

Film Inquiry Submission No. 90

**SUPPLEMENTARY SUBMISSION TO THE HOUSE OF
REPRESENTATIVES STANDING COMMITTEE ON
COMMUNICATIONS INFORMATION TECHNOLOGY AND
THE ARTS INQUIRY INTO THE FUTURE OF THE FILM
ANIMATION SPECIAL EFFECTS AND ELECTRONIC GAMES
INDUSTRIES**

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The recent debate (see attached) on the 17th June in the House of Representatives, to which only three members of the current Standing Committee made a contribution, on the proposed merger and amalgamation of the Australian Film Commission and the National Film and Sound Archive, the original and most appropriate and recognizable name, highlights a number of issues regarding the future of the Australian film production sector which need to be considered during the present inquiry.

INTRODUCTION

The most important issues to be resolved are the competitive advantage of developing an intellectual property regime based on the Australian entertainment and arts sectors (it is not just having a bright idea that counts – it's what you do with it); the role of policy makers in driving reform in an increasingly important economic sector without being captured by vested interest groups who have over the past several years come to dominate the sector and are now stifling its economic development; the division between national and international viewpoints; cultural globalization; and the need to take advantage of the opportunity, during the current negotiations on the proposed Australia-United States free trade agreement, to establish a more mutually beneficial relationship with the largest media country in the world.

1. The Boom in Intellectual Property

The only issue for the Committee during this Inquiry is how to co-ordinate the urgent reform of the Commonwealth's 'whole of government' support policies for the development of an intellectual property regime based on a sustainable film and television production sector capable of competing successfully in the international marketplace.

The film industry is more than glitz and glamour. It is a key economic sector (US\$ 60 billion) emerging at the heart of the multi-media universe.

According to Michael J. Wolf, Senior Partner, Booz-Allen Hamilton in New York, "media and entertainment have moved beyond culture to become the driving force of the global economy" "The Entertainment Economy" Penguin Books, London, 1999.

Jack Welch, former CEO of GE, said during a recent visit that "the most successful companies in the future will be those that create intellectual capital." "World's greatest boss says it's no time for wallflowers" The Australian, 18th June 2003. He could have just as easily been referring to countries.

As Alan Oxley made clear in "US holds the key to our success" Australian Financial Review, 2nd January 2002, 'how Australia relates to the rise and rise of the United States as the world's leading exporter of filmed entertainment is vital to its future.'

America, the springboard of globalisation, was the first country to realize how greatly its exports, and therefore its entire economy, depend upon its trade in intellectual property.

As the world was reeling from OPEC's increase in oil prices in 1973-4, the US Senate Committee on Foreign Relations held an emergency session on whether the country could be "held to ransom" in other areas of the economy. The committee decided that ideas and information might be next. It asked percipiently, "if information and its communication represent a strategic resource in international affairs, whose value may approach or exceed that of energy, will appropriate US Government policies be formed only after there is an energy-type crisis? A few years later President Ford set up a Task Force on National Information Policy **which concluded that the US needed "a new foreign policy not only for information but for intellectual property, for the ownership of ideas and information."**

The basic truth of the film industry is that it is a distribution-led business. The formula used now by Hollywood majors is exactly the same as it has been for 80 years. The Hollywood studio's mathematics are simple: money spent on production is more than earned back in distribution, profits are taken and the balance is used to help finance the production and distribution of more films.

Make no mistake, international distribution is where the real money is made in the film industry.

"In 1997 America produced US\$ 414 billion worth of books, films, music, television programs and other products. Copyright became America's number one export, outselling cloths, chemicals, cars, computers and planes."

The Creative Economy by John Howkins, Penguin Books, London, 2002.

These diverse activities have one thing in common. They are the results of individuals exercising their imagination and exploiting (or preventing others from exploiting) its economic value.

Howkins' book is about the relationship between creativity and economics. Creativity is not new and neither is economics, but what is new is the nature and extent of the relationship between them, and how they combine to create extraordinary value and wealth. See *ibid* pages 97-101 and 159-173 for background information on the entertainment economy.

It is therefore extremely disappointing that the Committee's focus on creative and technical issues without a commercial context will not include submissions that raise issues relating to the Commonwealth's tax incentives or funding of the film industry. The Committee will be aware of a recent article in BRW June 26- July 2, '**Lights, Camera But No Action**' in which Pat Robie, who runs one of Australia's largest film crew agencies, Top Techs, describes the past six months as the worst she has seen in 15 years of crewing movies.

For example, a study of copyright royalty flows during the 1990's showed that Australia paid out to overseas copyright owners around A\$ 1.2 billion more than it received, Office of Regulation Review, *An Economic Analysis of Copyright Reform*, Commonwealth of Australia, 1995.

More important for the film production sector is for the Committee to find ways for the private sector to fund the high cost of developing intellectual capital in the film production sector including electronic games. **For the basis of competition lies in the high cost of development.**

By way of comparison, the seven major US Studios spend between US\$ 500-600 million annually on script development and acquisition of literary rights, equivalent to about 10% of annual production expenditure.

Because **“underneath the development ideology of intellectual property there lies an agenda of underdevelopment. It is all about protecting the knowledge and skills of the leaders of the pack”** *Information Feudism* by Peter Drahos with John Braithwaite (both with ANU), Earthscan Publications, London, 2002.

The book is an excellent introduction into how the intellectual property rules governing the ownership of intangible assets in the knowledge economy have been globally and profoundly changed in the last 20 years. The rules impact on who can and cannot be an entrepreneur in the 21st Century. For information on the film industry see pages 54, 125, 132, 144, 169, 174-80, 185-6, 192; Jack Valenti, 81-3, 96, 102, 147, 175, 195 and Rupert Murdoch 201.

2. The Role of Policy Makers in Driving Reform

It was obvious during the AFC/Film Archive debate that special consideration needs to be given by the Committee to the lack of a detailed background history on the film industry (*The Story of the Kelly Gang* was released in 1906, not 1896, 1904 or 1905) and the role of the Commonwealth Government. The quality of either the background briefing or explanatory memorandum prepared by the Department/Minister's Office and the absence of corporate memory is of real concern. A newly commissioned history should be written which is updated by the Parliamentary Library and made available on its website to Members.

For example, Mr Ciobo's ill-informed comments about the Canadian film production sector could have been easily avoided if he had been provided with the proper links and had checked the facts instead of listening to Bryan Brown. Not only is Telefilm Canada the federal cultural agency dedicated primarily to developing and promoting the Canadian film, television, new media and music industries, it also acts as one of the Canadian Government's principal instruments for providing strategic leverage to the Canadian private sector. In 2001-2002, Telefilm Canada's commitments totalled C\$208.3 million (US\$ 150 million), a 17% increase over the previous year providing support to some 1000 film, television and new media projects in English, French and aboriginal languages. Hardly an industry that “has no cultural heart.”

As for the National Film and Sound Archive its identity needs to be restored after its ill-considered so-called re-branding (devised in secret by the previous director who had been a public service appointment and without any experience in the field) as ScreenSound Australia in 1999.

It is essential that the Archive's needs and responsibilities are managed and monitored by people with appropriate credentials in the field – experts – consistent with the management of the nation's other leading cultural institutions such as the National Library of Australia and the National Art Gallery. Imagine the outcry if someone with no experience in the art world to head the Gallery. Why should it be different for the film archive?

Again, the Committee may wish to recommend that an intellectual framework for a modern archive in the Asian time zone be developed in consultation with a new National Film and Sound Archive Advisory Committee as a matter of urgency.

I believe it will be instructive for members of the Committee if they are aware of the different approaches to the Commonwealth's support for the film industry adopted by the two major parties (one local and anti foreign the other orientated to the international market) during the Senate debate, 11th June 1981, on the Income Tax Assessment Amendment Bill 1981: Second Reading and how these two very different approaches have played out over the last 20 years. The speeches are attached.

Sadly Senator David Hamer's vision for **“Australia as a major film producer with dramatic effects on Australia's international prestige. For films are of universal appeal. After all, films are the one new art form of the twentieth century,”** has still to be realised.

3. The Division Between National And International Viewpoints

“Australianness has always been the philosopher’s stone, or poet’s stone of Australian culture. Every means has been tried in order to attain it.”

Clive James, Times Literary Supplement, 9 April 1976.

‘Defining who and what we all are as Australians – not only from an historical point of view but, more importantly, into the future,’ (Mr Ciobo) has been an obsession with Australians since the 1850’s (writers) and filmmakers since the 1960’s. Critics and commentators have long agonized over the problems facing the writer/director/composer in Australia in establishing a relationship or an attitude to the country and its society.

For the film business the impact of this division between the national and the international viewpoints has been to limit the universality of much of Australia’s best nationalistic filmmaking and preclude films reaching more than specialised audiences/markets overseas.

Faced with a small finite domestic market, the policy options open to the Commonwealth Government are:

- accept the ‘small’ industry option of an Australian film production sector catering for the domestic market, producing low budget productions for limited theatrical release – up to 5-6 annually; plus overseas runaway productions;
- accept the ‘global’ industry concept that survival of an Australian film production sector, facing rising costs, increasing domestic competition and expanding international opportunities is dependent on its ability to produce (create intellectual capital) films and television programs which are also capable of being distributed in overseas markets.

My strong recommendation is that the Federal Government insist that the AFC and the FFC move to the second view, encouraging the growth, maturing and self-sufficiency of the Australian film production sector. This in part, requires a shift in attitude, not the least being among policy makers.

A failure to achieve reform could further reduce Australia’s relevance in the international filmmaking community.

Nationalism is not solely an inward looking phenomenon. It looks outward to observe differences and claim superiorities. It feeds on condemnation and contempt; it is xenophobic as well as patriotic.

The arrival of filmmakers such as Raymond Longford, Ken G. Hall and Charles Chauval prepared to make films on such terms was a necessary condition for the development of Australia’s film production sector.

The aggressive face of nationalism in Australian films, particularly towards England, was a long time dying. For example, Gallipoli, written by David Williamson and directed by Peter Weir.

David Williamson and Bob Ellis provide admirable material for the social historian and nostalgic sentimental comfort for Australians. To the outside world they must remain quaint and parochial.

The European model of protecting film-makers from the American aggressor, and favoured by the Australian Film Commission, is under threat after the 16 European Film Councils called for a clearer definition of the rationale for supporting films, arguing that support cannot be confined to so called cultural films – as all films are both a commercial venture and a cultural expression.

It was disappointing during the recent debate (18th June 2003) on the Australian Film Commission/National Film and Sound Archive that more recognition wasn't given to Ken G. Hall, our most successful and passionate film director/producer, as a role model for today's young filmmakers. Because he unashamedly regarded films primarily as entertainment all his films (18) were popular and commercial successes. His credo, which grew from the need to finance the next film from the profits of the last was - **NEVER MAKE A FLOP.**

Again, the lack of recognition for the late Joan Long, Ray Edmondson, the National Library and the generous contributions, made over the years through the 'Film Search' campaign, by the many people throughout Australia not just those in the film production/distribution/exhibition sectors, was particularly disappointing.

The support of Mr Rupert Murdoch, Mr Peter Broome and 20th Century-Fox and Mr Alan Rydge and the Greater Union Organisation in donating and covering the cost of copying the Movietone and Cinesound newsreels also deserved special mention.

These oversights were in contrast to the 'star struck' attention given to the opportunistic appearance on 17th June, in Canberra, of Bryan Brown and his wife Rachel Ward, 'to save the film industry' whose Union, Actor's Equity, to which both belong, has, in my experience, done more to stifle the film production sector than any other organisation to stifle the sector's economic development.

For example, Thorn Birds did not shoot in Australia because it would have cost US\$ 2 million more than the way they eventually did it. Equity imposed too many restrictions and penalties.

Again there was interest in the early 1980's, after lobbying from Paul Riomfalvy, Chairman, New South Wales Film Corporation, from United Artists, AIP and Warner Bros. in each putting up US\$ 100 million if Australian investors came up with US\$100 million to be invested in their films to be made in Australia. Equity refused to support the concept because they wanted to cast the pictures themselves and impose financial penalties upon any foreigners brought in to work on them. That killed it.

The Union also supports increased quotas for local content on television in defence of "the national interest" – a political straightjacket which has herded Australian filmmaking into a cultural ghetto while more talented actors and experienced directors, writers, cinematographers and musicians drift overseas in search of new challenges and opportunities/employment no longer available in Australia.

4. Cultural Globalisation

Actor's Equity has also consistently run the line against American cultural domination, an inherently vague and negative concept of cultural imperialism now largely discredited in most parts of the world, but still, following the European intelligentsia self-consciously fashionable in certain special interest groups in Australia. Cultural imperialism emerged in the early 1960's as part of a Marxist critique of Western countries particularly of American popular culture with its emphasis on consumerism and mass communication.

According to John Tomlinson, "*Cultural Imperialism*" The John Hopkins University Press, 1991, "The idea of imperialism contains ...the notion of a purposeful project: the intended spread of a social system from one centre of power across the globe." He contrasts imperialism with the concept of globalisation (referred to by Ms Julie Bishop as posing questions for arts policy), which suggests interconnection and interdependency of all global areas happening in a far less purposeful way.

In contrast to the concept of cultural imperialism, as being extremely pervasive and leading to the homogenisation of global culture, which seems to be popular with our arts bureaucrats, there are three other more complex models of cultural globalisation which would, if given more emphasis and applied with more intellectual rigor in future submissions regarding the influence of films, be more appropriate to the Government's negotiations to encourage the film production sector to undertake those changes which will make Australia better able to compete in the global marketplace.

The various models, if combined and made easier to understand by responsible commentators, may also help to explain Australia's relationship with the biggest media country in the world and allay the fears of many Australians that their sovereignty is being usurped by Hollywood's growing media empires. I also suggest that the European Union and particularly France (on which much of the AFC's research seems to be based) has a different agenda viz-a viz the United States than Australia's push for free trade agreements not only with the United States but with, ASEAN, China, Japan and now Indonesia.

First, the cultural flows or network model offers an alternative conception of the transmission process, as influences that do not necessarily originate in the same place or flow in the same direction.

Receivers may also be originators. In this model, cultural globalisation corresponds to a network with no clearly defined centre. Globalisation as an aggregation of cultural flows or networks is a less coherent and unitary process than cultural imperialism and one in which cultural influences move in many different directions. The effect of these cultural flows, consisting of media, technology, ideologies and ethnicities on recipient nations is likely to be **cultural hybridization** rather than homogenization.

Second, the reception model has been used to explain responses to cultural globalisation by publics in different countries. The model hypothesizes that audiences respond actively rather than passively to mass-mediated news and entertainment and that different national, ethnic and racial groups interpret the same materials differently. This model does not view globally disseminated culture as a threat to national or local identities. **Multiculturalism** rather than cultural imperialism is perceived as the dominate trend.

The **third** approach focuses on strategies used by nations, global cities, and cultural organisations to cope with, counter or promote cultural globalisation. Specifically, nations, global cities and cultural organisations engage in strategies for preserving and protecting inherited cultures, strategies for rejuvenating traditional cultures, strategies for resisting cultural globalisation, and **strategies for altering or transforming local and national cultures for global audiences.**

From this perspective, cultural globalisation is a process that involves competition and negotiations as organisations and countries attempt to preserve position or project their cultures in global space. Countries vary in the emphasis upon **preservation as opposed to production of culture for export.** In this, the third approach, cultural globalisation is seen as a disorderly process, fraught with tension, competition and conflict. And more difficult to explain during periods of rapid change.

5. The Advantages of an Australia – United States Free Trade Agreement

In commenting on the proposed Australia-United States free trade agreement raised during the debate by Ms Julie Bishop and Messers. Ciobo and Tanner it is important to remember that the regulation requiring local content on Australian television was introduced in 1961 with black and white television as part of a general import replacement policy, a policy of economic development/income distribution now largely discredited, adopted by many countries seeking to build their economies after WW2.

The local market is too small and the costs of production too high to provide a satisfactory return in Australia alone and the parochialism of the local networks limits the amount of programming that can be exported.

According to Martin Cox, Chief Executive Officer, International Chamber of Commerce, **“The Australian film and television industry is bracing itself ahead of the new round of US free-trade negotiations due to begin in just over a week. And already the arguments for protectionism are being rehearsed: arguments, which, like Lord Byron, are mad, bad and dangerous.**

The mad arguments are the economic ones: the free-trade debate has been won. No credible person believes in protectionism any longer, but each of us can fool himself that his own industry, whatever that may be, is the one exception where trade barriers are still a good idea. Notwithstanding this self-deception, nobody ever wins from insulating a market from international competition.

Even the local industry itself suffers, as it inevitably becomes soggy and flaccid, unable to stand on its own feet. For whereas the free market ensures that resources flow into the areas, and in the proportions, that consumers want, market manipulation by governments, for example trade barriers, create a whole matrix of warped incentives that divert resources away from propitious channels.

We can draw an example from one of the Australian Film Commission's own favourite illustrations: a TV series that costs \$5 million to produce in Australia can be half-paid for by Channel 10 and half-paid for by the Australian taxpayer. An investment twice as big, made in America, can cost Channel 10 as little as \$300,000, and costs the Australian taxpayer nothing. That means that consumers and taxpayers get a deal 30 times as good.

Our government tries to mitigate this natural effect by an elaborate and costly web of rules and restrictions. But protectionism is a disease that makes everything it touches morbid and moribund. The local-content laws protect the mediocrity of local TV by guaranteeing a local market for local productions.

Worse yet, it rewards producers whose product is not good enough to win an export market with a consolation prize of free money from the government instead. This export failure compensation undermines the incentive and saps the commitment necessary to break into foreign markets the precondition of success in a global age. Protectionists want you to believe it's all much more complicated than this. It's not.

The bad part of the protectionists' argument is the one they skip over, on account of its moral indefensibility. For if the consumer is not entitled to decide what he will watch on TV, then who does decide what is worthy? Well, it turns out there is a panel that assesses TV content for "quality" and "Australian-ness", would you believe! When I was five, I was resigned to being told what I could and couldn't watch on TV, but I'm a grown-up now and I resent being told by some faceless cultural arbiter what's good for me.

Dangerous is the notion that free trade would cost us our unique Australian culture and compromise our national sovereignty. If this is who we are then it's time we grew up and told mummy we don't need her to protect us from the rough boys in the big playground, as this sort of thing only produces a sickly, withered and ingrown culture. But this is not the Australia I know. In fact the best Australians have always relished the fiercest competition. We should be strong and proud and take on the best of them. That's a culture worth celebrating." Australian Financial Review, 12 July 2003.

Again, Greg Robinson, a former Australian trade negotiator was keen to point out in "Don't Tune Culture Out Of Trade" - Australian Financial Review, 26 June 2003, that "a free-trade deal with the United States has enormous potential to offer our local industries greater and more secure access to the world's largest market and make Australia a more desirable location for American investment in our local industries. But to maximise this opportunity, we cannot afford to adopt policies that will have the triple effect of adding legitimacy to the protectionist arguments of vested interests in the United States, making us a less attractive and accessible trading partner, and acting as a brake on our own economic performance.

Most of the Australian economy is already operating without being coddled by restrictive trade measures and this has contributed to Australia's strong economic growth in recent years.

We should resist the temptation offered by protectionists to retreat to our cosy past of economic under-achievement. Labor's shadow communications minister, Lindsay Tanner, recently argued that Australia's restrictive local content rules for television programming should be *taken off* the negotiating table in the proposed free-trade agreement.

Tanner's comments reveal a worrying misunderstanding of what a free-trade agreement entails and how to get the most benefit from one. These types of trade policies should be rejected on at least three key grounds.

First, the economic objection. Tanner argues that local content rules are necessary because American programs are produced "much much cheaper than the local version". But this is precisely why trade is beneficial. Free trade delivers benefits across the board by allowing economies to focus their resources on producing goods or services where they possess a comparative advantage, then trading with others for goods and services produced according to *their* comparative advantages.

Intuitively, we know this to be true from our own daily lives. Most of us find it efficient to specialise in one occupation, trading with other specialists for the goods and services they produce more efficiently. Of course, inefficient industries may need to adjust when subjected to competition. But this is no less true whether the competitors are domestic or international firms. And by propping up inefficient industries, we effectively tax other more efficient industries and consumers and reduce total welfare.

Second, adopting protectionist policies will give succour to protectionists in the United States and make it politically difficult for the Bush administration to offer Australia meaningful market access commitments in sectors of interest to Australian exporters.

Just as Tanner argues that the US film and television industry will gain an unfair advantage if allowed freely to compete with "bargain basement prices" on a level playing field in Australia, American farmers will gladly adopt his logic and wage a concerted campaign against an agreement that would allow Australian farmers to enter their home market to sell products at prices that US consumers find attractive.

Some might respond that culture is a special case and economic arguments are irrelevant. Sadly, this type of disguised protectionism has a successful track record - the French have stymied liberalisation of European agricultural markets in the past by arguing in the WTO that protecting their agricultural industry is crucial to protecting French culture itself.

Third is the fundamental issue of whether consumers should be allowed choice.

Tanner, ironically, appears to think so: "We want to decide ourselves how much Australian culture, how much Australian content are (sic) on our television screens", he told

Channel 10. Well, mandating local content requirements certainly does not allow consumers to make this decision for themselves.

Tanner doesn't want to see wall-to-wall American programs on his television and he is entitled to this preference. But he should not seek to impose this preference on everyone else. And if he is correct in saying that Australians want to protect our "culture" by watching home-grown soap operas, then he shouldn't even need to.

The good news is that if enough people share this preference then television stations in a competitive market will respond to this demand by playing local content to attract viewers. Those who don't will see their ratings fall, unless of course they are responding to alternative consumer demand.

Putting aside the trade arguments for one moment, this process also happens to be the best way to maximise consumer satisfaction."

CONCLUSION

Our future is about telling stories that move us, characters we can barrack for, ideas that transform the cultural landscape, special effects that take us to a world we've never seen before, situations and dialogue that make us laugh, and ideas that are so universal, they forever change the way we live.