



16th April 2013

House Standing Committee on Economics
Parliament House
Canberra ACT

Thankyou for the opportunity to make a submission to the Inquiry into the Tax and Superannuation Laws Amendment currently being heard by the House Standing Committee.

Our company is a big employer in the factual production area and is directly affected by the proposed changes to the definition of Documentary. Many of our documentaries are hybrid documentaries and do not fall into the traditional mold of a "documentary". Despite that, productions such as our series on the refugee debate, **"Go Back to Where You Came From"** has contributed greatly to the national debate and has won awards around the world for its power and original format.

Other producers both here and overseas have also made wonderful series, which may not fulfill the criteria being proposed for "documentary". This thinking can only hurt the industry and will suppress innovation. We have made a formal submission in relation to the proposed changes to the definition. That paper sets out the weaknesses of the changes and how they work to stifle creativity and commercial innovation by adopting a very narrow and old-fashioned definition of documentary.

In this industry, we need to innovate to retain audiences for local stories. To do otherwise is to risk the viability of our businesses. These very businesses are significant employers of Australian creative talent.

The Producer Offset was established to encourage business sustainability in the local industry, allowing us to invest in new ideas. We endorse the SPAA's position about the need to be nimble and react to the market. The proposed definition has the opposite effect.

I encourage the Committee to reject the proposed amendments to lock in a restrictive definition of documentary. I am happy to discuss the issues further and would be happy to be contacted directly.

Yours faithfully,

Nick Murray
CEO

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11 February 2013

The Hon Simon Crean MP
Minister for Regional Australia,
Regional Development and Local Government
Minister for the Arts

The Hon David Bradbury MP
Assistant Treasurer
Minister Assisting for Deregulation

RE: Exposure Draft for Tax Laws Amendment Bill 2013: film tax offsets (definition of documentary) (the "Exposure Draft")

We are responding to the above Exposure Draft on behalf of Cordell Jigsaw Productions, part of the Cordell Jigsaw Zapruder Group, an independent, wholly Australian owned production company ("CJZ").

We have produced more than 150 hours of original Australian documentary content over the last 8 years under Cordell Jigsaw Productions (including the highest grossing feature documentary "Year of the Dogs" about an AFL football team) and more than 20 hours as Zapruder's Other Films since 1999. In 2012 the respective companies merged and in that year we broadcast for than 12 individual programs (including one-off and series) across Australia free to air and pay television, including the following titles

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| ▪ Go Back To Where You Came From (SBS) | 4 x 1 hrs |
| ▪ Country Town Rescue (ABC) | 6 x ½ hrs |
| ▪ Great Southern Land (ABC) | 4 x 1 hrs |
| ▪ Dumb Drunk and Racist (ABC2) | 6 x ½ hrs |
| ▪ Bondi Rescue (Network Ten) | 13 x ½ hrs |
| ▪ Recruits Paramedics (Network Ten) | 13 x ½ hrs |

We consider CJZ to be a significant creator of original Australian documentary programs. Our submission is that the Exposure Draft seeks to be too limiting on the definition of "documentary" to the detriment of the Australian film and television industry. In a time of greater fracturing of viewership across multiple points of audience engagement, we believe that the department should be looking at ways to be MORE inclusive of new forms of factual programming, rather than restrictive.

The UK industry has become one of the main exporters of innovative factual programming because the industry and incentives have embraced hybrid forms of factual storytelling, which may not fit a narrowly defined set of criteria as set out in the Exposure Draft. This innovation underpins the growth of the UK production sector and allowed leading documentary producers such as Wall to

Wall and Studio Lambert to earn significant export income and establish production bases in the USA.

We respond in detail to the Exposure Draft below.

The amendments define documentary as; *“a film that is a creative treatment of actuality, other than an infotainment or lifestyle program or a film that presents factual information in multiple parts without an over-arching narrative structure or thesis (a ‘magazine program’).”*

1. Creative treatment of actuality

1.21 *“To qualify as a documentary, a film needs to be a creative treatment of actuality. To do that, it has to analyse, explore or interpret its subject matter.”*

To insist that a documentary is required to analyse or interpret subject matter suggests that true ob-doc (also known as cinema verite, observational documentary, direct cinema etc.) style programs are not documentaries. American documentary filmmaker D.A Pennebaker was a pioneer of cinema verite and he stated that "it's possible to go to a situation and simply film what you see there, what happens there, what goes on, and let everybody decide whether it tells them about any of these things. But you don't have to label them, you don't have to have the narration to instruct you so you can be sure and understand that it's good for you to learn."¹

There is an extensive list of documentary programs that form a creative treatment of actuality without analyzing or interpreting the subject matter; some notable feature films include *“Salesman”* (an observational documentary that follows door to door salesmen in the USA from 1969) *“Hoop Dreams”* (winner of 1994 Sundance Film Festival: Audience Award for Best Documentary) *“Children Underground”* (nominee of 2001 Academy Award for Best Documentary) and *“Spellbound”* (nominee of 2002 Academy Award for Best Documentary). Further, Michael Apted’s groundbreaking *“7 Up”* series of documentaries, contain no critical analysis.

Local series such as *“Bondi Rescue”*, *“RPA”*, and *“Recruits”* do not analyse or interpret the activities of three distinct workplaces, but rather present these environments to an audience.

1.22 *“The treatment also needs to be creative through, for example, an innovative narrative structure or the manner in which the film is edited or constructed from a range of sources.”*

We would suggest that although documentaries by their nature of capturing a viewpoint are creative treatments of actuality, that to further the definition with such obligations to include a narrative structure or to be constructed from a range of sources are obligations that are too limiting.

In 1929, Dziga Vertov picked up his camera and took to the streets of Odessa and other Soviet cities. *“Man With A Movie Camera”* captured citizens at work, at play, with their families, and generally documented their everyday life with no narrative structure. Other highly acclaimed non-narrative documentaries include *“Baraka”*, *“Samsara”*, *“Koyaanisqatsi”* - they present a creative treatment of actuality without an over arching narrative structure.

In 2011 Shine Australia produced a series for SBS entitled *“The Family”*. Funded under the Screen Australia documentary strand, this fly-on-the-wall series depicted everyday life in an Australia household. It was filmed entirely in 1 location and just like Vertov 80 years earlier, it captured

¹ “Documentary explorations;: 15 interviews with film-makers” by [G. Roy Levin](#) 1971

everyday people with no over arching narrative structure. The camera simply observes and documented.

2. Contrivance

1.23 *“the documentary is an exploration of something that would have happened whether someone was there to film it or not. However, it would be possible for a situation that was contrived by a filmmaker to give rise to actual events that are explored and analysed as part of a documentary program”*

1.25 *“... the greater the level of contrivance of the matters being depicted, the greater the likelihood that the film is not a documentary. ”*

We reject the suggestion that programs that include a level of contrivance, may not qualify as documentaries. To suggest that documented programs that are “contrived” may not qualify as documentaries penalizes programs that utilize multiple methods to extract engagement from an audience.

The series *“The 1900 House”* portrays entirely contrived situations to see how participants would cope with olden days farm conditions in southeast London. In *“Go Back To Where You Came From”* our participants boarded a fishing boat in Darwin. Once off the coast of Darwin, under simulated conditions, the boat began to sink and the very real reactions of the participants were captured. In Sir Richard Attenborough’s *“Blue Planet”* lobsters were filmed in a tank in North Wales during their annual spawn rather than in the ocean for environmental reasons. By suggesting that programs that utilise contrived techniques to elicit real reactions, or to simulate the natural world may not qualify as documentaries is limiting and not reflective of modern techniques employed during the process of producing documentaries.

For the record, *“Go Back to Where You Came From”* qualified under the Producer Offset as a documentary and was awarded the Logie and an ACCTA for most outstanding documentary series. It went on to win the top television award in the world, the prestigious Rose d’Or for most outstanding program in any genre for 2012.

1.24 *“when assessing whether a film is a creative treatment of actuality, and therefore a documentary, regard must be had to the extent and purpose of any contrived situation featured in the film, the extent to which it explores an idea or a theme, and the extent to which it has an overall narrative structure.”*

While we agree that a documentary explores an idea or theme by the nature of capturing and recording that idea or theme, as we have outlined above, a documentary should not be defined as such subject to level of contrivance and whether it contains an overall narrative structure.

3. Superficiality

1.26 *“Films that are superficial in their treatment of the subject matter would generally not be characterised as documentaries.”*

1.31 *“At the margin, it is this emphasis on entertainment that distinguishes an infotainment or lifestyle program from a documentary that presents facts in a creative but entertaining way. In a documentary, the entertainment serves the more serious purpose rather than the other way around.”*

A documentary need not be filled with facts and figures to qualify as a documentary. A number of documentaries about serious subject matters have almost exclusively used humour to make the point. Examples include Michael Moore’s films such as *“Roger and Me”* (winner of 6 international best documentary awards), Morgan Spurlock’s *“Supersize Me”* (nominee in the 2004 Academy Award for Best Documentary), and the Chris Rock documentary *“Good Hair”* (2009 Sundance Film, Festival Special Jury Prize Documentary). In these cases, the entertaining elements in the film made it more likely that an audience would engage with the subject matter.

3. Over arching narrative structure

1.27 *“A program without an over-arching narrative structure, such as one consisting of brief and unrelated aspects of a broad topic, is unlikely to be a program that explores and analyses its subject in some depth, which is a key characteristic of documentaries”*

“Baraka” was filmed in 152 locations in 52 countries with a total duration of 96 minutes. It has no plot, no storyline, no actors, no dialogue nor any voice-over. Instead, this documentary film observes, documents and presents human activities across the breadth of our planet and was classified by the British Board of Film Classification as a documentary. The film makers, Ron Fricke and Mark Magidson followed up this film with the non narrative documentary *“Samsara”* and once again proved that a documentary can present you with images of everyday life across the world without the need for over arching narrative and as an audience member you can create your own story, your own structure from a myriad of images.

4. Financial structures

1.28 *“the commercial arrangements underpinning the production, the likelihood of the film having enduring appeal, and the breakdown of the film’s budget could each be a relevant factor in an appropriate case.”*

We believe that the commercial arrangement underpinning the production have little to no influence as to whether a program is a documentary.

“Iconoclasts” a documentary series (nominated by the International Documentary Council for best series) about high profile individuals in music, arts, food, adventure and politics and was funded by Grey Goose Vodka. Grey Goose Vodka also funded *“Rising Icons”* an observational series following emerging music talent in the US.

Morgan Spurlock’s documentary series *“30 Days”* features 30 x 3 minute short documentaries that has been funded by General Electric that captures days in the life other than your own – working in a coal mine or being a prison inmate. And ironically, in 2011, Morgan Spurlock made a documentary called *“Pom Wonderful Presents the Greatest Movie Ever Sold”* about branding, advertising and product placement that is financed and made possible by brands, advertising and product placement and was nominated for the best documentary at 3 international awards.

In 2012, The Sundance Film Festival announced a partnership with Hilton Worldwide to fund documentary productions focused on environmental sustainability.

With an ever increasing gap between traditional broadcast license fees and direct government investment subsidy, alternative models for financing documentary programs should be encouraged rather than discouraged. These examples show that compelling factual programming can be innovative in its financing structure to the benefit of the program, rather than the detriment.

Upon review of the Exposure Draft we consider a number of the new indicators of a documentary to be unnecessarily restrictive and contradictory to the existing indicators of documentary programming:

1. That a documentary should analyse and interpret;
2. That documentaries should have overarching narrative structure;
3. The greater the contrivance, greater likelihood of not being a documentary;
4. Programs that are superficial or entertaining would not be considered documentaries; and
5. Commercial or financial arrangements should be considered in deciding whether a film is a creative treatment of actuality

Grierson's definition of documentary still holds the most succinct and valuable reference to the genre "documentary is the creative treatment of actuality". Any attempt to restrict other areas of documentary will stifle the creation of new forms of factual programming and documentary in Australia, at a time when we need to be innovating. The Producer Offset should be rewarding innovation rather than penalizing.

We would propose that if "documentary" requires further definition, further consultation with industry is vital. Otherwise the proposed documentary definition creates uncertainty for the industry.

Katie Shortland and Nick Murray

Cordell Jigsaw Zapruder

8 February 2013