Australian Screen Directors Association

Independent Producers' Initiative Inc

REVIEW OF AUSTRALIAN GOVERNMENT FILM FUNDING SUPPORT

SUBMISSION TO THE

Department of Communications Technology and the Arts

AUGUST 2006

AUSTRALIAN SCREEN DIRECTORS ASSOCIATION

The Australian Screen Directors Association (ASDA) is the professional industry association that represents the interests of 500 film and television drama directors, documentary filmmakers, animators and independent producers throughout Australia.

ASDA is dedicated to promote excellence in screen direction, encourage communication and collaboration between directors and others in the industry, and to advocate policies that promote the creative role of directors and support and enhance the screen production industry in Australia.

ASDA is a foundation member of the Australian Screen Council and fully supports the recommendations of the ASC's submission. ASDA's submission seeks to provide some broader context for ASDA's support for the positions articulated through ASC, to provide the particular perspective of Australian directors, and to submit some further recommendations and observations for DCITA's consideration.

INDEPENDENT PRODUCERS' INITIATIVE INC.

The Independent Producers' Initiative (IPI) represents Australia's independent feature film producers. IPI's members and supporters include many of the most experienced and successful feature film producers currently working around Australia, and some of its most promising newcomers. Members have at least one feature film credit, and associate members have a demonstrated commitment with production credits.

IPI has actively contributed to the formulation of the ASC's submission and supports its recommendations. IPI has joined ASDA in making this supporting submission to emphasise the joint commitment of producers and directors to the future of the Australian screen production industry.

ASDA and IPI thank DCITA for the opportunity to contribute to this review.

EXECUTIVE SUMMARY

In order to meet the Government's cultural objectives, the Australian screen production industry needs to increase the volume, diversity and value of its feature film, television and new media production.

The industry is facing rapid structural and technological change. If it is to grow and prosper in this new media era new mechanisms of Government support will be required to extend the current matrix of direct and indirect measures.

For this reason ASDA and IPI support those indirect measures outlined in the ASC submission:

- the introduction of the Australian Film and Television Production Offset: a new tax offset scheme for eligible Australian productions that would provide a rebate of 40% on qualifying expenditure that could be utilised in conjunction with 10BA and 10B investment,

- Amend the operation of Division 10BA in order to make it more certain and attractive, including the consideration of a 50 per cent tax break on earnings.

- the introduction of a 125% accelerated tax deduction for research and development.

ASDA & IPI also supports a tax offset to producers for distribution costs, in order to encourage greater marketing support for Australian feature films.

These measures will increase:

- the ratio of private investment to Government support
- diversity in production style and genre
- the retention of intellectual property in Australia for future income generation
- the industry's capacity to grow and adapt
- the audience reach of Australia's feature films

In line with the views outlined in the ASC submission, ASDA & IPI can also see the benefit of some realignment of agencies into a more unified agency structure. However, ASDA & IPI believes that any changes to the current agency structure, which continues to work relatively efficiently, should be undertaken in close consultation with industry stakeholders.

KEY POINTS

Industry success and sustainability

Over the past forty years the Australian screen production industry has made a significant contribution to the everyday life and culture of Australian society.

However, because of a series of structural and regulatory constraints, the industry is currently falling below the critical mass required to sustain development, production and distribution.

In order to assess the projects and requirements for future success, the following need to be considered:

- The overall volume and diversity of screen product being made and watched.
- An independent industry, which is fully underwritten by direct Government investment, cannot be said to be truly independent.
- Whether the necessary volumes of production, diversity, audience reach and sustainability will allow the Government's cultural objectives to be achieved.
- Future policy must ensure that industry growth is effectively supported to achieve a better chance of success.
- A better understanding of the economic dimension to the cultural rationale for Government support to the sector is required

Meeting the Government's objectives

Government support for Australia's audiovisual industries over the past forty years has been focused on cultural outcomes; and the most effective means of achieving these outcomes is supporting a diverse range of high quality films and programs.

Priority should be given to the concept of an independent sector, to allow for a diverse range of visions and stories to be shared.

Policy should continue to be aimed at a greater recognition of the range of support required to underpin a vigorous independent sector.

3. Direct and indirect funding balance

The Australian Government should increase the balance of direct and indirect support in favour of indirect support, to

- create a new avenue for screen financing;
- increase structural diversity, and diversity of product;

- increase the ability of content makers to negotiate better deals with buyers of content ;
- provide a range of sources of funding to match to appropriate projects
- allow for growth in the sector

In order to achieve these objectives:

- consideration should be given to encouraging private investment throughout the value chain, from development to production to distribution.

- direct investment must stay at least at current levels in order to ensure cultural and growth targets continue to be met.

4. Stimulating growth in Private Investment

In order to stimulate growth in private investment in the sector, the Government should:

- introduce an R&D concession to companies to write off legitimate development costs associated with audiovisual production.

- Introduce an Australian Film and Television Production Offset: a new tax offset scheme for eligible Australian productions that would provide a rebate of 40% on qualifying expenditure that could be utilised in conjunction with 10BA and 10B investment,

- amend Division 10BA to make it more attractive and certain, including a consideration of a 50 per cent tax break on earnings.

ASDA and IPI also support:

- Extending the offset proposal to P&A costs associated with distributing Australian feature films, in order to provide an incentive for distributors to increase their financial commitment to Australian feature films – but on the proviso that the offset goes to the producer rather than the distributor.

- Developing a separate mechanism to allow private foundations and individuals to make tax-deductible grants to documentaries and filmmakers, in the same way that individuals can receive tax deductions from their private investment through 10BA.

ASDA and IPI further submit that the Government should also give serious consideration to:

- Developing a sliding scale within the offset mechanism that would provide an incentive producers to keep budgets low, while not restraining their capacity to use the offset for larger productions.

Direct support

Diversity is a key operating principle that needs to underpin support for a healthy and vibrant film industry. In order to provide a level of structural diversity in a system dominated by direct investment ASDA and IPI have consistently supported the retention of multiple film agencies.

However ASDA and IPI would be supportive of a realignment of agencies into a more unified structure, on the basis that this level of diversity is provided through the development and successful implementation of the new indirect measures outlined above.

ASDA recognises that synergies between the functions of some of the agencies and greater convergence might be of value, to ensure that particular areas and objectives can continue to be effectively targeted.

However, ASDA believes that any changes to the current agency structure, which continues to work relatively efficiently, should be undertaken in close consultation with industry stakeholders. Simply merging agencies will not provide the best range of outcomes to serve the government's and the industry's range of cultural and economic objectives

INTRODUCTION

> We don't read and write poetry because it's cute. We read and write poetry because we are members of the human race. And the human race is filled with passion. And medicine, law, business, engineering, these are noble pursuits and necessary to sustain life. But poetry, beauty, romance, love, these are what we stay alive for.
>
> To quote from Whitman, "O me! O life!... of the questions of these recurring; of the endless trains of the faithless... of cities filled with the foolish; what good amid these, O me, O life?" Answer. That you are here - that life exists, and identity; that the powerful play goes on and you may contribute a verse. That the powerful play *goes on* and you may contribute a verse. What will your verse be?
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> *John Keating in* Dead Poet's Society*, 1989, Tom Schulman (writer), Peter Weir (director)*

The Australian production sector is experiencing the digital media revolution. The global audiovisual landscape is undergoing dramatic, rapid and fundamental change.

In this new media landscape where long-established paradigms of screen content, production and distribution are being overturned, how can Australia's audiovisual sector, and the Government institutions which support it, create and disseminate quality screen content that will reach audiences and contribute to Australian culture?

In John Keating's words, what will our verse be?

Background to Australian film support

Over the past century, films and television programs have proved to be the most accessible, popular and enduring forms of entertainment and cultural expression. Governments worldwide recognise that the power of these audiovisual forms have national value that goes beyond their capacity to entertain and engage audiences. A powerful local industry and its screen content creators make a significant impact on a nation's culture, identity and values. This is the justification for government support in assisting the industry to thrive.

For 50 years the Australian Federal Government has played a leading role in the development of Australia's audiovisual industry. Recognising the significant international dimension of the industry, it has provided a vital mix of strategic regulatory and subsidy interventions addressing areas of market failure.

Underpinning government intervention in the sector is the longstanding recognition that to achieve the desired diversity of screen content, and the development of a strong and vibrant independent sector federal support is essential.

Government support into the future

These basic rationales for Government involvement in the support of the screen production remain. Questions of content diversity are becoming more important as we move into a new digital media framework.

There will continue to be market distortions that mitigate against the production and screening of Australian screen content. In fact the future of Australian content may come under threat as mass audiences fracture and the established business models supporting high-cost production face increasing pressure. However, at the same time great opportunities are opening up through digital delivery systems that could, over time, allow Australian content creators to access different, possibly global, audiences more directly.

The challenge is to determine the most strategic way to create and distribute this content to audiences in the future.

If the Australian industry is to take advantage of the new opportunities and deliver on its great potential, Government support settings need to be correctly calibrated. They must also be flexible enough to respond to the rapid technological and structural change that characterises the audiovisual sector. The opportunity for the industry to thrive and prosper in this new media environment is immense.

The role of the director

The director plays a primary role in the creation of an audiovisual works – such as a film or and television program. While the collaborative process is at the heart of all production, the Director is the person with the creative responsibility for the artistic and aesthetic integrity of the work.

The director contributes to all of the creative elements relating to the making of an audiovisual work and integrates them into a dramatic and aesthetic whole.

Directors are therefore crucial, and the ongoing support and development of directors in Australia will remain one of the keys to the ongoing success and sustainability of a creative and vibrant Australian production industry. While a necessary focus must be maintained on the structural and commercial settings of the industry, this cannot be done without considering its creative dimension, and the importance of the director’s voice and vision in both drama and documentary forms.

Directors work in very different ways across the different forms of production, but it is important to recognise that they are often centrally involved in the generation of projects, particularly in areas such as feature film and documentary, even if they do not write or finance them.

Some directors write and develop their own projects; others initiate projects but work with a writer prior to the involvement of a producer; while some directors are attached to project once it has been through a number of stages of script development. Other directors work on projects, particularly television series, where that they have not had a significant role in its generation or development.

There is no set model for the development of a project and it is important that this diversity is not just acknowledged but is also promoted and supported.

It is also important to recognise the role that Australian directors have directly played in the commercial success of the industry and its capacity to attract investment into the sector. Directors have been crucial in the development of successful commercial companies, in attracting both private sector and international finance to Australia, and have had success on the world stage that has helped to give Australia and Australian films an international profile.

Directors such as George Miller, Phil Noyce and Baz Luhrmann are examples of directors who attract international finance to Australia because of their directorial talent. They are the asset of their production companies, and it is their creative vision that has brought hundreds of millions of dollars of international investment into the country over the past ten years.

Other directors such as Peter Weir, Bruce Beresford, Gillian Armstrong, Fred Schepisi, Scott Hicks (to name a few) continue to have success on the international stage, not to mention emerging filmmakers such as Robert Luketic, Leigh Whannel, and John Polsen.

In the meantime, locally based directors such as Ray Lawrence, Richard Lowenstein, and Rolf de Heer have created production companies along very different models, but all of which are contributing to the ongoing critical and commercial success of the Australian industry. Others such as Robert Connolly and Bill Bennett, or documentary directors such as Tom Zubrycki and Dennis O'Rourke, move successfully between directing and producing.

Recognition of the diverse contributions that Australian directors make to the ongoing health of our industry must be taken into account in any review of the screen production sector.

The role of the Independent Producer

Independent producers play a similarly crucial role in the ongoing development and success of the Australian screen production industry, and one that is well recognised by directors with whom they work as their collaborative partners.

As will be explored in this submission in some detail, the role of the independent producer is crucial in ensuring that a diversity of voices can be heard and visions can be shared.

The history of Australian cinema shows that many of the greatest creative successes have been developed and produced by independent producers.

It is vital that a viable base of independent producers are able to prosper in the screen production industry, in order to ensure that the industry retains the right creative and economic balance.

WHAT DOES THE AUSTRALIAN FILM INDUSTRY NEED TO DO TO INCREASE ITS CHANCES OF SUCCESS AND SUSTAINABILITY?

What is success?

There are two dimensions to the success of any industry:

- the success of individual products of an industry, and
- the overall ongoing success of the industry itself.

In regards to the former, the Issues Paper suggests that a vigorous film sector should enable the development and production of Australian films and television programs which:

- are of interest and relevance to the Australian public;
- have the potential to attract wider exposure in international markets; and
- enable a record of Australian life and culture to be kept for future generations.

By these measures, the Australia industry continues to be successful:

- Its films and programs continue to be of interest and relevance to Australian audiences: Australian drama and factual programs attract consistently high ratings on television in comparison to imported programs, while recent box office figures for films such as *Jindabyne* and *Ten Canoes* indicate there is still a healthy audience for Australian cinema;

- Australian television programs continue to be sold to the world, and the recent high level of representation of Australian films and filmmakers in competition at Cannes is an indicator of the regard with which our industry and its creative practitioners are held worldwide;

- There has been a significant growth in demand for factual programming that engages with our current society and culture, and Australian screen producers have responded to this demand in a variety of ways that cross different platforms

Raw measures such as these only tell part of the story, of course. There is a complexity that lies beneath the production and distribution of screen product that needs to be taken into account, particularly when attempts are made to compare the relative success of one screen product against another.

Just taking feature film as one example, it is not always easy to compare commercial success. For example, two films that take $5 million at the box office may be seen as similarly successful by some, but it could be that the cost of producing and distributing one is dramatically more than the costs of the other. One film may not make as much box office as another but may find greater audiences on DVD and on television later in its life, or even make greater overseas sales.

Which one is more relevant? Which one is more successful? The specific context of each film's production and distribution is very important to bear in mind when analysing their overall success in the marketplace, not to mention their success in cultural terms.

Moreover, it is important not to put too much focus on the success of each particular film or program in isolation. There is general recognition that the overall success of screen industries needs to be judged across the production and release of a number of films and programs. The history of screen production worldwide tells us that only a small percentage of products that enter a market will be successful, and it is a question of creating enough critical mass to allow you to achieve an acceptable hit rate (which in feature films worldwide is usually expected to be about one in ten).

The two most successful commercial film industries in the world, Hollywood and Bollywood, have developed their business models around this numbers game. The expectation is that overall commercial success will be derived from a volume of production, where the successful films in an overall slate will make up for the numbers of films that do not find audiences and/or don't make profits. Recently independent industries in countries such as Denmark and Israel have employed this same logic and the results have been nothing less than remarkable. In this equation the issue of production volume is key.

The tendency in the Australian media to judge the success or not of the industry on the basis of the box office of one or two films, or the cancelling of one television series, without recognising the market dynamics underpinning screen production industries worldwide, is a continuing issue. The Government must ensure that its measures of success are based on overall assessments of the industry, rather than allowing the immediate results of one film to divert its attention from the direction in which the industry is heading.

Industry success

In order to justify Government intervention into any industry, an industry must demonstrate that it can do something that has broad benefits for the community; a positive impact on the lives of everyday Australians, either in terms of the immediate contribution it makes or because of the regard in which it is held.

In terms of the screen production industries, a broad assessment of its success along these lines could be the extent to which it:

- contributes to the broad ongoing cultural, social and democratic conversation of Australians;
- contributes positively to a process of social cohesion, and cross-cultural dialogue,
- provides both a creative mirror to ourselves as well as a window to other cultures and countries about our lives and values, and
- showcases Australian talent and creativity to Australians and the world;

There appears little doubt that films created by the screen industries contribute positively to these kinds of objectives. For example, the success of one of our directors on the international stage can make us feel proud just as we feel proud of a gold-medal-winning Olympic athlete; a feature film that we have seen may stay with us long after its watching; a TV series may give people outside Australia a view of Australian life; a documentary may give someone a new insight into the life and values of a particular community in our society; while something as prosaic as a TV commercial may introduce a new shorthand such as "not happy Jan" into our everyday lexicon.

The question is how does one measure the extent to which an industry is delivering on these objectives, given that they are by their very nature subjective?

How does one measure today the value of an iconic film such as Picnic at Hanging Rock? By the number of people who saw it at the box office when it was originally released? By the TV audiences who have seen it since it was first released? Or by the impact that it has had on our broader culture, the pride that we have had in the international success of Peter Weir, or the confidence and inspiration that it and other successful Australian films have given to subsequent Australian filmmakers?

Quantitative measures

The most basic quantitative measure to determine the screen productions industry's success is volume. However, this cannot be restricted to the amount of material being made, as there is little point in creating a wealth of content if no one is able or willing to watch it. The issue of exchange and reception is important to bear in mind.

Any assessment of success must therefore include both:

- the overall volume and diversity of screen product being made
- the overall volume of Australians watching this product

If there is a high level of both production and reception of a diverse range of Australian content, one can be fairly confident that the industry is making a significant contribution to the formation of a nation's cultural capital.[1]

The only factor that impacts on its success is the extent to which it relies on direct Government support to underpin this production and exchange.

It is well accepted that a certain level of Government intervention is both necessary and appropriate to support the screen industries. David Gonski noted in the Government's 1997 review of the industry that it was likely that the Government will need to continue to be involved in assisting the industry for the foreseeable future, and his conclusions remain no less valid today[2]. The Australian industry is underpinned by a series of strategic and inter-linked regulatory and subsidy-based interventions, and any suggestion that these could be unpicked and still allow an industry to produce even the level and diversity of audiovisual product being produced, let alone allow an industry to grow, is not realistic.

And it is worth noting that the Australian screen industry is not alone in this. Almost every other screen industry in the world, including Hollywood, requires the ongoing intervention of Government, in order to address market failures and distortions in the trade of audiovisual goods and to meet their own specific cultural and economic objectives.

However, if a volume of production is achieved solely due to direct Government subsidy, the level of success comes under question. An independent industry, which is fully underwritten by direct Government

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[1] This term has been developed in depth by George Barker in his monograph "Cultural: Capital and Policy" (Centre for Law and Economics, ANU, 2000). Cultural capital may be defined as the "intangible set of tastes or preferences, understandings or beliefs, and moral or ethical codes of conducts which may be shared in common by a number of individuals. Individuals may then associate in formal or informal groups or collective associations with others according to the degree to which the individuals in that group share something in common on any one, or more, of the moral aesthetic cognitive or moral dimensions of culture."

Dr Barker's analysis considers the role that cultural creation, and in particular film production, has in the formation of cultural capital, and makes some suggestions about ways of supporting this activity. His is an important contribution because it begins, without being reductive, to put an economic framework around what has previously been the realm of cultural theorists.

[2] That the Government recognise that to achieve its cultural objectives within a commercially driven Australian film and television industry, there will be a continuing need for Government assistance and non-commercial rates of return on its investment.
David Gonski, *Review of Commonwealth Assistance to the film industry*, 1997, p6

investment can hardly be said to be truly independent. This is where the concept of ‘sustainability' becomes important.

Sustainability itself is perhaps a misleading word, because it suggests the possibility of complete self-reliance, outside of Government support. Nonetheless, the health of a commercial industry that relies on direct Government investment can in some ways be assessed by the extent to which it is proportionally reducing this level of reliance. In other words it could be said that it is moving towards greater ‘sustainability’ – or in other words becoming ‘healthier’, and more ‘independent’[3].

Characteristics

So what should the screen industry be heading towards? What does a healthy independent industry look like?

ASDA’s view is that a healthy industry is one that is likely to exhibit the following characteristics:

- There is a sufficient, diverse base of production with the capacity to develop projects during periods of low production activity
- There is overall growth in the sector, both in terms of production but also audience reach
- The concept of ‘reward for success’ is established as a general operating principle of this industry, and filmmakers earn ongoing equitable remuneration from the programs and films that they are making
- Production companies are able to negotiate to retain and exploit reasonable levels of IP in the programs and films that they are creating
- There are a range of diverse and diversified production companies engaged in the sector, and incentives and programs designed to allow companies to improve their structures and capital bases
- There is not an over-reliance on direct Government support
- A sufficient quantity of local production companies are resourced and structured to compete globally
- Companies are well positioned to adapt to technological change in production and distribution
- There is scope for sustainable careers for successful and talented creative practitioners
- There is a regular flow of Australia’s creative talent between the Australian and international industries
- The industry has capacity to train and re-skill its creative and technical practitioners

[3] The Issues Paper uses the term “vigorous film sector”. (p7)

- That content makers have a reasonable level of creative and financial control over the product that they are producing
- The industry and its professional associations are leading the debates about the industry's future
- There are adequate numbers of outlets for screen content, both local and global, who are prepared to pay a reasonable price to underwrite the real costs of production

Growth is the key

The next question that follows this is how you judge the success of an industry over time? How can you judge that it is at least moving towards some level of sustainability – rather than away from it?

The simplest measure to determine the extent to which that industry is succeeding must be the extent to which it is growing. An industry that is static overall, or in decline, is by definition one that is not fulfilling its potential.

Some of the indicators of growth that could be used as a starting point include: production levels; audience levels; private investment levels; level of returns; diversity levels.

Current Australian situation

A quick examination of these key indicators in Australia suggests that the industry's growth has been constrained. While Australian audiences are still indicating a strong demand for Australian content, the capacity of the industry to meet this demand is decreasing.

- Overall production levels have decreased significantly

  The most recent measure of the size of the production sector is the 2002/03 ABS Television, Film and Video Production survey which shows that the total production value of the industry is $1,502.5 million – a fall of 16 per cent since the last survey which was $1,792 million in 1999/2000.

- The reduction in Australian screen production across the board has resulted in less Australians watching Australian content

  While overall audience levels per program remains healthy, there have been overall decreases in the numbers of people watching Australian content on television, the overall box office levels for Australian films in recent years has fallen below ten year averages, while the lack of development of the digital content sector has constrained the growth of audiences and users for Australian products on new digital platforms.

- Private investment has reduced significantly

  The number of private investors in the Australian film and television industry has fallen from a high of 4,614 in the middle of the 1990's to only 1,475 in 2003/04 (ATO).

  Total Investment from private individuals (including 10BA, 10B, and FLIC's) has also fallen from $39.49 million in 1995/96 to $22 million in 2003/04. There was a fall in average investment over this period from $20,539 to $14,915.

- Overall returns to producers from equity in production have decreased

  The film and video production services sector generated an overall income of $1.597 billion in 2002/03, up by 8 per cent from $1.474 billion in 1999/00, and an operating profit of $92 million, up from $77 million.

  However, the increase in income was in the provision of services – both production and post production – to other businesses; income from the production of completed works decreased.

  What this means is that the industry continues to be dominated by a fee-for-service approach, with limited capacity to invest in the ongoing development of content for the future.

- There has been an overall reduction in the range of programs and films being produced

  The reductions in the overall level of production, and the limited capacity for Australian producers to take full advantage of digital production and delivery, have resulted in a subsequent reduction in the diversity of content across platforms.

Key targets for the future

In order for the screen industry to be seen as a successful industry, increasing its volume and diversity, increasing its audience reach, and becoming a healthier more vibrant sector – it must be growing. In order to demonstrate that it is growing it needs to achieve the following benchmarks:

1. increase in production levels
2. increase in audiences across platforms
3. increase in financial returns
4. increase in private investment in the sector
5. increase in diversity of product available

6. increase in the profile and visibility of both the product of the industry and the industry itself

Role of Government in Assisting Future Success of the industry

The logical role of Government, therefore is to have a strong focus on assisting the industry to grow, and to create the conditions by which these increases can be realistically achieved.

For this reason issues such as media regulation, Australian content rules, adequate funding of public service broadcasters, and terms of trade requirements – issues that are outside the immediate scope of this current review – will need to continue to be addressed by Government if the industry is going to have a realistic chance of success.

The industry's ongoing success cannot be judged without taking into account the structural impediments that are contributing to this result.

The Government's role will be to remove the structural and legislative impediments to growth, while at the same time providing positive measures that will underpin the industry's development. There will need to be programs and mechanisms to provide support for a range of different programs, production methodologies, individual practitioners and production companies.

Future industry assistance mechanisms must be developed and assessed according to how they can assist the industry to achieve these objectives, and the extent to which they contribute positively to the industry achieving the previously outlined characteristics of a healthy, independent industry.

1.1 The key challenges facing the Australian film and television production sector

Underlying challenges

Australia's screen production industry faces the same underlying challenges as similar industries in many other countries trying to compete with high-cost screen product from the USA in particular. Australia has always been a relatively small screen player in global terms with a small local market with limited capacity to underpin high cost screen production, such as drama and documentary, without Government intervention.

Format-by-format challenges

There are specific challenges that affect specific formats, and it is worth bearing in mind that this raft of different challenges requires a diversity of responses. It is not possible to have a simple one-size-fits-all solutions.

In feature films, for example, there are ongoing challenges in relation to the limited Australian theatrical distribution sector, and its capacity to support Australian films; the inability for Australian marketing budgets to compete with those of larger budget Hollywood films; the multiplex release patterns of exhibitors which works against smaller independent Australian releases; the increase in the number of independent non-Australian films in the market in recent years; and the shift of the primary audience for feature films generally away from cinema release to DVD.

In regards to television drama, there are ongoing challenges in regards to the level of licence fees; the low level of television drama being produced and screened, both on commercial and public networks but in particular the ABC; the lack of tolerance for any drama series that does not achieve audience targets immediately, compared to shows such as *Blue Heelers* which were allowed time in their first season to 'find an audience'; the resistance of the broadcasters to produce Australian children's programs, which is likely to increase if regulations restrict certain types of advertising; and the general collapse of the previously lucrative international television marketplace. This is not to mention the current digital challenge to the established television paradigm.

It is worth noting that only 9% of new fiction programs on Australian television, including ABC and SBS were locally produced in the year 2004-05, in comparison with the US 94%, UK 86%, Germany 56%, Italy 47%, Spain 44%, France 31%, Sweden 21% and the Netherlands 17%. The low levels of Australian drama does not reflect a lack of industry response to audience demand, but a restriction in terms of trade, and a lack of commitment from commercial free to air networks to its own local programming.

In documentary, by contrast, the issues are less to do with a lack of demand for the product – in fact demand for Australian documentary and factual content appears to be increasing dramatically, both in Australia and overseas – but with a lack of financing sources to allow this demand to be met. Documentary funding from direct Government sources is under extreme pressure, and the capacity of the sector to grow is being seriously constrained simply due to the fact that the Government's direct investment envelope for documentary has not increased for some time.

Emerging Challenges

Critical Mass

The most urgent challenge that the industry faces in order to move ahead confidently into the digital future is increasing the overall volume in screen production. As noted previously the quantity and diversity of production has been shrinking in recent years, and the need to turn this around in a short amount of time is becoming increasingly critical.

If production levels continue to fall, the critical mass required to sustain an industry across sectors will come under increasing pressure, and there will be no investment in developing the infrastructure required for the future.

Australia will also see an ongoing flight of expertise to other industries and other countries. Given the amount of energy and finance that has been invested in developing the talent and infrastructure base of the industry, this will represent a significant lost opportunity.

Constraints on growth

The current structure of support is not directed enough to overall growth in the industry. The industry's current reliance on direct investment must be addressed, as this puts artificial caps on the potential of the industry to grow.

The structure of support needs to be reoriented in order to encourage overall industry growth, particularly through the development of workable mechanisms to encourage private investment into the sector.

Private sector participation in the screen sector has clearly fallen in recent years, and this must be reversed if the industry is to fully capitalise on its potential.

Digital technology and the speed of change

The emerging challenge associated with digital technology represents the biggest challenge, and yet the greatest opportunity for screen content producers. The rapid change that characterises the industry means that some screen producers have not been quick enough to understand the potential that this new medium has for the distribution and exploitation of conventional programs and formats, nor for the creation of new forms of content.

Ongoing challenges include the fact that the business models for digital content creation are still being devised; there are major issues in terms of creative, technical and business training for the digital sector; and there are issues in regard to the investment in new capital items.

On top of this the ways that consumers are interacting with screen content are changing fundamentally, and established understandings of copyright itself is coming under greater pressure. The maintenance of the concept of re-use payments in the digital world will be one of the greatest issues facing producers in the future.

1.2 Whether there are impediments to investing in Australian film production

Investing in screen content, worldwide, is a risky business. Many of the high-end formats are expensive, and have little chance of doing anything more than recouping their budgets from their marketplace. As a result, profits from production are often illusory.

This level of 'market failure', is one of the reasons why Governments become involved in assisting film production in the first place, and why Australia has concessional tax arrangements in the form of 10BA and 10B.

10B and 10BA, while they are still used by some producers to raise finance, are neither attractive nor certain enough in the present investment climate to attract significant levels of private sector participation.

1.3 Whether the industry can do more to increase its competitiveness, both in the marketplace and as a vehicle for investment, and

Australian screen content is highly competitive on a cost basis with product from around the world. What content producers face, however, is less access to established screens and hence opportunities to compete.

In order to address this issue, the Government would be required to consider broadcasting policy and content regulations alongside its subsidy support mechanisms.

1.4 Whether the industry is suitably responsive to industry demand.

Australian content continues to be successful across the existing delivery platforms, where the demand for Australian content remains undiminished. What has become more of an issue is the extent to which producers are able to access these screens and feed this demand

Television dramas continue to find significant audiences. Series dramas, from long-running serials (*Neighbours* and *Home and Away*), to series (*McLeod's Daughters* and *All Saints*), and comedies (*Kath and Kim*) are still in high demand, while more recent series such as the pay-TV generated *Love my Way* has been a standout critical and commercial success.

At the same time, higher budget event projects such as the mini-series *Mary Bryant*, and telemovies such as *Society Murders* have commanded high audience numbers despite being programmed against US programs with higher budgets.

Attempting to gauge and respond to 'audience demand' however, is not always a simple equation in an industry where there is a high level of subjective judgment at all links in the value chain. Some genres and formats, particularly those in television, are more audience-driven in their conception, while some, such as feature films and documentaries, may require the creators to lead the audience.

The reality is that it is an increasingly difficult commercial television environment for programs to compete in. Australian drama series are no longer given the luxury of being able to build audiences, as they once were. This is a development that has less to do with competitiveness, per se, and more to do with the increasingly zero tolerance approach taken by the commercial networks with programming that does not meet immediate audience targets.

The recent downturn in drama production has been compounded by the significant retreat of the ABC from this genre over the past five years. This has been the single largest contributing factor to the reduction in audience access to Australian content during this time. This has less to do Australian dramas attracting audiences, than the ability of the ABC to fund the level of high quality programming that it once did.

Feature films, in the meantime, are competitive in terms of the scale of their budgets compared to imported product generally, and the recent hit rate per volume of production has been quite significant. However, they are not always given the opportunity, nor the marketing back-up, to build audiences over time. While box office returns have remained at relatively low levels in recent years, the fact remains that a number of recent films have done significant figures, and there is little doubt that they will build on cumulative audiences through subsequent releases on DVD. It is worth noting that in 2005 *Little Fish* which took around $4M at the box office out-grossed all other specialist releases that year[4].

There have been a number of changes to the way that films seeking funding from the Film Finance Corporation are evaluated, in order to address some of the structural anomalies in film financing that resulted in the production of a batch of critically and commercially unsuccessful films, and the first results of this new approach will be tested in the next twelve to eighteen months.

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4 Specialist films are those that are released on 70 prints or less

However, the ultimate issue in relation to feature films seems to come down to volume, and the fact that Australia is simply not making enough films to allow it to create the opportunities for the breakout films to be made.

In documentary, as mentioned previously, there has been an increased demand in a range of documentary and factual programming across the board, from both audiences and broadcasters. The problem has been the finite resources, particularly of the public broadcasters, to invest in the creation of this programming, and the fact that the funding agencies have not received any increases specifically for documentary for over ten years.

2. HOW CAN THE GOVERNMENT'S OBJECTIVES BEST BE MET?

2.1 Whether the current Government objectives for the film sector are appropriate

The Issues Paper notes that the Government 'is committed to maintaining a strong, active and vibrant Australian film industry for both cultural and economic reasons'.

These objectives are similar to those spelled out in the current Commonwealth Film Program which:

> ... supports the development of a creative and highly skilled Australian film and television industry in a competitive commercial context. The program assists the development and production of Australian film and television programs and promotes their presence and appreciation in local and international markets.
>
> The program creates opportunities for:
>
> - Australians to make and view a rich variety of high quality film, television and other audiovisual productions;
> - current and future generations to access a record of life stories and issues relevant to Australians;
> - Australian students and practitioners to develop a high level of creative, technical and business professionalism to meet industry needs; and
> - appreciation and extended audience reach for Australian film and television productions both in Australia and internationally.

Primacy of Cultural Objectives

Over the past forty years, Government support for Australia's audiovisual industries – through regulation, direct subsidy and indirect incentives – has been primarily focused on cultural outcomes.

These outcomes relate to the impact that the creation and exchange of Australian screen content has on the development of cultural capital in our society – how its products, stories and visions create a shared language; how it contributes to our social and democratic conversation; the expression of our community values, mores and histories to the outside world; and the positive role that it has to play in processes of social cohesion.

However, as discussed, cultural objectives do not lend themselves easily to quantitative measures. The Government has instead focused on the input that it has determined is the most effective means of achieving these outcomes –

and this is to underpin the creation of a diverse range of high quality films and programs.

ASDA submits that cultural objectives should remain the primary rationale for Government involvement, and that it should continue to support particularly those programs where there is both a cultural rationale, where there is demonstrated demand, and where the market will not otherwise support their creation.

The role of the Independent industry

Importantly, the Government has recognised that it also needs to support and sustain a healthy, vibrant and growing industry in order to best deliver these outcomes.

What is of interest is the particular priority that Governments have consistently given to the concept of an independent sector – on the basis that the independent sector is generally more efficient that large agencies and broadcasters, is creatively driven, and has a flexibility that allows it to adapt and respond to rapid change.

The notion of independence has had a broader rationale that is related to issues of diversity and the range of voices in the media landscape. David Gonski referred to this issue in his 1997 review:

> To achieve its cultural objectives the Commonwealth requires the Australian industry to produce a broad slate of products of different types, formats and genres, reflecting different ideas and points of view and enabling different 'voices' to be heard and different visions to be shared.
> (Review of Commonwealth Assistance to the film industry, 1997, p6)

Gonski's last point about "reflecting different ideas and points of view and enabling different 'voices' to be heard and different visions to be shared" is a crucial one in this context, and in ASDA and IPI's view is no less relevant today. The role of the creative community of writers, directors, producers, actors and technicians is to contribute to the overall diversity within the screen industries, and to underpin the achievement of a broad and rich set of cultural outcomes.

Independence also requires a level of self-determination within the industry. Screen practitioners and production companies should, for example, not be seen as merely 'suppliers' to wholesalers and retailers. In order for the independent industry to succeed it must be engaged in the generation and development of ideas, have a reasonable level of control over how these ideas are realised and reach the screen and retain an equity stake in their outcome.

There must be a diversity of production methodologies, and company structures. The importance of developing and sustaining a diverse ecology within the independent sector is important. Without this level of diversity, the independent sector is at risk of becoming creatively thin, and this will ultimately impact on the capacity of the industry to innovate, to create engaging work, and ultimately on its capacity to deliver fully on the Government's cultural objectives.

ASDA and IPI are of the view that the role of the independent sector is inextricably connected to the achievement of the Government's cultural and social objectives.

Multiplier effects

The impacts of the screen production industry also flow through to other sectors including education, tourism, and foreign affairs, that fall outside the broad 'cultural' prism through which the industry is, and should primarily, be judged. Although it may be argued that in fact an enhanced role of the audiovisual sector in contributing to these sectors – education, for example – could in fact be one of the ways that it achieves its cultural objectives.

More recently, Stuart Cunningham's work on the creative economy[5], which considers the contribution that sectors such as film production have on innovation within our economy more broadly, suggests that there may well be fruitful future lines of enquiry on this multiplier question. Cunningham's work does not replace the established rationales for government involvement, but is welcome because it extends the consideration of benefits stemming from screen production and exchange.

These indirect multipliers across the economy have not been properly measured as yet, nor have the possibilities of fostering greater linkages between the production industry and some of these areas been fully explored. While there has been insufficient time to develop this analysis further in the context of this review, this broader thinking about extending the impact of the screen production sector into other aspects of everyday Australian's lives promises much for the future of our industry.

2.2 The areas where Government support is most needed or appropriate

The areas that Government has identified over time for subsidy support – development, production and training – should remain the key areas of direct and indirect assistance.

[5] Stuart Cunningham, 2006, *What Price A Creative Economy*, Platform Papers, Currency Press, July.

However, there is acceptance that there should be some strategic assistance provided in other links of the value – in the areas of distribution and marketing, in particular, which are not always able to properly support films and TV programs find the audience that they are justified to find.

For this reason ASDA and IPI are generally supportive of the offset proposal submitted by the Australian Independent Distributors Association, although with the slight caveat that the offset should go to the producer, not to the distributor.

At a broader level, there is ongoing need for research and information, audience development through screen culture and other programs, and archiving of Australia's screen heritage.

2.3 The appropriateness of the current balance of support between genres and platforms

There is generally agreement on the existing support balance between different formats and genres. What is more important is to remain open to changing these balances over time, but maintain the same principles that lie behind policy decisions which determine the correct balance over time. In other words, the Government should continue to support those products that will contribute to its cultural objectives, where there is demonstrated demand, and where there is clear market failure.

The area of digital content – both using digital platforms to extend the life and distribution of conventional screen products, as well as the development of new digital forms – is an area that will require enhanced support as a matter of some urgency. While there is still uncertainty about the sorts of products that will ultimately be viable, and those which will be deemed to have some cultural merit, it is important that the Australian industry begins to develop and experiment with different ideas and platforms.

Finance triggers

Despite the fact that new platforms are constantly opening up on the internet for distribution, many of the current mechanisms triggering financing still rely on presales to established media platforms. Over time, there will need to be a recalibration of these triggers to ensure that legitimate projects are not unfairly constrained.

Given the pace of change in the new media environment, it is likely that there will be some need to be able to review eligible formats more easily.

3. WHAT BALANCE SHOULD BE STRUCK BETWEEN DIRECT AND INDIRECT FUNDING?

The Australian Government should increase the balance of direct and indirect support in favour of indirect support, to

- increase structural diversity, and diversity of product;
- increase the ability of content makers to negotiate better deals with buyers of content ;
- provide a range of sources of funding to match to appropriate projects
- create scope for more commercial products;
- allow for growth in the sector

It is not obvious what the precise ratio of direct to indirect support should be in the Australian context, only that the percentage of direct investment is currently higher than it should be. It is clear that if the Australian industry is to develop and grow, there is a need to use indirect support to attract a higher level of private sector involvement in the sector.

Indirect support is currently in the form of tax concessions for private investment, and due to the narrowness of the eligibility criteria is currently mostly restricted to production investment. As the industry needs to increase activity and encourage growth overall, there are good arguments to encourage private investment throughout the value chain, from development to exhibition.

Direct support is presently at the minimum possible level. Whatever changes are made, any reduction in total direct support would seriously constrain the possibility of growth in the screen production industry, and impact upon the ability of the industry to deliver the diversity of programs required to meet the Government's cultural objectives.

3.1 The effectiveness of direct and indirect funding;

Direct and indirect support approaches have different benefits to Government and industry. Direct mechanisms have the benefits of certainty, transparency and clarity, which are of particular benefit to Government but can be of value for producers.

Indirect mechanisms have the benefit of reducing levels of bureaucracy, and a greater capacity to leverage funding from the private sector. For the industry, indirect schemes are also attractive because they allow greater flexibility, allow for industry growth (if uncapped), are open and allow for a greater involvement with the market.

They allow for the industry to be responsive and adaptive to market and technological change.

Whether these schemes are effective depends on the objectives that underpin them. If the objectives are more targeted, direct schemes would tend to be more effective because the outcomes can be more easily controlled and predicted. If the objectives are broader, and are more tied to notions of flexibility and growth, indirect schemes can be very effective.

ASDA and IPI are of the view that there is a need for a balance of the two approaches, in order to ensure that the right balance in the production ecology is struck, and to ensure that the range of cultural and social objectives of Government can be most effectively met.

3.2 The relative strengths and weaknesses of direct and indirect support mechanisms;

See 3.1

3.3 Whether the existing balance between these support mechanisms used by the Australian Government is still appropriate and effective; and

Presently the balance is skewed towards direct mechanisms by the lack of attractiveness or effectiveness of existing indirect mechanisms.

ASDA & IPI believes it is desirable to increase the ratio in favour of indirect, for the reasons outlined above; and to achieve this by increasing overall activity and the attractiveness of indirect incentives, rather than by reducing amount of direct support.

3.4 If not, what an appropriate balance might be.

There is no predetermined ratio of effective direct and indirect support. Every country's situation requires different mechanisms and a different balance. However, as mentioned, ASDA and IPI are of the opinion that the current balance is not appropriate, and that while the quantum of direct support should not be reduced the overall ratio must be weighted in the favour of indirect support.

As the balance changes, it needs to be monitored. AFC research indicates that it takes 2 years for the effect of a change in indirect incentives to flow through to a measurable change, in this case in production levels, and about 5 to reach a plateau. That correlates with the period typically required for financing and completing a feature film.

4. WHAT OPTIONS ARE THERE FOR STIMULATING GROWTH IN PRIVATE INVESTMENT?

The Government should consider appropriate tax mechanisms at a number of the links in the industry's value chain: development, production and distribution.

Development

The Government should introduce an R&D concession for films that allows companies to write off legitimate development costs associated with audiovisual production.

Production

A new mechanism is required to encourage greater private sector investment into the screen content sector, and contribute to the future growth of the industry.

It is important that any new mechanism:

- is not seen as a substitute for what is currently being delivered by direct investment.
- is accessible to all content makers, from new entrants through to established enterprises.
- Includes the possibility of a mixture of options is essential because it is impossible to dictate market behaviour.
- is not introduced without appropriate transitional arrangements for existing 10BA and 10B tax mechanisms, for a reasonable period of time.

The following are preferred attributes of any new tax model

- certainty – for both investor and producer
- attractiveness
- transparency and accountability
- simplicity
- as low in cost as possible
- capacity to create a truly new door
- able to support and underpin industry growth
- limits the role of the ATO to the extent possible
- supports the building of businesses
- allows investors to come in on lower budget films as well as higher budget films

4.1 Whether tax incentives are still an effective and appropriate mechanism;

Tax incentives are still attractive to Australian investors in other products and other industries. We have consulted with professional investors, bankers and investment advisors, who are united in their views that tax deductibility is still a key driver of investment, despite the lowering of tax rates. They are also emphatic that certainty of treatment – particularly of deductibility for the investment – is essential , if investment in film is to compete with other investment options. That involves certainty for the investor, that it will get its deduction or benefit and that the nature of its investment is as stated, and for the producer, that it can solicit and use funds in confidence.

Significant sums continue to be invested in film and TV production, although analysis of the last decade shows a drastic long-term decline in private investment, to the point that levels are now insufficient.

While the FLIC scheme brought some welcome private investment into the industry, its actual impact can be placed in perspective by comparison to total funds raised under 10BA over time. The peak impact of the FLIC scheme occurred in 2001/02 when $20.14 million was raised under 10BA. However, the scheme has failed to arrest the overall decline in private investment. The latest FLIC offering failed to attract enough funds by 30 June 2006 to proceed.

4.2 The appropriateness of the current 10BA/10B schemes;

10BA is neither sufficiently attractive nor sufficiently certain to stimulate the level of new activity that is required. The figures show a clear decline in private investment.

Private investors can currently claim a 100% tax deduction on investment in productions certified under Sections 10B (over two years) and 10BA (one year) of the Income Tax Assessment Act 1936. There are many well-founded concerns about the schemes' level of cost and complexity, about their administration, and as to the restrictions on eligibility

There is now a real need for changes to these schemes, at the very least to recognise the extent of the change in what comprises screen production since the schemes were introduced in 1988.

ASDA and IPI's joint submissions to 10B/10BA review last year are still pertinent. As we note that the findings of that review are to inform part of this one, this is a brief overview of the barriers to using 10BA to fund production.

Eligibility Criteria

The current eligibility criteria are outdated. The content and format of production are relevant, not the intended delivery mechanism. The focus should be on the Australian view or perspective, and involvement of Australian creative talent, rather than "significant Australian content" which is vague and subjective. The key issue should be the involvement of Australians and Australian control of copyright.

"At risk" rule

The 'at risk' rule applied to 10BA investment is a significant disincentive to private sector investors. There is a range of tax-deductible investments available to Australian private investors that compete with film investments in the private sector marketplace, yet have capital guarantees.

There may have been an argument for such a rule when the concession was significantly more attractive, and included a tax break on revenue. The deduction is now 100%, and the normal depreciation period has been reduced to 5 years, so the timing effect is also reduced.

Timing

10BA : Greater flexibility for completion is needed. A film must be completed within 24 months after the end of the financial year in which the investment was made. A longer deadline should be allowed to acknowledge that many productions using new technologies require longer to complete. The animation feature *Happy Feet* was in production for five years. Other computer-heavy films and multi-platform projects may require similar times, as may low-budget films.

The normal completion time should be extended to 36 months, and DCITA should be given the ability to extend this deadline on a discretionary basis, on application by the producer.

10B: Investments under 10B should also allow investors to claim a deduction in the year the investment is made rather than, as is currently the case, from "when the project first earns an income".

Product Rulings

One of the most significant issues for independent producers is providing certainty to investors. The most effective way is to obtain a public product ruling from the ATO for the film that is being made. Many investors now insist on them, due to a number of tax investigations in recent years.

Seeking a product ruling is costly *($150,000 for one experienced producer last year, for a proposed film that did not raise its finance)* and time-consuming. An experienced producer may wait five months or more for a ruling, a less experienced producer may wait well over a year. Then there is no guarantee that deductions made by an investor in good faith under 10BA will not be subject to anti-avoidance procedures under part IV A of the Taxation Act.

Product rulings should be available much more promptly, and for certain films should be almost automatic. Such automatic rulings could be given when either:

1) A Government agency is co-investor in the film
2) An independent professional completion guarantor is attached

These attachments would give the ATO a level of certainty that a third party was applying some rigour in regards to fees and budget levels. In the case of (i) the agency should not have to provide a draft PIA prior to a product ruling being provided.

If a producer complies with the product ruling, the ATO should not be able to use part IVA of the Tax Act in its assessment of deductions.

Fragmented responsibilities

DCITA, ATO, ASIC, Treasury all have some role to play in the 10BA process. Not only does this create unnecessary complexity, but there does not always appear to be a unity of view among these agencies about the treatment of concessional film investments. As a matter of good policy, there should be as few government authorities dealing with the process as possible.

Non-prospectus raisings

The thresholds for non-prospectus raisings should be increased to encourage the production of lower-budget independent Australian films.

Section 1012E of the Corporations Act 2001 currently allows non-prospectus raisings from 20 investors (that the producer knows) to a maximum of $2M in a 12-month period. This should be amended to allow 50 investors (not necessarily known personally to the producer) to a maximum of $5m.

GST

10BA investment in film is subject to GST, as an acquisition of copyright. Other financial investments like shares or units in other investments such as managed funds are not.