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Susie Black and Mandy Bendelstein
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Via email: exemptions@acc.gov.au

Submission to the Screen Producers Australia application for authorisation (AA1000535)

Stan is the country's leading local streaming service and is at the forefront of changing how Australians consume video content. We have made it possible for consumers to access the best television series and films from Australia and around the world, whenever and wherever they want, through a multitude of connected and portable devices. This content has been made available for free to all Australians for the first 30 days of a subscription, and from \$10 a month thereafter.

Launched in 2015, Stan is owned by one of Australia's most trusted and culturally significant media companies, Nine Entertainment. In just over five years, Stan has built a base of more than 2.2 million active subscribers and cemented itself as the leading local SVOD player. The business offers Australians the chance to work in one of the world's most exciting industries from their own backyard. Stan has also contributed to thousands of jobs directly and indirectly through its investment in local productions, which are known as Stan Originals. These productions have attracted widespread acclaim and won multiple awards.

Stan welcomes the opportunity to provide its submission to the Australian Competition and Consumer Commission (ACCC) in relation to Screen Producers Australia's (**SPA**) application for authorisation dated 18 November 2020 (**SPA Application**). Stan has confined its submission (set out in Annexure 1 to this letter) to the issues that are most relevant to its business within the context of the SPA Application.



Annexure 1 – Stan’s Submission to the SPA Application

The SPA Application is to gain authorisation for SPA, and its current and future members, to:

- Collectively negotiate model terms of engagement with the Australian Writers’ Guild (**AWG**), Media Entertainment and Arts Alliance (**MEAA**) and the Australian Directors’ Guild (**ADG**)
- Give effect to existing contracts or arrangements containing model terms of engagement already negotiated with the AWG, MEAA and ADG, and
- Create new contracts or arrangements with current or future members of the AWG, MEAA and ADG that contain existing or new model terms of engagement and to give effect to those new contracts or arrangements

(the **Proposed Conduct**).

While Stan does not, in principle, oppose the Proposed Conduct, it has two key concerns with the SPA Application;

1. **The need for proper consultation with media platforms as part of agreement negotiations** – As a commissioner and acquirer of content produced by SPA members, the model terms of engagement negotiated by SPA on behalf of its members with the AWG, MEAA and ADG are passed onto Stan in its capacity as a financier and licensee of such content and impact Stan’s ability to recoup its investment in such content. For example, as part of the 2016 Memorandum of Understanding between SPA and MEAA which amended the Actors Television Repeats and Residuals Agreement (ATTRRA 2016), the initial license period for a program available to commissioning platforms was reduced from seven years to three years. This change was detrimental to Stan because a three-year license period is not compatible with the SVOD business model, which sees the platform exploit a piece of content on an ongoing basis, over an extended period of time. This is vastly different to the traditional television model, which sees the value of a piece of content split over a limited number of runs. Stan, which was a new entrant in the Australian SVOD landscape at the time (having launched on 26 January 2015) and which had commenced commissioning content, was not directly consulted by SPA as part of the ATTRRA 2016, while free-to-air broadcasters Nine Network and Seven Network have both cited a lack of proper consultation from SPA during its negotiations of model terms over several agreements with the MEAA, AWG and ADG.



2. **The proposed length of the authorisation period** – 10 years is double the length of the previous authorisation period, and is being proposed at a time when the pace of technological, commercial and structural change in the media sector is accelerating. It is impossible to predict the composition of the broadcasting media landscape in 10 years' time with any particular accuracy or certainty, and therefore granting an authorisation of this length would not be appropriate.

The Need for Proper Consultation with Media Platforms

The rationale behind the ATRRA 2016 was to bring the agreement into “the 21st Century”¹ which referred to the way performers would be paid for content distributed on digital platforms and how this content could be exploited by platforms. However, the agreement showed a limited understanding of how the underlying business models that finance productions on digital platforms actually work. This is somewhat understandable given the SVOD market had only existed in Australia, via the launch of Stan and Netflix, for just over a year at the time the ATRRA 2016 was completed. While Stan commissioned two local productions - No Activity and Wolf Creek - in its first year, the streaming service has now commissioned more than 20 local productions, and has consistently increased its annual output since launch, cementing its position as one of the most significant commissioning platforms in Australia. In August, Stan announced it would ramp up its output to around 30 Stan Originals per year by 2025. Given the model terms negotiated by SPA are a quasi-industry standard and dictate key commercial terms of commissioning agreements, including the initial license period, it is critical that Stan, in its capacity as a significant commissioning platform, has genuine and meaningful input into any future agreements struck as part of the Proposed Conduct of the SPA Application. Not only is Stan a key financier and exhibitor of local productions, but it can also provide valuable insights into how the SVOD business model works and the key commercial points that will allow the streaming industry to maximise its investment in Australian content. This, in turn, will deliver clear and significant benefits to the production industry and consumers.

While there are a number of commercial issues that Stan would discuss with SPA as part of any consultation process ahead of a negotiation with the MEAA, AWG or ADG, one of the key concerns is the three-year initial license period under ATRRA 2016. The decision of SPA and MEAA to shorten the license period from seven years demonstrated a limited understanding of the SVOD business model, which sees platforms exploit content over an ongoing and extended period, rather than catering to mass audiences at a particular time in order to generate advertising dollars. For a production to be eligible for Screen Australia funding, Screen Australia's Terms of Trade must apply and these terms require the commissioning platform to pay a minimum license fee per hour of \$440,000 for the initial license period. This license fee has not changed since the implementation of ATRRA 2016 to

¹ <https://www.if.com.au/spa-and-meaa-reach-ae~groundbreakingae-new-atrra-agreement/>



reflect the shorter license period. This license fee is well above the market rate given international premium scripted content, including productions with a significantly higher production budget per hour, can be licensed from US and other international studios for around a quarter of this fee. If Stan is to invest in such a high license fee for its local commissions, then it should be able to license that content for a period of time that better reflects the way SVOD platforms monetise programs without having to incur further costs to relicense programs.

The Proposed Length of the Authorisation Period

With the proliferation of new technologies and media business models in recent years, it would seem strange to lock in any regulatory decision affecting the sector for longer than is necessary. The evolution of the local media market is only accelerating, with two new SVOD services, Binge and BritBox, launching within the past six months and other companies announcing their intentions to launch in the near term. The aforementioned example of the ATRRA 2016 failing to contemplate how the SVOD business model works demonstrates how quickly the media landscape is evolving and the inherent risk involved with any long-term regulatory or public policy decision in the sector. Because it is impossible to predict how the media industry will evolve over the next 10 years, it is not possible to assess the public benefits and detriments of the Proposed Conduct over that period.

Recommendations

1. If the ACCC is to approve the SPA Application, it should make it a condition of the authorisation that SPA adopt a wider and more meaningful consultation process with acquirers of content, particularly streaming platforms and FTA broadcasters, to develop the model terms of engagement. This would involve SPA being required to:
 - a. invite Stan, and other streaming platforms and FTA broadcasters, who acquire content from SPA's members to participate in meetings with the AWG, ADG and MEAA regarding the development of model terms;
 - b. ensure that correspondence between SPA and the AWG, ADG and MEAA regarding the development of model terms is shared with Stan, and other streaming platforms and FTA broadcasters, so they can provide their input;
 - c. otherwise engage in reasonable consultation, which includes taking into account interested parties' views in the development of terms; and
 - d. be able to demonstrate to interested parties that it has taken into account their views, and have a dispute resolution process that enables interested parties to raise concerns if they consider that their views have not been taken into account.
2. The ACCC should restrict the term of the authorisation period to no longer than five years.