Submission in response to Media Reform Discussion Document

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australia new zealand screen association

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EXECUTIVE SUMMARY

The Australia New Zealand Screen Association (ANZSA) is pleased to make these comments to the Ministry of Culture and Heritage (MCH) and the Government of New Zealand, in response to the Government's discussion document, *Media Reform: Modernising regulation and content funding arrangements for New Zealand.*

ANZSA and our members recognise the challenges faced by the local screen and media industries. Similar challenges are being faced all around the world, and ANZSA's members are equally exposed to those trends and - like New Zealand's local media services - are implementing strategies to succeed in this new environment.

Partly based on a lack of relevant data, the Discussion Paper fails to correctly identify the trends that have put pressure on the advertising revenue of local media services, especially the dominant role of large User Generated Content services in that advertising market. As a result of this incomplete analysis, we submit that several of the proposals in the discussion document focus on treating the symptoms rather than the underlying problems that exist in the New Zealand screen industry, and that some of the proposals could instead exacerbate these underlying problems.

ANZSA cautions against implementation of most of the Draft Proposals in the discussion document, except for the proposal to streamline crown content funders. Please find ANZSA's responses to each of the five Draft Proposals briefly outlined below:

Draft Proposal 1. Ensuring accessibility of local media platforms.

ANZSA opposes Draft Proposal 1. Identifying one of group of businesses and providing them with a legislated benefit is inconsistent with the goal of a more fair and balanced regulatory system. We also note that any preferential treatment of local services with regards to placement of smart TVs or set-top boxes appears to be inconsistent with Draft Proposals 2 and 4.

Draft Proposal 2. Increasing investment into and discoverability of local content.

ANZSA opposes Draft Proposal 2. Research and experience overseas show that investment obligations do not tend to meet policy aims, while at the same time causing higher production costs and skills shortages. Prescriptive regulation deters inbound investment, and we anticipate it will not aid in lifting the quality and audience appeal of what is being made today, which as a result will likely continue to struggle to connect with local and international audiences. Policy makers can enact regulation that requires services to make New Zealand shows, but it cannot force audiences to watch them. As a result, a minimum obligation is likely to become a maximum investment requirement in practice. Since 2021, ANZSA has advocated for another way to raise investment levels in New Zealand content; screen funding bodies aligned with international developments, a focus on producer capability and a more flexible NZSPR

Domestic. Such an approach does not pit domestic and international producers and services against one another. These approaches have proven to be more effective than content obligations, which do not drive improvements in the commercial appeal of screen production.

Draft Proposal 3. Increasing captioning and audio description.

The streaming services of ANZSA's members are already voluntarily providing a high standard of captioning and audio description. Any regulatory intervention should be narrowly targeted on media services where there is a clearly identified problem. ANZSA urges the New Zealand Government to be cautious when imposing legislative obligations on professional media services given the fragile economic position of many in the eco-system, particularly the local broadcasters. Technological innovation can be expected to help improve levels of CAD without the need for legislation.

Draft Proposal 4. Modernising professional media regulation.

ANZSA opposes the current scope of the proposal to modernise professional media regulation and suggests a more holistic review is required. Streaming services should not be captured under the Broadcast Act for the purpose of program standards requirements whilst also being required to comply with the CVOD Classification Act.

Draft Proposal 5. Streamlining Crown Content funders.

ANZSA supports this Draft Proposal and encourages that the remit of the combined organisation enables it to build producer capability and international connectivity, leading to the attraction of more international funding.

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CHAPTER 1: ABOUT ANZSA

This submission is made on behalf of the Australia New Zealand Screen Association (ANZSA). ANZSA's core mission is to advance the business and art of filmmaking, increasing its enjoyment in New Zealand and around the world. We seek to protect and promote the safe and legal consumption of movie and TV content across all platforms.

Our members are proud participants and contributors of the film and television industry in New Zealand that contributed $3.3 billion in gross revenue to the New Zealand economy and supported an estimated 5,100 firms and 24,000 jobs in 2021,[1] and include Motion Picture Association; Walt Disney Studios Motion Pictures; Netflix Inc.; Paramount Pictures; Sony Pictures Releasing International Corporation; Universal International Films, Inc.; Warner Bros. Pictures International, a division of Warner Bros. Entertainment Inc. and Amazon Studios LLC.

CHAPTER 2: INTRODUCTION

ANZSA's members have been actively engaged in the New Zealand screen industry for over half a century. They have produced many feature films here; from Peter Jackson's *Lord of the Rings* and *Hobbit* movies to James Cameron's *Avatar* movies to shows such as *Sweet Tooth*, *East of Eden*, *the Wrecking Crew*, *Klara and the Sun* and *Time Bandits*. One of our members owns and operates a local production company; Warner Bros. International Television Production New Zealand. Our members have distributed classic New Zealand films such as *Whale Rider*, *Heavenly Creatures, Boy* and *Hunt for the Wilderpeople*. One of our members owns and operates *TV3* and *Three Now.* Our members have also long operated pay television channels on SKY NZ, and our members also operate streaming services in New Zealand. This includes major services such as *Disney+*, *Netflix* and Prime Video, but also niche services such as *Crunchyroll* (Japanese Anime) and *Hayu* (US reality television shows).

These services have been offering more choice, quality and value to audiences than ever before, providing access to thousands of movies and TV series that can be watched wherever, whenever and on the device of their choosing.

These streaming services have worked with some of New Zealand's most decorated and respected filmmakers; Disney+ released Peter Jackson's *Get Back* documentary series, Netflix partnered with Dame Jane Campion on *The Power of the Dog*. Netflix has also created unscripted shows which highlight New Zealand's people and culture; *The Volcano: Rescue from Whakaari* – filmed with a primarily New Zealand crew - spent two weeks on the Global Netflix

[1] MBIE, Economic Trends in the New Zealand Screen Sector – February 2024, https://www.mbie.govt.nz/business-and-employment/economic-development/screen-sector/economic-trends-in-the-screen-sector/economic-trends-in-the-new-zealand-screen-sector-february-2024/executive-summary

Top 10 list, and *Down with Love*, a feel-good reality series about ten New Zealand people with Down Syndrome navigating the trials and triumphs of dating, completely filmed in New Zealand and produced by New Zealand company Altitude Pictures. Prime Video created the documentary *All or Nothing: New Zealand All Blacks*. Netflix has also backed Jane Campion's *A Wave in the Ocean*, a popup intensive course for New Zealand's emerging film directing talent.

ANZSA acknowledges the challenges faced by screen and media industries.

ANZSA's members acknowledge the challenges faced by local New Zealand media services, and their challenges have been well articulated in the media. Many of our members are facing similar challenges in the United States and other countries around the world where they own broadcast assets. For example, both Warner Bros Discovery[2] and Paramount Global[3] were forced to write down the value of their cable assets by a combined US$15 billion last year.

Awake to the reality of changing audience preferences, our members seek to build new engagement with audiences through SVOD, AVOD (Advertising Video on Demand) and BVOD (Broadcasting Video on Demand) models. These new digital services are only just starting to break even on a global basis.[4]

These same developments are also happening closer to home. In Australia, Foxtel, the subscription television operator manages three separate SVOD services (*Binge* for scripted content, *Kayo* for sports content, and *Flash* for news content). Two of three commercial broadcasters operate their own SVOD services (Nine with *Stan*, Ten with *Paramount+*), and all broadcasters operate BVOD services. New Zealand's local media players are following the same playbook - Sky operates *Neon*, TVNZ operates *TVNZ+* and TV3 operates *Three Now* – seeking to build online revenue.

ANZSA's members also acknowledge the challenges faced by the New Zealand screen community. Our members make available films and TV series from all over the world, delighting audiences with an ever-increasing variety of content. New Zealand producers need to compete with higher quality shows with international appeal. Since 2021, ANZSA has been consistently warning policy makers in New Zealand about the regulatory settings which have made it harder for New Zealand's producers to do so, coupled with our recommendations for how to mitigate those disadvantages.[5]

ANZSA is concerned that several of the proposals in this Media Reform Discussion Document focus on treating the symptoms rather than underlying problems that exist in the New Zealand

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[2] Harshita Mary Varghese and Akash Sriram, Reuters, 8 August 2024, https://www.reuters.com/business/media-telecom/warner-bros-discovery-misses-quarterly-revenue-estimates-2024-08-07/

[3] Dawn Chmielewski, Reuters, 9 August 2024, https://www.reuters.com/business/media-telecom/paramount-global-writes-down-value-cable-networks-by-6-billion-2024-08-08/

[4] Brad Adgate, Forbes, 11 October 2024, https://www.forbes.com/sites/bradadgate/2024/10/11/streaming-units-are-starting-beginning-to-be-profitable/

[5] ANZSA's recommendations on how to better enable New Zealand's producers to compete can be found on page 17-18.

screen industry. Moreover, if implemented, these proposals will likely exacerbate these underlying problems.

A lack of reliable data to help understand the current situation.

The Interim Regulatory Impact Statement (IRIS) acknowledges the lack of relevant data.[6] As a result the IRIS portrays an out of date and incomplete picture of the New Zealand media landscape and does not provide a strong basis upon which to make policy decisions.

We submit that no policy decision should be made until the Ministry has conducted a thorough impact analysis. This will ensure that any future policy decision is effective, sustainable and does not risk unintended consequences for the New Zealand production industry. This impact analysis should at minimum be able to answer the following questions:

- Are New Zealand audiences asking for more local content, and in the case of STV and SVOD services, would they consider paying more for it?

- Is there an access problem with New Zealand content in general, or just with certain genres thereof? How is that measured?

- How much are local broadcasters investing in local content, overall and by genre? How much is coming from Government sources, how much from international sources?[7]

- The IRIS notes the lack of reliable revenue data for SVOD services[8] but fails to consider the viability/profitability of these services.

- The IRIS briefly mentions User Generated Content services such as YouTube and Facebook[9] but doesn't accurately interrogate the role these services have had on local media services. Note the very detailed report by the Australian Competition & Consumer Commission which found these major platforms and their parents companies held substantial market power as far back as 2019.[10]

- The IRIS notes the lack of data assessing the impact of other jurisdictions' approaches. Based on the examples given in the IRIS, this appears to be a reference to other jurisdictions that have introduced levies and investment obligations. ANZSA submits evidence should also be sought from jurisdictions which deliberately have <u>not</u> chosen to impose any such obligations.

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[6] IRIS page 4
[7] For instance, in Australia, Screen Australia and ACMA provide data sets which help inform policy making showing investment in content by channel, as well as the sources of funding for that investment for drama content.
[8] IRIS page 4
[9] IRIS page 6
[10] ACCC Digital Platforms Inquiry Final Report, June 2019, https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf

ANZSA submits that stakeholders should be provided with the opportunity to provide feedback on future policy proposals once they are further developed, based on findings from the impact assessment.

Misdiagnosing the problem; the primary source of competition for advertising revenue comes from UGC and other digital services, not streaming services.

Given the incomplete information available, it is perhaps not entirely surprising that the Discussion Document misdiagnoses the problem.

All traditional services providing access to curated, professionally produced content are facing the same challenges, irrespective of whether they are local or global media businesses. The internet has created an abundance of choice for consumers, with UGC services by far the biggest disruptors, uploading hundreds of millions of hours of video each year at no upfront cost to these platforms.

- YouTube has a library of 5.1 billion videos with an estimated 800 million added in the last year alone.[11] Its app has been downloaded 10 billion times since launch.[12]

- TikTok was the most downloaded app in 2024 with 773 million downloads. It is estimated that the app has been downloaded over five billion times since launch.

- Meta's apps were all in the Top 10 most downloaded apps in 2024; Instagram with 759 million, Facebook with 571 million and WhatsApp 527 million in 2024 alone.[13]

These limitless catalogues of content create more advertising inventory than traditional media was ever able to generate and provide a more effective opportunity for advertisers through their ability to target ads based on the vast amounts of user data they have collected.

For perspective, none of the global SVOD services feature on the Top 10 of most downloaded apps. Even the biggest SVOD service, Netflix, is comparably much smaller, reporting 302 million memberships in its recent financial results[14] from a library of anywhere between 6,000 and 8,000 titles per country[15].

We therefore refute the statement in the Discussion Paper that concludes 'competition from streaming platforms is reducing the capacity of local TV broadcasters to produce local content'.[16] Broadcasters – whether those in New Zealand or abroad - are advertising-funded;

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[11] SEO.AI, 15 February 2025, https://seo.ai/blog/how-many-videos-are-on-youtube
[12] Kobiton.com, https://kobiton.com/blog/the-most-downloaded-apps-of-all-time/
[13] Kobiton.com, https://kobiton.com/blog/the-most-downloaded-apps-of-all-time/
[14] Shareholder Letter, Netflix, 21 January 2025, https://s22.q4cdn.com/959853165/files/doc_financials/2024/q4/FINAL-Q4-24-Shareholder-Letter.pdf
[15] Best Netflix Library Size, World Population Review, 2024, https://worldpopulationreview.com/country-rankings/what-country-has-the-best-netflix
[16] Discussion Paper, page 16.

their primary competition for advertising revenue comes from UGC platforms and other digital platforms, not from streaming services. This is supported by NZ on Air's recent 'Where are the audiences' report, which finds that global video sharing platforms such as YouTube, Facebook and Instagram attract the biggest New Zealand audience overall.[17]

The nature of internet distribution has created both a challenge and an opportunity for screen production businesses. It poses a challenge, because audiences in New Zealand have much more choice; they are offered shows from all over the world, showing authentic stories coupled with excellent production values and visual appeal. Audiences are now more discerning in what they choose to watch - with greater choice and quality available than ever before. As a result, local stories face more competition, and thus in turn a requirement to lift their appeal. This requires higher production values, supported by bigger production budgets. These higher budgets cannot be justified based on New Zealand audiences alone.

However, that challenge is offset by a much greater opportunity; the internet has created a global addressable audience for New Zealand stories in the billions. New Zealand producers must now work hard to capitalise on this opportunity, adopting an outward focus, working with investors and distributors around the world, offering a greater level of ambition and investment up-front; and in turn creating high quality stories that will be loved not just in New Zealand but around the world.

To achieve this, the New Zealand Government must put the right policy settings in place, encouraging screen agencies and New Zealand production companies to look globally for financing, expertise and distribution, as opposed to asking streaming services to support more of what is being made today.

CHAPTER 3: THE CONFLICTING GOALS OF THE MEDIA REFORM DISCUSSION PAPER

This Media Reform Discission Paper appears to have three overlapping and competing goals. While the goals of the Media Reform Discussion Paper are commendable and aim to enhance the media landscape in New Zealand, it is crucial to recognize the potential conflicts and challenges that may arise from regulatory interventions.

- **Better servicing New Zealand audiences** through (1) increasing captioning and audio description, and (2) offering more access to local content. With respect to additional local content – we note no evidence is provided that New Zealand audiences want this – and in the case of subscription television (STV) and subscription video-on-demand (SVOD) – whether they would consider paying more to access additional local content.

[17] NZ on Air, Where are the audiences, 2024, slide 20, https://d3r9t6niqlb7tz.cloudfront.net/media/documents/Where_are_the_Audiences_2024_Report_Final_21_08_24.pdf

- **Supporting New Zealand screen producers** through (1) measures to increase the investment into and discoverability of local content and (2) a merger of the New Zealand Film Commission (NZFC) and New Zealand On Air (NZOA).

- **Supporting local New Zealand media businesses** through draft proposals ensuring (1) accessibility of local media platforms, and (2) modernising professional media regulation. ANZSA submits that there wouldn't be a relevant distinction between local and global media companies if each were to have identical local content requirements.[18]

These goals compete with one another; for example, introducing additional requirements on media services to produce local content and requiring these services to increase captioning and audio description, while well-intended, can lead to increased costs and further challenges for these businesses. It is essential to recognize that these services will need to balance these new obligations with their existing challenges and objectives to ensure sustainable growth and continued service to their audiences.

Introducing local content requirements could increase costs for all professional media services. This could lead to price increases for subscribers, or – in the most extreme scenario – could discourage new professional media services from launching in New Zealand or even encourage professional media services to exit New Zealand. Any of these reactions would reduce, not increase, the benefits viewers derive from these services, even more so if they do not want more New Zealand content. This should be a key consideration in a cost-of-living crisis.

In the following chapter we will now respond to each of the five Draft Proposals.

CHAPTER 4.1: ENSURING ACCESSIBILITY OF LOCAL MEDIA PLATFORMS

Under Draft Proposal 1, 'local TV services'[19] would be guaranteed a prominent position at no cost, whereas global content services would *not* be guaranteed this position and could be forced to pay by smart TV manufacturers, creating an uneven competitive environment.

The IRIS cites evidence from an Australian Senate hearing that one smart TV manufacturer has sought a placement fee of 15% of revenue to feature on its television's homepage.[20] It is implied that local TV services cannot afford to do these kinds of deals. We would submit no evidence is provided that any of the other services can afford to.

[18] Noting that New Zealand's international trade obligations don't permit overseas services to be treated differently than equivalent global services.
[19] IRIS, page 13
[20] IRIS, page 25

We are concerned that there are a number of critical considerations which have not been assessed as this draft proposal was developed.

Firstly, there is not sufficient evidence to justify intervention. The Paper cites research conducted by the Royal Melbourne Institute of Technology about Australian audiences and does not mention New Zealanders' experience accessing local media services apps, nor their demand for intervention on prominence. Any regulatory framework must be based on a detailed understanding of the audience and the work involved to ensure quality device performance and innovation in both consumer electronics and consumer experience.

Secondly, prominence frameworks must be assessed as part of a broader media regulatory landscape, ensuring that they do not introduce discriminatory measures on certain players. As is described below, the proposal provides 'local services' with a legislated benefit and is inconsistent with the goal of a more fair and balanced regulatory system.

The IRIS notes several international comparatives; including Australia and the United Kingdom.[21] Each of these has a regulatory environment which is balanced against other interests and obligations. For example, it should be noted that Australia's 'must carry' obligations for local services are part of a finely balanced regulatory environment where local broadcasters have specific obligations to make available local content which do <u>not</u> apply to local and global streaming services. In other words, a prominence benefit is provided as part of a regulatory environment which balances specific benefits and obligations. In the United Kingdom, the prominence benefit only accrues to Public Service Broadcasters (PSB) and applies to both the broadcast and online models of these PSBs. It does not extend to commercial operators and does not pick winners amongst commercial services.

Finally, mandating placement of broadcaster apps, particularly when there is little data indicating real audience need for greater access, risks impacting innovation, technical standards and existing commercial relationships across technology, equipment and content ecosystems.

ANZSA notes that any preferential treatment of local services with regards to placement of smart TV's or set-top boxes appears to be inconsistent with Draft Proposal 2 and – potentially – Draft Proposal 4.

Inconsistency with Draft Proposal 2

Draft Proposal 2 considers an equal investment obligation applied to all services providing access to predominantly professionally created content. This would make all content providers effectively equally 'local' and would thus remove any rationale for preferential treatment of one service relative to another.

[21] IRIS, page 24

The IRIS justifies this on the basis that even if an investment obligation were to be introduced, it is likely that local services will continue to 'carry more in local content (both proportionally and in terms of overall volume)'.[22] ANZSA submits that this is a statement without any supporting evidence, and even if evidence were provided, it would be no more than an observation at a moment in time. In Australia, for instance, the Australian Communications and Media Authority (ACMA) reports that Australian streaming services make available 11,383 hours of Australian content, up from 3,776 hours just four years earlier.[23] To put that in perspective, a linear channel broadcasting 365 days a year, for 24 hours each day, without any repeats at all, would have shown 8,760 hours in one year.

The world is changing quickly, and ANZSA submits that any legislation should be drafted in a way that is future-proofed and technology neutral. Identifying one group of businesses and providing them with a legislated benefit is inappropriate.

Inconsistency with Draft Proposal 4

Draft proposal 4 seeks to modernise the broadcasting standards regime and make it apply to all 'professional media' operating in New Zealand. ANZSA submits that creating a benefit that applies to one group of 'professional media' services at the expense of another group of 'professional media' services is inconsistent with the goal of a more fair and balanced regulatory system.

Chapter 4.2: INCREASING INVESTMENT INTO AND DISCOVERABILITY OF LOCAL CONTENT

ANZSA opposes Draft Proposal 2. We believe that a thorough impact analysis would conclude that protectionist measures are unlikely to be effective, and that a better path forward is to focus on regulatory changes that will help improve the quality and exportability of local production.

ANZSA wholeheartedly agrees with Minister Goldsmith's focus on quality over quantity in his *Letter of Expectations* to NZ on Air. [24]

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[22] IRIS, page 24

[23] ACMA, https://www.acma.gov.au/spending-subscription-video-demand-providers#australian-programs-available-in-australia

[24] Minister Goldsmith letter NZ on Air Letter of Expectation, https://d3r9t6niqlb7tz.cloudfront.net/media/documents/Minister_Goldsmith_Letter_NZ_On_Air_draft_SPE.pdf

“For local content to compete for attention, it has to meet higher expectations of quality. I ask NZ on Air to consider supporting higher quality content, rather than higher volumes.”

We propose focusing on initiatives that enhance the quality and ambition of content, ensuring it resonates with both local and international audiences. We submit that this Draft Proposal will do the opposite; it will make New Zealand content less able to connect with international audiences, thus less able to access international capital, and in turn unable to lift production standards.

If New Zealand content is funded based on a New Zealand audience only, it will be structurally disadvantaged relative to content from the United States, the United Kingdom, Korea, Spain, Japan, Scandinavian countries, Australia and many others. Connecting with international audiences and accessing international capital is the only way to improve quality and audience appeal and level the playing field and failing to do so will therefore further increase pressure on Government to support the sector.

As noted above,[25] we submit that the Discussion Paper misunderstands the competitive environment in which local and global media companies operate. All professional media services, both local and global, broadcasting and online, are in competition with UGC services that do not pay for content upfront, offer a greater library of content to viewers, and can offer micro-targeting tools to advertisers coupled with unrivalled advertising inventory. Professional media companies are all seeking to respond to this environment and, whilst we are confident many will secure a healthy position, the current state is one where most media services operate with low profit margins and with streaming services only just breaking even. In such an unstable environment, the risk of unintended consequences is significant.[26]

The Discussion Document and the IRIS fail to capture the *benefits* of the status quo.

To date, only some European countries have introduced local content requirements, but many have not. Many of the countries which have opted not to introduce obligations appear to be very successfully exporting their shows, whilst some that do impose obligations are not.

A 2024 study by Frontier Economics, commissioned by the Motion Picture Association, suggests that protectionist AV policies have historically been *negatively correlated* with investment in local content.[27]

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[25] See page 8, ‘Misdiagnosing the problem; the primary source of competition for advertising revenue comes from UGC and other digital services, not streaming services’.
[26] See ‘Blunt regulatory intervention risks unintended consequences’ on page 13 for more details.
[27] Frontier Economics, *Policy+: The Rise of K-Content: How Korea’s Policy Environment Has Supported the Success of K-Content, 2024*, https://www.mpa-apac.org/wp-content/uploads/2024/10/Frontier-Economics-Policy-and-K-Content_Digital_ENG.pdf

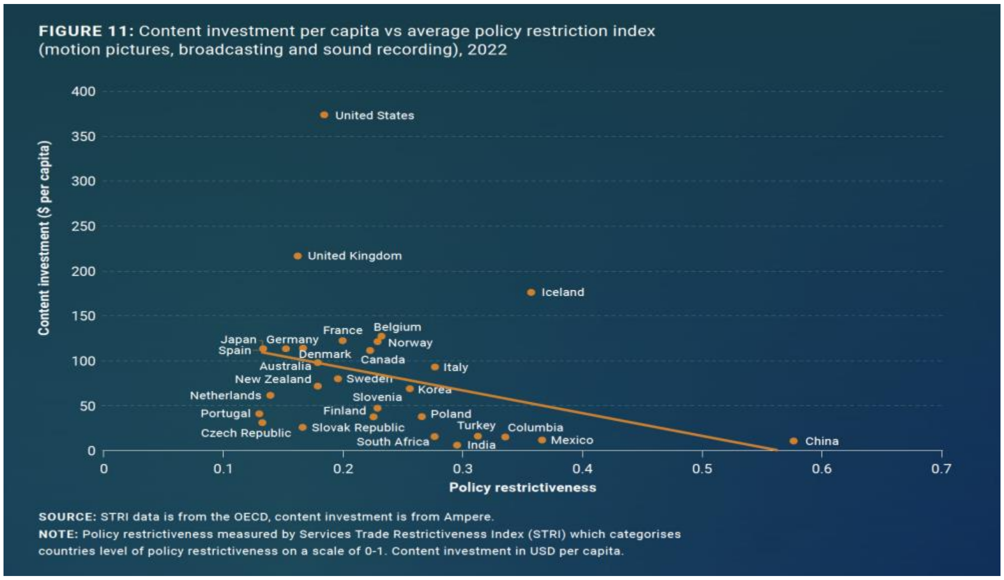

FIGURE 11: Content investment per capita vs average policy restriction index (motion pictures, broadcasting and sound recording), 2022

SOURCE: STRI data is from the OECD, content investment is from Ampere.
NOTE: Policy restrictiveness measured by Services Trade Restrictiveness Index (STRI) which categorises countries level of policy restrictiveness on a scale of 0-1. Content investment in USD per capita.

The authors submit that the intended benefits of such policies are negated by the negative consequences of such restrictive policies:

- Restrictions drive up costs for both domestic and foreign companies, reducing competition and raising prices for consumers.
- Policy restrictions that erect barriers to inward investment deter the influx of international capital, talent and skills, and can restrict the arrival of new techniques and innovation that inbound investment brings.
- An onerous definition of 'local content' for the purpose of defining restrictive policies can discourage investment in local content and the local industry.[28]

Another Frontier Economics report shows that that less restrictive policies, such as implementing a basic production investment program, are more effective. Such programs on average lead to a 6.5% increase in local content production.[29] New Zealand of course has long had incentives in place, and the recent decision to allow the NZSPR to be combined with NZ on Air funding is already showing promising results.

A deep dive[30] into the correlation between K-content's success and the evolution of Korean policy settings over time, concludes that policy decisions to reduce protectionist barriers led to a focus on quality over quantity, leading to bigger audiences in Korea as well as abroad. That

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[28] ANZSA refers to its submission in response to the consultation 'Increasing value from Government investment in the New Zealand Screen Production Grant (18 December 2022), which shows that New Zealand's 'local content' test already is amongst the world's most restrictive tests (Appendix 4).
[29] Frontier Economics, Stimulating screen production investment, 27 September 2024, https://www.frontier-economics.com/media/zqcdceog/stimulating-screen-production-investment.pdf
[30] Ibid. footnote 27

focus on quality and open markets created a flywheel of success: higher quality programs resulted in larger audiences, which in turn led to an increase in the quantity of programs commissioned, increased investment, and increased employment growth.

The Korean Government are invested in the creative sector, and have made it a top national priority, helping to promote the sector internationally through well-funded and dedicated Government bodies, along with strong enforcement of Copyright, which has led to sustained growth in the Korean content industry.[31]

Blunt regulatory intervention risks unintended consequences.

Whilst the IRIS correctly notes that it's hard to assess the impacts of other jurisdictions approaches to regulating streaming services, ANZSA submits that the many potential negative effects make a net positive effect unlikely.

- **Forced investment in local content by streamers can increase** production cost and thus increase financial pressures on local broadcasters. The French regulator, ARCOM, reported that increase of investment by streamers resulted in 'artificial price hikes', and a 30% increase in production costs for French content in 2023 alone, primarily affecting local players such as TF1, Canal and France Television.[32]

- **Increased production costs will in turn negatively affect media companies that are required to absorb them**; local media companies will either get less hours of content for their investment than they do today or will be forced to spend more.

- **Forced investment in local content by streamers can take away points of difference for local media companies**, further eroding their sustainability. Streaming services have outcompeted local broadcasters for the best stories and the best talent by offering larger production budgets. To acquit an obligation, streaming services could also pursue New Zealand sports rights or key reality formats that underpin much of the success of broadcasters today.

- Increased volume and production budgets would lead to **increased expense for the New Zealand Government**, as a result from increased claims under the NZSPR Domestic.

- These increased costs could also lead to **price increases for subscribers to Streaming Services or Pay Television**.

[31] For instance, Korea used to have import quotas for foreign movies but once these were relaxed annual revenue for domestic films more than doubled, and revenue per film more than tripled with a focus on higher quality productions. That led to greater audiences and revenue, which in turn increased volume.
[32] ARCOM, Etude relative a la mise en oeuvre du decret SMAD, November 2024, https://www.arcom.fr/sites/default/files/2024-12/Arcom-etude-relative-mise-en-oeuvre-du%20decret-smad-2024.pdf

- **Prescriptive obligations for New Zealand content decrease the opportunity to access international funding**. An obligation requires prescriptive definitions; what genres are eligible to discharge the obligation, and what meets the definition of New Zealand content? This limits New Zealand producers when negotiating with overseas investors.

- Limiting access to international funding will translate into **lower production budgets, and less appealing content**.

- **A discoverability requirement further reduces the ability to maximise international opportunities for New Zealand shows.** It fundamentally misunderstands the nature of streaming services; each user is offered a unique and tailored offering of content based on the content watched and feedback provided. For instance, forcing a NZ user to be presented with a New Zealand Rom Com is wasted if that user has only watched horror movies or true crime documentaries. Conversely, such a requirement elsewhere could limit the ability for that New Zealand Rom Com from being presented to Rom Com lovers the world over.

- A **local content requirement would threaten the viability of niche streaming services**. Audiences are increasingly served by smaller online streaming services that tailor to specific audience tastes. Services such as Crunchyroll – which offers only Japanese Anime – and Hayu – which offers only US reality television – would be threatened by poorly designed regulation that would be clearly inconsistent with what its audiences expect to see.

Streaming services cannot effectively create access to global audiences for local stories in a balkanised regulatory environment.

Imagine a world where each country protects its local industry through mandated investment and visibility requirements as New Zealand is now considering. Professional Media services would not be able to invest based on audience demand and they wouldn't be able to present the content most likely to appeal to individual subscribers. Instead, films and TV shows created and presented would be based on a smorgasbord of regulations across the globe, each mandating their own investment, and each capturing a significant share of the very limited real estate digital interfaces offer. This would increase the dissatisfaction of subscribers, leading to higher churn rates, thus further reducing investment in content.

- It would reduce the global opportunity for creators to gain access to overseas audiences – reducing views overseas and by extension reducing access to international financing.

- It would create a protected industry in each country, leading to more insular thinking and reduced quality of output.

- It would ultimately make all professional media services less attractive to audiences, not able to respond to what their audiences want, thus further cementing the increasingly dominant position of services like YouTube and TikTok[33], which are able to maximise the use of their limited digital interfaces.

- This would ultimately reduce investment in professional content over time.

ANZSA notes and welcomes the references to New Zealand's international trade obligations in the Discussion Paper and the IRIS. Our members' global streaming services operate in a highly competitive global environment and our members rely on these global trade standards to be able to build sustainable streaming businesses that aim to delight their subscribers.

Imagine a world where New Zealand has improved the quality of its output, following countries such as the UK (*The Crown)*, Spain (*La Casa de Papel)* and Korea (*Squid Game). A unique* Kiwi voice is recognised the world over, following K-content, Scandi Noir, Japanese anime, and Bollywood with dedicated fans around the world. Imagine New Zealand screen producers replicating the successes enjoyed by their Australian counterparts where shows such as *Heartbreak High*,[34] *Boy Swallows Universe*[35] and *Apple Cider Vinegar*[36] (Netflix), *Deadloch*,[37] *The Lost Flowers of Alice Hart*[38] (Prime Video), *NCIS: Sydney*[39] (Paramount+) and *The Artful Dodger*[40] (Disney+) have all become ratings hits in Australia and around the world.

Producers from these countries now benefit from the access to international audiences and international investment; New Zealand can also achieve this with a focus on quality over quantity. However, that increase in quality could not deliver the same sustainability boost in a balkanised regulatory global environment for streaming services.

A requirement to increase investment into and discoverability of local content will not create sustainable benefits, but there are other options.

The problems with the proposal are laid out above and can be summarised with one sentence:

Policy makers can enact regulation that requires services to make New Zealand shows, but it can't force audiences to watch them.

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[33] Services such as TikTok or YouTube will grow as individual creators increasingly utilise generative AI to create content. While there is a risk that the content created could be copyright infringing, these services and creators will not need to enter into licensing or other arrangements, in the way that professional media companies may be required to do.
[34] Business News Australia, 17 April 2024, https://www.businessnewsaustralia.com/articles/aussie-success-continues-on-netflix-as-new-heartbreak-high-season-cracks-top-10.html
[35] Mediaweek, 24 January 2024, https://www.mediaweek.com.au/boy-swallows-universe-hits-3-in-netflixs-global-tv-top-10/
[36] Netfix Top 10, accessed 28 February 2025, Apple Cider Vinegar in Global Top 10, https://www.netflix.com/tudum/top10/tv
[37] Amazon, 9 July 2024, https://www.aboutamazon.com.au/news/entertainment/prime-video-renews-global-hit-deadloch-for-season-two
[38] TV Tonight, 17 August 2023, https://tvtonight.com.au/2023/08/strong-start-for-the-lost-flowers-of-alice-hart.html
[39] Forbes, 12 February 2024, https://www.forbes.com.au/life/entertainment/ncis-sydney-takes-us-by-storm/
[40] Disney.com.au, 21 November 2024, https://www.disney.com.au/news/disney-plus-artful-dodger-back-for-season-2

Forcing investment that doesn't excite and appeal to audiences will over time reduce the capacity of media services to invest in local content, not increase it.

ANZSA has consistently laid out an alternative vision in our submissions to various MCH consultation processes. Starting in our 2021 submission in response to MCH's *Long-Term Insights Briefing* consultation, followed by MCH's 2022 *Increasing value from Government investment in the New Zealand Screen Production Grant* consultation, and most recently in 2024's *Amplify* consultation,[41] we have consistently called for the following initiatives:

- **Create one overall screen agency for film and TV**. We are pleased to see this is now under active consideration. For the past ten years the main opportunity for New Zealand producers has been international finance for TV shows, but that has been outside of the remit of both NZFC (export focus, but only for feature films) and NZOA (focus on TV content, but only towards local audiences via free services).

- **Investing in producer capability, scale and global connectivity**. ANZSA submits that one screen agency with a clear requirement to support and stimulate the New Zealand screen production community will be a major step towards enabling this, although the screen agencies could also collaborate more in their current form.

- **Ensure New Zealand's Screen Production Rebate for New Zealand Productions is better equipped to help tell Aotearoa's compelling and ambitious stories**. Our submissions have highlighted the fact that New Zealand's cultural test is the strictest we have been able to identify anywhere in the world, and one that has a low per-project cap that disincentivises ambition.[42] More flexibility would make it easier for New Zealand producers to attract more international capital, which we submit is the only sustainable strategy to structurally improve audience appeal for New Zealand shows. ANZSA also supported the 2023 change which allowed producers to access NZ on Air funding as well as the NZSPR Domestic. The first qualitative feedback is that this has helped access more international funding and has raised production budgets.

ANZSA urges the New Zealand Government to consider this alternative vision. Should the New Zealand Government decide to progress this Draft Proposal despite the risks we have identified, we urge the Government to engage in additional, detailed consultation focused on the design elements, levels of the obligation, and definitions before any legislation is introduced. Failing to do so would further exacerbate the risk of negative effects.

[41] In our *Amplify* submission we also called for changes to New Zealand's copyright legislation – noting the absence of an effective mechanism to disable access to pirate websites and apps which have the primary purpose of providing access to illegal content – a remedy available now in nearly 60 countries worldwide.
[42] Our concern with the risk of unintended consequences for a local content investment obligation is heightened by these very strict policy settings.

Chapter 4.3: INCREASING CAPTIONING AND AUDIO DESCRIPTION

As the IRIS correctly notes, global streaming services generally provide high levels of captioning and audience description (CAD)[43] and ANZSA's members are proud of the efforts they have made to increase media access for those with hearing or sight impairments. ANZSA notes that our members strive to delight all of their customers – including those with hearing or sight disabilities.

Our members generally strive to make their originals available with audio description in the language in which they were originally produced. Some members are going further than that. For instance, Netflix are also expanding the captioning and AD for many Netflix films and TV series to include an additional 20 languages.[44] These captions are in addition to subtitled translations. For example, non-English language series like Lupin and Squid Game now have English captioning and AD available as well as captioning and AD in their original language.[45] In another example, Prime Video offers 'Dialogue Boost' on select Amazon Originals, which allows a viewer to increase the volume of dialogue relative to background music and effects, creating a more comfortable and accessible viewing experience.

Nevertheless, ANZSA urges the New Zealand Government to be cautious when imposing legislative obligations on professional media services given the period of transition in which these services operate.

We suggest collaborative solutions that balance operational costs with the goal of maximizing available content. ANZSA makes the following observations which we submit should inform how Government chooses to proceed with this.

- **The nature of Subscription streaming services is very different than broadcast television.** For example, customers actively choose to pay for the service and select the specific programs they want to view. In this context, any regulatory approach should be sensitive to the particular features of the service and its use by consumers. In fact, a regulatory approach may disincentivise a user-centric design that is driven by consumers; and could in fact lead to a lack of accessibility features due to resources that might be strained under a heavily regulated system.

- **Taking a catalogue-based view would miss the fact that streaming services are typically performing very well in their CAD coverage.** When assessing the need for any regulatory invention, the Government should consider the total quantum of streams that include captioning and audio description, rather than a percentage of a catalogue, because services generally prioritise the most-watched streams for these kinds of investments, thereby best meeting the needs of customers.

- **Making a distinction between original content and third-party content**. Policymakers should also consider that streaming services typically have very high

[43] IRIS, page 33
[44] https://about.netflix.com/en/news/celebrating-global-accessibility-awareness-day
[45] https://about.netflix.com/en/news/continuing-our-work-on-accessibility

coverage of captioning and audio description on content they create. However, there should be a distinction between this original content and third-party content that services distribute. In the case of third-party content, services do not always have control over the content, and in some cases may not have permission to modify the content to include accessibility features.

- **Imposing a high share of catalogue requirement could have the perverse implications of reducing access to content for all New Zealanders**. On-demand services generally have a mix of new, often commissioned, programs and a deep library of older, often licensed programs. Making available a deep catalogue of library content improves a greater variety for all subscribers of that service, but the economic value can sometimes be marginal – imposing a high CAD requirement could therefore result in deep catalogue titles not being made available at all.

- **Compliance costs for on-demand services could be significantly higher given the diversity of the media devices and platforms used by consumers to access professional media services**. Professional media services make their on-demand content available through a number of interfaces with different platforms (e.g. android, MacOS, etc), different devices (e.g. phones, tablets, computers, smart television screens). What a professional media service can achieve is limited by the capabilities of each of the technological standards for each manufacturer or operating system.

Chapter 4.4: MODERNISING PROFESSIONAL MEDIA REGULATION

ANZSA opposes the current scope of the proposal to modernise professional media regulation and suggests a more holistic review is required. We recognise that the objective to create a fair and level playing field is a worthy goal. However, we caution that 'fair' should not be defined as 'same'.

The *Broadcast Act 1989*[46] ("the Broadcasting Act") effectively captures two key areas: content standards and the establishment of screen agencies.[47] Draft Proposal 4 concerns itself with the former - program standards - noting that broadcasters are regulated under the Broadcasting Act whilst print and online news services are not regulated, but do make available a complaints mechanism via their membership of the New Zealand Media Council (NZMC). For Commercial Video on Demand providers, as the Discussion Paper correctly notes, parallel legislation exists: 'program standards' are the responsibility of the *Films, Videos, and Publications Classification (Commercial Video on Demand) Amendment Act 2020* (hereafter referred to as CVOD Classification Act), but this is out of scope for this review.

[46] Broadcasting Act 1989, https://www.legislation.govt.nz/act/public/1989/0025/latest/DLM155365.html
[47] There are also some sections covering electoral broadcasting and miscellaneous provisions.

ANZSA opposes streaming services being captured under the Broadcast Act for the purpose of program standards requirements whilst also being required to comply with the CVOD Classification Act. ANZSA submits that this regulatory duplication can be avoided – and with it, the audience confusion caused by two different systems - and the double burden of compliance on those services that would be subject to both the Broadcast Act and the CVOD Classification Act.

That said, there are good reasons to consider a more integrated regulatory system:

- Streaming services increasingly make available live content – including live sports – and the processes of the CVOD Classification Act are not designed to deal with that.

- The CVOD Classification Act has a higher regulatory burden than the Broadcast Act – for instance any classification decision made under a self-classification system needs to be registered on a central database, while the Broadcast Act does not have a similar requirement.

Chapter 4.5: STREAMLINING CROWN CONTENT FUNDERS

ANZSA supports this Draft Proposal. We refer to our submission in response to *Amplify*,[48] the draft National Cultural Policy, where we provide a detailed rationale for why one screen agency with a mandate of supporting the screen community in accessing export opportunities is so vital.

ANZSA applauds the leadership of both NZ on Air (NZOA) and the New Zealand Film Commission (NZFC). Both agencies have made significant attempts to support industry development, but their respective legislative remits have hindered both agencies from making enough progress. NZOA has a mandate to focus on local audiences and a focus on supporting content on freely available services, NZFC has an export and screen industry capability focus, but only on feature films. Meanwhile the most significant growth over the past decade has come from subscription video on demand services which have enabled stories from anywhere to become successful everywhere.

New Zealand can benefit from the lessons learned in Australia. Screen Australia was established as a dedicated screen agency in 2007. It has since overseen a near doubling in investment into scripted drama production in Australia from A$619 million in FY2009/10 to A$1,156 million in FY2022/23.[49]

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[48] ANZSA submission in response to Amplify, Chapter 5A, page 11.

[49] Please note all dollar amounts are at 2022/23 currency levels, Screen Australia, https://www.screenaustralia.gov.au/fact-finders/production-trends/all-drama/activity-summary

The Agency was able to pivot quickly to help producers capitalise on the global opportunities as a result of the ongoing transition into streaming. One example of such a successful program was Screen Australia' Business Enterprise Program in 2009, which gave training and business funding to a select group of production companies. In a 2013 review,[50] these companies were assessed to be more economically robust because of their more diversified revenue streams, were more profitable, and were rated more investment-ready than the overall screen production community in Australia.

This report defined the following characteristics for sustainable businesses:

- More likely to collaborate with other businesses, engage in joint ventures and have multiple producers.
- Mixed slates and income sources, for instance more than one production type (documentary, film, TV drama) and more likely involved in producing digital media projects.
- Higher income and employment.
- Higher demonstrated audience engagement.

For the New Zealand screen sector to thrive, it needs sustainable production companies with these same characteristics.

Over time, we have observed many of these companies offering production services functions for international producers, thus developing networks and creating evidence of the quality of work they can help deliver for larger budgets. Others have become so attractive that they have been acquired by international buyers and are able to access international investment more consistently.

Many companies that are now consistently attracting foreign investment came through this Enterprise Program; two are now owned by ANZSA members, Matchbox Pictures (owned by NBC Universal), Playmaker (now Curio, owned by Sony Television), while other businesses continue to be locally owned such as Blackfella Films and Hoodlum Entertainment.

Chapter 5: CONCLUSION

ANZSA cautions against implementation of most of the Draft Proposals in the Media Reform Discussion Document, except for the proposal to streamline crown content funders.

If the New Zealand Government chooses to proceed with any of the other proposals, despite the

[50] Screen Australia, Enterprise Funding: Program Review & Future Options, 11 December 2013, https://www.screenaustralia.gov.au/getmedia/29205db6-9c42-4a4c-9089-42c06b4074e1/Enterprise-Discussion-Paper.pdf

significant risks identified, ANZSA submits that further, more detailed, consultation is essential to interrogate the specific design elements of these policy proposals given the significant risk of adverse impacts from poorly designed mechanisms.

We thank you for the opportunity to participate in this process and stand ready to support this process in any way we can.

Paul Muller
Chief Executive Officer