

Australia investment obligations: Corrections of incorrect statements made by Mr Deaner

We are deeply concerned with comments made by the CEO of SPA, Mr Matthew Deaner, about streamers' investment in Australian content at the Senate Environment and Communications Committee hearing on 16 April. This document provides publicly available data to correct claims made about streaming services' commitment to the Australian screen industry.

SPA claims streamers first invested heavily in Australia to stave off regulation, and are now pulling back as a result of global directives.

[ACMA data](#), shown below, demonstrates that streamers (Disney+, Netflix, Paramount+, Prime Video and Stan) have continued to invest at high levels over the past four years, noting investment will ebb and flow due to the 'lumpy and lengthy' nature of productions.

	Total investment (Australian + Australian- related content)	Total investment in Australian content (acquired + new, commissioned)	Total investment in Australian-related content
2022-23	\$777,099,148	\$324,149,797	\$452,949,350
2021-22	\$668,511,918	\$335,102,356	\$333,409,561
2020-21	\$628,622,663	\$178,865,181	\$449,757,482
2019-20	\$268,476,759	\$153,390,521	\$115,086,238

For instance, [Netflix](#) and [Prime Video](#) have publicly stated they do not oppose an Australian local content investment obligation for streaming services so long as they are fair, flexible and sustainable. ANZSA has made the same statement in its submissions as part of the consultation process.

Netflix alone has **invested over \$1 billion** in the past four years on **new Australian and Australian-related Netflix films and shows**.^[1]

In the past six months, Netflix [announced](#) three additional new Australian series, Paramount+ [renewed](#) *NCIS: Sydney* for another season and just announced [Aussie Shore](#), Prime Video announced a new season of [the Test](#) in December, and [a new movie](#), *Top End Bub*, just two weeks ago, and Stan recently [announced](#) 25 Stan originals across television, film and documentaries.

SPA claims streamers are campaigning for a loose definition of what is Australian content so they can use international projects to satisfy an Australian investment obligation.

ANZSA recognises the importance of commissioning new programs which feel culturally Australian. We are not advocating for international projects to be considered 'Australian content' but we do advocate for a definition that does not prohibit creative international collaboration.

Streamers' concerns are around the proposed ACCTS definition which requires a program to meet **all of the technical criteria** to be considered 'Australian'. Some programs, illustrated in the attached document, do not meet the ACCTS definition, yet the producer has received assistance under the Producer Offset, which requires Screen Australia to be satisfied that the project has a significant level of Australian content (referred to as 'the Significant Australian Content test').^[2] This means that the ACCTS definition excludes many productions that would "pass the pub test" as being culturally Australian. Applying the narrow ACCTS definition would likely affect local streamer Stan the most, with for instance *Ten Pound Poms*, a quintessential Australian story which has been renewed for another season, co-financed with international partners, not recognised as 'Australian' under the ACCTS.

ANZSA submits that the ACCTS definition is no longer fit for purpose. It originated in the 1990's at a time when the world was far less interconnected than it is now. Today, there is intense competition at a global level for talent and capital and the current definition restricts the ability for a streaming service to employ an international producer, or to collaborate with international directors and writers. This ability is essential to raise the investment required to produce many of the great Australian stories made available on streaming services today.

The Government's Migration Strategy prioritises attracting the skilled workforce and facilitating the international engagement Australia needs to enhance our economic prosperity. Yet the ACCTS definition means Australians may miss out on the benefit of working with and learning from a highly skilled international director or writer.^[3]

SPA claims streamers have circulated misleading information to Parliamentarians claiming that Australian documentaries such as *The Test*, *The Story of the Wiggles* and others would not be counted as Australian content.

This is simply incorrect. Streamers circulated the attached document to policymakers raising two concerns with the models proposed in November 2023: (1) they would mandate investment in programs which meet the narrow ACCTS definition of Australian content, and (2) the models excluded documentaries.

The document highlights the programs that would not qualify under the proposed models because they either don't meet the ACCTS definition, or are documentaries.

SPA claims streamers are investing in 'filler content', that is licensing of content from broadcasters, as opposed to commissioning new Australian content.

The [ACMA reports](#) on investment in both licensed (also known as acquired programs) and new, commissioned Australian programs. The table below shows that the majority of streamers' investment has been on new, commissioned content, not what SPA has labelled 'filler' content. It also shows the growth in the number of new, commissioned programs over the past four years.

Dates	Total investment in Australian content (acquired + new, commissioned)	% of investment spent on new, commissioned programs	Number of new, commissioned programs
2022-23	\$324,149,797.60	68%	67
2021-22	\$335,102,356.25	76%	55
2020-21	\$178,865,181.82	70%	27
2019-20	\$153,390,521.00	85%	30

Netflix has publicly disclosed that [more than 95% of Netflix's total 2022/23 spend on Australian content was on new stories](#) across three main genres - kids, drama & documentary - **versus only 5% on the licensing of older (second run) films and shows.** ^[4]

It is also important not to devalue the licensing (or acquiring) of Australian programs. It provides new income for the producer which can support the creation of additional Australian content, and gives the program and its talent a new, international audience.

SPA referenced that in May 2023, the Office of the Arts estimated that a 20% spending obligation would equal around \$341.5m of investment in Australian content, which would require streamers to spend an additional \$17.4m each year on Australian content.

Subscription streaming provider revenues are not publicly available and are commercial in confidence. As such there is no reliable data to support SPA's assertion. Mr Deaner referenced a Discussion Paper which was provided to stakeholders in confidence. We understand some Senators were provided a copy of this Paper and note that the numbers in this report are based on an estimate from a UK-based third-party vendor and that SPA's statement misrepresents the calculations presented by the Department.

Current calculations show that a 20% of revenue model would require streamers to invest substantially more than current levels and would impose a hugely unequal content obligation on streamers when compared with Australian broadcasters. For Netflix, a 10% of revenue model would require them to spend 49% more than Channels 7, 9 and 10 *combined*, and 434% more than the subscription broadcast industry *combined*. A 20% obligation would therefore be double these amounts. ^[5]

SPA claims an expenditure model would be ineffective as no regulator will be able to validate the data provided by streamers about their investment. Mr Deaner stated Canada has explicitly said it will not pursue an expenditure model for this reason.

The ACMA has been effectively compiling and vetting streamers' data for the past four years, and subscription and commercial broadcasters' data for decades. The ACMA publishes a [data quality statement](#) on its website outlining this process. This is no different to the process currently used to validate the expenditure of subscription broadcasters under the *Broadcasting Services Act 1992*.

The Canadian regulator, the Canadian Radio-television and Telecommunications Commission (CRTC), is currently conducting a public proceeding that will inform the requirement for streamers to contribute to the production and promotion of Canadian programs. The CRTC has [not made any announcements](#) indicating it will not be progressing an expenditure model.

SPA claims there is an abuse of market power by 'powerful digital streaming services' who are intimidating creatives into surrendering their rights, and that screen producers are increasingly unable to do business deals on fair terms with 'powerful' digital service providers.

SPA has not provided any credible evidence to support this claim. The Australian production ecosystem is thriving and highly competitive, producers and creatives have more options on how to distribute their content than ever before. ^[6]

As each deal is unique, the freedom for producers and distributors to choose from a range of ownership structures is essential to ensure ongoing investment in a broad range of Australian projects.

ANZSA does not have access to deal terms on individual titles given these are commercial in confidence, but UK-based screen consultancy Olsberg SPI has [reported](#) that a wide variety of deal terms are currently used in Australia, and that they have seen a shift away from the Studio/Buy Out model towards co-productions and licensing models.

SPA claims that streamers are 'weaponising' the US Australia Free Trade Agreement (AUSFTA) and say they have obtained legal advice that confirms that the language of Annex 2 in AUSFTA does not restrict the Australian Government from imposing a minimum 20% of revenue obligation.

ANZSA has not been provided with an opportunity to sight SPA's legal advice but notes that SPA's current claims are inconsistent with [its own 2004 submission](#) when it advocated against the specific provision in AUSFTA it now claims permits the introduction of an investment obligation for streaming services:

“We are also extremely disappointed about the pre-conditions for future action by the Australian government. Annex 2-7(f) provides that Australia can only act to ensure Australian content on these services is not unreasonably denied to Australians and **can only do so after making a finding that Australian audiovisual content or genres thereof is not readily available to Australian consumers.**

There are thus two tests to be met before the Australian government can act. **It is not enough that there be a finding that Australian content on any of these services is not available to Australians, but it must also be established that the absence of such content is because of some unreasonable denial.** But what exactly does this mean? How low does the level of Australian content need to be before it is being unreasonably denied? What circumstances will be considered unreasonable? Can it be applied to the overall level or to certain genres of programming?”

“Assuming that the Australian government has satisfied itself and the USA that there are grounds to act, **the agreement provides that this action should be the minimum necessary, be no more trade restrictive than necessary [and] not be unreasonably burdensome. This would indicate that, in line with the reducing targets for market share in other areas, any measure a future government would seek to introduce would be very minimal indeed.**”

In 2004 SPA was concerned that Annex 2 was so restrictive that even if there was a significant reduction in investment, Australia would only be able to make minimal interventions.

SPA now claims the opposite: that the FTA would enable the Government to impose a 20% of revenue obligation. This is inaccurate and misleading. This claim not only contradicts their 2004 comments, but also doesn't recognise streaming services' significant investment in Australia's screen industry over recent years, and the absence of any evidence to suggest Australian content “is not available to Australians” or being “unreasonably denied”.

ANZSA agrees with SPA's original interpretation of the AUSFTA, as stated in their 2004 submission. Annex 2 imposes two pre-conditions on the Australian Government before it can act:

- (a) the Australian Government must make a finding that Australians are being unreasonably denied access to Australian content, to which the United States Government must agree, and
- (b) If such a finding were to be made, the Australian Government can only impose measures that improve access to content.

Given the record levels of investment we don't believe such a finding can be credibly made.

AUSFTA established an appropriate pro-investment framework to encourage the streaming services to make the investments they have made voluntarily and which we now see reflected in official data. It would be inappropriate/contrary to the intention in the AUSFTA to now use this investment as a basis for imposing higher, discriminatory obligations.

ANZSA would like to reiterate that its members do not oppose an obligation for streaming services to continue to invest in Australian content, provided such an obligation is fair, flexible, and sustainable.

[1] Netflix commissioned, co-commissioned or first-run acquisition.

[2] Screen Australia also lists such titles as 'Australian' in its annual Drama Report, a practice established long before streaming services started operating in Australia. In contrast, titles such as 'Thor' which Mr Deaner mentions, are reported as 'Foreign'.

[3] Section 10(1) Broadcasting Services (Australian Content and Children's Television) Standards 2020 requires the producer and either the director or writer to be Australian.

[4] Netflix commissioned, co-commissioned or first-run acquisition.

[5] Based on last reported drama expenditure figures available in ACMA reports. ACMA, Commercial TV Program Expenditure 2017 - 2022, <https://www.acma.gov.au/commercial-tv-program-expenditure>
ACMA, Subscription TV Industry Spending and Targets 2017-2022, <https://www.acma.gov.au/spending-and-targets-3>,
ACMA, Spending by subscription video on demand providers, 2022-2023, <https://www.acma.gov.au/spending-subscription-video-demand-providers#expenditure-on-australian-programs>.

[6] The [2022/2023 Screen Australia Drama Report](#) details the second highest expenditure ever on scripted screen production in Australia, with \$2.34 billion spent across a record 213 titles in 2022/23. Then CEO, Graeme Mason, noted "*It has been remarkable witnessing the unprecedented surge in production in Australia in recent years*". The [Deloitte 2023 Media and Entertainment Survey](#) finds that "*consumers have near limitless choice in how and where they source entertainment*", consumers spend 27 hours a week watching free to air (12h 20m), SVOD (10h 25m), and video platforms (4h 25m).