

- a) satellite subscription television broadcasting services,
- b) subscription television broadcasting services utilising delivery mechanisms other than satellite, and
- c) subscription television narrowcasting services.

It is the Parliament's stated intention that pay TV should provide new opportu-

nities for the film and television production industry, through an increased demand for programs, which is expected to provide jobs and contribute to the development of creative Australian product.

Consequently, section 102 of the *Broadcasting Services Act 1992* sets the minimum new Australian drama expenditure requirement on subscription broadcasting television (pay TV) licensees.

Section 102, states:

Each subscription television broadcasting licence is subject to the condition that, if the licensee provides a service devoted predominantly to drama programs, the licensee will, for each year of operation, ensure that at least 10% of the licensee's program expenditure for that year in relation to that service is spent on new Australian drama programs.

## DRAFT PAY TV GUIDELINES FOR THE IMPLEMENTATION OF THE 'NEW AUSTRALIAN DRAMA' LICENCE CONDITION

### OVERVIEW

It is the Parliament's stated intention that pay TV should provide new opportunities for the film and television production industry, through an increased demand for programs that is expected to provide jobs and contribute to the development of Australian creative product. In particular section 102 of the *Broadcasting Services Act 1992* sets a minimum new Australian drama expenditure requirement on some pay TV licensees.

These guidelines have been produced to provide some certainty as to the practical application of section 102. The draft guidelines should be read in conjunction with the Act. The ABA's intention is not to prescribe accounting standards but to facilitate compliance with section 102. The guidelines do not purport to be exhaustive; a practice not described in these guidelines should not be taken to be authorised by its omission.

### INDUSTRY PRACTICES

The ABA anticipates the pay TV industry will develop a range of practices in acquiring and broadcasting program material. These guidelines anticipate issues that may emerge as the industry develops.

In most cases it is anticipated that each licensee will maintain a program inventory and that as programs are used the value of the inventory will be charged to the profit and loss account of the licensee as expenditure. Where a portion of this expenditure relates to a predominantly drama service, this por-

tion will then form the basis for assessing the compliance of the licensee with section 102.

### SPECIAL CONDITION RELATING TO AUSTRALIAN CONTENT

102. Each subscription television broadcasting licence is subject to the condition that, if the licensee provides a service devoted predominantly to drama programs, the licensee will, for each year of operation, ensure that at least 10% of the licensee's program expenditure for that year in relation to that service is spent on new Australian drama programs.

### DEFINITIONS

For the purpose of these Guidelines the following definitions apply:

**Australian drama program** is defined in section 6 (1) of the Act and appears in Appendix 1 of these guidelines.

**Drama program** has the meaning given in section 6 (1) of the Act, modified to apply to all subscription broadcasting television licences, not just satellite subscription television broadcasting services. The original definition appears in Appendix 1 of these guidelines.

**Licensee** in the context of these Guidelines refers to the licensee of a subscription broadcasting television service, unless otherwise stated.

**Market value** means a value calculated on the basis of the expected price for which an asset could be sold if offered on an open market to any buyer.

**New Australian drama program**

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means an Australian drama program that has its first presentation on a subscription broadcasting television service, and has not been presented on another broadcast television service or narrowcast television service.

**Service devoted predominantly to drama programs (predominantly drama service)** means a subscription television broadcasting service that presents drama programs for 50% or more of the total time that the service is available over the year concerned.

**Program** is defined in section 6 (1) of the Act and appears in Appendix 1 of these guidelines.

**Program expenditure** is the usage and amortisation of program rights owned by a licensee that is charged to the profit and loss account of the licensee company. Costs included in program expenditure should relate directly to the cost of the program rights. Program expenditure should not include costs associated with incomplete programs or incidental costs such as administrative overheads or acquisition and promotion costs or transmission costs. Program expenditure should not include abnormal items such as a write down in program rights.

**Program rights** means the right to broadcast a program on a particular type of television service. This right may derive from ownership of the copyright of the program or from a contractual arrangement with the owner of the copyright or a person authorised by the copyright owner.

**Related party** has the same mean-

ing as in the Accounting Standards Review Board's standard *Related Party Transactions* (ASRB 1017).

**Year** means the financial year of the licensee company.

**JOINTLY ACQUIRED PROGRAM RIGHTS**

Where a licensee acquires program rights in addition to those intended for broadcast on a predominantly drama service, and the value of these program rights is lower than if they had been acquired separately for each service, the value of the program rights intended for the predominantly drama service should reflect the savings achieved through joint negotiation. Accordingly, the predominantly drama service should not bear an unequal burden in the cost of the program rights.

**SALE OF PROGRAM RIGHTS.**

Where program rights that are acquired by a licensee are sold in part or whole to another party, only the residual value of the program rights used

by the licensee should be included in program expenditure. The residual value should be calculated as the value of the program rights at the time of the sale less the price charged for a portion or all of the program rights sold and less the market value of any benefit associated with the sale accruing to the licensee. The residual value cannot be negative.

**RELATED PARTY TRANSACTIONS**

Where program rights are purchased or sold by the subscription television broadcast licensee from or to a related party, the value of the program rights used to calculate program expenditure should be the market value of those rights.

**INFORMATION SOURCES**

Program expenditure should be calculated using program expenditure figures consistent with the audited annual accounts of the licensee company for the year concerned.

Licensees should maintain separate records of new Australian drama ex-

penditure and total program expenditure for each predominantly Australian drama service. Licensees should also maintain records of the acquisition costs of program rights.

**RELATED CONSIDERATIONS**

The ABA may declare under section 6 (3) of the Act that a program that meets part (a) (both reproduced in appendix 1) of the definition of an Australian drama program is not an Australian drama program. These sections of the legislation apply to situations where a program is an Australian drama program as defined by part (a) because it is:

*...made wholly or substantially in Australia or in an external Territory and has a significant Australian content...*

but, under s 6 (3), where it,

*...has non-Australian content of such significance that it should not be treated as an Australian drama program...*

This power would be used to deal specific situations where the intent of the Parliament and the objects of the Act were not met by the definition.

**INQUIRIES IN RELATION TO THESE GUIDELINES SHOULD BE DIRECTED TO:**

<b>(Program aspects)</b>	<b>(Financial aspects)</b>
Nick Herd	Paul Myers
<b>Programs Division</b>	<b>Licensing Division</b>
<b>Phone</b>	
Domestic:	
(02) 959 7813	(02) 959 7973
International:	
61 2 959 7813	61 2 959 7973
<b>Fax:</b>	
Domestic	(02) 954 4328
International	61 2 954 4328
<b>DX:</b> 10528 North Sydney	
<b>Street Address:</b>	
Level 1	<b>Postal Address:</b>
76 Berry Street	PO Box 1308
North Sydney	North Sydney NSW 2059

## APPENDIX 1

### EXTRACTS FROM THE BROADCASTING SERVICES ACT 1992

6.(1) In this Act, unless the contrary intention appears: ...

'Australian drama program', in relation to a satellite subscription television broadcasting licence, means a drama program:

- (a) that has been made wholly or substantially in Australia or in an external Territory and has a significant Australian content; or
- (b) that has been made in pursuance of an agreement or arrangement entered into between the Government of Australia or an authority of the Government of Australia and the Government of another country or an authority of the Government of another country; or
- (c) that is to be treated as an Australian program under an agreement between Australia and another country; or
- (d) in relation to which a certificate under Division 10BA of Part III of the Income Tax Assessment Act 1936 has been issued; or
- (e) that would, if it were not a program of the kind referred to in paragraph (d) or (e) of

the definition of 'drama program', be entitled to such a certificate; or

- (f) would be an Australian drama program for the purposes of a standard relating to Australian content that is in force under paragraph 122(2)(b); but does not include a program in relation to which a declaration under subsection (3) is in force; ...

'drama program', in relation to a satellite subscription television broadcasting licence, includes:

- (a) a feature film of the kind that is commonly screened as a main attraction in commercial cinemas; and
- (b) a film that is similar in nature to a feature film but was produced for broadcasting on television; and
- (c) a mini series produced for broadcasting on television comprising an extended but self-contained drama and that is designed to be broadcast in 2 or more sequential parts; and
- (d) a drama series produced for broadcasting on television that comprises a potentially un-

limited number of episodes each of which:

- (i) has a self-contained plot; and
  - (ii) can be broadcast in any order; and
- (e) a continuing drama series produced for broadcasting on television that comprises a potentially unlimited number of episodes that are arranged into a consecutive series for broadcasting; ...

'program', in relation to a broadcast service, means:

- (a) matter the primary purpose of which is to entertain, to educate or to inform an audience; or
  - (b) advertising or sponsorship matter, whether or not of a commercial kind; ...
- (3) The ABA may, if it is satisfied that a drama program of the kind referred to in paragraph (a) of the definition of 'drama program' in subsection (1) has non-Australian content of such significance that it should not be treated as an Australian drama program, declare that it is not an Australian drama program.

