

**OPTU5G**

Submission in response to  
ACMA – Screen Australia  
Options Paper:

Supporting Australian Stories  
on Our Screens

Public Version

June 2020

## INTRODUCTION

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1. Optus appreciates the opportunity to respond to the consultation about reforming the set of Government interventions in the Australian content production and related markets, as set out in the 'Supporting Australian stories on our screens' Options Paper March 2020 ("the Options Paper").
2. The Options Paper provides a solid base of information, analysis, and an indicative set of options which are well structured to stimulate debate about the best pathway for regulatory reform. Optus agrees that the current regulatory model is no longer fit for purpose and supports a recalibration of Government intervention to be more effective and efficient, while recognising and promoting the cultural significance of Australian produced drama and scripted content.

### **Optus' position in the Australian content market**

3. Optus is a national provider of content services to the public in Australia, including services delivered via subscription TV, internet streaming, mobile applications and satellite delivery technology.
4. Optus' content services provide the Australian public with access to a range of premium sports and entertainment content, including Optus Sport (which provides live and on-demand coverage of international football properties such as Premier League, UEFA Champions League and J.League), Apple Music, and the Fetch and Optus TV featuring Foxtel subscription television services.
5. Optus holds subscription television licences under the Broadcasting Services Act ("the Act") for its broadcast of the Optus Sport channels via satellite television and its broadcast of the Optus TV featuring Foxtel service. In terms of the description provided by the Options paper of the existing regulatory frameworks, Optus provides its content in both the regulated subscription television segment, and the lesser regulated content segment using over the top applications to serve content.

### **Content service and carriage service investments**

6. Optus' comments come from its dual perspective of a carriage service provider and a content provider. Optus has made substantial investments in the rights to distribute premium international sporting content. The "production location" of most of its sporting content, especially live sporting events, is dictated by the home location of the international competitions. Even when those competitions are located overseas however, Optus often localises that content by sending Australian journalists and/or camera crews to provide an Australian angle, and regularly provides full studio production hostings in Australia for events which are played overseas
7. Optus' commercial model as a content provider primarily involves investment in sporting content rights, local production and application development. Where relevant and practical Optus produces highlights, analysis and opinion programming relating to its sporting content properties in its own studios in Australia. It also produces its own clip packages and news reports relating to its sporting content properties.
8. Optus has invested significantly in its development of the bespoke streaming application for Optus Sport which is available on a wide range of platforms, including mobile, tablet, Apple TV, Android TV, Chromecast, Amazon Fire and Xbox. There are currently over 800,000 active subscribers for the Optus Sport service.

9. Optus also has a number of commercial arrangements for the resale of third-party content services, including Fetch and Optus TV featuring Foxtel. Optus does not have any involvement in the production of content for those services (other than Optus Sport, which is distributed via the Fetch service) and simply resells the content services to its own customers.
10. Notably, Optus is also a significant investor in the telecommunications carriage service networks which are used to deliver the content services to Australian consumers. This places Optus in a different position to most content providers, producers and distributors in Australia, and substantially differentiates its position from 'over the top' digital platforms.
11. Optus owns and operates Australia's premier satellite fleet, which is used to provide broadcast capabilities for both subscription and free to air television services. Optus continues to invest in new satellite infrastructure to expand the technical capability and flexibility of its satellite services, and the capacity they provide to the Australian community for the distribution of content services and other communications services.
12. Optus owns, operates and continues to invest significant capital each year in its national mobile network, which is critical national infrastructure for Australia. It brings fast, reliable and high-quality mobile coverage to urban, regional and remote Australia. The mobile network provides 4G coverage in areas where more than 97% of the Australian population resides, and Optus is currently pursuing an aggressive investment schedule in 5G capability.

### **The principles guiding regulatory reform**

13. The discussion paper sets out three principles which have guided the development of the policy options brought forward for consultation. Optus acknowledges and supports the principles outlined in the paper:
  - (a) Australian screen stories are important culturally and economically
  - (b) Our stories should be available on the screens we watch
  - (c) Regulation and incentives should be fit for purpose, effective and efficient
14. Consistent with this third broad principle, Optus recognises the merit of regulatory policy settings which embrace the objective of platform neutrality, and which are fine-tuned to the nuances and practical realities of the production and delivery methods available to differing content categories.
15. As set out above, Optus currently provides the Australian community with access to the same or similar content using different carriage and platform technologies, which are differentially regulated. We are well placed to observe the potential efficiency benefits of flattening out some of these regulatory distinctions which have grown somewhat arbitrarily over time.
16. This perspective is consistent with Government statements about its reform agenda as set out in its response to the ACCC's Digital Platforms Inquiry:

*"The government will commence a staged process to reform media regulation towards an end state of a platform-neutral regulatory framework covering both online and offline delivery of media content to Australian consumers."*
17. Optus also provides carriage services in the heavily regulated telecommunications market and offers its content services in combination with these carriage services. It is also notable that time, technological change, market dynamics and customer choices have evolved to the extent that a number of aspects of the telecommunications

regulatory framework are no longer relevant or exhibit undesirable efficiency implications. This puts providers such as Optus in a differentiated regulatory position, straddling different regulatory paradigms, compared to both over the top digital platforms and broadcast and subscription content providers.

### **Differing content categories**

18. It has been a feature of the existing regulatory frameworks to identify and treat differently certain content categories. These includes children's content, drama, adult content, news, advertising and sport.
19. The current legislative framework, including the co-regulatory arrangements under the Broadcast Services Act and Industry Codes, enshrine and articulate some of the differential treatment afforded to the different content categories. The Options paper canvasses some of these differences, and they extend from content classification requirements, through to regulated viewing hours, advertising prohibitions, and the Australian content production rules which are the primary focus of this current consultation.
20. Policy consideration of the content classification arrangements is in train. In that context Optus supports the preservation of the differentiated treatment of the content categories of news and sport.
21. Optus also supports the preservation of this distinction into the policy reform considerations about Australian content regulation. That is, content services or channels which are dedicated, in whole or major part, to the supply of news or sporting content to Australian consumers should not be subject to Australian production regulation in which ever final form emerges from the current policy deliberation. The large proportion of live programming in news and sports content services distinguishes these genres from other content categories and warrants exclusion from Australian production regulation.
22. As set out above, Australian consumers exercise their choice to view and support sporting competitions from different parts of the world and it is not possible or practical for Optus or other sports content providers to intervene and seek to change the geographic locations from which that content is generated, nor should participation in this content category trigger requirements to cross subsidise or participate in other content categories.

End.