

**Submission by Story Box Library Pty Limited to the
Inquiry into the Competitive Neutrality of the National Broadcasters**

Background

I'm the founder of a small business, Story Box Library that brings the joy of reading to Australian kids through short videos. We are an Australian success story.

I founded Story Box Library almost six years ago when I was volunteering in my daughter's classroom. There, I was inspired to create a platform tailored for Australian audiences: Australian stories, read by Australian personalities, all for the benefit of Australian kids so that they can learn our stories and appreciate Australian talent.

I'm a qualified teacher and a mother. The joy of reading to my children is immense, but research shows that Australian kids don't have enough stories read to them aloud. With technology, we're changing that. Story Box Library provides videos of beloved Australian celebrities, including Nick Cave, Missy Higgins, Shane Jacobson, Kate Richie, Eddie Perfect and Jane Kennedy, reading books aloud along with images and sound effects that bring the stories to life.

We have the support and respect of industry peers and have recently been successful in our grant application to the Australia Council for the Arts to fund '**Story Box Library presents Indigenous Story time**'. The project aims to film and release 20 Australian children's picture books written, illustrated and read by Indigenous Australians. We are simultaneously producing a short film alongside our usual filming of the stories being read. The short film will explore what role 'story' plays in the lives of our Storytellers.

So far, we've seen real success: over 7,000 Australian schools, public libraries and community organisations subscribe to Story Box Library. That means tens of thousands of kids can have over 190 different books read to them on demand, even if their parents aren't around. Aside from being able to access Story Box Library for free through your local library, we also offer discounts and free subscriptions to low socio-economic and remote schools. Our aim is to ensure that everyone can enjoy Story Box Library.

Unfortunately, over the last year, our growth and success has been unfairly threatened by the ABC, who have decided to replicate our format as part of their own programming.

Question 8

Considering the commercial activities of the national broadcasters (e.g. where they are selling or purchasing goods and services), is there evidence that they have taken undue advantage of their government ownership, to the detriment of competitive outcomes?

Given the significant time, money and passion I have invested in developing Story Box Library, I was deeply disappointed to learn that the Australian Broadcasting Commission (ABC) has produced and distributed a series of videos titled "*Play School Story Time*", episodes of which can be viewed on YouTube via the "ABC KIDS" channel and iView.

The ABC appears to have knowingly and deliberately copied our format, resulting in a video series that clearly and deceptively mimics our concept whilst passing it off as original programming. We are aware that Play School has always had a story telling segment featured in the show, but to create a series of individual stories read by well-known personalities is a change in direction. I believe that change in direction has been directly influenced by the commercial success and reputation of Story Box Library.

Specifically, following the success of Story Box Library in the market for children's content, the ABC began producing new, different storytelling episodes that reproduce the same key elements as Story Box Library, including:

- Famous personalities reading the stories, no longer simply Play School presenters;
- Editing between the storyteller and illustrations from the storybook, no longer the Play School presenter simply holding up the book;
- Similar stop motion animated opening credits; and
- A similar duration for each episode.

It is a fact that the ABC has been aware of Story Box Library since at least July 2015.

██████████, who was a children's television Series Producer at the ABC, initiated contact with us in 2015. The ABC's dealings with Story Box Library evolved as follows:

- 31st July 2015 – Initial email contact from ██████████, Children's Television Series Producer at ABC – *"Thank you so much for recommending Mr Huff - we are producing a mental health special at the ABC and will get one of our Play School presenters to read this live on the show. Your website is a fantastic resource"*.
- 6th Aug 2015 – I emailed ██████████ to thank her, offer a complimentary subscription and expressed a genuine interest in working with the ABC stating, *"if the ABC is open to collaboration, I would be more than happy to discuss possibilities"*.
- 14th Aug 2015 – ██████████ responds via email requesting a subscription to enable her to access Story Box Library content. ██████████ also stated *"Let's keep in touch re future projects"*.
- October 2015 – Mental Health Awareness Week *Mr Huff* screens on ABC TV
- November 2015 – Email from ██████████ asking if we had seen the screening of *Mr Huff*, stating that Story Box Library is, *"an amazing resource for us"*.
- April 2016 - Story Box Library releases 100th story – Kate Ritchie reading May Gibbs Gumnut Babies (also 100th year anniversary)
- July 2016 – Play School 50th Anniversary episode is screened (Produced by ██████████
██████████)
 - Kate Ritchie presents *Big Ted's Excellent Adventure*
 - Play School introduces *Celebrity Covers*. *"The mini episodes feature a star-studded line up of popular Australian personalities turning their hand at being a Play School presenter, entertaining viewers with a familiar Play School song or story"*

- Missy Higgins is one of the presenters, and wears the same outfit she wore whilst reading for Story Box Library in 2014!

Given [REDACTED]'s direct awareness of Story Box Library, her senior position within the ABC at the time, and her access to Story Box Library's subscription service, it appears highly likely that the development team for *Play School Story Time* would have been well acquainted with Story Box Library and very familiar with our format.

I was severely disappointed when the ABC chose to ignore this opportunity to work collaboratively with us in favour of replicating our format for the ABC's sole benefit.

We have clearly suffered loss and damage as a result of the actions detailed above, including the licence fee that we would have required had we authorised the reproduction of our format, the opportunity to collaborate with the ABC and the diminished value Story Box Library has in the marketplace.

Additionally, we have valuable licensing arrangements in place with the majority of Australian publishers, and the above conduct has begun to interfere with these commercial relationships and diminish the strength and value of these arrangements and, more generally, our intellectual property.

Given the above, I am deeply frustrated and disappointed that the ABC – being a vast, highly resourced government-funded agency that is established and substantially supported to produce original content – has chosen to cannibalise our work, rather than working to produce its own, original formats, or collaborating with us. My frustration at the ABC's decision is exacerbated by the ABC's promoted reputation as an organisation that values integrity, originality and the value of Australian creative endeavour. I believe that each of these values is directly undermined by the ABC's activities in this matter.

As a small business owner and independent Producer, I have come to expect competition. However, free content paid for by public monies and offered by an acclaimed, established and otherwise reputable brand is hardly fair competition. ABC leveraging another, much smaller and much more fragile start-up's innovation and foresight stands in contrast to the express words of the ABC Charter which in relevant part reads:

(2) In the provision by the Corporation of its broadcasting services within Australia:

(a) *the Corporation shall take account of:*

the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system;

We maintain that the ABC has failed to comply with its charter obligations in this instance. Alternatively, in the instance that the ABC's conduct falls within its charter obligations, those obligations are manifestly inadequate to ensure and uphold the principles of competitive neutrality.

Question 9

What is the differential impact of regulation on commercial and national broadcasters, and is there evidence of consequent adverse impacts on competition and outcomes?

No response.

Question 10

Is the reporting and accountability by the national broadcasters on their best endeavours to observe competitive neutrality adequate?

No. Despite contacting the ABC in relation to my concerns they have failed to resolve this issue or take accountability for their actions. Absent any effective reporting or external monitoring process, I believe the ABC's unfair conduct is likely to continue, and commercial entities (particularly smaller ones in the digital space) are likely to suffer.

Question 11

Are you aware of any specific instances where the ABC or SBS may have received any other competitive advantage, due to their public ownership, to the detriment of a private competitor?

Yes. We believe the ABC has been able to take advantage of its public ownership to the detriment of private competitors, including Story Box Library, as a direct result of the market power and public funding that the ABC enjoys. Examples of such unfair competition are detailed below. In particular, I believe that the ABC's unpaid distribution of content on various platforms, the ABC's recurring use of contracted ABC talent as hosts in producing content for Playschool Story Time, and the potential impact of ABC cost pricing, licensing and rights management practices on the ABC's ability to produce content for Playschool Story Time are all highly relevant to the matters to be considered by this Inquiry.

1. ABC Advertising

Story Box Library is a start-up and as a result, clearly does not have the budget, opportunity and ability to market in the same way that ABC Kids was able to use to its advantage from the start of its development of Playschool Story Time. Furthermore, no other brand is permitted to advertise on the ABC, so ABC Kids had a vast promotional advantage as a direct consequence of government ownership.

ABC Kids launched with television advertising on ABC2, pre-roll and banner advertisements on iView and banner advertisements on ABC Online. All of these channels and advertisements are funded by public resources, which a commercial entity like Story Box Library does not receive. The ABC has only been able to develop these platforms by using government funding, and the resources they have established over decades as a government subsidised broadcaster.

Moreover, even if Story Box Library wanted to advertise its services on these channels, it would be unable to do so given the operation of the ABC Charter and governing rules. In this, as a direct result of government funding and legislation, the ABC controls a significant share of the Australian children's entertainment market, and is able to exclude commercial competitors from advertising on its platforms and mediums. Story Box Library simply cannot access the same government-funded monopoly.

Equally, when it features its content on commercial platforms such as YouTube, the ABC is able to feature its content on an unpaid basis, without the support of paid ads. This is because the ABC receives government funding, and can justify relationships with

platforms that do not return a direct commercial benefit. Conversely, as a commercial entity, Story Box Library cannot distribute its content on an unpaid basis, and therefore operates on a paid membership basis, using a paywall to control access to its content. Whilst this ensures that our content is protected, and is only accessible in commercially viable fashion, it means that we cannot reach the same number of users as we would if we were able to post our content for free on platforms such as iView or YouTube. Of the broadcasters and producers that Story Box Library competes with, only ABC enjoys the benefit of being able to produce and distribute content without commercial return.

2. Arrangements with literary publishers

Publishers have told Story Box Library that the ABC has approached them and requested licenses for many of the titles that Story Box Library already showcases.

In this, given the unusual size, power and level of control that the ABC exercises in the Australian television, entertainment and education market (particularly in relation to children's content), it holds a significant advantage in its negotiations with literary agents and publishers. The ABC provides numerous significant (government funded) potential funding and revue opportunities for publishers, creating a perverse incentive and pressure for publishers to prioritise their relationship with the ABC over commercial entities like Story Box Library. Equally, given the ABC's significant historical activities in the area, the ABC already controls a substantial amount of licences and intellectual property rights in relation to Australian literary works, which allow it to extend or apply those rights to new projects. The ABC has been able to use the market power and funding provided to it by successive governments to be able to request and control a broad range of rights in relation to the projects it participates in (whether from a development, production, distribution or licensing perspective), and it is able to use these existing rights in a way that would not be required of a commercial producer such as Story Box Library, who usually negotiate in relation to a far more narrow and prescribed category of rights and usage. As referenced above, these opportunities are only available to the ABC due to their access to significant government funding and support. This level of market dominance provides the ABC with unusual power in negotiations that commercial entities such as Story Box Library do not possess.

As an example of this licensing practice, we are lead to believe that the ABC have appeared to house their requests for copyright under the perception that the stories were to be used on a one off Playschool episode – rather than stand alone “Story Time” episodes. Playschool is an incredibly desired platform for published books to be read on, so the publishers are willing to concede to the vast majority of the ABC's requests. I understand that it has been a shock for some publishers to learn that iView clips are available for public viewing for 7 years (!) and can be shared freely on social media platforms.

On the other hand, Story Box Library's copyright agreements with publishers are limited to 12-months only and require us to ensure that only subscribers can access the stories. Unlike the ABC, we do not have access to a significant “warehouse” of existing licences, the same publicly funded administrative staff (i.e. in relation to legal advice and accounting), established recording or production facilities or distribution networks. In the event we wish to engage in such activities, we have to consider each such expense on a commercial basis, and invest our own money and resources in that activity.

3. Arrangements with Storytellers

The vast majority of the Storytellers that feature on Playschool Story Time are either ABC personalities or have been engaged to work on other ABC productions. Leigh Sales, Kumi Taguchi and Kat Stewart are examples of this. By utilising contracted ABC talent for unrelated projects like “Playschool Story Time”, the ABC is able to avoid or minimise costs that commercial producers and distributors like Story Box Library are forced to incur in their everyday commercial activities. In this instance, the ABC is able to minimise or avoid the cost of hiring talent by deploying existing contracted ABC talent from their standard activities at the ABC to new, separate projects like “Playschool Story Time”. Conversely, Story Box Library – without a publicly funded stable of contracted public figures – enters contracts with its talent in relation to each work it produces. Story Box Library negotiates with each such individual directly in relation to the extent of its licence, payment for the specific project, and the duration of the contract’s term. We have no contracted talent to call upon for new projects without further payment.

We note that the broad extent of the ABC’s dealings with third parties also provides it with significant influence over the commercial activities of those third parties. For instance, publishers have denied us the opportunity to record with a significant BBC personality due to the fact that he was to read a story on Playschool Story Time. Three celebrity Storytellers recently declined invitations to read for Story Box Library despite being approached first and agreeing to read with us. They have since been seen reading on *Play School Story Time*.

4. Copying of Story Box Library Format:

As detailed at Question 8 above, the ABC’s most damaging conduct towards Story Box Library relates to their decision to directly replicate the format of Story Box Library.

In our view, the ABC’s use of public resources to unfairly appropriate concepts and intellectual property first tested and developed by Story Box Library constitutes a wholly inappropriate use of the ABC’s power as a government funded entity, and disregards the principles of the Commonwealth Competitive Neutrality Policy. I remain shocked by the ABC’s decision to use public resources to cannibalise and undermine the work of a successful, innovative Australian business, rather than working to produce its own, original work, or collaborating with Story Box Library – as we had directly offered to do.

As detailed above, it is indisputable that the ABC was aware of Story Box Library prior to developing or producing Playschool Story Time, and that the ABC only chose to develop such a property after it became aware of our success and good reputation. Equally, we are aware that other Australian children’s entertainment platforms hold similar concerns regarding the ABC’s abuse of its resources and power to imitate or replicate successful Australian ideas, and that our experience appears to be part of a broader pattern.

For the reasons detailed above, we maintain that the ABC has used its privileged position and access to public funding to replicate and undermine our work in a way that would never be viable or practical for a commercial enterprise. Not only would a commercial competitor lack the financial shortcuts the ABC enjoys as a publicly funded entity (as detailed above), they would lack any substantial incentive to do so – commercial entities have no reason to appropriate formats and then give them away for free. Conversely, the ABC’s drive for viewers alone (absent the financial incentive advertisers bring to those figures in a commercial context) has every reason to unfairly cannibalise successful models. We believe this is the reason the ABC poached our idea.

Conclusions:

These examples illustrate the unfair competition that the ABC has engaged in since the launch of *Play School Story Time*, copying key elements of the Story Box Library format.

These activities constitute a direct and serious threat to the continuing success and growth of Story Box Library. The ABC's activities, driven by public funding and absent standard commercial imperatives, undermine our market, drain the pool of talent available to us and target categories of rights that would have otherwise been available to Story Box Library. The product of the ABC's activities is then widely distributed throughout Australia for free, supported by taxpayer funded advertising. In the instance the ABC continues to undermine Story Box Library in this manner, it will become increasingly hard for Story Box Library to justify its membership fees to its members, who have previously been a highly satisfied and loyal group of consumers. We are already finding it harder to sell Story Box Library to libraries that question the need for Story Box Library if families with younger children can access *Play School Story Time* for free. Without library subscriptions we simply will not survive.

For these reasons it is our Submission that regulatory intervention requiring the ABC to be subject to effective principles of competitive neutrality is necessary and overdue.

Question 12

The SBS Charter requires it to take into account the activities of the ABC and community television on radio and television. In the context of the competitive neutrality principles how in your view, is the SBS complying with this requirement? From your perspective does it adequately cover the activities of the SBS?

No comment.

Question 13

From your perspective do the national broadcasters seek a balance between competing in the market and complementing the market? Is that balance the same for traditional broadcasting and for new digital platforms?

No. Our experience above demonstrates that the ABC aggressively and unfairly competes in the market to the detriment of existing commercial operators. Our experience clearly demonstrates that the ABC places little to no value or emphasis on complementing existing providers, and is willing to unfairly and detrimentally employ its public ownership and funding to undermine existing operators. By essentially duplicating Story Box Library's content and services, then providing them for free using its publicly funded platform, the ABC has attempted to hijack Story Box Library's market, and claim our company's innovation, audience and ideas for itself.

Whilst Story Box Library recognises that commercial entities engage in similar practices from time to time, there is little incentive for them to duplicate existing services, given their need to obtain a return on their investment. Nor would they offer such services for free, given their primarily commercial impetus. The ABC stands alone in this regard.

In response to the final question, Story Box Library submits that if anything, national broadcasters such as the ABC should hold a special duty to consider existing operators

in the digital marketplace. Whilst commercial broadcasters are invariably larger companies, able to absorb or challenge the practices detailed in this submission, digital platforms are likely to be smaller, newer entrants to the marketplace, and are therefore more vulnerable to unfair competition by publicly owned entities such as the ABC.