



## SUBMISSION REGARDING NEW NATIONAL CULTURAL POLICY

BritBox International welcomes the opportunity to make submissions to the Senate Standing Committee on Environment and Communication's inquiry in relation to the proposed new National Cultural Policy for Australia, *Revive: a place for every story, a story for every place*.

In particular, Britbox wishes to comment on the action to introduce Australian screen content requirements for streaming platforms proposed under Pillar 5 of the Policy.

### Introduction to BritBox

BritBox is a subscription streaming service created and owned by the BBC and ITV. The service offers the best collection of British TV all in one place, with a wide range of British titles, from dramas and comedies to documentaries, lifestyle shows and murder mysteries. BritBox also offers expert curation and content lists, enabling viewers to find British programmes they know and discover new favourites.

The BritBox service in Australia is operated and retailed by The BritBox Australia Partnership. The service is available via the BritBox website and mobile and smart TV apps, and via Amazon and Apple channels.

### British Nature of the Service

All of the content that BritBox makes available in Australia is British content. For the vast majority of our content, this means that it:

- was commissioned by a UK television broadcaster
- was first broadcast on a UK television channel
- was produced in the UK by a UK production company
- has a majority UK cast and crew
- depicts aspects of life in the UK

Almost all of our content has had its world premiere on British television channels, normally a BBC or an ITV channel. Generally, the only exceptions to this are some British films on our service which may have originally premiered in cinemas rather than on TV. As of February 2023, these include films such as *Snatch*, *Legend: The True Story of the Krays*, *Sense & Sensibility*, and *Dad's Army – The Movie*. Movies make up a relatively small proportion of the content on our service, but they are still British in nature.

### Local Australian Content Requirements

We understand that the Australian government intends to introduce requirements for online streaming services to include a minimum level of Australian content. While we understand the rationale for such requirements, we respectfully submit that any such regime must be introduced in a proportionate and nuanced way, otherwise there is a risk of significant consumer harm. We share the concerns of Senator Davey, as raised during the estimates hearings of the Senate Environment and Communications Legislation Committee when discussing local content requirements with



representatives of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts on 14 February 2023:

*“There is a question about the niche streaming services which are often provided through another streamer—things like BritBox, which are very much a specific genre with a specific target market. BritBox is British television.”*

As Senator Davey rightly says, BritBox is indeed British television. However, Senator Davey went on to suggest that services like BritBox might be adequately protected if *“they’re provided through Apple or Paramount or one of those others, to be able to continue—as long as the umbrella streamer is meeting the requirements—to provide that very specific service”*. With respect to Senator Davey, that approach would not be sufficient as it would do nothing to help services like BritBox maintain their own direct-to-consumer offerings, and would instead make them entirely dependent on carriage by larger, mostly American ‘umbrella streamers’. BritBox would become dependent on and beholden to larger (mostly American) services, and consumers would be forced to enter into relationships with those larger services in order to access BritBox. We think the answer is far simpler and well-precedented, as set out below and would avoid any such unintended consequences.

### **Need for a ‘Nature or Theme’ Exemption**

We submit that any regime providing for the mandatory inclusion of Australian content in video on demand services should include an exemption for services like BritBox on the grounds that such a requirement would be contrary to the very essence of the service. We note that in the European Union (EU) the Audio Visual Media Services Directive (**AVMS Directive**) imposes a requirement for on demand services to include a minimum percentage of European works. However, the AVMS Directive acknowledges that for certain services that would be impractical and unjustifiable. The Directive therefore allows EU Member States to include in their domestic legislation an exemption for services for which the European works requirements *“would be impracticable or unjustified by reason of the **nature or theme** of the audiovisual media services”* (Article 13(6) of the AVMS Directive – emphasis added). For example, the UK government, prior to the UK’s departure from the EU, did indeed include this exemption in UK law by way of section 368CB of the Communication Act 2003. It is our understanding that if an on demand service dedicated to Australian content launched in the UK, such a service would be exempt from the European works requirement which would otherwise apply under UK law, i.e. the service dedicated to Australian content and culture would not have to somehow shoehorn French or German TV content into its service. We submit that that is an eminently sensible position for service providers and consumers.

### **Need for a ‘Scale’ Exemption**

We further respectfully submit that any regime providing for content quotas for on demand services should include an exemption for smaller services for which the additional cost would be prohibitive. The barriers to entry for new entrants to the Australian video on demand market, and the costs of maintaining an existing service, are already high. Content costs have been rising for a number of years, and platform technology costs are also very significant. The Australian market for on demand services is relatively small, and therefore any additional local production costs loaded onto providers are only likely to be recouped (if at all) by those providers with large numbers of users/subscribers who are able to exploit that content across numerous international markets. For smaller providers, the additional cost could well prevent them from entering the market in the first place, or cause them to exit the market altogether. That would result in only the largest providers being



represented in the Australian market, leading to a lack of choice and competition, which ultimately would harm Australian consumers in multiple ways.

As an example of this type of exemption, we would again refer you to the AVMS Directive, which includes a mandatory exemption for “*media service providers with a low turnover or a low audience*” (Article 13(6)) of the AVMS Directive) with respect to content quota regimes in EU member states. So in the EU, a service provider is exempt from such regimes if their turnover is below a certain threshold if their revenue is below. We understand that this sort of ‘turnover’ or ‘revenue’ based approach was adopted by the previous Government’s Green Paper and Media Policy Statement which considered similar requirements as only applying to ‘large SVODs’. We respectfully submit that a similar approach be adopted under the current Policy.

### **Final Comments**

To be clear, BritBox submits that there should be both a ‘nature and theme’ exemption and a ‘scale’ exemption. We do not believe that a scale exemption alone would be sufficient, as even a relatively large service (i.e. one which would not benefit from the scale exemption) should not be obliged to include content which is clearly inconsistent with its inherent nature or theme.

We would also note that a legislative exemption for services which are operated from outside Australia would not be sufficient to exempt BritBox from any local content requirements. The operator of the BritBox Australia service is an Australian partnership, not an overseas entity. Editorial decisions relating to the service are largely made in Australia.

We look forward to working with the Government on these matters going forward.