



**SOUTHERN
STAR**



SOUTHERN STAR GROUP LIMITED

**SUBMISSION TO PRODUCTIVITY COMMISSION INQUIRY INTO
BROADCASTING SERVICES ACT 1992 AND RELATED
LEGISLATION**

RESPONSE TO ISSUES RAISED IN THE DRAFT REPORT

DECEMBER 1999

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1 Southern Star Group Limited

Southern Star is an integrated film and television production, distribution and manufacturing group. Divisions of the company are involved in film, television and video production; video and optical disc duplication; sales and distribution; licensing and merchandising. Southern Star is a publicly listed company on the Australian Stock Exchange.

In 1998/9, Southern Star Entertainment, the Australian production division of the company, produced 317 hours of programming, including episodes of Australia's top rating dramas – *Blue Heelers* and *Water Rats* - the popular quiz programme, *Catchphrase*, and two new children's drama series, *Pig's Breakfast* and *High Flyers*.

Southern Star is actively seeking to expand its distribution operations to further strengthen its role as a multinational supplier of television programming. The company is also continuing to diversify its production activities, not only within Australia and the UK, but also by increasing its involvement in key international co-productions.

Southern Star has grown in 25 years to be Australia's largest producer of television programming and the 10th largest English language film and television library in the world. In 1997 Southern Star acquired the UK based television company, Circle Communications, including its distribution arm, Pavilion. In 1998 Southern Star acquired a second UK based company – Primetime - a television distribution company with a significant catalogue of English language programming. The libraries of Pavilion and Primetime have now been integrated into Southern Star Sales, the Australian based sales and distribution division of Southern Star Group.

Each year Southern Star makes a substantial investment in the local industry and its programming, through its overhead, its own production output and support for the production output of independent producers. This investment, coupled with a sizeable annual development slate, creates quality jobs in Australia.

2 Approach

This submission is made in response specifically to the content of Chapter 9 of the Draft Report and briefly addresses, firstly, the particular recommendations proposed and, secondly, the topics for further discussion that are raised in that Chapter (except where those topics are considered with the recommendations) and that are relevant to Southern Star.

3 Draft Recommendations

(a) Draft Recommendation 9.1

We welcome the Commission's support for the continuation of the existing quotas for first release drama, children's programmes and documentary. Southern Star is a longstanding supporter of these quotas as an efficient mechanism for meeting the objectives of the Act and as serving the public interest.

Moreover, we support regular review of the minimum quota obligations and incremental increases to ensure a diversity of Australian product on Australian television screens to satisfy the diverse interests of the Australian viewing audience.

We do not agree that the Creative Elements Test should be improved by removing criteria that require non-creative cast, crew and production processes to be Australian.

It is not possible or helpful to identify and separate those elements of the production process as having a strictly social or cultural objective and those that have a strictly industry assistance objective. It is the achievement of the overall objective that matters.

Creative issues are affected by structural and financial decisions and vice versa - they are neither distinct nor discrete. Producing a programme in Australia means that Australians will make decisions and perform tasks intricately connected with the creation of the programme. It is artificial to classify elements as strictly creative or non-creative. All elements contribute to the look and content of a programme. Labelling some elements as "creative" - and thus mandated to be Australian - and the others as "noncreative" - and able to be performed by anyone, anywhere - will deplete our skills base and will result in our programmes being made offshore. It limits the capacity of Australians to explore their creative potential in this potent medium.

Because Australian television relies upon English language programming, we are a key market for other cultures with larger population bases and substantial production output. Without regulation that encourages the growth and maintenance of local capacity for production we will be more vulnerable as a small market to being swamped by foreign programming.

Multinational companies' control of the majority of international production and distribution output threatens local content worldwide. Quotas address the cost disadvantage of local Australian programming and enable those programmes to gain audience support.

The best and, we believe, the only way of meeting the cultural and social objectives of the Act through local content is by the production and transmission of programmes made predominantly by Australians. It has been demonstrated that the current Creative Elements Test works to achieve those objectives, and has resulted in production and broadcast of programmes that Australians embrace and respond to.

It is untrue to suggest that non-Australians can make programs to support our cultural aims. To the extent that any programmes not made by Australians do achieve the objectives of the Act, it is by accident rather than design, and should not form a basis for regulation. Australian companies and not foreign companies make Australian programs. Australian creatively driven programmes are those that are made by companies that are locally managed and controlled.

To the extent that the Creative Elements Test amounts to an industry assistance measure, that characterisation does not reduce its value and utility as a mechanism for meeting the BSA objectives. The Australian film and television production industry is supported by Government at all levels for just that reason - it makes an important contribution to the achievement of the social and cultural objectives of Parliament - and not for the ultimate objective of industry assistance.

If regulation like the Australian Content Standard (and the Creative Elements Test) supporting cultural and social objectives includes an element of industry mandate necessary in order to meet those objectives, this does not mean that it ceases to have a social or cultural objective. Rather, that element should be seen as the means of achieving the objective.

(b) Draft Recommendation 9.2

We do not support the Commission's view that P programs to fulfil the subquota should not continue to be mandated to be made by Australians.

It is particularly appropriate that young children have opportunities to experience their own culture through programming specifically made for them. This area of programming serves a susceptible audience and plays a key role in meeting the objectives of the Act.

We welcome examination of the role of national broadcasters and subscription broadcasters in providing childrens programmes, and believe that they must play a part in meeting the objectives of the Act. However, this does not diminish the significance of the role of free to air television in providing programming designed for children.

Free to air television is a powerful influential medium and delivers a mass audience. Children's programmes are highly influential and have strong social and cultural imperatives. Accordingly, we do not support any move for sole responsibility for this (or any other) area of programming to be borne by national broadcasters and/or subscription broadcasters to the exclusion of free to air broadcasters. This would reduce diversity and access, especially for children.

(c) Draft Recommendation 9.3

The Australian production industry is small and relative to the population.

As a small, integrated production sector it has sustained the domestic infrastructure and talent base, which produces a range of genres, including feature films, commercials and light entertainment. This pool of Australian productions is wider than the programmes the subject of the sub-quotas. Many of Australia's film and television producers and directors, onscreen talent and crew members gained their training in the discipline of television commercial production, live entertainment and sports.

Because of the crossover of creative talent, technical staff, facilities, equipment and capital in all areas of production activity, any analysis of television production issues must be seen in this wider picture. Attainment and maintenance of a wide skill base and high quality infrastructure is a real achievement in an industry as small as Australia's. Having done that, it is important that we don't lose what we have created. To sustain that position, continuous work of high quality and breadth is needed.

The Australian programme transmission and advertising production quotas (as well as the specific sub-quotas) assist in maintaining the skills base and depth of the local production industry. Equally, a viable, creatively sustained Australian production industry is essential for the production of Australian programmes.

There are cultural and social benefits in having commercials that are Australian. They comprise 13 minutes of each hour of programming in prime time on each commercial channel. To suggest that this programming has no impact on the viewer is to ignore the proven influence of these images and sounds.

Removal of the advertising production quota and the transmission quota will lead to the fracturing of the structure of the framework that delivers on the cultural and social objectives. Since the reduction of the quota from 100% to 80% we have seen foreign commercials on our screens. Reduction of the 80% or its removal altogether will perpetuate that trend. It would adversely affect the capacity of the industry to deliver on the objectives of the Act in telling Australian stories. It would not contribute to a regulatory environment that will facilitate the development of an efficient, competitive and responsive broadcasting industry. The independent production sector plays a significant role in that industry.

Australian light entertainment, news, sports and current affairs programmes say something different about Australia that someone compiling those programmes elsewhere will see with a different perspective. Australians like those programmes as they are.

The overall transmission quota plays an important role in the "Australian" look of television programming and contributes to diversity. Other countries lacking a quota system do not have local content at any real and appreciable level. The international trend is to impose and strengthen national transmission quotas and sub quotas in areas of sensitive programming.

Not all networks exceed the quota; it is structured flexibly and we would support further flexibility if the ABA identified this as being desirable.

In particular, an overall transmission quota can be more suitable for new delivery services.

(d) Draft Recommendation 9.4

We support this recommendation as it is consistent with the work currently performed by the Australian Broadcasting Authority, and should be carried out with other future enquiries to avoid higher regulation costs.

4 Other Topics

(a) Trade in quotas

This proposal will lead to a decrease overall in Australian content as there will be no excess in any of the quotas. Any broadcaster not intending to use its quota will trade it and buyers will only buy what they can fill. So, cheaper imported programming will make better commercial choice if it fulfils audience needs.

It will not promote the objects of the Act; nor will it support the continuation of quotas as a sensible and efficient way to meet those objectives.

Removal of quotas is not a good response to licensees meeting their obligations. Rather, the quotas must be recognised as a minimum standard, not a maximum, to satisfy the objectives of the Act. Quota trading will entrench the quotas and subquotas as minima.

(b) Promotion of programs to meet the cultural objectives of the Act

We would not support any proposal that the national broadcasters be the sole source of access to Australian programs. Broadcasting Australian programmes only on one or 2 channels does not meet responsibilities to viewers of other channels - especially in a multi channel environment - and will further narrow the available range of Australian programmes. It is a recipe for reduced diversity.

The practical issue is that this will result in one or 2 people - who may not have ties to international broadcast outlets or distributors - commissioning and buying Australian programmes for what will become a marginalised outlet. The reduction in buyers is not good for suppliers, both creatively and commercially.

There are no viable, cost-effective alternatives to the present system of financing of television programmes. Direct subsidy to meet the current minimum sub-quotas of adult drama, children's programs and documentaries would be prohibitively expensive and inefficient. Our estimate of the value of that subsidy today, across all networks and with a mix of programming, would be in excess of \$100,000,000. This would constitute a dramatic subsidy to licensees (and their shareholders) by taxpayers with improved profitability and instant capital gain to private network owners at public expense. In any event, subsidy does not ensure diversity nor does it ensure quality.

The current mechanisms for subsidy delivery through the FFC supplement quota regulation for high cost quality programming and works well. The state of the international market has placed pressure on Australian producers' capacity to finance programmes and placed pressure on that subsidy, which is currently insufficient to meet the needs of larger budget productions. Increasing subsidy by an amount that is also sufficient to meet the costs of all quota material is unrealistic in the current environment.

(c) Australian programming on subscription television

Subscription television ought not to be outside the net of Australian content regulation. The social, cultural and economic objectives of the Act should be met by regulation on all services, and through regulation designed appropriately and flexibly for that type of service. Australian content regulation has successfully encouraged the availability of a choice of programmes for Australian audiences. That choice should continue to be available and is just as important, in the growing subscription sector.

We also support transmission quotas for all services as an efficient and effective way of achieving the objectives of the Act.

While the pay television expenditure model has not worked well, it may do so with legislative force. In any event there is a need to keep that regulation under regular review as to the level of actual transmission of Australian content and compliance with legislative obligations, especially as the penetration of subscription television increases in Australia.

Other countries have achieved a form of regulation of pay television content, so it is possible to mandate workable transmission obligations on these services.

(d) Content regulation in a converged environment

Services offered in the so-called converged media environment must be examined for their capacity to influence and their role in fulfilling the objectives of the Act. Regulation to meet those objectives ought to be tailored to the medium and be appropriate, ie deal with start up phase and the genre of content offered as well the physical nature of the distribution outlet.

Further, regulation need not be linked (as it is in the current analog broadcasting environment) to other areas of broadcasting regulation. We believe that the cultural and social objects of the Act can and should stand alone from other regulation; meeting those obligations serves the public interest and should not be treated as compensation for protection. The benefits of protection from competition should, similarly, be assessed independently of content regulation.

Having a multiplicity of services does not remove the rationale for content regulation. Rather, it reinforces the need for all services to have targeted and appropriate regulation and for regular reviews of overall compliance with their content obligations. The ABA is well placed to do this and should do it. We believe that new services will increase the impact overall of digital communication and, if not appropriately regulated in the public interest, will thwart the objectives of the Act.