LEGALLY PRIVILEGED AND CONFIDENTIAL

May 2021

Supporting Local Content Investment: International Policy Approaches to VOD Services

A report for the ABC and Free TV Australia
prepared by Oliver & Ohlbaum Associates Ltd

O&O

Contents

Table of Figures

Summary

Following the 'Australian and Children's Screen Content Review' and 'Supporting Australian Stories on our Screens' options paper, Government has updated some regulatory settings for broadcasters and introduced voluntary requirements for SVODs to report on Australian content expenditure and availability from January 2021. As the next part of its staged process to review media regulation, Government is now considering whether further changes are necessary to ensure the sustainability of the television sector and the availability of Australian stories on local television screens in the new media environment.

This report has been commissioned by the ABC and Free TV Australia from Oliver & Ohlbaum Associates (O&O) to inform the Green Paper debate in relation to the proposals on 'Harmonising Australian Content Obligations'. The ABC and Free TV Australia have asked O&O to look at:

- **Lessons from other jurisdictions:** identifying what lessons can be learned from other jurisdictions with respect to the design and implementation of policy settings/regulation of SVOD to promote local content
- **The potential impact of policy options on the Australian market:** the likely effects (for example, inflationary effects, labour impacts, content discoverability) of different policy options to impose local content obligations on SVOD platforms
- **Policy considerations:** advice on considerations for optimal design of policy and regulatory settings to promote the creation of Australian content of high-quality, cultural value

We have examined these questions using desk research, data analysis and a programme of stakeholder interviews in Australia and other markets, as well as our expertise in the media sector and audiovisual regulation.

Regarding the market context, we find that the national broadcasters and the commercial free-to-air (FTA) broadcasters are the cornerstone of investment in Australian content in terms of expenditure, volume, and depth and breadth of genres. Their local content offer includes news and information, which supports informed democratic debate and holding decision-makers to account, as well as responding to emergency situations such as the bush fires or the COVID-19 pandemic. Trusted and accurate public interest news has become even more important with the rise of disinformation. Sport, live entertainment and appointment-to-view series bring Australians together with shared experiences. By focusing on Australian stories, their programmes reflect Australia to itself and to audiences around the world.

Furthermore, this content is universally available to all Australians, free at the point of use, over broadcast and online. We would highlight that linear TV remains the most popular viewing option across all audiences, with 40 per cent of viewing time to professional content.[1] Meanwhile, the broadcasters are innovating with broadcaster video-on-demand (BVOD) services, allowing audiences to watch what they want when they want – and viewing to BVOD is up 40 per cent year on year.[2]

Lastly, by investing in genuinely Australian content, the national and commercial FTA broadcasters provide a solid and lasting foundation for growth, jobs and opportunities in the Australian screen sector.

However, reduced advertising revenues for the commercial FTA broadcasters and Government decisions to reduce public funding to the national broadcasters, have coincided with the entry of global SVOD in the Australian market and the rise of global digital platforms, especially Google and Facebook. In this report we also underline that COVID-

[1] ACMA Communications Report 2018-19, Figure 2.28
[2] OzTAM VPM. H2 2019 to H2 2020

19 has accelerated a trend in global productions filming in Australia, which we heard is leading to an under-supply of contributors, crew and facilities. Increased production costs are reported. We heard that this is especially acute for genres where both FTA broadcasters and SVODs are active but is spreading to other genres due to an overall lack of production resources.

Meanwhile, while global SVOD services have a legitimate role to play in the sector and bring additional consumer choice and production opportunities, their offering is fundamentally different:

- **Global SVODs operate in the wider 'ecosystems' of their respective online digital platforms**. They are affected by competitive factors that differ significantly from those operating on national and commercial FTA broadcasters and have little to do with the production of Australian-originated new content

- **Content on SVOD tends to be in a narrower range of genres** (predominantly drama, high-end factual and comedy, although some commissions in reality and sport have recently been announced)

- **SVOD content is destined to serve both a local and a global audience**, where 'rest of world' success is more important than Australian. Programmes set in Australia take the most exportable elements of Australian culture. Weaker competitive pressure from local providers could allow the emphasis on global content to grow

- In contrast, as seen above, **national and commercial FTA commissions are the cornerstone of investment in Australian content** in terms of both expenditure, range and volume, and are expected to be distinctly reflective of life in Australia. Some programmes may be successful in international markets, but this comes in addition to the primary purpose of serving all Australian audiences

The Green Paper expects global AVOD services to enter the market shortly. While the details of potential new launches remain to be seen, it seems likely that existing SVOD services may look to target advertising money and attract new subscribers with hybrid models including AVOD (for on-demand programmes and/or linear streams). While these have the potential to commission some local content, again we would expect an overall focus on global content, which may be made available more cheaply than original Australian productions by national and commercial FTA broadcasters, and add direct competition to the advertising funding model.

As highlighted by the Green Paper, the continuation of current market trends could make delivering public policy objectives around a sustainable television sector and universal availability of Australian content increasingly difficult. However, it is vital to have the right regulatory settings in the context of the Australian market, to avoid exacerbating the challenges that national and commercial FTA broadcasters are facing – given that they are the foundation of investment in local content.

The Green Paper proposes a 'formal expectation' of direct investment by eligible SVOD and AVOD providers, with the option to contribute to a new content fund instead, plus discoverability requirements to promote consumption of the resulting content. Formal requirements could be imposed in the case of non-compliance. We have looked at the typical policy models in countries that have regulated SVOD and AVOD providers, as listed below. Countries selected for the case studies include those with long-standing measures, current debates on updating or introducing new regulation, and/or significant SVOD investment but lighter direct SVOD regulation around local content. It is worth clarifying that most countries do not place local content investment obligations on SVOD services. Where there is a policy debate, the merits of different models are still being discussed or, in general, implementation is relatively new.

Policy Model for Promoting Local Content	Jurisdictions Considered
Quota on share of local content	EU, Mexico
Direct investment	France, Italy, Canada
Indirect investment (levy and fund)	France, Germany, Canada
'Discoverability' or prominence	EU, UK, Germany
Low direct SVOD regulation	UK

All models raise two risks in the Australian market. Firstly, given the relatively small size of the market, increasing global SVOD spend through regulation could worsen the reported problems of cost inflation and overstretched production resources. Secondly, global SVOD productions and commissions are unlikely to reflect Australian cultural diversity in the way that content from the national and commercial FTA broadcasters does. It is also unlikely to cover a comparable depth and breadth of genres or significant volumes or spend.

We make the following additional observations about the different policy models:

- **Quota on share of local content**: This targets volume – how much local content is made available in a channel schedule or a VOD catalogue (also known as an 'exhibition requirement'). In principle it may be met from SVOD/AVOD productions, co-productions or acquisitions (archive). By increasing demand from SVOD/AVOD providers to meet the quota, it may indirectly support local content. However, it does not directly target investment in new original content and could be met through lower-quality 'filler'. Where SVOD compete for more recent acquisitions, this could drive up costs for BVOD services when audiences increasingly expect boxsets and previous series to be available. While some jurisdictions add sub-quotas for works from producers independent of the SVOD service or for recent works, these continue to target volume, not spend. It is also important to consider the size and ability of the local market to respond to a quota (or certain level), given the noted problem of inflation. The EU has a quota on share of local content, where the average level of provision became the floor. The current Australian average is 4 per cent; this might imply a low quota level or possibly that the market is not yet ready for this tool

- **Direct investment**: This does directly target spend by an SVOD/AVOD service but on content for inclusion in its own catalogue, allowing the SVOD/AVOD to tailor the content to its own business model and specialisms. Depending on the regulatory setting the investment may be in productions, co-productions or acquisitions. However, considering the distinct role of SVOD in the Australian market, it is not clear that this would result in a significant proportion of new investment in high-quality and culturally specific Australian content. The total global audience potential will always be more important. Unless there were sub-requirements or incentives on global SVOD/AVOD providers to co-produce with the national and commercial FTA broadcasters (given their specialism in culturally relevant content) and to commission from Australian producers, this would also fail to increase access to IP in Australia. Even then, the negotiating power of global SVOD may limit a broadcaster's rights to an exclusive primary window or a producer's right to IP. These are nonetheless essential for the future growth and sustainability of the sector. Finally, the content would be on services that are not free to access and do not have universal reach, in contrast to the national and commercial FTA broadcasters. Again, such an obligation (or its level) could exacerbate existing market weaknesses with cost inflation and limited production resources.

- **Indirect investment**: An obligation applied to SVOD/AVOD through a levy for a central fund that may also receive public funding also targets spend by those services. However, unlike a direct investment obligation it allows an independent body to pool and then target the investment at proposed productions according to Australian local content criteria and identified gaps in overall market performance against public policy goals (e.g. for certain genres or audience segments). Reach and consumption, including universal availability, for the funded content may be secured through rules on eligible distributers. Taking broad inspiration from the Canadian model, a fund can also be a means to support performance against quotas for regulated broadcasters where this is otherwise under pressure due to a relatively small advertising market. This model secures access to IP by funding national producers with national distributers attached, while permitting international co-productions including with global SVOD/AVOD partners. International comparators do suggest that careful design is needed, notably to minimise administrative costs for the fund and applicants, ensure the fund is aligned with public policy goals and any related screen bodies, and – as far as possible – to avoid replacing investment that would have happened anyway

- **Discoverability or prominence**. As referenced in the Green Paper, this comes in two forms:

    - Prominence of national and commercial FTA channels and their BVOD services on TV platform user interfaces, on the basis that these services deliver high-quality local content, notably the national broadcasters because of their remit and public funding model, and commercial FTA broadcaster services because they are subject to local content regulation or meet criteria showing the overall public value It is also important for news/current affairs/emergency information
    - 'Discoverability' of individual local content programmes in SVOD/AVOD catalogues

  The first type is especially important as it underpins a virtuous circle of reach, consumption and investment by national and commercial FTA broadcasters. It may also act as an important regulatory benefit to balance obligations around local content, where the equation is shifting over time as market and technology developments affect revenues and production costs. Recent events in Australia have underlined how important it is for citizens to have clear and immediate access to the news and emergency information provided by the national and commercial FTA broadcasters. We also note the UK's finding that the commercial incentives of TV platforms to accord prominence on a global basis increasingly conflicts with the public policy aims around delivering the benefits of national and commercial FTA local content, making regulatory safeguards necessary.

We also looked at the different ways that regulation is structured; for example, the debates on current legislative proposals in Canada and France include proposals for an independent body (such as the national regulatory authority) to reach agreements with major SVOD and AVOD providers, which can go into more detail, reflect the particular SVOD or AVOD's characteristics, and be more easily amended over time. This may:

- Clarify the basis of their investment contribution (especially for those established abroad)
- Consider their existing contribution to local content against the defined policy objectives
- Agree the level of their additional contribution obligations (where the legislation provides ranges)
- Take account of their negotiated agreements with local co-commissioners or producers, such as access to IP or windowing exclusivity
- Agree measurement and reporting criteria
- Allow for iteration over time, according to the regulator's assessment of the SVOD/AVOD providers' impact, overall market trends and consumer outcomes against the defined public policy goals

In conclusion, the prominence of national and commercial FTV services (channels and BVOD) on TV platform user interfaces is an especially important question, to enable broadcasters to effectively compete in an increasingly connected environment and deliver the public policy objectives around local content provision.

In relation to SVOD/AVOD quotas and investment models, each of the policy options serves different purposes and has different risks associated with it, which would need to be carefully considered in the context of the Australian market. We heard that the risks of cost inflation and undersupply in production are significant and should be addressed in the near term. The outcomes of the recently introduced voluntary reporting requirements on global SVODs would also need to be factored into a consideration of whether and how to regulate at this time.

Above all, any interventions would need to support the national and commercial FTA broadcasters. Global SVODs/AVODs make their own valuable contribution to consumer choice and sector growth but they are fundamentally different – they add additional creative opportunities in particular genres, especially to established talent or as service provision, and an additional route to global audiences for proven content and formats. However, it is intrinsic to the traditions, remits and business models of the national and commercial FTA broadcasters to invest in genuinely Australian stories, at scale and across genres. In addition, regulatory action to support a domestic industry of size and scale may help to reduce the risk of the sector 'over heating' from influxes of global production as well as encouraging inward investors to commit to Australia for the long term.

Introduction

1 Introduction

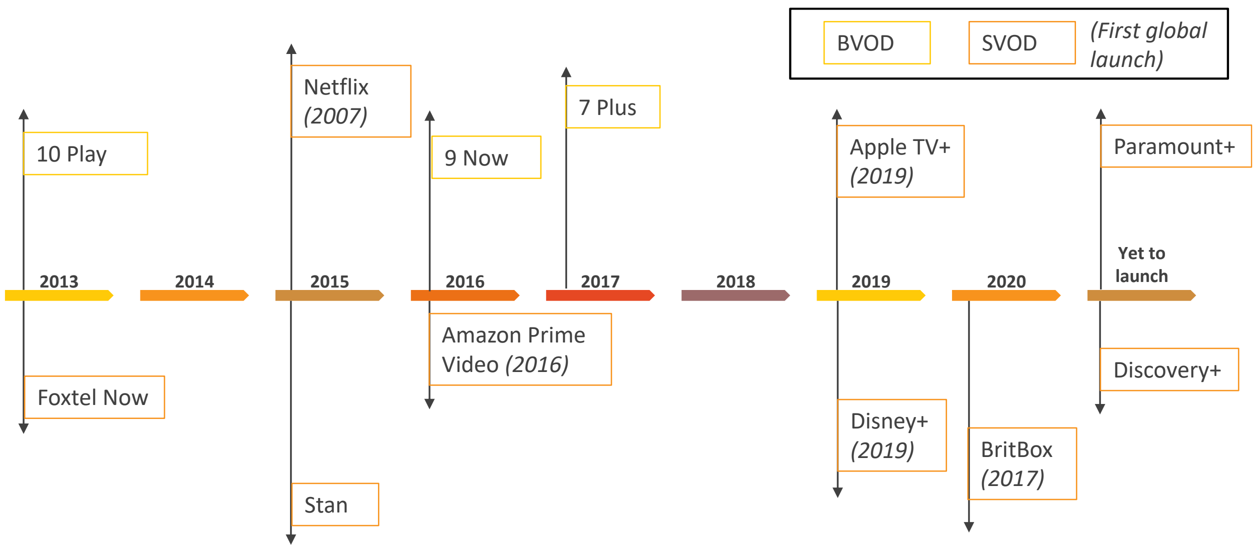
Following the 'Australian and Children's Screen Content Review' and 'Supporting Australian Stories on our Screens' options paper, Government has updated some regulatory settings for broadcasters and introduced voluntary requirements for subscription video-on-demand services (SVOD) to report on Australian content expenditure and availability from January 2021. As the next part of its staged process to review media regulation, Government is now considering whether further changes are necessary to ensure the sustainability of the television sector and the availability of Australian stories on our television screens in the new media environment. This report forms part of the ABC and Free TV Australia's contribution to the debate.

1.1 The state of the market

The Green Paper identified several trends in media consumption and changing dynamics within the television market.

A key driver of change in the Australian television market has been the arrival of VOD services, both from broadcasters and new services competing for viewing time. The ABC's iview was one of the earliest VOD services to launch in Australia, arriving in 2008. **Figure 1** shows the launch dates of subsequent VOD services, with broadcaster video-on-demand services (BVOD) from 10 Play, 9 Now and 7 Plus launching in 2013, 2016 and 2017 respectively, also joined by Foxtel Play (now Foxtel Now) in 2013 and Nine Digital-owned Stan in 2015. Stan in particular differentiates itself from global SVOD by carrying a significant volume of Australian content, both commissioned and acquired. The global SVOD services first arrived in Australia in 2015, when Netflix entered the market, followed by Amazon Prime Video in late 2016 and Disney+ in 2019. Global AVOD services from other US studios, such as Discovery+, are expected to arrive in Australia over the next few years.

Figure 1: Timeline of the availability of VOD services in Australia, 2013 to 2020

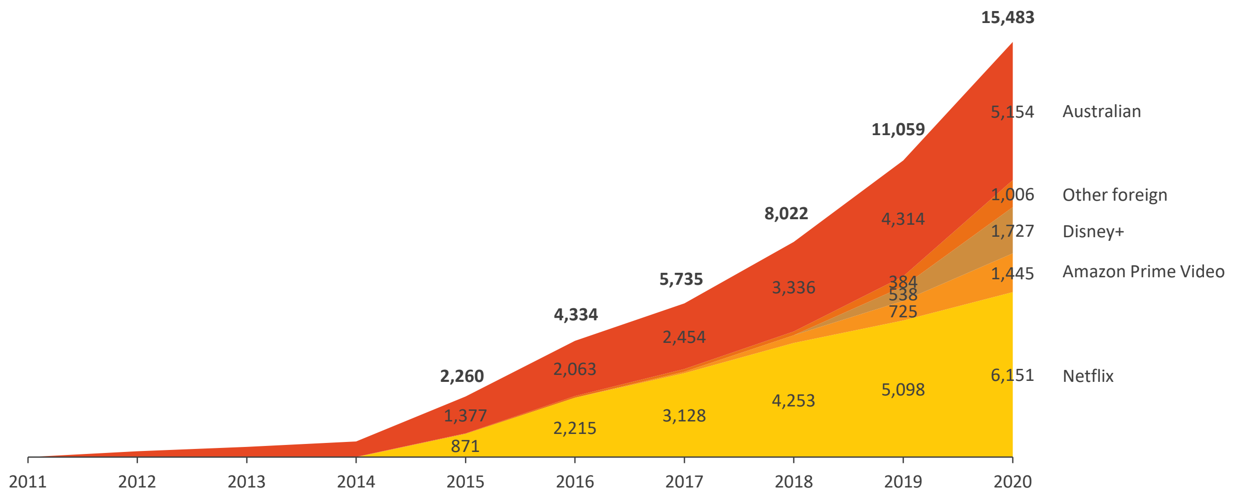


As identified in the Green Paper, these services have proven popular in Australia. Linear free-to-air (FTA) television remains the most used viewing platform. Nonetheless, there has been a gradual shift in behaviour with consumers also choosing BVOD services for linear and on-demand. BVOD viewing is up 40 per cent year on year.[3]

[3] OzTAM VPM. H2 2019 to H2 2020

Uptake of services from non-traditional providers represents a more significant change for the sector. **Figure 2** shows how the uptake of SVOD services has grown in recent years, with global SVOD services dominating. In 2020 Netflix had by far the most subscribers, with 6.1 million. Overall, the three largest global services by subscriber numbers accounted for almost 60 per cent of the market, and it is the global services which are growing subscriber numbers fastest, with both Amazon Prime Video and Disney+ reaching around 1.5 million subscribers after a couple of years.

Figure 2: Penetration of SVOD services in Australia, 2011 to 2020



Note: Includes multiscreen, bundled, and standalone services. Excludes a small number of subs to minor services. Categorisation as Australian or 'Other foreign' relates to owership
Source: Omdia, Oliver & Ohlbaum analysis

Considering the above trends in SVOD and the future arrival of global AVOD, the Green Paper raised several policy questions, including:

- **FTA television is important for a significant proportion of the population:** The growth of SVOD and potential growth of AVOD is challenging viewing and advertising revenue for FTA television. These businesses need a sustainable future to continue to offer important FTA services to all Australians. They are especially important for audience segments less likely to use pay TV or SVOD – such as older audiences and those who are less affluent, as well as those in more remote locations who are less likely to have access to alternatives
- **Global services are not a substitute for Australian services when it comes to reflecting Australian culture:** The existing public policy framework relies heavily on FTA television to meet the public policy objectives including provision of widely available news services for items of national and local importance. Supported by the existing quota system, FTA services also play a key role in making Australian stories available. Global SVOD services are unlikely to replace the volume, variety and quality of Australian content commissioned by broadcasters and audiences will have access to fewer Australian voices and stories

1.2 The Australian Government's policy objectives

The Government's Media Reform Green Paper sets out the following objectives:

- Support the FTA television sector to move to a sustainable operating model, in both metropolitan and regional Australia
- Reduce the regulatory imbalance between FTA television and internet-based competitors
- Secure a new funding source to support Australian news and Australian content

- Sustain the continued delivery of news and other Australian content across different platforms that Australians view

At the heart of the above is the objective to 'protect and promote Australian content and ensure that Australians are able to view programs that enhance their understanding and experience of our national culture across all media platforms'. To achieve this, the Government is considering a range of options, including:

- A proposal to legislate to set a 'formal expectation' of the percentage of revenues which are directly invested into Australian programming by eligible SVOD and AVOD services
- Discoverability requirements to ensure that the above investment in Australian content translates into as wide an audience as possible
- An option to contribute to a new content fund instead of having the above link to revenues
- Annual performance reporting to ACMA
- A Ministerial power to impose formal investment requirements on a service that fails to meet the investment level two years' running

The Government is now seeking views on the above from industry stakeholders via the on-going consultation process.

1.3 The scope and structure of this report

The Government's Green Paper covers several areas. The ABC and Free TV Australia asked O&O to produce this report to inform their submissions in relation to the proposals on 'Harmonising Australian Content Obligations'. The ABC and Free TV Australia have asked O&O to focus on:

- **Lessons from other jurisdictions:** identifying what lessons can be learned from other jurisdictions with respect to the design and implementation of policy settings/regulation of SVOD to promote local content

- **The potential impact of policy options on the Australian market:** the likely effects (for example, inflationary effects, labour impacts, content discoverability) of different policy options to impose local content obligations on SVOD platforms on local production markets, or any other relevant market

- **Policy considerations:** advice on considerations for optimal design of policy and regulatory settings to promote the creation of Australian content of high-quality, cultural value

Our report is structured around the three areas set out above. Our approach to the analysis has centred on desk research, data analysis, and a programme of stakeholder interviews in Australia and other markets – while drawing on our expertise in the drivers of change in the audiovisual sector, and past policy assignments looking at regulation across a broad range of territories.

1.4 About O&O

O&O is a leading advisor to the media, entertainment, and sports industries, having been involved in some of the biggest changes to affect the industry over the last twenty-five years. We are based in the UK but work globally on a range of assignment types, from policy and regulatory issues to commercial advisory and investment services. Our exclusive focus on the media sector means we have a detailed knowledge and understanding of the forces driving change in the sector, and what this means for different stakeholder groups. We have worked extensively on issues relating to AV regulation and UK content provision, for example:

- We have worked on every Ofcom PSB review, for broadcasters and producers as well as directly for Ofcom, to help shape UK AV regulation and support the sustainability of the PSB system

- The impact on the UK AV ecosystem of an increasing global content market and what this means for content reflecting British culture and values
- The contribution of the UK multichannel sector to economic and social outcomes
- Supporting Pact, the UK independent producers' trade body, in negotiating the Terms of Trade and in providing an evidence-based view of their impact and continued importance many times since

We have also worked extensively in other territories, including looking at regulation of AV content and approaches to promoting the provision of local content, including:

- Working with the European Commission on three occasions to monitor the impact of Audiovisual Media Services Directive (AVMS) content requirements on the European content sector
- Specific assignments in Ireland, Singapore, and Canada which have helped inform thinking around how best to protect and promote local content
- Several multi-territory regulatory reviews to assess the approaches taken to AV regulation, how they differ between territories, and why

This multi-territory regulatory experience combines with a detailed understanding of the Australian market, where we have completed several recent assignments, including sports rights valuations, channel valuations, and strategic support for broadcasters.

Lessons from Other Jurisdictions

2 Lessons from Other Jurisdictions

We want to start by setting out how the challenge of supporting local content has been addressed in other jurisdictions that are looking at VOD regulation. Our summary and analysis of the main policy options draws on desk research and a range of stakeholder interviews. We have covered a mix of territories with different perspectives, including those with long-standing measures, current debates on updating or introducing new regulation, and/or significant SVOD investment but few local content policy measures. It is worth clarifying that most countries do not place local content investment obligations on VOD services. Where there is a policy debate, the merits of different models are still being discussed or, in general, implementation is relatively new.

Our aim in this Part is to identify a range of policy approaches. We set out our findings from seven territories, based around the following main types of local content requirements, which have been applied to VOD services singly or in combination:

Policy Model	Jurisdictions Considered
Quota on share of works	EU, Mexico
Direct investment	France, Italy, Canada
Indirect investment (levy and fund)	France, Germany, Canada
'Discoverability' or prominence	EU, UK, Germany
Low direct SVOD regulation	UK

These examples could provide insights to inform the Australian debate. Our detailed findings are set out over the sections below, where we take each of the main types of policy requirement in turn and consider how this has been applied in key territories where it has been used.

2.1 Quota for a share of local works in a VOD catalogue

- As an 'exhibition' rather than an 'investment' requirement, this directly addresses the volume of local content available in an SVOD catalogue
- As such, it may create a greater incentive to comply through acquisitions (and cheaper 'filler') than the investment requirements (which relate to spend and so might incentivise higher expenditure on fewer productions). Some territories set sub-quotas for recent works and for local independent productions to try to mitigate this risk. However, this increases complexity
- Especially where the local market is relatively small and requires policy intervention to support growth and long-term stability, a quota for share of local works in a VOD catalogue does not directly target the underlying policy problem of investment levels. It might be better suited to larger and stronger markets, or regional approaches, as in the EU where the quota may be met by works from over 30 markets
- Finally, the level of any quota is key to avoid creating cost inflation in genres and budget ranges where other stakeholders also commission, or in production more broadly as resources overlap. On the EU model, the current average share of local works becomes the quota to create a 'floor'. In Australia's case, SVODs do not have more than c. 4 per cent local works in their catalogues, which might suggest the market is not yet in the position where a volume quota is the optimum tool

This approach is exemplified by the regional EU framework and is also a key element of the on-going national debate in Mexico around the approach to VOD service regulation and the protection of local content.

2.1.1 The European framework

Under the 2018 revision of the Audiovisual Media Services Directive (AVMS),[4] VOD services must offer at least a 30 per cent share of European works in their catalogue. The VOD quota comes in the context of a long-standing quota for linear channels – since 1989 'European works' must make up at least 50 per cent of transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. [5]

Below, we set out the details of how the quota for a share of works in an SVOD catalogue, works under this European framework:

- **Policy rationale**: From the outset, the framework had a very EU-specific policy rationale of harmonisation, to remove obstacles to freedom of movement for services, and avoid distortion of competition in the EU single market. And to do so while preserving general interest objectives including cultural diversity and media plurality – arguably the latter considerations have gained in importance in more recent legislative revisions. Member States have always been enabled to look at other suitable national measures to encourage the development of local production and distribution. The 2018 AVMS revision states, 'In order to ensure adequate levels of investment in European works, Member States should be able to impose financial obligations on media service providers', such as direct investment and levies, and it lays out some common rules (we return to these levers below)

- **Exemptions**: To ensure the VOD quota does not 'undermine market development and in order to allow for the entry of new players in the market', Member States may exempt services. This depends on the nature of the service and may be according to low viewing time or sales, or a low audience in the context of the size of the audiovisual market. Member States may also exempt services with a nature or theme that would make the requirement 'impracticable or unjustified'

- **Level of the quota**: While the 30 per cent VOD quota has to be met immediately on entry into force of the law, the level was set close to existing average levels of European works, i.e. that became the floor. The European Commission initially proposed a 20 per cent quota, noting '[o]n average in the EU, the share of EU films in big EU VOD catalogues was 27 per cent in 2015 and 30 per cent in 2016' and that a 20 per cent quota would 'take into account SMEs which may have less [sic] European works in their catalogues'. The average did cover a wide range, particularly between global commercial services on the one hand and national public services on the other.[6]

  The final figure was set at 30 per cent to reflect the current EU average and provide a 'stretch' for major global VOD providers who carried less, while exemptions are available for small services. Although the linear quota is higher at 50 per cent, this also took into account existing average levels across Europe to secure a

---

[4] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, Article 13.

[5] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ('Television without Frontiers Directive'), Article 4.

[6] Study on the Promotion of European Works, prepared for the European Commission DG Communications Networks, Content & Technology by VVA, KEA European Affairs and Attentional, June 2018

'floor' (EU averages remained over 60 per cent in the following years).[7] The linear quota should be met progressively according to the nature of the channel ('the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public […] on the basis of suitable criteria') and where a channel cannot meet the quota, the proportion of European works generally must not be lower than 1988, the year before the original Directive (i.e. no roll back).[8] The linear quota does not apply to broadcasts intended for local audiences and that do not form part of a national network

- **Scope of qualifying works**: The definition of 'European work' focuses on the place of establishment of the producer making or controlling the production. For co-productions, including under bilateral Treaties, it adds a requirement on the place of establishment of the producer providing the majority of the total production costs

  By referring to the whole EU or Council of Europe area, the definition of European works covers over 34 countries and audiovisual markets, together serving over 530 million inhabitants. The resulting broadness of scope is a significant consideration when looking at whether to apply this model; to set an equivalent quota in a national market there would have to be a wider scope than just domestic content, or it would have to have a lower threshold.

- **Monitoring and reporting**: As part of the 'country of origin' principle in the EU, enforcement and reporting is carried out by the national regulatory authority of the Member State where the service is established, e.g. if a service is established in Germany but also offered in Italy, consumers in Italy will see the results of the German requirements, while an Italian-established VOD service would have to comply with the Italian rules and report to the Italian regulator. Member States' regulators must survey compliance by the services established in their territory and report to the European Commission every two years. Reporting covers the share of European works on each service, progress on previous years, reasons for any failures to reach the quota (and the measures adopted or envisaged to reach it), the situation of new entrants and pressures on production capacity, and overall market developments. In its Impact Assessment, the Commission observed that reporting obligations would also foster transparency in the on-demand services' business, which would help assess the role those players can play in the financing of content

The EU and Member States grappled with various questions around the application of the VOD quota, resulting in a further public consultation and Commission Guidelines.[9] These allow us to see the types of practical issues raised. The policy considerations included: adapting to the different business models of VOD services compared to linear services; encouraging diversity of qualifying content; and ease of monitoring and reporting by VOD providers and national regulators. The Guidelines look at whether to:

- **Calculate share of catalogue by duration or number of titles**: VOD compliance is measured by number of titles. The European Commission considers duration as a metric to be specific to services with a linear schedule, the time-bound nature of which constrains the number and choice of works that may be offered and consumed. VOD provider content decisions and user viewing choices are conversely based around the perceived attractiveness of individual titles, which may be selected whenever the user chooses. Number of titles also facilitates monitoring, reporting and verification for VOD providers and national regulators

---

[7] For example, Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Seventh communication on the application of Articles 4 and 5 of Directive 89/552/EEC "Television without Frontiers", as amended by Directive 97/36/EC, for the period 2003-2004, p.9.

[8] TVWF, Article 4(1).

[9] Communication from the Commission, Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover (2020/C 223/03).

- **Consider one cinematic film as equivalent to one TV episode, season or whole series**: One season counts as one title. The Guidelines consider that like a film, a season is usually a single and continuous creative effort made by the same group with a single budget and over a unitary period of time. The release and related promotional activities often concern individual seasons. This is also intended to reduce incentives to favour (lower quality) seasons with a high number of episodes to meet the quota, to the detriment of film and high-end TV
- **Consider a cinematic film franchise as equivalent to one title or separate titles**: Each film is a separate title
- **Weight works with high levels of production investment**: Where a single episode has a duration and production cost like a film, where justified, authorities may give a higher weighting for example, based on a provider's substantiated request
- **Require compliance at all times or on average over a period**: Member States are free to define this, subject to reducing the administrative burden of compliance and enforcement and providing transparency and legal certainty for VOD providers

The AVMSD sets the minimum regulatory requirements to which Member States must adhere in their local regulation. Member States are free to provide more detailed or stricter rules for the services established in their territory, so we have also considered the implementation of the quota in EU Member States. One element applied in some cases is a sub-quota for recent works, e.g. produced in the last X years. Other variations are sub-quotas on nationally produced works, or original language production, since the EU quota covers over 30 countries.

2.1.2 The current Mexican debate

It is informative to contrast the regional EU approach with the current Mexican debate, which questions whether a VOD quota on the European model is the right tool in the context of a single country market.

In Mexico, a proposal for a 30 per cent quota on the share of SVOD catalogues,[10] and subsequent proposal for a 15 per cent quota of works no more than 25 years old, has both cultural and economic aims. It has also been considered whether the quota should be met by producers independent of the SVOD group, and that SVOD providers should ensure prominence of national works in their catalogue. Under existing regulation, there is a quota for Mexican films at the cinema (10 per cent) but there is no linear broadcasting quota for national works, so there is not the same debate about 'levelling up' as in the EU.

The proposal has stimulated considerable debate, with particular focus on whether a quota is the right tool and could ever be set at an appropriate level given the size of the national market. Other criticisms are linked to local market dynamics, which involve a few integrated media providers and local SVOD services, with much smaller catalogues overall, that could meet a percentage quota more easily. The risks raised by the need to comply, especially in the short term, are that this could cause:

- A transfer of value to existing rights holders (national commercial broadcasters with archive to sell) as services rush to acquire existing content to meet the quota
- SVOD services acquiring lower-quality 'filler' to meet the quota – promoting quantity over quality to the detriment of consumers and creators
- An overall reduction in size of SVOD catalogues to facilitate compliance, reducing overall content choice

[10] Comisiones Unidas de Hacienda y Crédito Público, y de Estudios Legislativos, Segunda, Ciudad de México, a 18 de marzo de 2020, CHCP/LXIV/050/2020

A key question compared to the EU regional quota is the existing share of national content in VOD services and the capacity of a single national production market to expand and sustain supply of new productions without, for example, provoking shortages of contributors, crew and facilities, production cost inflation, or increased cost of market entry and innovation by VOD services. The debate asks if other measures might be more appropriate or would be necessary in combination to stimulate and support the national production sector, such as: funding for public service broadcasting, a levy according to revenues to support a national production fund, tax incentives, or incubators for the creative industries.

Following the quota proposal, Netflix and Amazon Prime announced increased investment in original productions in Mexico, noting their success with local, regional and global audiences, and Netflix became established in Mexico and opened a regional headquarters for Latin America.

2.2 Requirement for direct investment in local content

- As an 'investment requirement' this targets SVOD spend on local content, to include in its own catalogue. As such it may incentivise greater spend on fewer productions than a share quota. However, this model may make own productions the most attractive option – the SVOD could meet the spend target more quickly, with less administrative effort, and tailor the programme to its global platform and global audiences. The resulting productions would be less likely to reflect the diversity of Australian culture
- Sub-quotas for co-productions with local broadcasters and commissions from independent producers might help to address this
- However, the level of any investment obligation would also need to be given careful thought to avoid causing cost inflation in genres and budget ranges where local content providers also commission or in the overall availability of production resources. This would affect investment by local providers, which specialise in genuinely Australian content, contrary to the policy objective
- There may also be a question of timing in the Australian context: the TV programme market is reported to be 'over-heating' with studios, contributors and crew all over-subscribed. Government has introduced a voluntary reporting obligation on content investment by SVODs and AVODs, which just began on 1 January 2021. It may be appropriate to allow for a period of data collection, and possibly to consider formal reporting obligations if the voluntary system proves insufficient, before looking to impose a formal expectation of investment, with the possibility to legislate. This would allow Government to monitor inflation and resource availability, and to consider other changes to strengthen the Australian content sector so that the overall ecosystem can accommodate both local and global commissions

We now turn to the second type of measure that may be applied to VOD (and other) services: a direct contribution requirement to invest in local content.

This exists in some EU Member States, although providers are often given a choice between direct investment and indirect investment (usually a levy contribution to an audiovisual or film fund, which we look at in the next section). Specifically, under the 2018 revision of the AVMSD, EU Member States may choose to impose financial obligations on providers established in or targeting their territory, including:

- Direct investment in the production and acquisition of European works
- Levies payable to a fund, based on the revenues generated by services provided in and targeted towards their territory

Under the European Commission Guidelines, Member States should exempt services with low turnover or audience share (usually those under EUR 2 million revenues or 1 per cent audience share, defined as the number of active users over a defined period out of total users of similar VOD services in the Member State).[11]

2.2.1 The French approach

France is currently considering a bill implementing the 2018 revision of the AVMSD. We have looked at France as it has a strong tradition of regulation in this area, including a quota on catalogue share and indirect investment pre-dating the 2018 revision of the AVMSD. Direct investment rules already apply to linear services and would be extended to foreign linear services targeting France under the proposals. The proposals would also extend direct investment requirements to VOD:

- **The investment requirement**: VOD providers would be required to directly invest a percentage of revenues made in France in the production of works, if they are established in or targeting France. This requirement applies above a threshold according to turnover, audience, and number or share of film and audiovisual works made available to the public. There would be a reduced rate for the first two years of operation of a new service, and for services towards the bottom of the turnover range. The investment must be made directly in European cinematographic and audiovisual works in the form of acquisitions, production or co-production investment, with a sub-quota for national independent productions with a defined window of exclusive producer rights to ensure that most investment is not in-house production. At least 20 per cent of the investment must be in programmes and at least 20 per cent in film. The rest can be allocated to either according to the VOD service's business model and usual focus. Investment may also be made to adapt works for the deaf or hard of hearing
- **Tailoring investment levels**: Different levels of investment would apply to different types of service: SVOD (higher) vs TVOD, BVOD and AVOD. In general, services offering more recent feature films must invest at a higher rate, which is linked to France's regulatory rules around feature film windowing. A (high) share of the investment must be in independently produced works. Contributions to audiovisual production by linear and VOD services belonging to the same group may be counted together for compliance purposes. The same approach applies separately to film
- **Regulatory approach:** While the legislation would set out the framework requirements, VOD providers would then reach an individual agreement with the national regulatory authority (CSA) to further define the terms of their contribution. This would take account of negotiated industry agreements, as a means of incentivising these. For example, the VOD provider may agree with producer associations on a higher investment rate in exchange for more recent windows. This is the current system for linear channels subject to direct investment obligations, although such industry negotiations are newer for VOD; if negotiations fail the investment requirement would be as provided in the law with a small discretion for the regulator according to the nature of the VOD service. The agreement with VOD providers should also define how European and French-language works will be displayed and reporting to right holders on the exploitation and viewing levels of their works.[12] It would also take account of the nature of the VOD service, e.g. a youth service might have a particular target for animation. Without agreement with the CSA, the VOD contribution would be presumed to be based on total French subscription revenues, including bundled services like music and delivery[13]
- **Challenges by SVOD**: The proposal would tighten the definition of 'qualifying producer' in relation to VOD services only. There is a policy concern about producers losing access to IP, compared to when they work for linear channels. As such, European subsidiaries of non-European groups would not qualify as a producer; the

[11] Communication from the Commission, Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover (2020/C 223/03)

[12] See Articles 11 - 17

[13] Article 7 of Decree No. 2010-1379

VOD may not have shares in the producer (while broadcasters may). Netflix has challenged this aspect of the proposal before the European Commission (see below)

2.2.2 The Italian approach

We can capture some variations on the French regulatory approach by looking at the Italian proposal implementing the AVMS Directive. In particular, while the French approach has a high sub-quota for direct investment in works by independent producers, Italy has chosen to target its whole requirement in this way, albeit at a lower rate. The overall policy objective is to retain access to IP in Italy, to support the growth of the sector. There is considerable concern at the trend for SVOD 'buy-outs' and a perceived imbalance in negotiations with global SVOD.

- **The investment requirement**: the requirement relates to European works by independent producers (further detail will be set out by the national regulator, AGCOM)
- **Tailoring investment levels**: The rate of 12.5 per cent of annual net revenues in Italy may be increased by the national regulator (AGCOM) in agreement with the relevant Ministries up to a ceiling (20 per cent) if the approach to investment is not considered to support 'balanced growth of the national audiovisual production system' and:
    - ***Operations in Italy***: if the provider does not have an HQ and more than 20 employees in Italy by 12 months after entry into force of the law (subject to EU law) (extra 3 per cent), or
    - ***Producer access to IP***: if the VOD provider does not share secondary rights with the producer proportionally to the producer's financial contribution or applies agreements that assign the producer a purely executive role (extra 4.5 per cent)

  In addition, TVOD services may comply by recognising the producer's right to remuneration proportionate to the success of the work and taking into account the costs incurred for its digital distribution on the platform.

2.2.3 The Canadian approach

Meanwhile, in Canada private broadcasters are currently subject to a direct local content investment obligation of 30 per cent gross revenues in Canada. A proposed C-10 Bill to update the Broadcasting Act 1991 would empower and give flexibility to the national regulator, CRTC, to require investment as necessary to meet the policy goals by an individual broadcaster or VOD provider or a class of providers, for the purposes of:

- Developing, financing, producing or promoting Canadian audio or audiovisual programs to be provided by broadcast or VOD services
- Supporting, promoting or training Canadian creators of audio or audiovisual programs to be provided by broadcast or VOD services
- Supporting participation by parties representing the public interest in proceedings before the CRTC under the Act

The CRTC may define how the investment should be calculated, including by reference to performance against the CRTC's policy objectives including for the provision of Canadian programmes, revenues, and the market served. It may also permit or mandate that such investment be paid to another organisation or fund. We look at the current main audiovisual fund below, the Canada Media Fund.

2.2.4 Key issues raised by direct investment requirements

These examples raise some key questions about the use of direct investment obligations and/or the appropriate level for different types of player, which we summarise below. We will bear these in mind when assessing the policy options for Australia in Part 5.

- What are the current levels of investment by different players as compared to the policy goals; does this mean regulation is not needed (market forces are delivering investment), or are there specific gaps that need addressing?
- Where there are gaps, which type of provider is best placed to fill these and at what investment level, considering their overall business model (funding type and revenue levels, genre focus, audience segments served)? Is there an equitable balance of contributions across broadcasters and SVOD/AVOD providers?
- What criteria will apply to any investments to promote the national content ecosystem and/or an overall balance of culturally specific content, in contrast to 'glocal' content or service provision?
- Should there be additional requirements or incentives on global providers to promote co-production with national partners, windowing or access to IP?
- Should any requirement cover broader types of investment such as in skills and training or pre- and post-production?
- Should investment into a central fund be an alternative or an additional requirement to meet complementary policy goals?

It is also important to consider possible unintended consequences – for example, might introducing requirements for direct VOD investment (depending on how they are defined) exacerbate cost inflation or scarcity of production resources for national broadcasters and independent producers in genres like drama and high-end factual? Would requirements respect consumer preferences to consume certain genres on certain types of service? How would they impact overall content diversity, provider distinctiveness and choice?

2.3 Requirement for investment in a local content fund

- This is also an 'investment' obligation, but funding may be targeted at genuinely Australian content by Australian producers and crew, and carried on local broadcaster services, which are universally available
- It is not necessary for those funding the scheme to be the same as those who may directly access the funding. Contributors may instead indirectly benefit, e.g. from a more vibrant content ecosystem overall, or from more attractive local content or audiovisual services that can increase demand for their offer
- The rise of global VOD services has led some policy makers to require contributions from services not only established in but also targeting their territory; general taxation or VAT/GST liability may be hooks
- As well as increasing plurality in commissioning, a fund does imply an additional layer of administration and cost, both for the fund and for applicants. The levy should not divert funds that would otherwise have been directly invested in local content, and funding allocations should not replace investment that would have happened anyway
- To avoid the above-mentioned Australian market risks of cost inflation and undersupply of production resources, it is also necessary to consider to what extent the levy should be additive and/or move existing production spend to support those with local content obligations and that are best placed to commission genuinely local content. The size of the fund may also play a part in minimising the risks, and it might be considered as a time-limited pilot of, say, three years (based on the UK Young Audiences Content Fund pilot)
- Compared to the direct investment obligation, this model is targeted at strengthening the local TV sector. The question is whether this can be done more efficiently through the national broadcaster funding and remit, and national and commercial FTA television regulation

A levy and fund system is sometimes offered to stakeholders as an alternative to a direct investment obligation, or imposed in addition. In this section we will look at the French and German regimes, which have extended existing linear levy systems to VOD; we then look more deeply at the Canada Media Fund.

2.3.1 The French film fund

In France, a levy on cinema tickets to support a film fund overseen by the National Cinema Centre (CNC) was created in the late 1940s to develop and sustain the French film industry as the market impact of US studio films grew. The principle is that the more success global content has, the more it contributes to strengthening the French production ecosystem in parallel. Today the fund subsidises French original content across films, TV, video games and digital:

- **The investment requirement**: Those covered by the levy requirement include cinemas, DVD and premium VOD, TV broadcasters and distributers, and VOD and 'video sharing platform' services (e.g. YouTube) that are established in, or target, France. The latter two were covered by a 2017 extension to the levy to ensure a balance of contributions across 'traditional' and new media, and to tackle a perceived 'digital tax loophole' for services established abroad but targeting France

- **Tailoring investment levels**: The VOD levy was originally 2 per cent, which brought in c. 5 per cent of the CNC's income in 2019 (c. EUR 32 million out of EUR 643 million). The VOD rate was increased to c. 5 per cent in 2020 to bring it into line with the rate applicable to TV channels and distributers. It applies to rental, sales, subscription or advertising and sponsorship revenues in France, according to the VOD business model.[14] The rate is increased to 10 per cent for services offering works of pornography or that incite violence. Advertising

[14] The rate is c11 percent for cinema

revenues e.g. on AVOD are subject to a tax allowance of 4 per cent, or 66 per cent for services giving access to User-Generated Content (UGC)

- **Fund approach to targeting investment**: TV productions can receive support from the fund provided they are pre-financed by a broadcaster established in France. French or European individuals must have corporate control of the producer, the producer must own rights in the production proportionate to its investment, and the producer must be meaningfully involved in the financing, technical and artistic elements of the production, and guarantee its completion. Television production companies may not be controlled or under the influence of a broadcaster. Only productions that have qualified for national production funding from the CNC may access film and audiovisual tax credits

  For audiovisual, c. 80 per cent of support in 2019 was allocated automatically to producers established in France who have already had works carried on TV or VOD (EUR 220 million). The CNC also supports creation (concept, writing, pilot) and distribution (especially abroad). More broadly, it supports technology innovation, marketing and export support, digitisation and conservation of works, and media education. It provides advances and contributes to the public guarantee fund for production finance loans. This comprehensive scope reflects the fund's mission to sustain and develop the whole content ecosystem in France, and the concept of 'cultural exception'. Apart from known award nominees, overall, it funds a high volume of works, many of which would not get made without the fund and may not reach a wide audience.

- **Administrative costs**: 2019 administrative costs for the fund were EUR 38 million, c. 6 per cent of funds allocated and administrative costs together. Its administrative costs have been under scrutiny and it has an efficiency programme[15]

- **Challenges by SVOD**: Netflix has challenged the proposed French implementation of the 2018 revision of the AVMSD before the European Commission as a route to argue that because it contributes to the CNC it should be able to qualify as a distributer for CNC-funded projects.[16] The Commission's response is not yet public

2.3.2 Germany's federal and regional film funding programmes

Germany also has a well-established tradition of indirect investment. Federal and regional film funding programmes make available around EUR 350 million/year to support film and high-end TV.[17] The German Federal Film Board (FFA) levy is another example of a country attempting to achieve a balance between levies for 'traditional' media and VOD, including VOD established elsewhere and targeting the territory:

- **The investment requirement**: The levy applies to cinema ticket sales, and to public service broadcasters, commercial FTA broadcasters and pay-TV broadcasters in relation to feature films shown.[18] In 2014 it was extended to all VOD providers that generate income from streaming in Germany (1.8 per cent for EUR 0.5 million - EUR 20 million turnover/year, 2.5 per cent above)

- **Challenges by SVOD**: Netflix challenged the extension of the levy to VOD services established outside Germany, because its EU Headquarters are in the Netherlands. This was rejected by the Court of Justice of the EU. The fact that Netflix was specifically targeted by the levy amendment was not sufficient to demonstrate that the decision

---

[15] Centre National du Cinéma (CNC), Bilan 2019

[16] Observations de Netflix dans le cadre de la notification par la France du projet de décret SMAD Procédure TRIS 2020/825/F

[17] German Federal Film Board, Spotlight on Funding in Germany. Applications must be made by producers headquartered in Germany, but it can fund international co-productions in relation to German costs (with conditions on German language/ language versioning, use of German or European studios and post-production or premiere in Germany).

[18] The levy on cinema is 1.8 per cent – 3 per cent of annual revenue from ticket sales, for public service broadcasters it is 3 per cent of expenditure on screening feature films, for commercial FTA broadcasters it is 0.15 - 0.95 per cent net advertising from showing films, and pay TV pays 0.25 per cent net turnover from subscriptions. All have exemptions for low turnover or low share of films in their offer.

substantially affected its market position. This SVOD challenge is specific to the functioning of the EU single market, but shows the general importance of clear and robust rules

2.3.3 The Canada Media Fund

Lastly, we look at the largest TV and digital media fund in Canada, the Canada Media Fund 'CMF' (there is a separate Canada Feature Film Fund, 'CFFF', administered by Telefilm Canada). It is arguably the most relevant to the policy questions raised in Australia, and to the Australian market developments. The CMF aims to help national broadcasters to fund Canadian production given the relatively small market, including lower advertising revenues. It incentivises larger commercial broadcasters to show underrepresented genres by altering the commercial equation and enables smaller and niche broadcasters to invest at all. Our interviews suggested that support for Canadian producers and IP has become more important with the strong growth in international service provision as a share of the overall programme market in Canada:

- **The investment requirement**: The levy applies to Canada's cable, satellite and IPTV distributors ('broadcasting distribution undertakings'), under CRTC regulations and policies, on the basis that content drives demand for their distribution services). This makes up just over half of the funding. The rest is contributed by the Federal Government (around 45 per cent). With falling revenues for traditional media providers, including due to the market impact of VOD services, in recent years Government has committed to 'top up' the fund. The current debate underlines that there are no contributions by unlicensed online programme streaming services, or internet or wireless service providers. We heard from stakeholders that the scope of the levy may be reviewed following Bill C-10, as part of an overarching review of Canadian content funding and commitments by different industry parties or categories of provider
- **Fund approach to targeting investment**: The fund structure is designed to allow CMF to target identified 'gaps' against Canadian content policy goals:
    - The 'Convergent Stream' only supports underrepresented genres defined as drama (around half of funding), documentary (around one quarter), children's and youth (around 10-20 per cent with greater investment in French-language productions), and variety and performing arts. Within the stream, funding programmes target different stages of production (pre-development, development, versioning) or society segments (regional, minority groups, languages)
    - The 'Experimental Stream' encourages the development of innovative interactive digital media content and software applications

  Another aspect of targeting investment is securing reach and consumption within Canada of the funded content, particularly because Federal funding is used. While the producer must apply to the CMF and receives the funding, a CRTC-licensed broadcaster must be attached. The funding may be triggered by a broadcaster-owned BVOD or SVOD service and there is no requirement that the production be aired on a broadcast channel, so long as it is available on two distinct platforms. In practice, this trigger means that Canadian broadcasters determine what projects can apply to receive CMF funding. Global SVOD services argue that they should also be able to act as a distributer to trigger producer applications.

  CMF reports that since 2010/11 it has invested CAD 3.6 billion in Canadian TV and digital media production, triggering CAD 13 billion-worth of production activity and enabling the production of 27,000 hours of TV. In 2019/20 CMF invested CAD 349 million on Canadian TV and digital media projects, triggering a total of CAD 1.4 billion of industry activity. For English-language productions, CMF provided 24 per cent of total production financing and broadcasters provided 28 per cent. 58 per cent was for drama, 25 per cent documentary, and 12 per cent children's and youth[19]

- **Administrative costs**: CMF's total administrative expenses are capped at 6 per cent of total revenue under their agreement with the Department of Canadian Heritage. In 2019/20, total administrative expenses were CAD 18 million or 4.9 per cent. Applicants would also incur admin costs on their side. In principle a simple fund is easier to administer and to navigate for applicants, but rules are required to target a limited pot at areas of need (and to avoid loopholes) and complexity might build up over time. Rules are also an important way to provide greater transparency and predictability about which projects are eventually selected. We heard from stakeholders that the CMF receives over 2,000 applications a year, and most programmes are around 50 per cent oversubscribed
- **Whether to have a plurality of funds**: A series of smaller federal and regional funds also exist, with their own targeted funding schemes (e.g. a genre specialisation). Some advantages are that this supports diversity and plurality of voices by opening up the number of organisations judging proposals, and possibly increases the overall funds available by allowing different public and private funders to set up schemes. The challenges are that this increases the total costs of administration, is more complex for applicants (different criteria, different deadlines), and funds might not all respond to market developments or policy priorities in a coordinated way

A related element is the definition of Canadian content (cultural test). We look at this together with other international comparators next.

2.3.4 Definition of local content

Considering their individual market circumstances and gaps in delivery of local content against their policy priorities, countries target levies in different ways – in terms of who pays in and who may benefit (mentioned above), and which productions may be funded (the 'cultural test'). Regarding the cultural test:

France: runs a points-based system to access the CNC's national television funding. The location of the production is worth two points and the nationality of the personnel is worth 16 points. Each has sub-categories worth different points totals, e.g. where post-production costs are incurred, where editing takes place. To qualify, drama requires a minimum of 13 points, and documentary nine points.

Germany: considers projects on an individual basis rather than using a points system. The director or writer or lead roles must be European citizens and at least two out of seven cultural content criteria must be met, including that the crew must be primarily German or EEA citizens, and that production technical services must be primarily located in Germany or the EEA. Films must also premiere in Germany in the German language, or at an internationally significant festival.

Canada: the production must meet three requirements: be certified as a Canadian production (10 out of 10 points on the Canadian Audio-Visual Certification Office (CAVCO) scale, with some flexibility), underlying rights must be owned and meaningfully developed by Canadians, and it must be shot and set primarily in Canada. The CAVCO scale gives points for key roles being filled by Canadians, in front of and behind the camera. It is worth noting that having nationality, location or spend requirements in relation to one country is stricter than allowing for region-wide European locations.

We may summarise the overall requirements as follows:

[19] CMF Annual Report 2019 - 2020

Territory	Who pays the levy?	Who may receive investment?	Requirements on the production
France	Cinemas DVD and premium VOD TV broadcasters and distributers VOD and 'video sharing platform' services - That are established in or target France	TV productions must be: - Pre-financed by a broadcaster established in France - Producer must be under French or European corporate control; not owned or influenced by a broadcaster; own rights in the production proportionate to its investment; be meaningfully involved in the financing, technical and artistic elements of the production and guarantee its completion	Points based system: - Location of the production and where costs incurred - Nationality of the personnel
Germany	Cinema ticket sales PSB and commercial FTA broadcasters Pay TV broadcasters - Proportionate to revenue from feature films shown - That are established in or target Germany	- Producer must make the funding application, and be established in Germany	Case-by-case evaluation: - Director or writer or lead roles must be European citizens - At least two out of seven cultural content criteria must be met, including nationality of the crew or production location - Films must premiere in Germany in the German language, or at an internationally significant festival
Canada	Canada's cable, satellite and IPTV distributors ('broadcasting distribution undertakings') Federal government funding	- A broadcaster licensed in Canada triggers investment (may be via its BVOD or SVOD service) - Producer established in Canada receives investment; underlying rights owned and meaningfully developed by Canadians	Must be shot and set primarily in Canada, plus Points-based scale (requiring 10/10) e.g. key roles filled by Canadians, in front of and behind the camera

2.3.5 Key issues raised by the use of local content funds

Some of the observations in Section 2.2, above, on direct investment obligations, are broadly relevant here. Specific additional questions for policies around indirect investment obligations may be summarised as:

- Can the market sustain a system based on industry levies only or is a public funding element required?

- Should all contributors be able to benefit from funding or are some sufficiently compensated by wider outcomes, e.g. the funded content driving demand for connectivity services, or a strengthened national production ecosystem?

- How can the levy and fund be designed to ensure that investment is additive? As far as possible it should not replace investment in qualifying content that would have happened anyway, while adding an administrative layer

- Should the fund support providers that are subject to quotas, where the financial viability of the required investment is under pressure – for example, by targeting some funding programmes at underrepresented genres where quotas for broadcasters also exist (noting the Green Paper interest in drama, children's programming and documentaries)?

- Is legal certainty provided regarding services targeting but not established in the country?

- Is it optimal to have different funds vs a single, integrated fund in a country? Considerations are diversity of voices through different funding decision-makers, maximising total funding available, administrative costs and complexity, and a coordinated response to market trends and policy goals

- What governance would best secure independence, efficiency, responsiveness to policy gaps, and coordination with other relevant bodies? Some international funds sit under the Culture Ministry or Regional Government, some are 'arm's length bodies', and some sit under the independent national regulator (e.g. smaller production funds in Canada)

Overall, we would highlight that an indirect investment obligation can serve a distinct policy goal from direct investment. It can do this by pursuing equitable contributions across industry, independently pursuing diversity and plurality of local content, complementing other types of regulation such as genre quotas where market dynamics mean that these require additional support, and targeting funding at services that are best positioned to fill an identified 'gap' against the policy objectives. We also heard in our interviews that a fund can serve as a constant and reliable support to the national programme market more broadly, developing its capacity and securing a steady flow of productions over time.

2.4 Prominence

- Given the much higher levels of investment in hours and spend by national and commercial FTA broadcasters in content that reflects Australian cultural diversity, and their role to make this universally available, it is relevant to consider the 'discoverability' or appropriate prominence of their services (channels and BVOD) on TV platform user interfaces as part of the current debate
- In the UK this is intended to underpin the availability, reach, consumption and investment in local content, in a virtuous circle. Ofcom also asks if individual programmes by other providers should benefit from prominence, if they meet certain criteria
- This policy model may be accompanied by requirements on brand attribution, so that the broadcaster's logo is clear on their programmes and services and audiences may attribute value back to them

We will cover two types of prominence:

1. Prominence on TV platform user interfaces for whole channels and BVOD services that provide high-quality local content, including in key genres (such as the ABC and commercial FTA channels and iview, 10 Play, 9 Now and 7 Plus)

2. 'Discoverability' or prominence of local works within a VOD catalogue

2.4.1 Prominence of services on TV platforms

Here we refer to the prominence of whole services (channels or BVOD) from local broadcasters on TV platform user interfaces, such as the EPG, VOD menus, and search. We will focus on the UK, where there is a well-established prominence regime for PSB channels and proposals to extend this to PSB BVOD services. In its current PSB Review, Ofcom has also asked about prominence for items of content from other providers that deliver public service values. We will then extract learnings from the German regime, which refers to 'general interest' content (in line with the AVMSD) and has a differentiated regime across linear, on-demand and social media.

UK PSB prominence regime

As in Australia, UK public service broadcasting is a well-established and proven policy intervention to ensure the provision of high-quality original programmes that reflect the lives and concerns of different communities and cultural interests across the UK, bring the nation together at important moments, and inform, educate and entertain society among other points.[20]

The UK PSBs – meaning all of the BBC's public service channels plus the main ITV, Channel 4 and Channel 5 channels – must comply with a set of public purposes and service requirements, which are balanced against and enabled by a set of regulatory benefits. For example, for the privately-owned commercial PSBs, ITV and Five, the legislative obligations are to deliver the PSB purposes and objectives and a 'range of high-quality and diverse programming'.[21] Ofcom defines this further in the ITV and Five licences, including quotas on news and current affairs, regional programming, independent productions, and original productions.

The regulatory benefits include prominence of the PSB broadcast channels on Electronic Programme Guides (EPG, i.e. TV platform channel listings) as well as access to spectrum, and licence fee revenues in the BBC's case. Prominence makes PSB easy to find and watch.

The principle of PSB prominence and a list of beneficiary PSB services is set out in primary legislation.[22] The national regulator Ofcom then provides further details on how EPG providers should comply in a Code of Practice.[23] EPG providers are licensed by Ofcom and must comply with prominence requirements as a licence condition.

Under the current Code, EPG providers have to:

- Ensure that the five main PSB channels are listed in the top five slots of the EPG, and that regional variations are used in the relevant areas of the UK
- Ensure that other national PSB channels (e.g. BBC Four) are no lower than a certain position on the main EPG menu, or genre channels on relevant genre menus (e.g. CBBC or BBC News)
- Refrain from giving undue prominence to a channel with which they are connected, except to comply with the above

[20] See Sections 264(4) and 264(6) of the UK Communications Act 2003
[21] Communications Act 2003, Section 265(2)
[22] Section 310 of the UK Communications Act 2003
[23] Ofcom Code of Practice on Electronic Programme Guides

More broadly, EPG providers have to publish an 'objectively justifiable' method of calculating their listings, keep it under review and consult channels on any proposed changes. Agreements with broadcasters must be fair, reasonable and non-discriminatory.

However, the prominence of PSB BVOD services like BBC iPlayer and ITV Hub on connected TV is not covered by regulation – it is determined through negotiations without any regulatory backstop. Ofcom notes that these are increasingly conducted at a multi-national level between global operators and suppliers and 'public sector broadcasters find it increasingly difficult to secure similarly favourable terms for prominence' to the global services as they cannot bring the same scale in negotiating for their one market.[24] Ofcom also found that as new on-demand services launch and technology continues to evolve there is a risk that, without protection, PSB linear channels will become harder to find, for example because linear channels or the EPG are relegated altogether. Equally, while linear viewing remains strong, consumers are increasingly accessing PSB (including linear) via their BVOD services. Some connected TVs may run over Wi-Fi only.

Given the rise of online viewing, Ofcom has made recommendations to Government for a new legislative framework to safeguard PSB prominence online, including:[25]

- Linear PSB channels must be easily found on TV platforms' homepages
- Extending prominence to PSB BVOD services on connected-TV devices (set-top boxes, smart TVs, streaming sticks) – because connected TV is the main way audiences watch TV online. Other platforms and services may be subject to prominence obligations in future as technology and viewing habits change
- To benefit, PSB BVOD services must meet a new requirement to deliver a range and amount of high-quality content made for UK viewers, as well as content in particular genres such as children's, current affairs and factual. This is because ITV, Channel 4 and Channel 5 BVOD services include content from their non-PSB portfolio channels, which are not subject to PSB regulatory requirements
- PSB content should also be given prominence in TV platforms' recommendations and search results

The recommendations from Ofcom have not yet been actioned into updated legislation and in December 2020 the Government said that this is unlikely to happen for at least another two years. However, as part of its Inquiry into the future of public service broadcasting, the Digital, Culture, Media and Sport (DCMS) Select Committee criticised this delay and recommended that the Government prioritise new legislation to update prominence before the end of 2022, particularly extending it beyond linear channels on the EPG to cover PSB BVOD.

The Committee heard evidence from a range of stakeholders, including platforms and device manufacturers who argued that there is no need to extend PSB prominence when customer demand already dictates that these services be accessible. The Committee was unpersuaded that the popularity of PSB content means that prominence can simply be left to market forces. It echoed Ofcom's concern that it is likely to be difficult for UK PSBs to have enough leverage in negotiations with powerful global manufacturers and platforms, which are able to act as gatekeepers to content. It also recommended that PSB content should be clearly labelled as such and branded with the logo of the PSB from which the content originated, to ensure consumers attribute value back to the PSB.[26]

Ofcom is currently carrying out its five-yearly PSB Review into the health and sustainability of PSB. Its consultation, 'The Future of Public Service Media', asks whether content with public service values from non-PSB providers should also be considered under a new framework, for example content aimed at specific audience segments that do not typically use PSB services, new content formats, or specific content genres underprovided by the market or with particular value or characteristics. The PSBs argue that prominence should be about whole PSB services, as the main

[24] Ofcom, Future of Public Service Media', December 2020
[25] Ofcom, Broadcasting: Recommendations to Government for a new framework to keep PSB TV prominent in an online world, July 2019
[26] DCMS Select Committee, The Future of Public Service Broadcasting: Sixth Report of Session 2019-21, March 2021

investors, and as they seek to bring audiences into their BVOD services to use curation and recommendations to encourage them to explore further PSB content that they might not otherwise have found or selected. This could be affected by any disaggregation by the TV platform. As in the Canadian example above, supporting distribution via a clear and identifiable service can support content reach and consumption.

German prominence regime for general interest content services

Germany, France and Canada are also looking at prominence rules, around similar policy objectives to the UK although not necessarily focused on PSB. While the proposals in France and Canada remain to be developed beyond a statement of principle in proposed legislation, Germany has recently approved a new regime.

In Germany, a two-tiered rule in the Inter State Media Treaty provides that for user interfaces on TV platforms:

a. Broadcast services that contribute to plurality must be directly accessible and easy to find in their entirety on the first level of a user interface
b. BVOD that make a significant contribution to plurality must be easy to find in BVOD or app menus[27]

The national broadcasters benefit from these rules. Commercial providers may also benefit if they are designated by the media regulatory authorities for a three-year period according to criteria including the proportion of reporting on political events, reporting on regional and local news, accessibility, the quota of European works, and the young audiences quota.

Meanwhile, online intermediaries such as social media are covered by the principle of non-discrimination: in the absence of legitimate reasons (e.g. alphabetical or genre listing), similar services and content may not be discriminated against as regards their order or location on the user interface. All offers must be discoverable without discrimination by using a search function.

These provisions are new and it remains to be seen how they operate in practice.

Additional considerations

Lastly, we would highlight related and complementary issues to prominence, namely 'inclusion' or availability of the relevant content services on TV platforms (UK) and brand attribution for content on third-party platforms (EU, Canada). In other words, prominence can only take its full effect if the content or service is first available, and if content is branded with its original logo so that consumers can attribute value back to the investor.

2.4.2 Prominence of local works within a VOD service

In contrast to the concept of prominence in the previous section, we now refer to the discoverability of individual programmes within a VOD catalogue.

Under the EU AVMSD, VOD providers are required to ensure prominence of European works programmes included in their catalogue. Legislation gives non-exhaustive examples:

- A dedicated section for European works that is accessible from the homepage
- The possibility to search for European works in the search tools available as part of the service
- The use of European works in marketing

[27] German Inter State Media Treaty, Article 84

- Promoting a minimum percentage of European works in the catalogue by using banners or similar tools[28]

Before the 2018 revision of the Directive, prominence of European works was given as a policy option without any quota or investment obligations. However, it was not considered effective without measures to also increase availability.

As regards the regulatory structure, countries have generally favoured a high-level requirement in legislation, listing the platforms that must provide prominence and the services to benefit, complemented and further defined by the national regulator in guidelines. This approach provides greater flexibility to reflect the different permutations of user interfaces and market changes over time. For example, in Italy the national regulator AGCOM is required to set out a series of options, each worth a number of points, from which VOD providers established in Italy must choose to reach the necessary score and comply with the requirements. These are expected to include: a dedicated EU works section on the homepage, a category within search, and a quota of their advertising or promotional campaigns. France has existing rules (prior to the 2018 AVMS update) for services established in France, which suggest visuals, trailers and specific sections on the homepage, in the recommendations (personalised or not) made to users, in programme searches initiated by users, and in marketing to promote the service.

We have also considered the framework for measuring and reporting on these prominence obligations. A study commissioned by the European Commission before the 2018 revision of the AVMSD proposed compliance reporting on these elements, inspired by the approaches in Sweden, Spain and Bulgaria: [29]

- Percentage of European works on home page
- Possibility to search works per country (yes/no)
- Dedicated sections for European works
- Percentage of promotions for European works (trailers and/or other marketing channels)

In gathering such data, the authorities relied on strong cooperation and continuous dialogue with the sector.

2.4.3 The UK example of a market with fewer local content obligations

The UK has few local content requirements in the sense of the typical tools set out in this Part. It has implemented the 30 per cent VOD quota for European works as part of implementing the 2018 revision of the AVMSD, in addition to an existing linear quota. But it has not imposed direct investment obligations on SVOD and AVOD services, or indirect investment obligations via a levy and central fund.

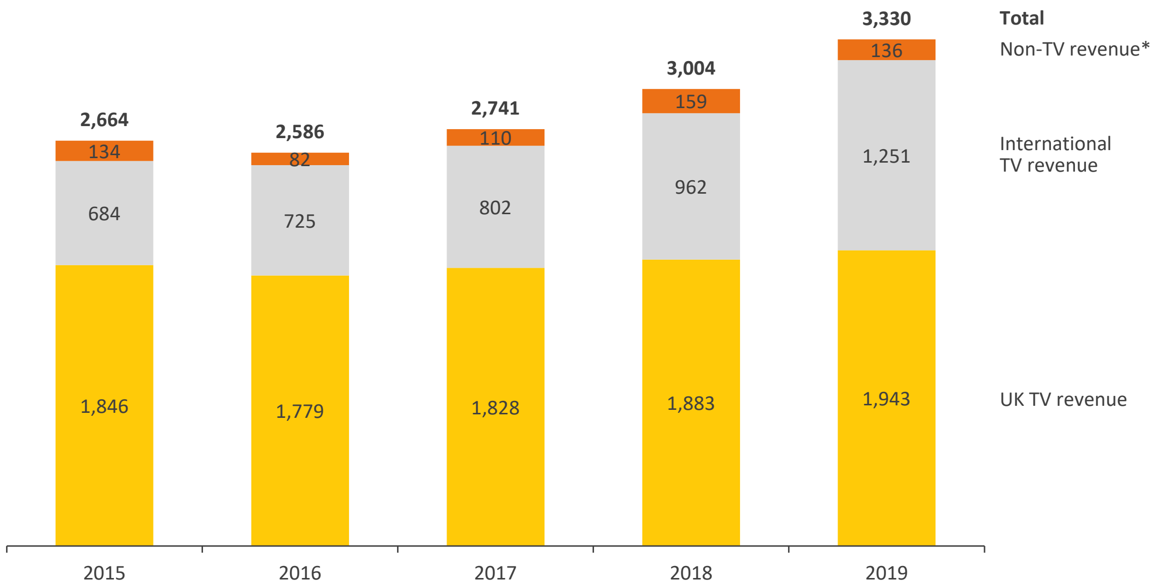
However, this is not the full picture. Firstly, if we look across the content ecosystem the UK has made a series of judicious policy and regulatory interventions to support UK content investment and the wider audiovisual sector, over decades. These work alongside and enable industry ambition and are necessary to compensate for the relatively small size of the UK's home market (particularly as compared to the US). Supported by this framework, public service broadcaster (PSB), commercial FTA broadcasters and a dynamic local independent production sector with access to IP, are the cornerstone of investment in high-quality local content for UK audiences. Over time, this careful balance has supported revenue growth, a healthy cycle of market entry, growth and consolidation in the production sector, international expansion, and inward investment. By 2019 the audiovisual sector contributed GBP 26.2 billion, up 12.7 per cent on 2018.[30] The UK also benefits from a well-established global market for its content – TV exports were

[28] Recital 35 and Article 13
[29] Study on the Promotion of European Works, prepared for the European Commission DG Communications Networks, Content & Technology by VVA, KEA European Affairs and Attentional, June 2018
[30] DCMS Sectors Economic Estimates 2019

GBP 1.48 billion in 2019/20.[31] **Figure 3** shows the UK's production revenues split between domestic and international revenue.

Today, the UK is second only to the USA for audiovisual content creation and IP exploitation despite having a much smaller home market. The key point is that, because the domestic content sector has been able to develop in strength and size over time, so far it has been able to both attract and support global productions and service provision without over-heating in the way a smaller domestic market might (as we have heard reports of Australia doing).

Figure 3: Total UK producer revenues, 2015 to 2019 (£m)



Note: *Non-TV revenue includes corporate production, new media and other non-TV activities such as online publishing, talent management, promotions, public relations and feature films*
Source: *Pact UK Television Production Census 2020, Oliver & Ohlbaum analysis*

It may also be better placed to attract and retain longer-term investment from global players. In evidence to the DCMS Select Committee inquiry on 'The Future of Public Service Broadcasting, Netflix said, '[i]t is impossible to disentangle what we do from what the PSBs do. That is, by definition, what a creative ecosystem is. The impact that the BBC has had over the last few decades in building the profile of the UK creatively, in nurturing talent, its investment in production and so forth, is one of the key reasons why we have chosen to make our home here and one of the reasons why we are such strong supporters of what it does and want to see it continue doing'. Amazon made the broader point that, '[...] broadcasters are continually pushing creatives [...] [we] a[re] attracted to the UK because of the talent, the creative industries, the skills that we have here. The facilities and infrastructure we have are attractive. I think UK creatives continually punch above their weight'.[32]

The wider UK web of regulatory measures is outside the scope of this report but includes voluntary production industry funding for skills and training, export support, a strong IP framework and enforcement, a Creative Industries Council with industry leaders and the Secretaries of State for Culture and for Business, Enterprise, Innovation and Skills, and an industrial strategy for the sector.

[31] Pact UK TV Export Report 2019-20
[32] DCMS Committee Inquiry, 'The Future of Public Service Broadcasting', March 2021

But even with this large and well-established ecosystem, new challenges are emerging.

The shift in audience expectations caused by global production budgets has led to creative inflation – stretching PSB budgets and increasing the need to raise third-party finance. There is also production inflation as global players are keen to use UK talent (in front and behind camera) and production resources both in the UK and in the US. This could intensify if, as expected, the global SVODs being to target more rights and are less willing to share commissions with the PSBs.

As the overall balance in the TV programme market is shifting, as well as changing viewing habits especially among the young (lower viewing to broadcast TV), Ofcom is carrying out its five-yearly PSB Review with a focus on how to strengthen PSB (including the main commercial channels ITV and Five), as well as UK independent production, for the future. They consider that PSB 'still matters': some types of programming rely heavily on their contribution (news, children's, arts, education, religion and ethics), it brings people together around shared national experiences, it reflects the UK's diversity, it is vital to vulnerable groups without internet access, and it underpins the UK's creative economy. A key proposal is that PSB BVOD services should be available and prominent on TV platforms (in addition to channels) – see above. Ofcom is also considering strategic partnerships between PSB and other key companies, and the terms for independent production.

In conclusion, the UK market is markedly different from Australia in terms of its size and carrying over the UK's approach to SVOD regulation would not be well-founded. However, its current position is the result of decades of regulatory intervention alongside industry innovation and creativity and some elements of the wider regulatory framework may be a useful reference for strengthening the domestic Australian sector.

Australian Market Developments

3 Australian Market Developments

This part provides a brief overview of the main developments in the Australian TV market since the emergence of global SVOD services in Australia, including the impact of COVID-19 and expectations for the future. This allows us to identify the challenges facing market participants and thus the issues that policy interventions might be required to address, or to avoid intensifying. Our findings include: a strong increase in SVOD subscribers, downward trends in viewing for the ABC and commercial broadcasters (particularly in genres targeted by SVOD such as drama), and an overall shift in advertising revenues towards online.

3.1 The growth in SVOD services

As we saw in the introduction to this report, the arrival of VOD services has been the most significant driver of change in the TV sector – both local broadcaster-owned services and, crucially, global SVOD services. The ABC's iview was one of the earliest VOD services to launch in Australia, arriving in 2008. BVOD services from 10 Play, 9 Now and 7 Plus launched in 2013, 2016 and 2017 respectively. Local SVOD services Foxtel Play (now Foxtel Now) launched in 2013 and Nine Digital-owned Stan in 2015. Stan in particular differentiates itself from global SVOD by carrying a significant volume of Australian content, both commissioned and acquired.

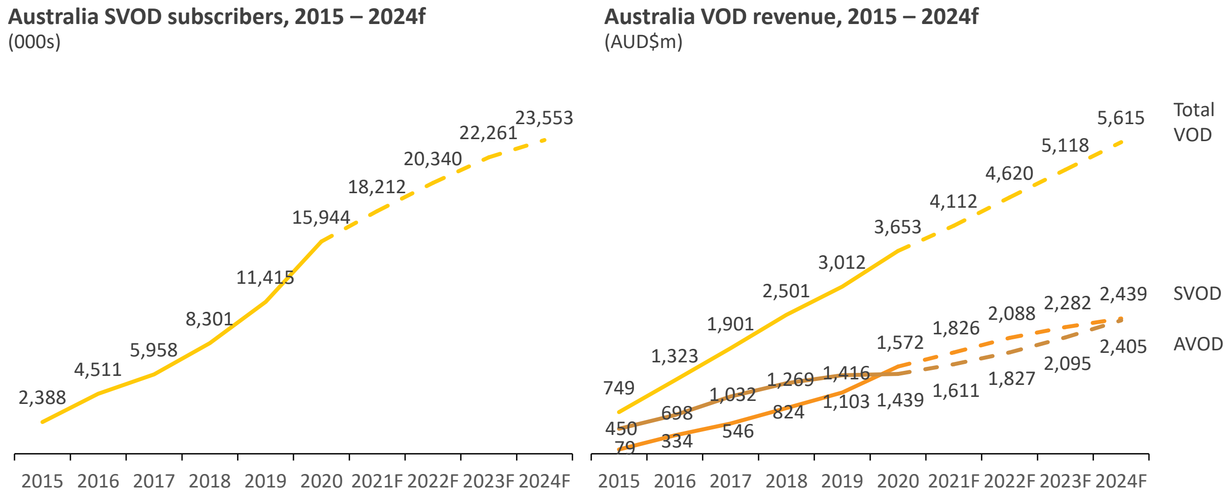
It was the arrival of global SVOD Netflix in 2015 that acted as the catalyst for a growing global SVOD subscription base.[33] It was followed by Amazon Prime Video in late 2016 and Disney+ in 2019. The total SVOD subscriber base has increased from 683,000 in 2014, to 15.9 million in 2020.[34] Australia is the highest penetrated market for Netflix globally, currently at 63 per cent.[35] As shown in **Figure 4**, strong growth in SVOD subscribers is expected to continue.

Figure 4 also shows that total VOD revenues (not only SVOD) have reached AUD 3.7 billion, 39.8 per cent of total TV market revenues, and are expected to reach AUD 5.6 billion, 51.6 per cent of total TV market revenues, by 2024. This is predicted to be roughly split 50-50 between SVOD and AVOD. Such growth is expected to be supported by ongoing broadband investment. The Government has announced an AUD 3.5 billion upgrade package to further roll out fibre, with broadband penetration forecast to reach 78 per cent by 2024. Improved broadband services will also enable wider access to national and commercial FTA broadcaster BVOD services.

---

[33] Think TV - https://www.adnews.com.au/news/thinktv-australian-tv-market-down-4-8-to-3-86-billion-in-2019
[34] Omdia
[35] Ampere Analysis (Aug 2020)

Figure 4: Australian SVOD subscribers and VOD revenue, 2015 to 2024



Note: Total VOD revenue includes, SVOD, AVOD, TVOD, virtual pay TV offerings (i.e. own online channels rather than third party channels)
Sources: Omdia, Oliver & Ohlbaum analysis

Global SVOD services have undoubtedly changed the market, by competing directly with traditional broadcasters' services for consumers' viewing time. And further developments can be expected as new business models are likely to arrive in this space; global AVOD services may well add further competition to both SVODs and national and commercial FTA broadcaster services. Paramount+ will launch later this year. The exact details of further launches remain to be seen, but a move into AVOD from a service such as Amazon Prime Video could make sense, and existing SVOD services may look to target advertising money and attract new subscribers with hybrid models. In 2020, local SVOD Stan signed a major multi-year deal with NBCUniversal, securing a pipeline of premium US and UK studio programming including Peacock Originals, which may mean that the launch of Peacock as a hybrid SVOD/AVOD service in Australia is less likely in the short term, but other global services could see this opportunity.

Of course, while these developments challenge Australian broadcasters, the importance of national and commercial FTA broadcasters in serving genuinely local and public interest content across genres and to all Australians universally and for free cannot be underestimated. We look at trends in national and commercial FTA broadcaster viewing and revenues in the next section.

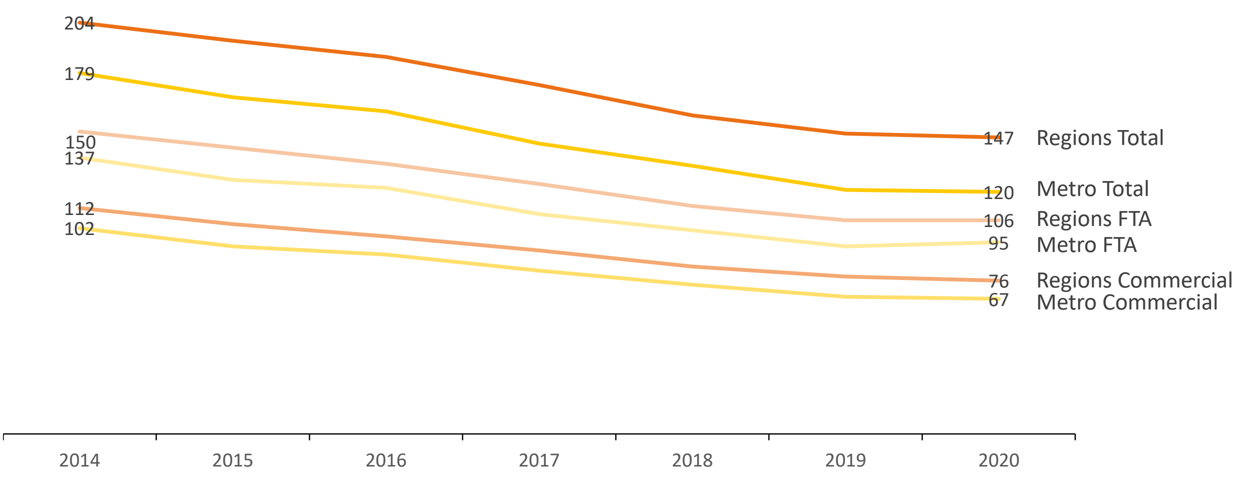
3.2 Changes in national and commercial FTA broadcasting viewing and revenues

Linear FTA channels (live or recorded) remain the most watched type of professional content on average, at 40 per cent of such viewing in 2019 compared to 20 per cent for 'online subscription or pay-as-you-go'[36] . The importance of FTA television becomes especially apparent at times of national crisis such as the bush fires and now the COVID-19 pandemic, when audiences turned to the national and commercial FTA broadcasters in greater numbers for trusted news, emergency information, and shared entertainment and sporting moments.

That said, average viewing minutes are on a downward trend over time, as shown for 2014 - 2019 in **Figure 5**, led by the younger age groups.

[36] ACMA Communications Report 2018-19, Figure 2.28

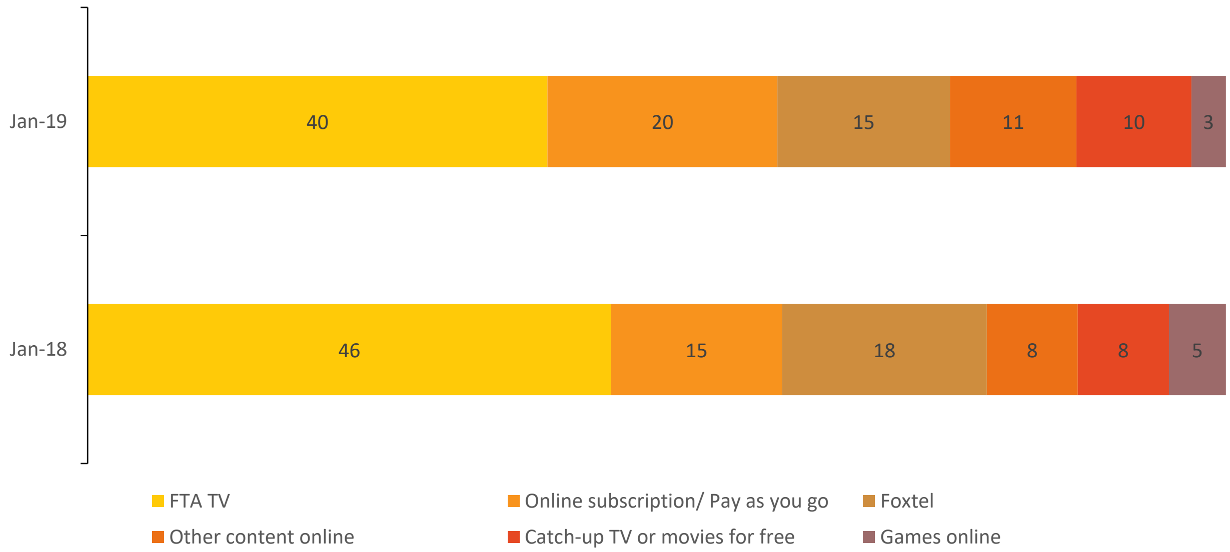
Figure 5: Average time viewed, consolidated, Metro vs Regions, 2014 to 2020 (mins)



Sources: OzTAM, Regional TAM, Oliver & Ohlbaum analysis

At the same time, both the national and commercial FTA broadcasters have been developing their own BVOD services. As can be seen in **Figure 6**, while the share of time spent watching TV (live or recorded) fell 6 per cent in 2019 on 2018, the share to BVOD ('catch-up TV or movies for free') rose 2 per cent, reversing some of the trend especially for younger audiences who tend towards watching online. Other gains went to 'online subscription/ pay as you go' services (up 5 per cent) and 'other content online' such as professional TV content hosted on social media (excluding UGC), up 3 per cent.

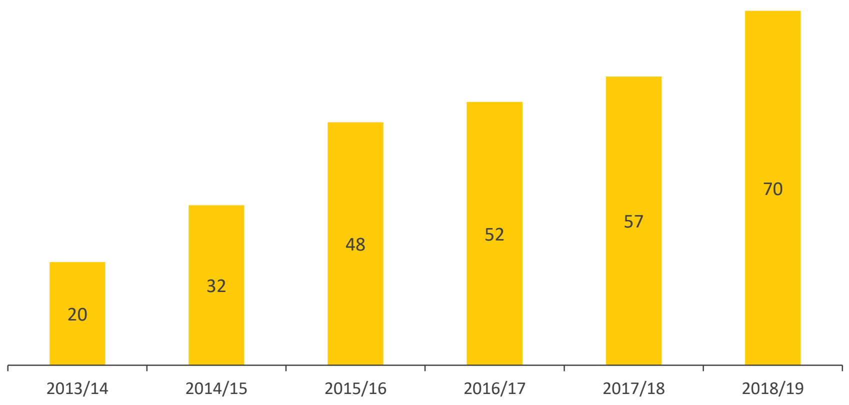
Figure 6: Time spent watching TV (live or recorded) or professional online video content (%)



Sources: ACMA Communications Report 2018/19

An ACMA survey indicated that 70 per cent of all adults watched online TV or online video content in May 2019. While 'online subscription or pay per view' was the most popular at 49 per cent, 'catch-up TV or movies for free' came joint second at 43 per cent and showed the strongest growth year on year, up 10 per cent on May 2018.[37] Of all adults that watched an FTA catch-up service in the past seven days, ABC iview was the most popular at 67 per cent, up 4 per cent on 2018[38]. We can see how use has grown in **Figure 7**. Commercial FTA BVOD services have since experienced record growth in terms of both audiences and advertising spend – up 40 per cent year on year in the second half of 2020.[39]

Figure 7: Total monthly program plays, ABC iview, 2013/14 to 2018/19 (million)



Source: ABC Annual Reports, Oliver & Ohlbaum analysis

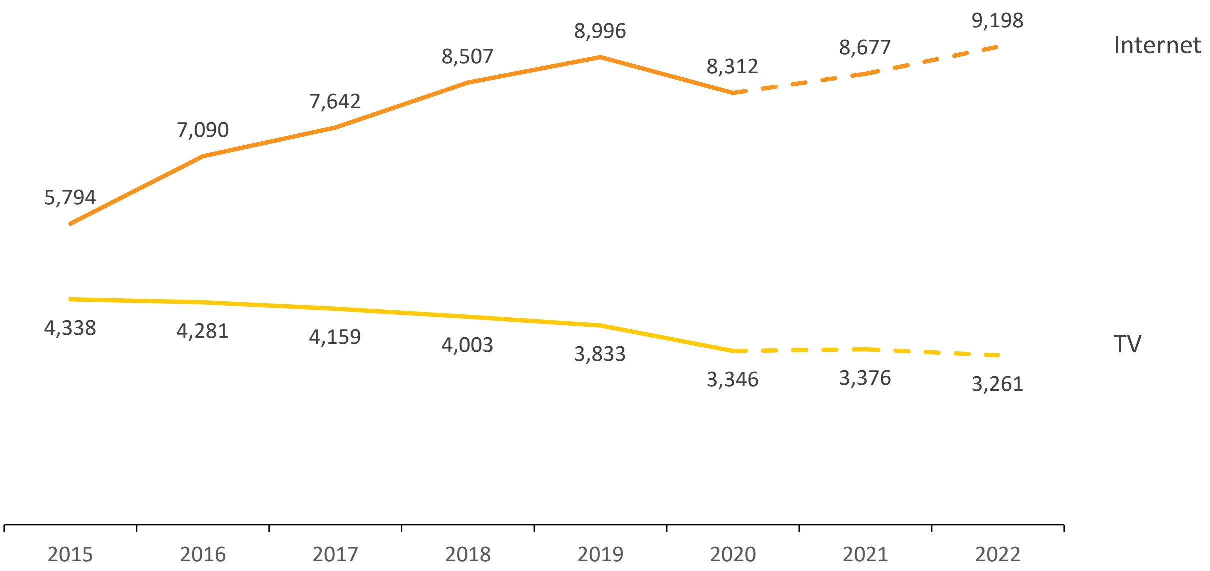
In terms of genres, in 2020 drama performed especially well on BVOD (28 per cent), followed by children's, reality, and news and current affairs (13 - 10 per cent).[40] This shows how some genre viewing has simply moved from linear to BVOD in line with audience preferences on when and how to watch.

If we turn now to advertising revenues for commercial FTA broadcasters, the reduction in viewing hours to linear FTA channels has presented challenges, although this has been mitigated by investment in BVOD. As seen in **Figure 8**, total television advertising revenue for broadcast and BVOD saw a 1.9 per cent year on year decline from 2015 – 2019. According to WARC, BVOD – also including Kayo and Foxtel Now in their numbers – grew advertising revenues in 2019 on 2018, up 39 per cent from a low base.[41] This was followed by a total drop in revenues in 2020, due to the COVID-19 pandemic, but the rate is expected to remain broadly stable in 2021 and 2022. Indeed, figures by Total TV for the second half of 2020 indicate that TV continued to outperform the broader advertising market with a 0.5 per cent increase in revenue for the six months to 30 December 2020, while BVOD increased 52.7 per cent in the same period. The commercial FTA metropolitan broadcasters have protected themselves by investing in their BVOD platforms – 7Plus, 9Now and 10 Play – and it is to be seen how BVOD revenues continue to evolve.

Total internet advertising revenue continues to grow, and it is expected to reach AUD 9.2 billion by 2024. This includes general display, classified, search and directories, which may be around TV brand extensions online but excludes BVOD. As widely discussed, this is affecting revenues to established media – TV as well as print.

[37] ACMA Communications Report 2018-19, Figure 2.29. Australians aged 18 and over; 2018 (n=1,973), 2019 (n=2,067). ACMA-commissioned survey, May 2018 and 2019.
[38] ACMA Communications Report 2018-19, Figure 2.22. Australians aged 18 and over who watched catch-up TV for FTA programs in the last seven days; 2018 (n=498) and 2019 (n=765). Source: ACMA-commissioned survey, May 2018 and May 2019.
[39] OzTAM VPM. H2 2019 to H2 2020
[40] Source: VPM. Includes co-viewing on CTV devices
[41] WARC, February 2020, 'BVOD growth shores up Australia's TV advertising market'

Figure 8: Australian advertising revenue, by type, 2015 to 2022 (AUDm)



Sources: Zenith, Oliver & Ohlbaum analysis

Turning to funding for the ABC, this is the result of the governmental process to set the level of the grant. The ABC has faced a real-terms decline in funding over a longer period than the advertising-funded broadcasters. For the current triennial period of 2019–20 to 2021–22, Government has allocated around AUD 3.2 billion in funding with an operational funding indexation pause, resulting in AUD 879 million/year available for the ABC's general activities.[42] In real terms this means the ABC's operational funding will be more than 10 per cent lower in 2021/22 than it was in 2013.[43] The ABC reports a 30.7 per cent reduction in real funding from 1985/86 to 2020/21 in operational revenue from Government.[44]

3.3 The impact on pay-TV broadcasting in Australia

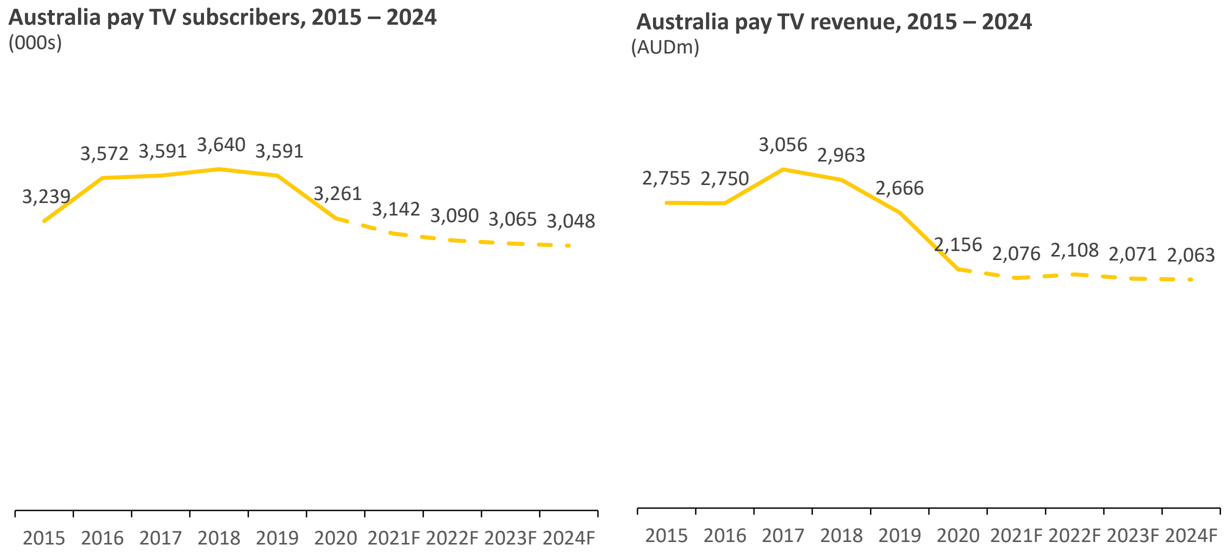
Foxtel is the pan-Australian pay-TV platform, also funded by advertising revenue, with 1.8 million subscribers across cable and satellite. **Figure 9** includes both Foxtel pay-TV and Foxtel VOD subscribers (Kayo, Binge, Foxtel Now and Foxtel App), as a further breakdown is not available. Despite the growth in global SVOD, the total number of subscribers has held relatively stable with a 2.6 per cent CAGR between 2015 and 2019 – though this somewhat hides the most recent trend, with subscribers dropping to 2015 levels in 2020. COVID-19 may have accelerated the consumer shift to SVOD as viewers have searched for extra entertainment while also looking to cut down on household bills (see section on COVID-19 impact below). Foxtel's OTT offering, Foxtel Now, is likely to combat the effect of declining pay-TV subscriptions.

[42] ABC Annual Report 2019

[43] https://about.abc.net.au/speeches/abc-five-year-plan-2020-2025/

[44] ABC Annual Report 2020, including Capital indexed at 2019-20 levels – December 2019, six months CPI Index – 30.7 per cent reduction from 1985-86 to 2020-21

Figure 9: Australian pay-TV subscribers and pay-TV revenue, 2015 to 2024



Sources: Omdia, Oliver & Ohlbaum analysis

3.4 COVID-19 impact on the TV market and likely future trends

The long-term impact of the pandemic on Australia is yet to be seen. However, the economy ended 2020 with GDP down just 1.1 per cent in December 2020 on December 2019. It had dipped 7.0 per cent in March - June 2020, but this was followed by consistent growth in the second half of the year. The unemployment rate peaked at 7.5 per cent in July 2020 before falling back to 5.6 per cent in March 2021, when it was up just 0.4 per cent year on year.[45] The effect of the end of the JobKeeper scheme will be seen in coming months.

As regards our sector, production in 'Information Media and Telecommunications' was up 2.1 per cent in December 2020 on December 2019. The audiovisual sector received emergency funds such as the Temporary Interruption Fund and the SCREEN fund. However, there were some important short-term effects and trends that might signal more long-term developments.

The crisis could cause a structural acceleration in two industry trends, which could have significant implications for the size and mix of total industry revenue in the medium to long term:

- **The consumer shift from big bundle pay TV towards OTT:** During past economic downturns, consumer spend on home entertainment has historically risen. Previously this has focused upon pay TV, however a shift in consumer interest can be noted for 2020 as there was significant growth in on-demand viewing via online platforms. Total subscribers accelerated to 15.9 million, a 39.7 per cent yearly increase (up from 37.5 per cent in 2019). Growth in viewership has been spread across both domestic and international online platforms – though Netflix remains the leading platform. Going forward, growth is expected to continue, albeit at a slower rate, with a CAGR of 10.2 per cent from 2020 to 2024. This contrasts with the 1.7 per cent decline in pay-TV CAGR over the same period[46]

[45] Australian National Accounts: National Income, Expenditure and Product, accessed 17/05/21
[46] Omdia

- **A potential step change in advertising spend from TV towards online:** The pandemic led to a significant fall in total advertising spend; TV advertising spend declined by 9.6 per cent in 2020. It is set to recover at a growth rate of 3.1 per cent per year from 2020-2024. This is somewhat slower than online advertising recovery, which is expected to grow at 4.3 per cent per year following a smaller decline of 7.1 per cent in 2020. In comparison to other media, TV has still performed better than the wider market (on account of the impact the pandemic has had upon out-of-home and cinema advertising spend). Its ability to deliver mass audiences in a brand-safe environment will likely see demand endure in the short to medium term – albeit accelerated shift in consumption towards online platforms could see competition from AVOD services, or hybrid SVOD services, occur sooner

Beyond the trends in consumption and revenues, the TV production sector was severely impacted by the pandemic, with productions forced to pause following the initial outbreak. While the Temporary Interruption Fund helped 23 approved projects begin filming again, there have been longer-term implications. Production costs have increased to accommodate for COVID-secure environments. In particular, Australia's relative success in managing the impact of the pandemic and limiting lockdowns has seen an increase in demand for Australian production facilities – which has attracted a greater number of international projects. An AUD 400 million incentive to attract production to Australia has been announced for the next seven years (added to the existing Location Incentive Grant). This boosts the current incentives that were in place and extends them for a further four years until 2026/27. However, these incentives do not necessarily promote content which reflects Australian culture or is made by Australian producers. The role of the national and commercial FTA broadcasters remains vital in this respect.

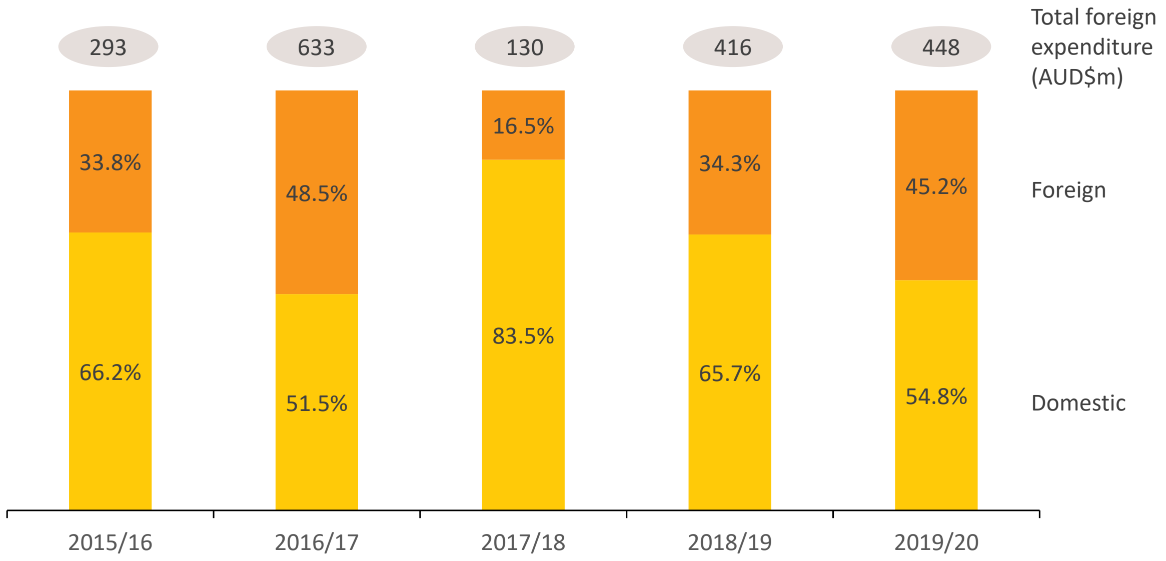
3.4.1 Production cost inflation and under-supply of production resources

Considering the size of Australia's market, there is the potential for production inflation, which would cause difficulties for local commissioners and producers. We would suggest that COVID-19 has fast-tracked existing developments in the production landscape – foreign investment is not a new phenomenon but may reach new levels in 2020/21. Total foreign spend reached AUD 448 million in 2019/20; this was below the AUD 633 million of foreign spend in 2016/17 but marked an increase from AUD 416 million in 2018/19 and included a record spend on foreign drama production.[47] Foreign films accounted for 93 per cent of total foreign spend in 2016/17; since then however the importance of foreign TV and online drama has grown – foreign films therefore only accounted for 57 per cent of total foreign spend in 2019/20.

At its previous peak in 2016/17, foreign spend accounted for nearly half – 48.5 per cent – of total Australian expenditure, before the withdrawal of the top-up scheme caused Australia to become much less internationally competitive, which caused foreign investment to plummet to only 16.5 per cent in 2017/18 (**Figure 10**). The Federal Government's new Location Incentives ensured a swift recovery in foreign investment as it grew to 34.3 per cent of total spend in 2018/19, and again to 45.2 per cent in 2019/20[48]. The sharp decline in 2017/18 is a stark reminder that foreign investment may not provide long-term, stable investment in local content as international producers can move about according to global competition in tax breaks. It also does not provide the same access to IP to allow growth in the local industry. Service provision needs to be a balanced, additional layer over solid local investment.

[47] Screen Australia, Drama Report – Production of feature films, TV and online drama in Australia in 2019/20
[48] Screen Australia Drama Report 19/20

Figure 10: Total Australian programming expenditure, domestic vs foreign, 2015/16 to 2019/20 (AUDm)



Sources: Screen Australia Drama Report 19/20, Oliver & Ohlbaum analysis

As a pre-existing trend, foreign investment is expected to continue. For example, Amazon Prime Video has announced seven new Amazon Originals to be filmed in Australia.[49] Interviewees explained there has not been a corresponding growth in the overall size of the industry following the entrance of global SVODs and a relatively consistent flow of talent has moved overseas. For example, we heard that in recent years there has been pressure on hiring writers, directors and actors – the creative base is just too small to sustain this pressure without over-heating. Intense competition for studio space has resulted in platforms with bigger budgets booking out studio spaces before confirming a project just to reserve the space; such luxuries are ones that smaller producers struggle to compete with. The ABC and commercial FTA broadcaster interviewees unanimously said that the boom in global productions and Australian service provision has inflated costs and led to a lack of resources. For example, *Dancing with the Stars* was filmed in a converted convention centre rather than the fully booked Fox Studios. This included building their own facilities to accommodate for the show.

It has also been reported in the press that Australian media groups have struggled to put together crews for productions, calling 20 different people before finding a series producer and then struggling to entice enough people away from other international productions that pay more to put together a whole crew.[50] A recent survey by Screen Producers Australia found that 80 per cent of respondents claimed they had increasing problems with forming crews for their productions, with 66 per cent saying this was one of their most significant problems. 95 per cent reported higher production costs overall, by an average of 24 per cent (and as much as 75 per cent).[51] The Victorian government recently sought approval to bring 400 foreign cast and crew to Australia to cope with the lack of domestic workforce.[52]

---

[49] Amazon Prime Video announces mammoth investment in Australian content with seven new local originals | TV Blackbox

[50] The Australian: Cashed up international producers draining local talent pool - https://www.theaustralian.com.au/subscribe/news/1/?sourceCode=TAWEB_WRE170_a&dest=https%3A%2F%2Fwww.theaustralian.com.au%2Fnation%2Fcashedup-international-producers-draining-local-talent-pool%2Fnews-story%2Ffa6f43734531869456b86b23f9b38102&memtype=anonymous&mode=premium

[51] Screen Producers Australia, Crew Availability Survey (April 2021)

[52] The Sydney Morning Herald: Victoria seeks urgent approval to brin in 400 foreign cast and crew - https://www.smh.com.au/culture/movies/victoria-seeks-urgent-approval-to-bring-in-400-foreign-cast-and-crew-20210510-p57qec.html

Canada provides an important example for the risks associated with high service provision as a proportion of total production. English language, location incentives and skilled crew are similarities with the Australian situation. While investment by Canadian television in independent productions had an average annual growth rate from 2009/10 to 2018/19 of 3.9 per cent and broadcaster in-house production grew 1.3 per cent, foreign location and service production grew 13.9 per cent, reaching 52 per cent of the market.[53] Similarly, 85 per cent of foreign investment in production in Canada is in foreign location and service. 78 per cent of foreign location and service projects by country of copyright are from the USA.[54] The programme market is characterised by a large share of small independent producers making local Canadian content, but so far without growth into a dynamic sector with a healthy share of medium and large producers. On the other hand, it has a large service industry producing programmes for the USA that are made in Canada but do not reflect Canada in their content.

[53] CMPA, Profile 2019, Economic Report on the Screen-Based Media Production Industry in Canada. Estimated based on data from CAVCO, CRTC, CBC/Radio-Canada, Association of Provincial Funding Agencies
[54] Ibid. Source: Association of Provincial Funding Agencies

How the National Content Ecosystem Supports Local Australian Content

4 How the National TV Ecosystem Supports Local Australian Content

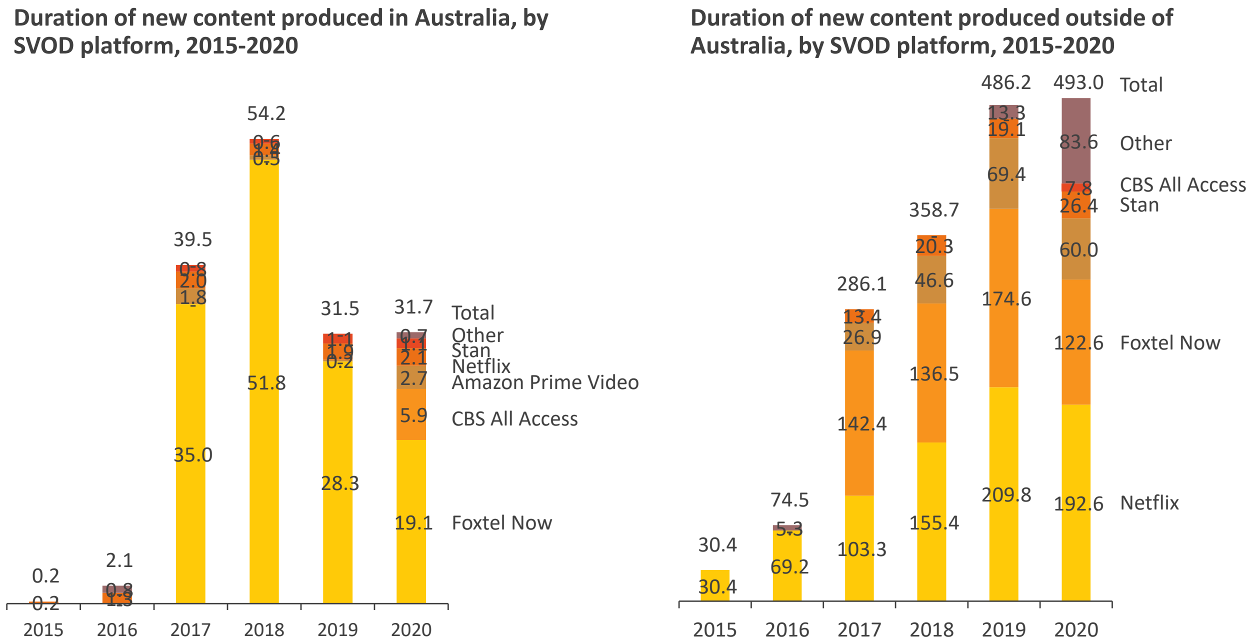
Having examined trends in the Australian TV market, we have seen where traditional players – who are responsible for the vast majority of Australian content – are under pressure. In this part, we look at the volume and nature of investment in original Australian content. We contrast investment by SVOD platforms, comparing global SVOD providers with their national SVOD competitors, and place this in the context of the volume and type of local content made available by the national broadcasters and the commercial FTA broadcasters. In the following part, we draw on these findings to test whether global SVOD service direct investment is really the best route to address the policy objective of genuinely local Australian content that reflects the diversity of Australian culture.

4.1 Volume of content investment by SVOD platforms

The economics of the global SVOD platforms are built on the fact that they can offer many of the same high budget programmes to audiences across a range of territories. As an English language market, global SVOD services have found Australians to be willing consumers of US and British content in particular. And, as SVOD services have grown in scale around the world, much of their expenditure on content has remained in the US. It is only relatively recently that global SVOD services have shown an interest in commissioning local content and expanding their focus beyond core scripted genres, such as drama. But this local commissioning typically remains insignificant relative to local broadcasters, and local content spending is more often focused on licensed content, rather than commissions.

Figure 11 shows the volume of new content, in terms of duration, available on SVOD services in Australia. Looking across both global and national SVOD platforms present in Australia, content mainly produced or financed in Australia totalled 70,900 minutes in 2016. This reached 373,200 minutes by 2020, however this growth is partly explained by the increase in the number of SVOD services available. If we look at the global SVOD providers Netflix and Amazon Prime Video, the share of new content coming from Australia only accounted for 1.1 per cent and 4.4 per cent of total new content on their Australian platforms respectively. The overall share of domestically produced titles is decreasing across all SVOD catalogues, with rapidly expanding catalogues increasingly filled with foreign-produced titles (overall, 96.6 per cent of titles were produced out of Australia in 2020, compared to 95.9 per cent in 2016).

Figure 11: Duration of new content produced in/out of Australia, by SVOD platform, 2015 to 2020 (mins, 000s)

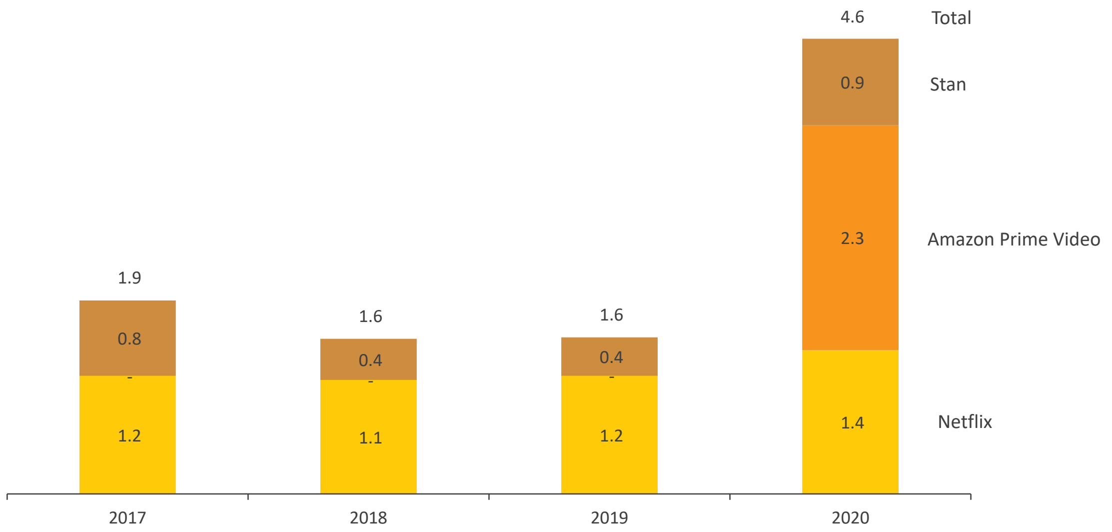


Source: Ampere Analysis, Oliver & Ohlbaum analysis

In **Figure 12** we can see that the amount of 'original'[55] content that was newly produced by SVODs spiked in 2020, as Amazon Prime Video expanded its efforts in domestic Australian programming, while Stan produced more than double the amount in comparison to 2018 as it focuses on local content as a differentiator. It is yet to be seen whether Amazon Prime Video will make longer-term efforts to cater for the Australian market or whether its sudden entrance coincided with the relatively successful handling of the pandemic in Australia allowing for more production of globally focused content to take place there, particularly given that the duration of original Australian content was fairly stable between 2017 and 2019.

[55] Original programming includes content that was funded, commissioned, produced, or exclusively acquired by a platform for Australia.

Figure 12: Duration of new original content produced in Australia, 2017 to 2020 (mins, 000s)



Source: Ampere Analysis, Oliver & Ohlbaum analysis

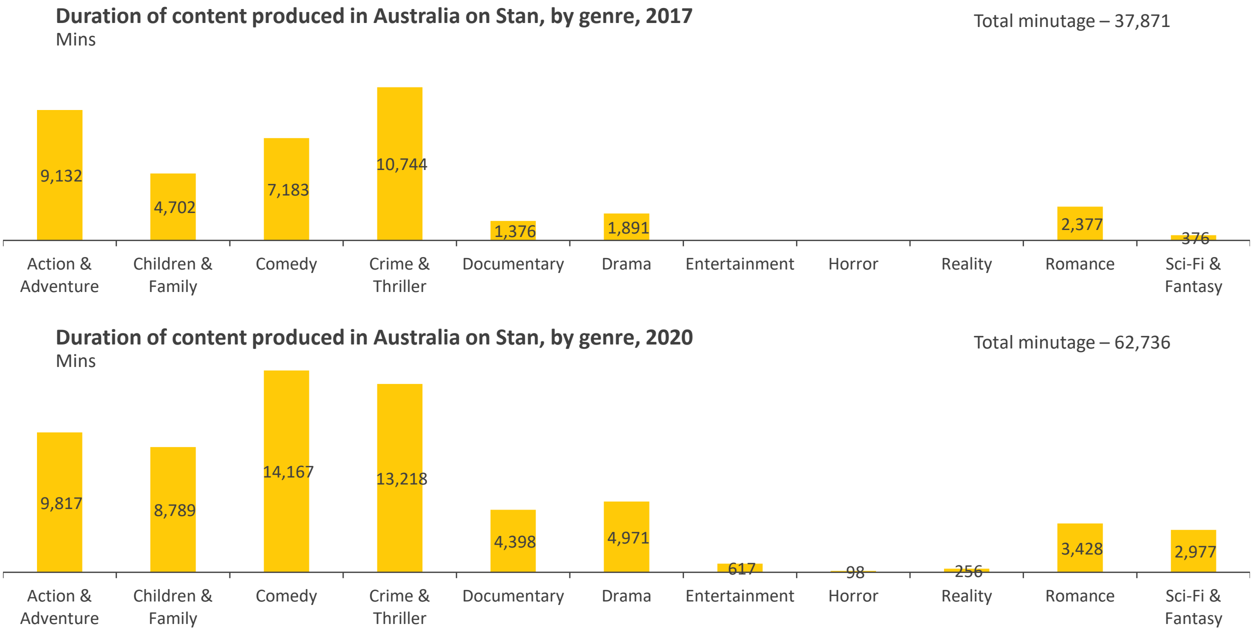
Having considered the overall volume of hours of new content offered by SVOD services in Australia, and how this breaks down by local and international content, it is useful to consider how the provision of Australian content by the SVOD services breaks down by genre and the approaches taken by different services. There are several considerations when assessing the Australian content offered by these services, in particular:

- **The level of investment in high-quality, high-budget genres, such as drama:** which could be important in providing new Australia-focused content in this sought-after genre
- **The extent to which they deliver genres which are most likely to reflect Australian life:** we heard from stakeholders that entertainment and reality programming are now core components of the broadcast schedule, reflecting Australian lives

We looked at the total catalogues (not just new content) of Stan and Foxtel Now, the largest two Australian VOD services, along with Netflix, to contrast the content mixes offered by Australian VOD services with those of the largest global service present in Australia. The objective was to consider their genre splits, with regard to Australian content – and thus their likely underlying strategy and use of Australian content.

Stan has focused more on genres that serve Australian audiences. **Figure 13** shows Stan increasing its focus on genres that serve Australian audiences and interests, doubling the amount of children's content, while also distinctly growing genres associated with higher production costs such as drama, sci-fi and crime. This has enabled the service to provide high-quality Australian-produced content to compete with global content carried by international VOD players.

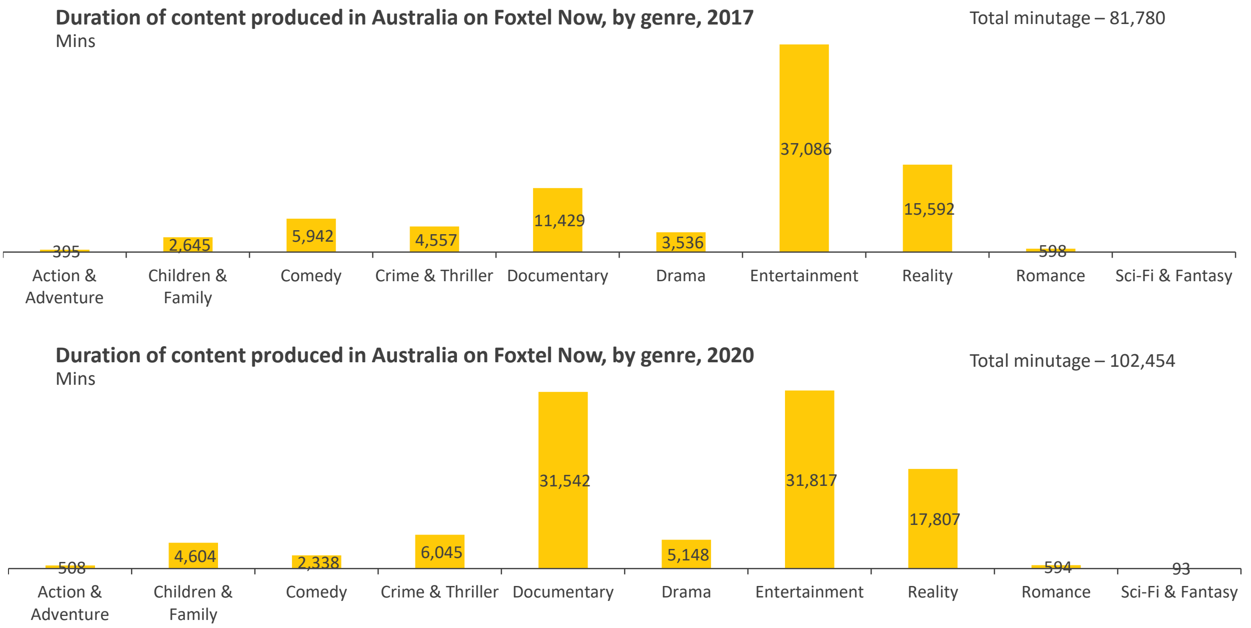
Figure 13: Duration of content produced in Australia, by genre, Stan, 2017 & 2020 (mins)



Source: Ampere Analysis, Oliver & Ohlbaum analysis

Foxtel Now has focused more on lower-cost genres, including entertaiment and reality content, as shown in **Figure 14**. These genres feature heavily on broadcast television and are well placed to closely reflect local interests, featuring local people and areas, and giving an insight into Australian life. Documentaries saw the largest rise in minutage, almost tripling between 2017 and 2020, with distinctly Australian shows such *as Aussie Salvage Squad*, *Aussie Gold Hunters* and *Outback Truckers*.

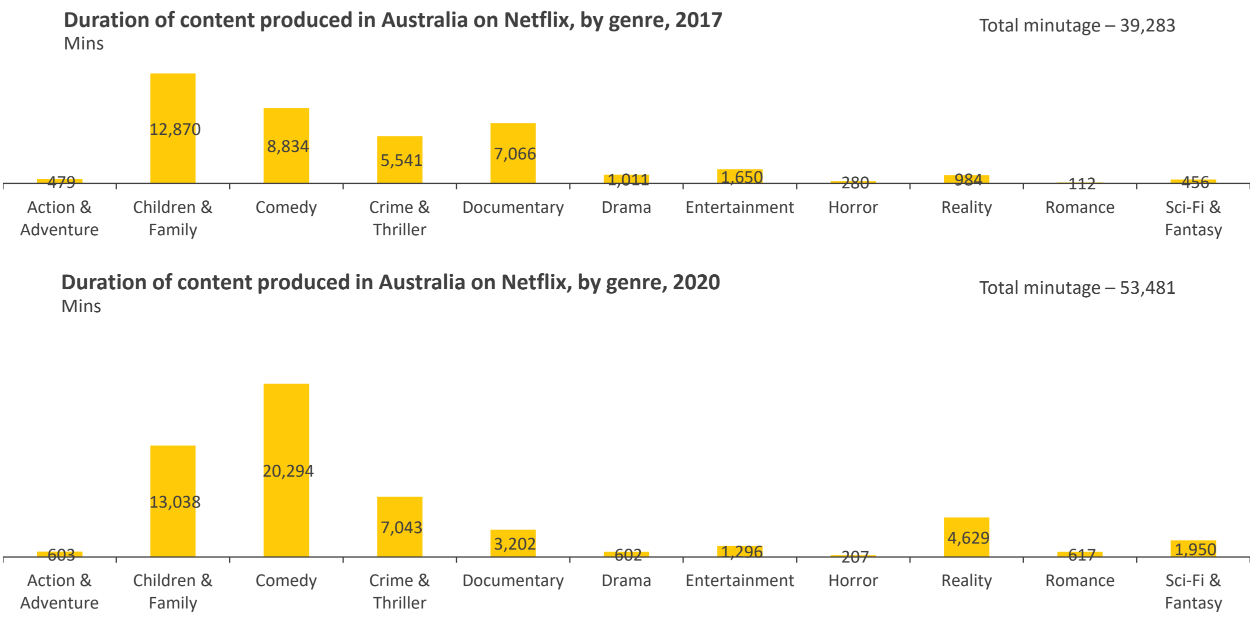
Figure 14: Duration of content produced in Australia, by genre, Foxtel Now, 2017 & 2020 (mins)



Source: Ampere Analysis, Oliver & Ohlbaum analysis

As shown in Figure 15, between 2017 and 2020, Netflix increased the total amount of Australian produced content in its catalogue – but less so than Stan and Foxtel Now. The increase is almost exclusively down to its growth in comedy. The platform has acquired a back catalogue of old content such as *Heartbreak High* (first released in in 1994) and *Offspring* (first released in 2010). This indicates that Neftlix may have taken a more low-cost route to carrying Australian content, focusing on older or proven programming and genres such as children's, which are more likely to offer global appeal than other genres that may more closely reflect Australian life.

Figure 15: Duration of content produced in Australia, by genre, Netflix, 2017 & 2020 (mins)



Source: Ampere Analysis, Oliver & Ohlbaum analysis

4.2 Levels of content investment by national and commercial FTA broadcasters

The role and levels of investment in Australian content by the national and the commercial FTA broadcasters is in marked contrast to SVOD providers, and particularly global SVODs.

Rooted in its public service remit, the ABC exists to provide "programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community". It is required to serve mass audiences with diversity of programming and programming of broad appeal, as well as specialist programming. This commitment is reflected in the investment the ABC makes in key genres including drama, scripted narrative content, documentaries and children's content. It is the largest single investor in Australian content. In the five years before COVID-19 disrupted Australian production, the ABC invested more than AUD 468 million in the independent sector on productions worth a total of AUD 971 million. This investment generated 1,477 commissioned hours. The content produced includes Australian drama, comedy, Indigenous, arts, factual and children's content.[56]

The commercial FTA broadcasters have regulatory settings under the Broadcasting Services Act to promote the overall availability of a diverse range of entertainment, education and information services to audiences throughout Australia, and to develop and reflect a sense of Australian identity, character and cultural diversity. They have a 55

[56] Australian stories – culture, identity and the importance of our cultural industries | About the ABC

per cent overall Australian content transmission quota, and a sub-quota for domestic drama, children's and documentary. Together, they invest approximately AUD 1.6 billion annually in Australian content. Australian content represented 85 per cent of commercial free-to-air broadcasters' total content spend in 2018/19.[57] In interviews we heard that news and current affairs, and family and entertainment programming, tend to be their most popular genre combinations for the early peak. After the early peak, we heard that it becomes difficult for broadcasters to compete with programming on SVODs – much of which has higher production values than commercial FTA broadcasters can offer as global SVODs can recover costs on a global basis. This challenge in attracting and retaining viewing in peak time impacts levels of broadcaster investment in these slots and in the genres, like drama, which normally occupy them and where they compete most directly with SVOD services.

If we contrast this with investment in new original Australian content by the main global SVOD service Netflix, it has produced under 5,000 minutes (since 2017) of programming and Amazon Prime has produced under 2,500 minutes (since 2020).

4.3 Nature of Australian content provided by SVOD platforms

In this section we look at the nature of Australian content from the global SVOD platforms – just how 'local' is it in reflecting the diversity of Australian culture on-screen?

This requires a subjective view, but we devised some simple assessment criteria to draw comparison between local content offered by Netflix in Australia, the UK, and Mexico. Netflix was the service of choice for this analysis because it is the most popular global SVOD in Australia as well as being the most well developed in other territories and having the most local commissioning of the global SVOD services. In particular, we considered:

- The choice of genre, format or tone
- Any changes to programmes commissioned by Netflix that had originally been commissioned by a broadcaster
- Netflix's business model and likely content strategy
- Other factors that can influence content strategy (e.g. PR)
- The balance of local content between commissions and acquisitions

The desire to serve Australian audiences is not enough to ensure content reflects Australian life and culture

The majority of Netflix commissioning for Australia has so far come out of LA or London. Netflix has recently opened an office in Australia with a local (ex-ABC) Director of Content, stating the 'entire remit is to please [Netflix's] Australian members', and that if a Netflix Australia show 'does really well overseas but it doesn't do well in Australia, we failed'.[58] This is an interesting acknowledgement of the importance of serving Australian content to Australians, but such content need not necessarily reflect Australian culture and values – it can have a global focus and still appeal to Australians.

This does not mean that Netflix is uninterested in Australian content that does not perform well in Australia – it may simply not make such content available in Australia. In fact, there is more Australian content in the US Netflix catalogue than the Australian catalogue. One example is that Netflix stepped in to co-commission another season of acquired show *Zumbo's Just Desserts* because it was popular internationally, while Channel Seven had initially cancelled it in Australia due to low ratings.

---

[57] Free TV submission, Supporting Australian Stories on our Screens, June 2020
[58] ABC - https://www.abc.net.au/news/2021-04-20/how-netflix-may-benefit-from-byron-baes-opposition/100080662

Local content need not reflect local culture

In countries where Netflix has increased local commissioning, this has not necessarily led to a significant increase in content that is truly reflective of local culture – with rights for originations usually being global, it is a well-known fact that Netflix and other global commissioners have an eye on how well local content travels. In the UK, for example, Netflix has invested heavily, spending USD 1 billion on British films and TV in 2020. But Minister for Media and Data John Whittingdale acknowledged the SVODs' focus on global appeal: 'the fact that *Sex Education*… is set in Wales and made in Wales but does not obviously appear to be a school in Wales, is just a function of that'.[59]

There are several high-profile examples of this from the UK. Enders Analysis compared local UK broadcaster commissioned programmes to those made for global SVOD, in terms of the number of British terms, 'culturally-loaded references to objects, people or places', and idioms (chosen as quantifiable, and easy to reduce if the intended audience of a programme is worldwide, rather than merely local). It found that British-produced programmes commissioned by the streamers have comparatively fewer British touchpoints than similar shows commissioned by local broadcasters; some shows may have familiar accents, actors and locations but have scripts that could be used almost anywhere, even when the screenwriter has written other works that are closely tied to their location.[60]

Local strands may see their identity adjusted for global audiences

Black Mirror was originated by UK PSB, Channel 4, and later picked up by Netflix from its third season. Though it is essentially set in an alternate reality, early seasons were identifiably British both in setting and content themes; this changed for the seasons commissioned by Netflix. For example, while early seasons primarily displayed British talent, later seasons have seen local actors joined by major US stars such as Anthony Mackie, Bryce Dallas Howard and Miley Cyrus. While the early seasons were produced in the UK, filming locations for Netflix have expanded to include Brazil, Iceland, Canada and Spain – for settings that are often US or US-inspired – as the show has become increasingly international. Producers have even commented on the perception that the show has been 'Americanised' following the move to Netflix, recognising the shift towards serving a global audience.[61]

National events can be portrayed though an international lens to broaden appeal

Even *The Crown,* a Netflix original that tells an unmistakably British story is aimed more at a global audience (reflected in its huge budget of a reported USD 6.5m per hour).[62] This type of content takes an internationally recognisable form of 'Britishness' rather than one that is necessarily relatable for local audiences. *The Crown* also frames its characters through internationalised storylines, for example including the space race and US President Kennedy.

'Local' content may be inspired by established formats which can be sold internationally

As regards formats produced locally, we considered the upcoming Netflix series *Byron Baes*, which takes a proven reality format and a local but internationally recognisable and attractive setting.

This has also been seen in Netflix's past attempts at Australian originals. Cunningham and Scarlata, in their paper on the impact of Netflix in Australia, note that shows such as *Tidelands* have been less well received by local audiences

---

[59] iNews - https://inews.co.uk/culture/line-of-duty-russell-t-davies-armando-iannucci-tv-britishness-905723

[60] Enders Analysis, 'Outsourcing culture: When British shows aren't 'British', 7 March 2021

[61] Radio Times - https://www.radiotimes.com/tv/sci-fi/black-mirror-season-3-on-netflix-full-episode-guide/

[62] The Guardian - https://www.theguardian.com/tv-and-radio/2019/nov/16/from-the-crown-to-game-of-thrones-whats-the-most-expensive-tv-show-ever

than Stan's originals which have been 'reviewed as familiar extensions of well-understood local genres and routines of representation'.[63]

Exceptions can serve other purposes – and are not representative of most local content

It is possible to make programming that reflects local culture while retaining international appeal. Netflix original film *Roma* focuses on a Mexican story by a local writer/director, with a local cast and location. The film was a global success, winning critical acclaim and numerous awards. However, while this is an example of local content with local flavour, it can also be seen as part of a broader strategy to win awards and prestige in the film industry. Its director Alfonso Cuarón was already an internationally esteemed talent, and Netflix also invested large amounts in marketing the movie (reportedly USD 25-50 million) – it even received a limited theatrical release in a departure from Netflix's usual SVOD-exclusive distribution strategy to be eligible for certain awards.[64] Another Mexican original *I'm No Longer Here*, was similarly positioned by Netflix, screening at several international film festivals. However, these are not representative of most local items offered and are a tiny fraction of the local content offer, let alone the wider catalogue.

The volume of hours of local content is only part of the story

Lastly, we have considered the balance of investment in originations and acquisitions. 86 per cent of the Australian content in Netflix Australia's catalogue in 2020 was acquired.[65] This is usually cheaper than investing in originations, allowing SVOD services to bulk out their local catalogues without taking on the risk of commissioning. A larger proportion of the Australian programming in the Australian Netflix catalogue is acquired than that of the UK Netflix catalogue. This might suggest that some of this content acts as local 'filler' in the domestic market.

Our last observation is that, as can be seen from Section 4.1 above, global SVOD services do not invest in the depth and breadth of genres that national and commercial broadcasters do. This is legitimate of course and derives from their fundamentally different purposes and business models.

[63] Stuart Cunningham and Alexa Scarlata, New Forms of Internationalisation? The Impact of Netflix in Australia, Media International Australia 2020

[64] LA Times - https://www.latimes.com/entertainment-arts/movies/story/2019-08-27/netflix-fall-festivals-awards-season-irishman-marriage-story

[65] Ampere Analysis data, Oliver & Ohlbaum analysis

What Next for Australian TV Regulation?

5 What Next for Australian TV Regulation?

In this section we consider the policy objectives in the Government's Media Reform Green Paper, against which we consider the international policy approaches to regulating global SVOD services. We will also consider the challenges identified in the TV market, meaning the issues that any policy approach needs to address and the potential unintended consequences that it should avoid or mitigate.

5.1 Policy objectives

Following the 'Australian and Children's Screen Content Review' and 'Supporting Australian Stories on our Screens' options paper, Government has updated some regulatory settings for broadcasters and introduced voluntary requirements for SVODs to report on Australian content expenditure and availability from January 2021. As the next part of its staged process to review media regulation, Government is now considering whether further changes are necessary to ensure the sustainability of the television sector and the availability of Australian stories on local television screens in the new media environment.

In particular, the Green Paper frames the policy objective as to 'protect and promote Australian content and ensure that Australians are able to view programs that enhance their understanding and experience of our national culture across all media platforms'. It notes the key role played by the national broadcasters and commercial FTA broadcasters in telling Australian stories, and that they currently carry the regulatory burden.

Our analysis of Australian market trends confirms that the national and commercial FTA broadcasters are best placed to drive investment in genuinely local content that reflects Australian culture, across a breadth and depth of genres, and to make it universally available to all Australians. This flows from their content remit, funding and distribution models.

In contrast, global SVOD investment (and that of potential future AVOD services) is destined to serve both a local and a global audience, where 'rest of world' success is more important than Australian. Their business models are legitimate but different – they operate in the wider 'ecosystems' of their respective online digital platforms and are affected by competitive factors that have little to do with the production of Australian-originated new content.

Our analysis also shows that national and commercial FTA broadcasters are under increased competitive pressure. We agree that this trend coincides with the arrival of global SVOD in the market from 2015 and the rise of digital platforms, which compete in the advertising market. However, we suggest that this may be exacerbated by other trends in the TV market:

- An under-supply of contributors, crew and facilities linked to growing global production and service provision
- Increased production costs for genres where Australian broadcasters and SVODs are both active, but spreading to other genres due to an overall lack of production resources
- Possible difficulties for Australian co-commissioners working with SVODs to negotiate an exclusive primary window within Australia, or for producers to access IP

The above objectives and challenges provide us with the factors that the policy options to be examined need to address and mitigate, or avoid worsening.

5.2 Policy options and considerations

In addition to the voluntary requirement for SVODs to report on Australian content expenditure and availability from January 2021, the current Green Paper proposes to amend the Broadcasting Services Act 1992 to provide for a 'formal expectation' of direct investment by eligible SVOD and AVOD providers with the option to contribute to a new content fund instead, plus discoverability requirements to promote consumption of the resulting content. Formal requirements could be imposed in the case of non-compliance.

In Part 2 of this report we looked at lessons from other jurisdictions on the design and implementation of policy and regulation to promote local content investment. Drawing on those case studies, plus our analysis of the Australian market and policy objectives around local content investment, we will now set out some considerations around future policy tools in Australia. As a reminder, we have considered the following models and international examples:

Policy Model for Promoting Local Content	Jurisdictions Considered
Quota on share of local content	EU, Mexico
Direct investment	France, Italy, Canada
Indirect investment (levy and fund)	France, Germany, Canada
'Discoverability' or prominence	EU, UK, Germany
Low direct SVOD regulation	UK

All models raise two risks in the Australian market. Firstly, given the relatively small size of the market, increasing global SVOD spend through regulation could worsen the reported problems of cost inflation and overstretched production resources. Secondly, global SVOD productions and commissions are unlikely to reflect Australian cultural diversity in the way that content from the national and commercial FTA broadcasters does. It is also unlikely to cover a comparable depth and breadth of genres or significant volumes or spend. We would make the following additional observations about the different policy models:

- **Quota on share of local content**: This targets how much local content is made available in a channel schedule or a VOD catalogue (an 'exhibition requirement'). It is most relevant if the policy concern is that certain audience segments using AVODs/SVODs are not sufficiently exposed to local content overall, measured by quantity not quality, but it assumes that there is adequate supply in the market. By increasing demand from SVOD/AVOD providers to meet the quota, it may indirectly support local content. However, it does not directly target investment in new original content, and could be met through lower-quality 'filler'. While some jurisdictions add sub-quotas for works from producers independent of the SVOD service or for recent works, these continue to target volume, not spend. It is also important to consider the size and ability of the local market to respond to a quota (or certain level), and the impact on the rest of industry through possible cost inflation. In this case, inflation could affect acquisitions and BVOD ability to meet audience expectations for box sets or past episodes of returning series

- **Direct investment**: As an 'expenditure requirement' this does directly target spend by the SVOD/AVOD service. It is for inclusion in its own catalogue, so the SVOD/AVOD can tailor the content to its own business model and specialisms. Depending on the design, the content investment may be in productions, co-productions or acquisitions. However, considering the distinct role of SVOD in the Australian market, it is not clear that this measure would result in a significant proportion of new investment in high-quality and culturally specific Australian content. The total global audience potential will always be more important. Unless there were sub-requirements or incentives on global SVOD/AVOD providers to co-produce with Australian national or commercial FTA broadcasters (given their specialism in culturally relevant content) and commission from Australian producers, this would also fail to increase access to IP in Australia, which is essential for the future growth and sustainability of the sector. Again, such an obligation (or its level) could exacerbate existing market weaknesses with cost inflation and limited production resources

- **Indirect investment**: An obligation applied to SVODs/AVODs through a levy for a central fund that may also receive public funding would also target spend by those services. However, unlike a direct investment obligation, it would allow an independent body to pool and then target the investment at proposed productions according to Australian local content criteria and identify gaps in overall market performance against the public policy goals (e.g. for certain genres or audience segments). Reach and consumption, including universal availability, for the funded content may be secured through rules on eligible distributers. Taking broad inspiration from the Canadian model, a fund can also be a means to support performance against quotas for regulated broadcasters where this is otherwise under pressure due to falling revenues. This model secures access to IP by funding national producers with national distributers attached, while permitting international co-productions including with SVOD/AVOD partners. International comparators suggest that careful design is needed, notably to minimise administrative costs for the fund and applicants, ensure the fund is aligned with public policy goals, as far as possible avoid replacing investment that would have happened anyway, and rule out diverting any funds from the national and commercial FTA broadcasters.

- **Discoverability or prominence**: This comes in two forms:

    - Prominence of channels or players that deliver high-quality local content, notably national broadcasters because of their remit and public funding model, and commercial broadcasters that for example meet criteria showing the overall public value of the service

    - Discoverability of local content in SVOD/AVOD catalogues

We consider that the first type is especially important as it underpins a virtuous circle of reach, consumption, and investment. It may also act as an important regulatory benefit to balance obligations around local content, where the equation is shifting over time as market and technology developments affect revenues and production costs. We also note the UK's finding that the commercial incentives of TV platforms to accord prominence on a global basis may conflict with national public policy aims around delivering the benefits of PSB and commercial FTA local content. It may be appropriate to establish the principle[66]regulated services and beneficiaries in legislation, with further detail and options for complying in a Code or Guidelines to allow for different user interfaces and any necessary adjustments as the market develops.

We have also considered different ways to structure global SVOD regulation, where it exists. We noted the Canadian and French examples of an independent body (such as the national regulatory authority) reaching tailored agreements with major SVOD and AVOD providers to, for example:

- Clarify the basis of their investment contribution (especially for those established abroad)
- Consider their existing contribution to local content against the defined policy objectives
- Agree the level of their additional contribution obligations (where the legislation provides ranges)
- Take account of their negotiated agreements with local co-commissioners or producers, such as access to IP or windowing exclusivity
- Agree measurement and reporting criteria

[66] Ofcom, Future of Public Service Media', December 2020

- Allow for iteration over time, according to the regulator's assessment of the SVOD/AVOD providers' impact, overall market trends and consumer outcomes against the defined public policy goals

In conclusion, we have highlighted the policy option of prominence as especially relevant to enable broadcasters to effectively compete in an increasingly connected environment and deliver the public policy objectives around local content provision. This relates to national broadcaster and qualifying commercial FTA broadcaster channels and BVOD on TV platform user interfaces.

We have set out the risks for the Australian market associated with potential SVOD and AVOD regulation around local content provision, notably cost inflation and undersupply in production. If a model is chosen, as noted, careful design would be necessary to minimise administrative costs or replacing investment that would have happened anyway, and to ensure there are no unintended consequences arising from new regulation.

This includes avoiding unintended consequences for the national and commercial FTA broadcasters, which are the foundation of the Australian content ecosystem. Global SVODs/AVODs make their own valuable contribution to consumer choice and sector growth but they are fundamentally different – they add additional creative opportunities in particular genres, especially to established talent or as service provision, and an additional route to global audiences for proven content and formats.

We would also recognise broader aspects of a well-functioning content ecosystem, which policy makers will want to bear in mind but which are beyond the scope of this report, such as the national broadcaster regime, export support, and the skills and talent pipeline. It may also be appropriate to review the flow of public funding in the system overall, to ensure that all tools are complementary (we have not examined this so purely by way of example, the impact of location offsets – which don't have a cultural test – on Government's local content policy objectives). Regulatory action to support a domestic industry of size and scale may help to reduce the risk of the sector 'over heating' from influxes of global production as well as encouraging inward investors to commit to Australia for the long term.