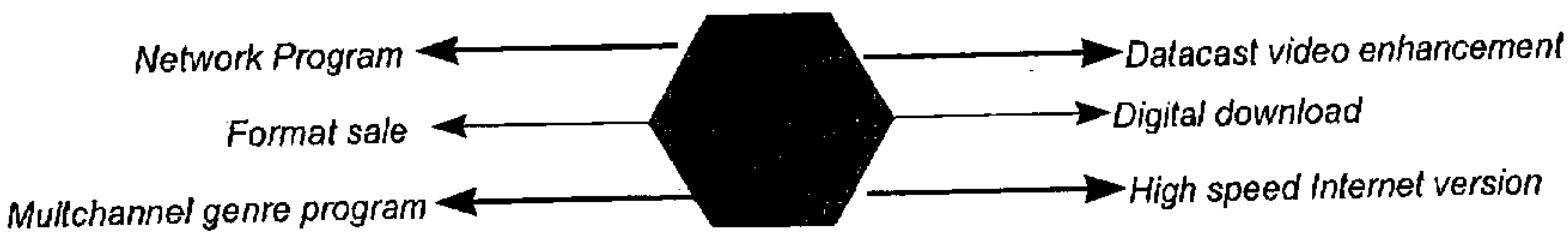


Likely TV Datacasting Services

- Datacasting - major driver of digital TV.
- Two kinds of interactivity:
  - locally
  - externally
- Can turn TV set into a multimedia terminal.
- Broadcasters, pay TV & the new licensed datacasters are all likely to develop datacasting.

Re-purposing of existing program material will present an increasing opportunity to add value:

- As some Australian production houses have proven, re-cut footage, sketches, formats, scripts and even production supervision modules can also extend value. This strategy will be even more valuable in the digital environment

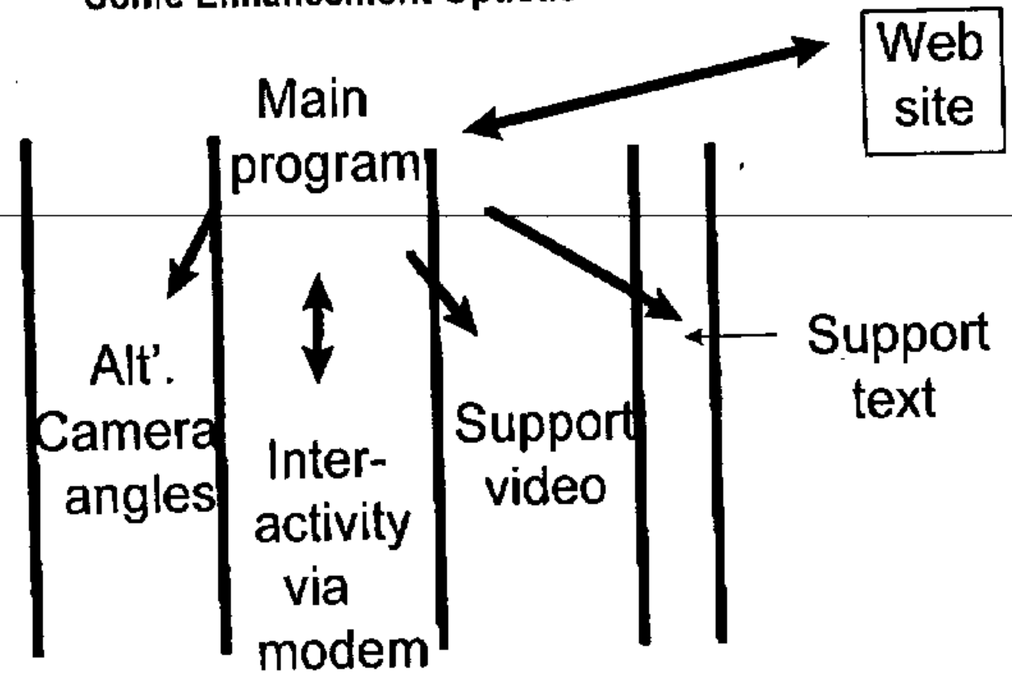


- The new production motto is

'CREATE ONCE ... PUBLISH MANY TIMES'.

Program enhancements will be particularly significant in exploring the new digital freedom:

Some Enhancement Options



- Enhancement success will depend on the creativity of production teams.
- Use of archives, repurposed Web material & unused footage could reduce enhancement production costs.

A new business model is evolving for rights in independent content production in the digital era:

As a result of:

- flat free-to-air licence fees
- 'chaotic', unpredictable emergence of new distribution paths
- move from mass audience to customised delivery,

theatrical 'performance' approach, becoming value management approach:

- every component of the production is assessed for value
- assessment happens upfront before licences are contracted
- rights packages are then created & managed to maximise overall potential revenue

Networks see the virtues of this business model too and will increasingly seek to acquire maximum rights from producers

Crucial to the new model is the sophisticated management & tracking of content assets and related data:

- Key assets like video & film clips, stock footage & archives, still images, audio content, scripts etc. can be digitised to add value.

- But digital systems can also capture the *metadata* - the data about the data.

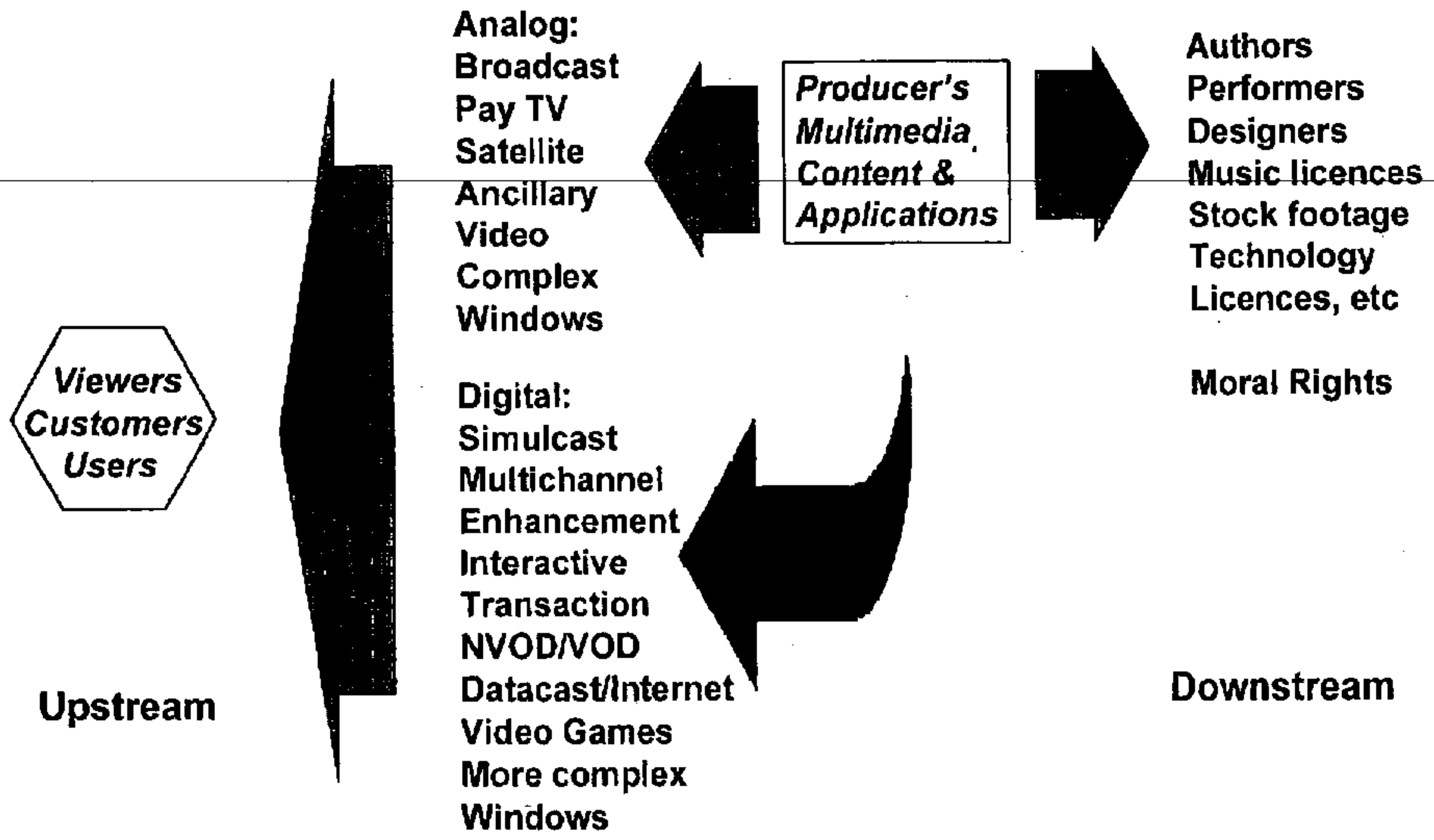
KINDS OF METADATA

CONTENT	TECHNICAL	PRESENTATION	OWNERSHIP
Genre	Shooting medium	Pan & scan coords	Copyright
Scene description	Aspect ratio	Versioning information	Licences
Content ratings	Processing history	Key scenes for promos	Residuals

- How this metadata is used in enterprises will be crucial

- How far can digital systems go in the automatic management of rights & licences?

As uses proliferate in the digital environment, independent producers will need to manage complex rights deals - upstream & downstream:



Rights experience in the United States & United Kingdom shows deal structures are still very fluid:

United States

- Networks are developing an upstream/downstream **rights model** based on an exclusive window to use **any distribution path** to the audience with payment calculated on **households reached**, measured by ratings and Internet measurement & including minimum audience guarantees.

United Kingdom

- UK independent producers are involved in a campaign to move away from the **traditional contract system** with networks. Currently they negotiate on a **'cost plus' system** whereby producers are paid a fee on top of production costs with most rights going to the broadcaster. In the light of digital, producers are arguing for all rights to be **separately priced** and for **value pricing,** reflecting the show's worth in the ratings and its pay, interactive and retail **transaction** potential.

Overall, analysis suggests that the most effective upstream deals in the new digital environment are likely to involve:

- Very specific description of content
- Specify details of the technical format & delivery medium of the program
- Separate contracts (and/or description) for separate transmission streams
- Detailed elaboration of agreed windows & hold backs
- Separate agreement for TV enhancements, interactivity & datacasting
- Tight definition & detailed payment mechanism for ancillary rights

A seemingly trivial use now may become a significant future use.

Online use is a new area for upstream program deals. Opinion suggests deals should:

- ☐ Distinguishes between promotional use & revenue generating use online.
- ☐ Be precise as to use - World Wide Web or a closed, proprietary service.
- ☐ License Internet/online rights for a specific domain
- ☐ Include copyright protection measures like Cyber Sentry or digital watermarking, where appropriate.
- ☐ Recognise the increasing distinction between traditional dial-up Internet and high speed online services.
- ☐ Fully consider a range of revenue models including:
  - straight sales for stock footage
  - up-front fees plus revenue split
  - revenue sharing alliances
  - distribution fee paid to ISP.

EXPERTS ADVISE: 'make any digital rights licence as narrow as you can ...'

Independent producers' downstream agreements are also coming under review:

- ☐ Producers acquiring up-front as many rights as possible
- ☐ Subsidiary payments should be easy to identify, administratively simple, and able to be processed automatically
- ☐ Avoiding agreements based on narrow, rigid categories for use like 'broadcast'
- ☐ The actual value of television streams will vary widely
- ☐ Performance or program contribution needs to be clearly defined
- ☐ A wider range of industrial agreements and custom & practice arrangements in production are likely to be reassessed.
- ☐ Current model of production is a rigid, industrial process in terms of skill groupings, crafts and production functions.
- ☐ New project structures involves multiskilling and flexibility based on actual use.

Distinction in agreements between broadcast & ancillary use, & Australian versus foreign use, likely to erode in the digital era.

The relative value represented by proliferating TV streams will be a central factor in digital program business management

RELATIVE VALUE OF DIGITAL TV SERVICES
(Very broad orders of magnitude estimates only)

Program Acquired for:	***Relative Value***
Analog Free-to-Air Network	100
Analog Free-to-Air Network with Digital Simulcast	100
Analog Free-to-Air Network with Digital Simulcast in HDTV	110
Digital Only Free-to-Air Network (multichannel)	25
Pay TV Analog or Digital	10-20
Digital Free-to-Air Enhancement Stream	20
TV Datacasting Video Service (broadcast model - upfront fee)	15
High Speed Internet TV video (broadcast model - upfront fee)	10
Dial-up Internet (low video quality on PC - upfront value)	2-5

‘Copyright is the currency of the information age’

- Working Group Report, European Audiovisual Conference 1998