



Submission in response to the Digital Platforms Inquiry

Joint Submission from the Australian Film & TV Bodies

April 17, 2018

The Australian Film & TV Bodies represent a large cross-section of the film and television industry that contributed \$5.8 billion to the Australian economy and supported an estimated 46,600 FTE workers in 2012-13.¹ We appreciate the opportunity to respond to this inquiry.

The Australian Film & TV Bodies commend the ACCC for conducting an inquiry into digital platforms, a subject on which legislators and regulators elsewhere in the world are also focusing. This review is timely and necessary given the increasing sense globally that the effective exemption from meaningful regulation of online platforms that has prevailed for the last 20 years or so is no longer justified. This is especially the case when viewed against the many harms created through what amounts to a failure to enforce the rule of law online.

While we understand that the primary focus of this inquiry is on how digital platforms affect the news and advertising sectors, we appreciate that the inquiry ‘recognises that the line to be drawn between news and journalistic content and other media content will not always be clear.’² For example, documentaries or films based on real life events often do serve a dual purpose; to entertain *and* to inform.

Our interest in this inquiry is based on the fact that digital platforms have become the primary means through which all content is consumed – not merely news. This is made clear in the latest report from AHEDA which notes that spending related to watching film and television programs digitally increased by 55% in 2017 to \$1.2 billion, matching the amount spent on movie-going for the first time in

¹ Access Economics, Economic Contribution of the Film and Television Industry (February 2015) Australian Screen Association <http://screenassociation.com.au/wp-content/uploads/2016/01/ASA_Economic_Contribution_Report.pdf> iv. Further details on members of the Australian Film & TV Bodies can be found in Appendix A.

² ACCC Digital Platforms Inquiry – Issues Paper, p6.

Australia.³ ARIA, in its submission to the present inquiry, notes that almost 70% of the revenue from music in 2016 was generated from digital sales.⁴

Becoming a key gateway through which all types of content can be accessed has provided digital platforms with an opportunity to take on significant market share. The transition to digital has enabled some platforms to profit off the traffic generated by giving access to content without first seeking authorisation or paying for it. While some have tried to justify this by offering micro-payments after the fact, much of the imbalance between content and platforms stems from an unfortunate failure to recognize creators' exclusive rights in their content at the outset. This has resulted in platforms taking a "take now, pay (or explain) later" approach, leaving those whose content is used without authorisation to essentially fend for themselves. One manifestation of this issue is described in ARIA's submission, which the Australian Film & TV Bodies support. The argument that platforms should not be responsible for the content on their services (but still allowed to monetise that same content) no longer holds water.

We encourage the ACCC to not only examine the potential for unfairness in the digital marketplace with the emergence of these platforms, but also to make recommendations aimed at ensuring that digital platforms are incentivized to take responsibility for keeping illegal content off their services.

Among other things, digital platforms should not be enabled to profit from illegal content being disseminated on their services, including content which breaches Australian content standards applied to traditional content and news media, content which infringes intellectual property rights, and the improper use of personal data. The ability of certain digital platforms to profit from such activities creates an uneven playing field and leaves creators at a significant disadvantage.

We look forward to seeing the ACCC's draft findings. We are available to answer any questions you may have about our submission.

³ For a summary, see Garry Maddox, *Australians switch to home entertainment, fragmenting along the way*, (7 April 2018) Sydney Morning Herald <<https://www.smh.com.au/entertainment/movies/australians-switch-to-home-entertainment-fragmenting-along-the-way-20180404-p4z7t9.html>>. The full report is available for sale at AHEDA, *Yearbook 2017* <<https://www.aheda.com.au/shop/aheda-yearbook-2017>>.

⁴ ARIA Submission to ACCC Digital Platforms Inquiry – Issues Paper, p3.

Appendix A: Full descriptions of members of the Australian Film & TV Bodies

The Australian Film & TV Bodies are made up of the Australian Screen Association (ASA), the Australian Home Entertainment Distributors Association (AHEDA), the Motion Picture Distributors Association of Australia (MPDAA), the National Association of Cinema Operators-Australasia (NACO), the Australian Independent Distributors Association (AIDA) and the Independent Cinemas Australia (ICA). These associations represent a large cross-section of the film and television industry that contributed \$5.8 billion to the Australian economy and supported an estimated 46,600 FTE workers in 2012-13.⁵

- a) The ASA represents the film and television content and distribution industry in Australia. Its core mission is to advance the business and art of film making, increasing its enjoyment around the world and to support, protect and promote the safe and legal consumption of movie and TV content across all platforms. This is achieved through education, public awareness and research programs, to highlight to movie fans the importance and benefits of content protection. The ASA has operated in Australia since 2004 (and was previously known as the Australian Federation Against Copyright Theft). The ASA works on promoting and protecting the creative works of its members. Members include: Village Roadshow Limited; Motion Picture Association; Walt Disney Studios Motion Pictures Australia; Paramount Pictures Australia; Sony Pictures Releasing International Corporation; Twentieth Century Fox International; Universal International Films, Inc.; and Warner Bros. Pictures International, a division of Warner Bros. Pictures Inc., and Fetch TV.
- b) AHEDA represents the \$1.1 billion Australian film and TV home entertainment industry covering both packaged goods (DVD and Blu-ray Discs) and digital content. AHEDA speaks and acts on behalf of its members on issues that affect the industry as a whole such as intellectual property theft and enforcement, classification; media access, technology challenges, copyright, and media convergence. AHEDA currently has 13 members and associate members including all the major Hollywood film distribution companies through to wholly-owned Australian companies such as Roadshow Entertainment, Madman Entertainment and Defiant Entertainment. Associate Members include Foxtel and Telstra.
- c) The MPDAA is a non-profit organisation representing the interests of theatrical film distributors before Government, media, industry and other stakeholders on issues such as

⁵ Access Economics, *Economic Contribution of the Film and Television Industry* (February 2015) Australian Screen Association <http://screenassociation.com.au/wp-content/uploads/2016/01/ASA_Economic_Contribution_Report.pdf> iv.

classification, accessible cinema and copyright. The MPDAA also collects and distributes cinema box office information including admission prices, release schedule details and classifications. The MPDAA represents Fox Film Distributors, Paramount Pictures Australia, Sony Pictures Releasing, Universal Pictures International, Walt Disney Studios Motion Pictures Australia and Warner Bros. Entertainment Australia.

- d) NACO is a national organisation established to act in the interests of all cinema operators. It hosts the Australian International Movie Convention on the Gold Coast, 2017 being its 71st year. NACO members include the major cinema exhibitors Amalgamated Holdings Ltd, Hoyts Cinemas Pty Ltd, Village Roadshow Ltd, as well as the prominent independent exhibitors Palace Cinemas, Dendy Cinemas, Grand Cinemas, Ace Cinemas, Nova Cinemas, Cineplex, Wallis Cinemas and other independent cinema owners which together represent over 1400 cinema screens.
- e) AIDA is a not-for-profit association representing independent film distributors in Australia, being film distributors who are not owned or controlled by a major Australian film exhibitor or a major U.S. film studio or a non-Australian person. Collectively, AIDA's members are responsible for releasing to the Australian public approximately 75% of Australian feature films which are produced with direct and/or indirect assistance from the Australian Government (excluding those films that receive the Refundable Film Tax Offset).
- f) ICA develops, supports and represents the interests of independent cinemas and their affiliates across Australia and New Zealand. ICA's members range from single screens in rural areas through to metropolitan multiplex circuits and iconic arthouse cinemas including Palace Cinemas, Dendy Cinemas, Grand Cinemas, Ace Cinemas, Nova Cinemas, Cineplex, Wallis Cinemas and Majestic Cinemas. ICA's members are located in every state and territory in Australia, representing over 560 screens across 144 cinema locations.