



Australian Government

**Department of Infrastructure, Transport,
Regional Development, Communications and the Arts**

To: The Hon Tony Burke MP, Minister for the Arts (for information)

To: The Hon Michelle Rowland MP, Minister for Communications (for information)

Subject: Australian screen content requirement on streaming services – outcome of roundtables

Critical Date: Routine.

Recommendation/s:	
<p>1. That you note stakeholder feedback on refined models for an Australian content obligation on streaming services received via departmental roundtables held in November 2023 Attachment B.</p>	<p>Noted / Please Discuss</p>
<p>2. Noting delays in receipt of stakeholder submissions and in allocation of drafting resources for Autumn 2024, that you note the updated proposed timeline for introduction of legislation at Attachment D.</p>	<p>Noted / Please Discuss</p>
<p>The Hon Tony Burke MP Date:</p>	<p>The Hon Michelle Rowland MP Date:</p>
<p>Comments:</p>	

Key Points:

- On 25 October 2023, in MS23-004534, you approved the *Targeted Consultation Paper – Refined Models*, subject to the final version being settled with your offices. You also agreed to a three-week consultation period, including the release of the consultation paper, followed by departmental roundtables with industry.
- On 6 November 2023, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts issued the consultation paper at **Attachment A** to the targeted stakeholders who participated in consultation held in the first half of 2023, with the addition of Apple TV.

3. On 13, 17, and 20 November 2023, the department held three roundtables with the screen production sector, free-to-air broadcasters, and streaming services respectively. Advisers from your offices observed these roundtables.

4. The department is also meeting individually with streaming services to discuss data modelling for their service and with industry groups, as requested.

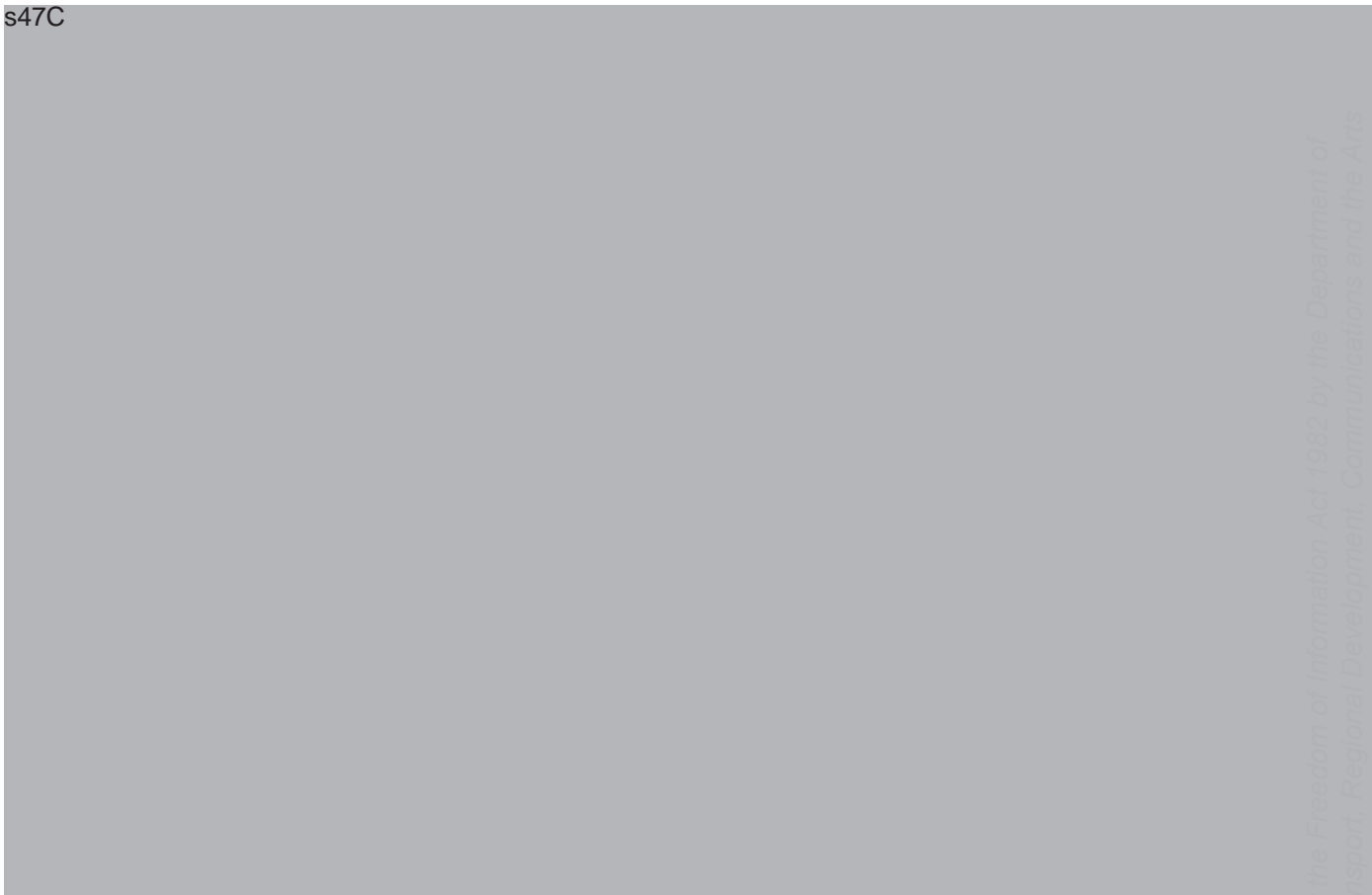
Models for consultation

5. Stakeholder views were sought on the two refined models in the consultation paper:

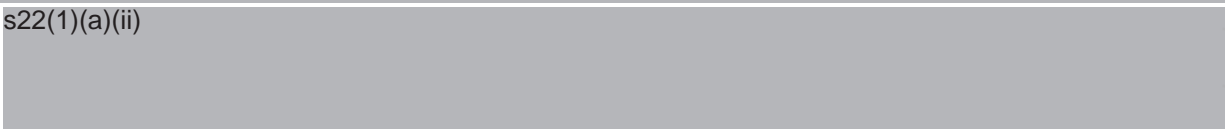
- a. A Progressive percentage of expenditure model that is based on the New Eligible Drama Expenditure Scheme. This model incorporates a progressive mechanism that applies a higher percentage obligation for services with higher subscriber numbers. Under this model, most services would be subject to an obligation of between 10-30%.
- b. A Percentage of revenue model, set at 10% with a non-sports ratio to accommodate services with sports expenditure. The obligation could be increased over time, subject to advice from the regulator.

Stakeholder feedback in roundtables

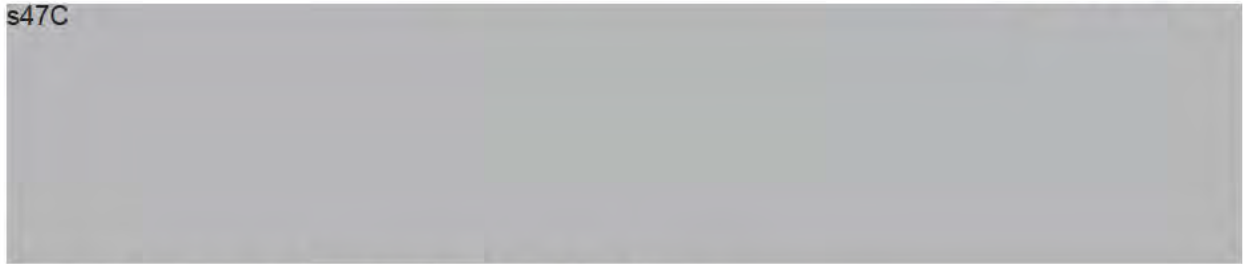
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s22(1)(a)(ii)



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Written submissions and proposed updated timeline

9. Written submissions to the consultation paper were due on 27 November 2023, however stakeholders across all sectors have indicated they are unlikely to meet this deadline.

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Stakeholder Implications: Stakeholders indicated in roundtable discussions that they would like the opportunity to review exposure draft legislation before it is introduced. Following a request for the consultation paper from the Chair of the Senate Environment and Communications References Committee, Senator Hanson-Young, Minister Burke supplied a copy to the Committee on 28 November 2023 (MC23-070297 refers).

Consultation:

The Australian Communications and Media Authority; Screen Australia; Trade Law Branch, Department of Foreign Affairs and Trade; Department of the Prime Minister and Cabinet; Legal Services Division; and Online Safety, Media and Platforms Division.

Media Opportunities: N/A

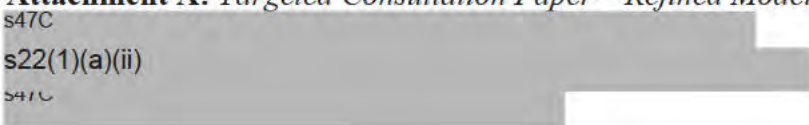
Attachments:

Attachment A: *Targeted Consultation Paper – Refined Models*

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Cleared By: Dr Stephen Arnott
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Cleared Date: 29 November 2023

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Cleared Date: 30 November 2023

Instructions for MPS: Nil.

Do you require a signed hardcopy to be returned: Yes.

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Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

OFFICE FOR THE ARTS / AUSTRALIAN SCREEN AND ARTS WORKFORCE DEVELOPMENT BRANCH /
CONTENT SECTION

Targeted Consultation Paper – Refined Models

Australian screen content requirements on streaming services

November 2023

Released under the Freedom of Information Act 1982 by the Department of
Infrastructure, Transport, Regional Development, Communications and the Arts

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Australian screen content requirements on streaming services

Introduction

In the National Cultural Policy *Revive*, the Government committed to introducing Australian screen content requirements on streaming platforms to ensure continued access to local stories and content. We have brilliant talent in Australia, and we want to make sure that people have access to Australian scripted drama and children’s stories across different platforms.

The Government’s objectives are to guarantee the production of new Australian programs, make it easier to find Australian content on SVODs, regulate like services consistently, and foster sustainable growth in Australia’s creative industries. We are guided by the objectives and regulatory policy of the *Broadcasting Services Act 1992*, and we are taking a consultative and evidence-informed approach.

The Government has undertaken targeted consultation with industry to help shape this policy and we thank stakeholders for their valuable input and engagement so far. We have refined the five models that were presented in March 2023 into two models for further consultation – an expenditure-based model and a revenue-based model.

Both models maintain a level of investment in Australian drama and facilitate a flexible pathway for growth into the future. Both models accommodate different business models and content strategies in the sector and are consistent with current levels of investment in the market.

We are committed to a genuine consultation process and are taking the time to consider views to support ongoing investment in, and production of, Australian stories and the continued provision of services to the Australian community.

Regulatory models for consultation

Progressive percentage of expenditure model

The model requires streaming services to spend a set percentage of total drama expenditure on new Australian drama programs, including commissions and first-on-platform acquisitions. The expenditure-based requirement is for scripted drama only (including children's drama).

The model is based on the New Eligible Drama Expenditure Scheme that applies to subscription television broadcasters. It uses a progressive obligation of up to 30% to ensure that large services continue to invest in Australian programs commensurate with their market share and degree of influence.

The requirement is calculated based on:

- a progressive percentage rate, based on the number of subscribers a service has in a financial year, and
- the total drama expenditure for the Australian service.

The formula for calculating the drama obligation amount is:

$$\text{Australian drama obligation (\$)} = \text{total drama expenditure for Australia} \times \text{percentage rate}$$

The model sets a floor for streaming services' investment in Australian drama as a proportion of their total drama expenditure for its Australian service, thereby ensuring a minimum level of investment over time.

The proposed progressive percentage rates are shown below.

Average annual Australian subscribers	Percentage rate
0 – 0.99 million	0%
1 million – 1.99 million	10%
2 million – 2.99 million	15%
3 million – 3.99 million	20%
4 million – 4.99 million	25%
More than 5 million	30%

Example 1 – Drama expenditure for Australia is \$100 million

A service with 1 million subscribers that spends \$100 million on drama programs for the Australian market would have a 10% Australian drama obligation of \$10 million.

The same scenario would produce a \$25 million or \$30 million obligation for services with 4 million subscribers and 5 million subscribers respectively.

A service's revenue would not affect its obligation as the obligation is calculated based on expenditure only.

Example 2 – Drama expenditure for Australia is \$80 million

A service with 2 million subscribers that spends \$80 million on drama programs for the Australian market would have a 15% Australian drama obligation of \$12 million.

The same scenario would produce a \$20 million or \$24 million obligation for services with 4 million subscribers and 5 million subscribers respectively.

A service's revenue would not affect its obligation as the obligation is calculated based on expenditure only.

Percentage of revenue model

The model requires streaming services to spend on new Australian drama programs, including commissions and first-on-platform acquisitions.

The requirement is calculated by multiplying revenue and an obligation of 10%. For platforms that stream sport, the obligation is reduced by the service's ratio of non-sport expenditure. The 10% obligation is consistent with services' current average investment and includes a growth mechanism to allow for an increase in production over time.

The model takes into account different business models subject to the requirement and their level of maturity in the market. As this is a drama obligation, services that carry sport will not be disadvantaged.

The requirement is calculated based on:

- gross Australian revenue for the Australian service
- a set percentage obligation of 10%
- For those streaming services that also broadcast sport, the requirement is modified using its ratio of non-sport program expenditure.

An obligation of 10% would set a floor for Australian drama expenditure and could be increased to 20% over time, based on advice from the regulator.

The formula for calculating the Australian drama obligation amount is:

$$\text{Australian drama obligation (\$)} = \text{percentage obligation} \times \text{revenue} \times \text{nonsport ratio}$$

The formula for calculating the non-sport ratio is:

$$\text{Non-sport ratio} = \frac{\text{Nonsport expenditure for Australia}}{\text{Total program expenditure for Australia}}$$

*Example 1 – \$250 million in revenue and **no sport programming***

- Streaming service earns \$250 million in revenue in Australia
- Has no expenditure on sport programming

Would have an Australian drama obligation of \$25 million, calculated as follows:

$$\text{Australian drama obligation (\$)} = 10\% \times \$250 \text{ million} \times 1$$

*Example 2 – \$250 million in revenue **with sport programming***

- Streaming service earns \$250 million in revenue in Australia
- Spends \$150 million on all programs for Australia of which \$50 million is spent on sport programs.

Would have an Australian drama obligation of \$16.67 million, calculated as follows

$$\text{Australian drama obligation (\$)} = 10\% \times \$250 \text{ million} \times \frac{\$100 \text{ million}}{\$150 \text{ million}}$$

Policy settings

In addition to the model which determines the relevant calculation of a proposed Australian drama obligation, the following settings are proposed in relation to thresholds, key definitions, eligible categories of expenditure and incentives.

Lever	Proposed setting
Scope and scale	Subscription video-on-demand services with a catalogue of at least 10% drama (in hours or titles, whichever is the greater). Excludes niche and thematic services.
Inclusion threshold	\$100 million annual gross revenue or one million subscribers/active users.
Revenue type	Subscription and advertising revenue for the purposes of the inclusion threshold, and for the revenue model.
Total drama expenditure for Australia	All (Australian and non-Australian) drama expenditure by an SVOD for the Australian market including commissions, acquisitions, Australian-related content and licensed Australian territorial drama expenditure. This excludes expenditure on linear channels provided as part of the subscription.
Australian content definition	ACCTS definition of 'Australian program'.
Genre inclusions	Drama and children's drama programs only. 'Drama program' as defined in the ACCTS (see Appendix A).
Qualifying expenditure	Commissions and first-on-platform acquisitions (less than 3 years old). Includes independent feature films (less than 3 years old).
Co-commissions with broadcaster	Allow commercial free-to-air television broadcasters to count hours for broadcast compliance. An SVOD can count expenditure based on its contribution to the co-commissioned program. Allow a media group with both broadcast and SVOD services to count commissioned content towards each of their Australian content requirements.
Incentive for children's drama	For further discussion. Options contemplated include: <ul style="list-style-type: none"> Require a set percentage of the obligation to be invested into children's drama, or Apply a 1.2x multiplier for children's drama.
Definition of children's content	Maintain current C and P definitions as outlined in the ACCTS.

Lever	Proposed setting
Cinema release	1.2x multiplier for streaming services content released first in cinema.
Carry over	Three-year rolling average.
Adjustment to settings	The regulator to monitor industry data and provide advice to Government on adjustment to settings, which may include percentage rates.
Discoverability	High level guidance but no specific requirements. Establish common metadata standards for the 'Australian' search term.

Appendix A – Definitions

Term	Definition
Australian program	<p>(1) Subject to subsections (3) and (4), a program is an Australian program if it is produced under the creative control of Australians.</p> <p>(2) For subsection (1), a program is produced under the creative control of Australians if:</p> <p>(a) the producer of the program is, or the producers of the program are, Australian (whether or not the program is produced in conjunction with a co-producer, or an executive producer, who is not an Australian); and</p> <p>(b) either:</p> <p>(i) the director of the program is, or the directors of the program are, Australian; or</p> <p>(ii) the writer of the program is, or the writers of the program are, Australian; and</p> <p>(c) at least 50% of the leading actors, including voice actors, or on-screen presenters appearing in the program are Australians; and</p> <p>(d) in the case of a drama program —at least 75% of the major supporting cast appearing in the program are Australians; and</p> <p>(e) the program is produced and post-produced in Australia (whether or not it is filmed in Australia); and</p> <p>(f) in the case of an animated program —the program satisfies at least 3 of the following requirements:</p> <p>(i) the production designer is Australian;</p> <p>(ii) the character designer is Australian;</p> <p>(iii) the supervising layout artist is Australian;</p> <p>(iv) the supervising storyboard artist is Australian;</p> <p>(v) the key background artist is Australian.</p> <p>(3) If a program includes segments that, if they were individual programs, would not comply with subsection (2), only a segment that, if it were an individual program, would comply with subsection (2) is taken to be an Australian program.</p> <p><i>Examples:</i> A sketch comedy program including Australian skits or a documentary including Australian segments.</p> <p>(4) A documentary that complies with subsection (2) is not an Australian program if it is a reversioning of one or more existing documentaries that are not Australian programs, Australian official co-productions, New Zealand productions or Australian/New Zealand productions.</p>
Children’s program	<p>Means a program likely to meet the C or P program criteria specified in the Broadcasting Services (Australian Content and Children's Television) Standards 2020.</p>

Term	Definition
Australian drama program	<p>(a) means an Australian program that:</p> <ul style="list-style-type: none"> (i) has a fully scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; or (ii) has a partially scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure and has actors delivering improvised dialogue that is based on a script outline or outlines developed by a writer or writers; or (iii) has actors delivering improvised dialogue that is based on a script outline or outlines, developed by a writer or writers, in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; and <p>(b) includes a fully scripted sketch comedy program, animated drama or dramatised documentary; but</p> <p>(c) does not include a program, or a segment of a program, that involves the incidental use of actors.</p>
Gross Australian revenue	<p>Gross revenue earned from the Australian market for each service, including both subscriber and advertising revenue, where relevant.</p>
Expenditure on Australian commissions and acquisitions (A1 and A3)	<ul style="list-style-type: none"> • Commissions and acquisitions of an ACCTS defined Australian program. • Commissions are programs for which an entity has made a material and meaningful financial contribution to the production of a program before the production has been completed (and includes in-house production). Includes co-commissions where relevant. • An acquisition is an Australian program acquired but not commissioned by an entity such as via licensing.
Expenditure on Australian related programs (A2)	<p>Expenditure on commissioned or acquired content which meets only one ACCTS criterion for 'Australian program'.</p>
Licensed Australian territorial expenditure on drama (B)	<p>This is expenditure by a service on licensing drama (non-Australian content) to be made available in Australia.</p>
Total drama expenditure for Australia	<p>All (Australian and non-Australian) drama expenditure by an SVOD for the Australian market, including commissions (A1), acquisitions (A3), Australian-related content (A2) and licensed Australian territorial drama expenditure (B).</p>

Consultation response form

The purpose of this response form is to inform Government's consideration of the financial and other impacts on your business/industry of the proposed regulatory models.

We ask that you please prepare the relevant data and supplementary information for the two models to support advice to Government about impacts in completing this form.

The department is collecting this information specifically for the purpose of designing an Australian content obligation on streaming services, including to inform the consideration of issues associated with developing and implementing such an obligation. The department undertakes to use the information provided in the response form only for the purpose of informing Australian content policy development, including the design of an Australian content obligation and the consideration of associated issues (e.g. implementation of the obligation).

Please provide your response in the template which covers key elements of the Impact Analysis Statement that will inform the Government's decision.

In your responses, please:

1. Do not include any personal information or information in your responses that identifies or may lead to the identification of an individual. Please note that the department's handling of personal information is detailed in the department's privacy policy (accessible on the department's website) and is in accordance with its obligations under the Privacy Act 1988 (Cth).
2. Identify where relevant, whether part or all of the information provided is confidential information and should therefore be subject to limitations on its use and distribution.

For the purposes of the responses provided as part of this consultation, confidential information does not include information that is, or becomes public knowledge other than by disclosure that is inconsistent with the department's proposed handling of information.

The department undertakes not to disclose any part of information provided by respondents that is identifiable information (i.e. identifies the relevant respondent or an individual associated with the relevant respondent) or is identified as confidential information to a third party for any purpose other than for a purpose related to the development of Australian content policy and not without the prior consent of the respondent providing the information, except to the extent that a disclosure is:

- a. To Commonwealth Ministers or their staff (on a confidential basis) including, but not limited to the following:
 - i. The Minister for the Arts;
 - ii. The Minister for Communications;
 - iii. The Minister for Foreign Affairs; and
 - iv. The Minister for Trade and Tourism.
- b. To officers in the Department of the Prime Minister and Cabinet including the Office of Impact Analysis (on a confidential basis) as part of the regulatory impact analysis process for government decision-making;
- c. In response to a request by a House or a Committee of the Australian Parliament;
- d. Required by law; or
- e. Confined to information that is already in the public domain.

The department will store any confidential information it is provided securely in accordance with the department's relevant policies, and use at least the same level of security to protect the confidential information from disclosure as the department uses for its own confidential information.

Please return your completed response form to the department at the following email address:
svodobligationconsultation@arts.gov.au Consultation closing date and time: 27 November 2023, 11:59pm.

Questions related to the Progressive Percentage of Expenditure Model

Refer to relevant consultation materials for more information.

Question 1 – What are the likely *monetary costs* associated with the Progressive Percentage of Expenditure Model? To the extent possible, please provide specific figures.

For example:

- What would be the estimated, overall monetary costs of compliance with an obligation of this nature?
- What would be the estimated, monetary administrative costs associated with complying and/or reporting on compliance with an obligation of this nature?

Insert response [Suggested maximum 500 words]

Question 2 – What would be the other *business costs* associated with the Progressive Percentage of Expenditure Model?

For example:

- How well prepared would your business be to comply with the new requirements?
- Would this model require changes to the way your business operates?

Insert response [Suggested maximum 500 words]

Question 3 – What are the other likely *costs/challenges* associated with the Progressive Percentage of Expenditure Model?

In your response to this question, please address other relevant:

- **quantitative** and **qualitative** examples of costs/challenges (for example: any relevant impact on the accessibility of quality Australian content, including drama and children’s drama to subscribers)
- any **possible flow on-impacts** (for example: the possibility any costs may be passed on to others, such as consumers or the Australian public).

Insert response [Suggested maximum 500 words]

Question 4 – What are the likely *benefits* of the Progressive Percentage of Expenditure Model?

In your response to this question, please address:

- **quantitative** benefits (for example: financial benefits, employment benefits, subscriber/audience numbers); and
- **qualitative** benefits (for example: broader social benefits for the Australian community).

Insert response [Suggested maximum 500 words]

Questions related to the Percentage of Revenue Model

Refer to relevant consultation materials for more information.

Question 1 – What are the likely *monetary costs* associated with the Percentage of Revenue Model? To the extent possible, please provide specific figures.

For example:

- What would be the estimated, overall monetary costs of compliance with an obligation of this nature?
- What would be the estimated, monetary administrative costs associated with complying and/or reporting on compliance with an obligation of this nature?

Insert response [Suggested maximum 500 words]

Question 2 – What would be the other *business costs* associated with Percentage of Revenue Model?

For example:

- How well prepared would your business be to comply with the new requirements?
- Would this model require changes to the way your business operates?

Insert response [Suggested maximum 500 words]

Question 3 – What are the other likely *costs/challenges* associated with the Percentage of Revenue Model?

In your response to this question, please address other relevant:

- **quantitative** and **qualitative** examples of costs/challenges (for example: any relevant impact on the accessibility of quality Australian content, including drama and children’s drama to subscribers)
- any **possible flow on-impacts** (for example: the possibility any costs may be passed on to others, such as consumers or the Australian public).

Insert response [Suggested maximum 500 words]

Question 4 – What are the likely *benefits* of the Percentage of Revenue Model?

In your response to this question, please address:

- **quantitative** benefits (for example: financial benefits, employment benefits, subscriber/audience numbers); and
- **qualitative** benefits (for example: broader social benefits for the Australian community).

Insert response [Suggested maximum 500 words]

General Question

Question 1 – Of the two models proposed, which is preferred by your organisation?

Insert response [Suggested maximum 500 words]

Pages 20 to 36 have been removed under section 47C, section 34(1)(c) and section 22(1)(a)(ii) of the FOI Act