



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

21 May 2021

Content Division

Department of Infrastructure, Transport, Regional Development and Communications

**via email:** [content@communications.gov.au](mailto:content@communications.gov.au)

Dear Sir/Madam

### **Media Reform Green Paper – Modernising television regulation in Australia**

We support the modernisation of Australia’s entertainment media regulations in line with the object under the *Broadcasting Services Act 1992* of ensuring that broadcasting services reflect “a sense of Australian identity, character and cultural diversity”.<sup>1</sup>

#### **Regulatory coverage**

The Media Reform Green Paper (the Green Paper) highlights that Australians do not believe streaming video on demand platforms (SVODs) are offering enough Australian content.<sup>2</sup> This represents a failure to reflect an appropriate level of Australian identity, character and cultural diversity, to the detriment of local small business content producers and the Australian public.

We agree that content investment obligations should apply to SVODs, as outlined in the Green Paper. However, it is critical that these obligations extend to *all* SVODs with Australian operations, including locally owned and operated SVODs, such as Stan.

The issue with exempting local SVODs is that they are not simply streaming the same content used for television broadcasting (and to meet existing content obligations) but an array of other programs. The result would be a dilution of the level of local content broadcast by existing licence holders.

Consistent and ownership-neutral SVOD regulation would mitigate perverse market and consumer outcomes and remove any perception of protection of local SVODs.

#### **Level of obligation**

A local investment rate of 5%, is low by international standards. We note France’s requirement that streaming platforms spend 16% of locally generated revenue on French content creation, and the European Union’s requirement that 30% of platforms’ catalogues be devoted to European content.<sup>3</sup> These examples suggest that there is scope to increase requirements for the Australian market, by a percentage of either revenue or catalogue, to ensure Australian producers receive appropriate investment. Further, the rate should be geared to ensure commissioning of new Australia content (not simply acquiring existing content) and also ensuring that local independent producers are engaged. We note reports that Italy and France are pursuing a similar measure.<sup>4</sup>

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<sup>1</sup> *Broadcasting Services Act 1992* (Cth) S3(1)(e).

<sup>2</sup> Australian Government. *Media Reform Green Paper: Modernising television regulation in Australia*. November 2020. Page 33.

<sup>3</sup> Australian Government. *Media Reform Green Paper: Modernising television regulation in Australia*. November 2020. Page 34.

<sup>4</sup> <https://www.afr.com/companies/media-and-marketing/no-brainer-netflix-should-have-to-invest-in-aussie-content-20210414-p57j3d>

T 1300 650 460 E [info@asbfeo.gov.au](mailto:info@asbfeo.gov.au)

[www.asbfeo.gov.au](http://www.asbfeo.gov.au)

Office of the Australian Small Business and Family Enterprise Ombudsman  
GPO Box 1791, Canberra City ACT 2601

**Terms of trade**

Instituting minimum terms of trade and appropriate and clearly defined external dispute resolution systems between commissioning companies and producers in any regulation is essential. Whether a commissioning company is a traditional broadcaster or subscription platform, a power imbalance exists between commissioner and producer. Survey data shows that 49% of independent screen producers cite “broadcaster bargaining power” as the most common challenge faced by the industry, representing a 5% increase from the previous year.<sup>5</sup>

If you would like to discuss this matter further, please contact Mr Eamon Sloane on 02 6213 7451 or at [eamon.sloane@asbfeo.gov.au](mailto:eamon.sloane@asbfeo.gov.au).

Yours sincerely



**The Hon. Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman

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<sup>5</sup> Deloitte. *Screen production in Australia: Independent screen production industry census*. 2019. Page 25.