

Screen Producers Australia's submission on the proposed Free Trade Agreement between Australia and the European Union

Screen Producers Australia welcomes the opportunity to provide a submission to the Department of Foreign Affairs and Trading (**DFAT**) as part of its negotiations with the European Union (**EU**) on a proposed Free Trade Agreement with Australia (**EU-FTA**).

For further information about this submission please contact Pravin Menon, Director of Government Relations & Operations (pravin.menon@screenproducers.org.au).

About SPA

Screen Producers Australia (**SPA**) was formed by the screen industry over 60 years ago to represent large and small enterprises across a diverse production slate of feature film, television and interactive content. As the peak industry and trade body, we consult with a membership of more than 500 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ hundreds of producers, thousands of related practitioners and drive more than \$1.7 Billion worth of annual production activity from the independent sector as well as nearly \$1 Billion in export earnings and tourism expenditure within the overall screen industry.

On behalf of these businesses we are focused on delivering a healthy commercial environment through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content have been met.

Executive Summary

SPA recommends DFAT undertake the following measures as set out in this paper:

Recommendation 1: The EU-FTA should include a co-production treaty with the EU that reserves Australia's right to adopt or maintain preferential co-productions for film and television under Screen Australia's International Co-Production Program.

Recommendation 2: Any co-production treaty with the EU should include the provisions in Annexure 7-B to the Korea-Australia Free Trade Agreement (**KAFTA**) and the Protocol on Cultural Cooperation between the EU and Korea (**EU-Korea Co-Production Protocol**) which liberalise trade and export opportunities, but otherwise exclude any provisions which serve as trade barriers (see sections 28 - 32 below).

Recommendation 3: Any co-production treaty with the EU should not diminish any rights and benefits conferred on Australia or EU member countries under Australia's existing co-production treaties or Memorandums of Understanding (**MoUs**). Minimum Australian contribution levels should not be more than 20%. The EU-FTA should also reserve future opportunities for Australia to explore a multilateral co-production treaty with the UK and the EU in the event of Brexit.

Recommendation 4: The EU-FTA should include robust copyright and intellectual property protections for audio-visual content owners relating to online piracy and against exceptions relating to geo-blocking, fair use and safe harbour. DFAT should consult with the Government's 'IP Policy Group' as part of proposed reforms to the *Copyright Act 1968* (Cth).

Recommendation 5: The Government should undertake a review of Screen Australia's *International Co-Production Guidelines* to ensure they are effectively facilitating trade, export and market access opportunities with partner countries.

Recommendation 6: The EU-FTA should reserve Australia's right to adopt any measure with respect to its broadcasting and audio-visual sector. These should be on similar terms to those found in the Peru-Australia Free Trade Agreement (**PAFTA**).

Recommendation 7: The EU-FTA should reserve Australia's right to adopt digital trade measures that ensure Australian content is "equivalently available" to Australian audiences for "digital products" and the "electronic supply of services" as on broadcasting services, both now and in the future. DFAT should consult with the EU on taxation / content regulation arrangements for streaming services and digital platforms to consider whether EU-FTA measures can be enhanced.

Recommendation 8: DFAT should leverage the 'soft power' capabilities of the screen sector. This includes supporting initiatives for a 'Screen Export Advisory Council', 'National Screen Export Fund' and better promotion of Indigenous screen businesses and stories.

SPA considers that the above commitments would help set benchmarks of what can be achieved between like-minded partners and therefore should be carried over as part of Australia's other negotiations and policy reviews, including the Soft Power Review, the Trade in Services Agreement and prospective free trade agreement with the United Kingdom.

The above recommendations will support the following strategic objectives:

- improve market access and reduce barriers to the trade and export of Australian goods and services in the screen industry, particularly for small and medium-sized enterprises;
- establish digital trade commitments with partner nations that strike a balance between facilitating modern trade and ensuring appropriate protections in the online environment;
- strengthen Australian's influence, reputation and relationships internationally with a clear, creative and confident long-term vision for Australia's international policy agenda;
- strengthen and deepen bilateral ties and raise Australia's profile as an innovative and creative nation, building understanding beyond our landscape and lifestyle.
- leverage Australia's 'soft power' assets in a more systematic and sophisticated way, to promote Australia's security and prosperity and enhance its image, reputation and standing abroad;
- improve foreign investment conditions in Australia, which will have flow-on benefits to other industries such as retail, hospitality, property and tourism; and
- increase taxation revenues to the Federal and State Government(s), which can then be used to support screen industry initiatives as well as essential services.

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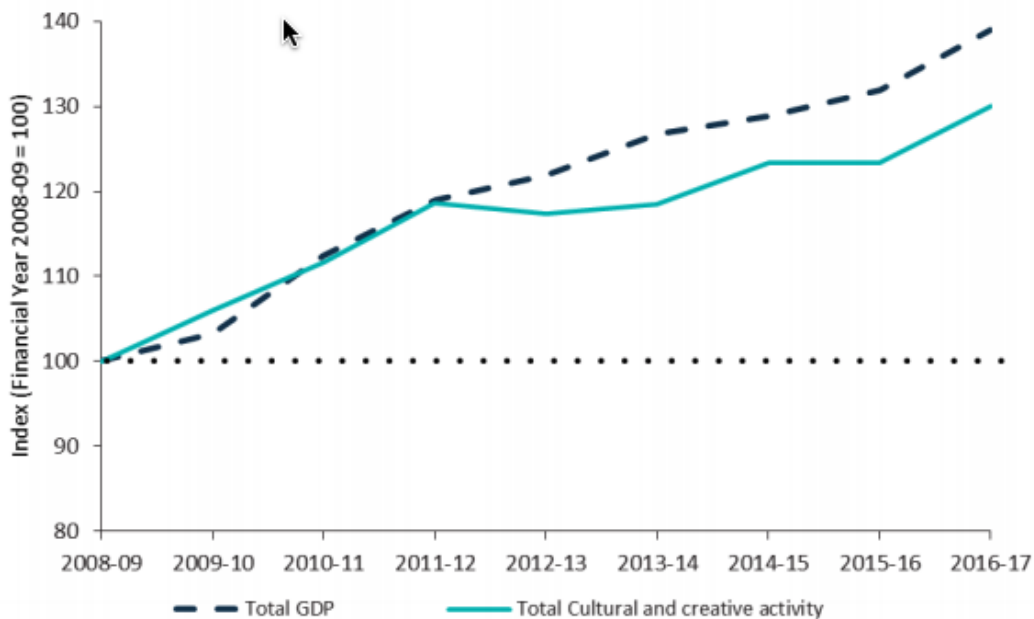
The economic value of Australia’s domestic screen industry

1. The screen industry and broader creative industries play a vital role in Australia’s economy through commerce, employment and foreign investment as well as expenditure in sectors such as tourism, education, retail and hospitality.

Economic activity

2. Recent research from the Bureau of Communications and Arts Research (**BCR**) released in shows that cultural and creative activity generated more than \$111.7 Billion in value to Australia’s economy, including over \$25 Billion in economic output from the broadcasting, electronic, digital media and film sector¹. However, the BCR research also highlights that total cultural and creative activity in Australia has been tracking less than total GDP since 2010:

Figure 4. Cultural and creative activity relative to nominal GDP



3. The cultural and audience value of the screen production industry alone has been estimated at over \$18 Billion, with an annual contribution to GDP estimated at \$3 Billion as well as over 25,000 in full time equivalent jobs (**FTEs**)². More recent studies in 2018 have examined the economic activity of film and TV offset-supported production in Australia and estimate the screen industry contributes more than \$6.4 Billion to the Australian economy, supporting more than 94,000 FTEs³.

¹ [Cultural and creative activity in Australia 2008-09 to 2016-17](#), Bureau of Communications and Arts Research, October 2018

² [Screen Currency: Valuing our Screen Industry](#), Screen Australia, November 2016, p.5

³ [Impact of Film and TV Incentives in Australia](#), Olsberg SPI, March 2018

4. In 2015-6, there were 3233 active film and video production and post-production businesses in Australia employing more than 17,000 people and generating income of more than \$2.7 Billion⁴. SPA's recent industry census undertaken by Deloitte Access Economics found that the independent screen production industry generated more than \$1.2 billion in production revenue in 2017, supporting nearly 20,000 jobs⁵.

Foreign investment

5. Access to foreign investment and sales is highly competitive but is critical to developing healthy levels of local screen production and supporting industry skills in an environment of static domestic tax incentives, declining subsidies and year-to-year fluctuations in foreign-studio backed domestic films and co-production titles.
6. Screen Australia's recent *Drama Report* highlighted that in 2016-7, nearly half of almost \$1.3 Billion of the expenditure on local production was attributed to foreign titles (\$624 Million)⁶. Other reports demonstrate that the majority of this expenditure (\$521 Million) related to screen content production in Australia without Australian creative involvement⁷.
7. In 2017-8, foreign investors were the single largest contributor of finance to Australia's annual slate of feature film (40%) and a significant contributor to Australian TV and online drama (23%), consistent with five-year averages⁸. Further, data from the Australian Bureau of Statistics (**ABS**) also shows that more than a quarter of film, television and video production income and more than a third of post-production income in Australia came from overseas⁹.
8. There is strong global competition amongst national and state Governments to attract international studio-backed filming and production activities. The Government has recently launched a \$140 Million Location Incentive Program, which it estimates will contribute an additional \$260 Million in foreign investment¹⁰. These figures still fall significantly short of foreign investment in other countries, such as in the UK (\$3 Billion) and Canada (\$3.76 Billion)¹¹.
9. The EU is Australia's largest source of foreign investment¹², making Australia well-placed to take advantage of further investment in our local industry under the EU-FTA or through co-production treaties.

⁴ [Film, Television and Digital Games, Australia, 2015-6](#), Australian Bureau of Statistics, released June 2017

⁵ [Screen Production in Australia](#), Deloitte Access Economics, June 2018

⁶ [Drama Report 2017-8](#), Screen Australia, October 2018

⁷ [Impact of Film and TV Incentives in Australia](#), Olsberg SPI, March 2018, p.11

⁸ [Drama Report 2017-8](#), Screen Australia, October 2018

⁹ [Film, Television and Digital Games, Australia, 2015-6](#), ABS, released June 2017

¹⁰ [Joint Media Release – Minister for Foreign Affairs, Minister for the Arts, Minister for Trade, Tourism & Investment - \\$140M Boost for Australian Film Jobs](#), Federal Government, May 2018

¹¹ [Impact of Film and TV Incentives in Australia](#), Olsberg SPI, March 2018

¹² [European Union Brief](#), DFAT

Tourism and other sectors

10. Australia's screen industry provokes curiosity, understanding and interest in Australian media, culture, wildlife, landscapes and local services industries. This plays a vital role in boosting tourism expenditure and has significant flow on effects to many other sectors including education, retail and hospitality. A good example is *McLeod's Daughters*, which promoted country Australia and has been exported to more than 180 territories worldwide¹³.
11. Research from the Australia Council highlights that in 2017, international arts tourists spent \$17 Billion in Australia, making up 60% of the \$28.4 Billion spent in Australia by all international tourists¹⁴. Australia's screen content is estimated to attract around 230,000 international tourists to Australia each year, driving an estimated \$725 million in tourism expenditure. 85,000 international tourists reported visiting or extending their stay in Australia each year as a result of viewing Australian film and TV content¹⁵.

Unlocking the export potential of Australian stories

Trade in services with Europe

12. The screen industry offers exceptional and unique export opportunities, however like many other service industries in Australia, these are currently being underutilised. In 2017-8 Australian services exports reached a record high of \$88 Billion, with total trade covered by agreements at 77%¹⁶. While services make up around 75% of Australia's GDP, they make up only 20% of our exports, suggesting there is still significant scope to improve our trade in services in overseas markets.
13. Europe offers attractive export opportunities as a market of half a billion people and GDP of \$17.3 Trillion. The EU is Australia's second largest trading partner, third largest export destination and second largest services market. However, despite this, there remains an \$8 Billion trade in services deficit with Europe. The UK also makes up half of Australia's trade with the EU, which requires careful consideration of the implications of Brexit on trade in our screen sector.

Untapped export opportunities for the screen industry

14. In 2016, Australian screen content was estimated to generate \$252 million a year in export earnings¹⁷. More recent figures from DFAT record \$239 Million in

¹³ [Aussie TV around the world](#), Screen Australia, August 2017

¹⁴ [International Arts Tourism: Connecting Cultures](#), Australia Council, November 2018

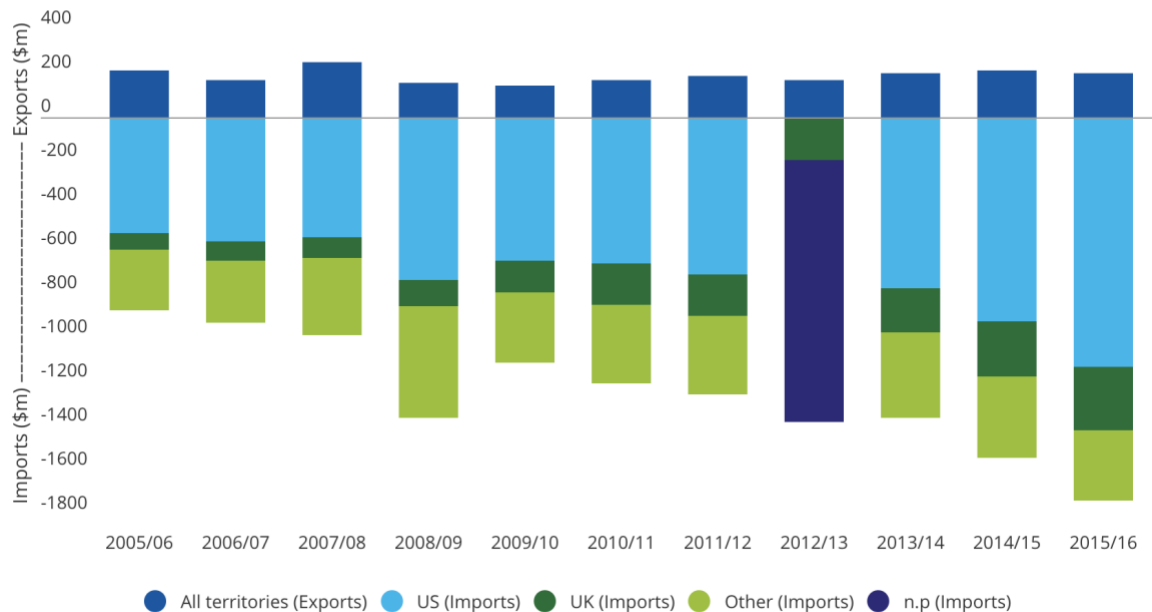
¹⁵ [Deloitte Access Economics, What are our stories worth?: Measuring the economic and cultural value of Australia's screen sector](#), 2016, p. v., p.

¹⁶ [Australian services exports continue to surge](#), Minister for Trade, Tourism and Investment, November 2018

¹⁷ [Deloitte Access Economics, What are our stories worth?: Measuring the economic and cultural value of Australia's screen sector](#), 2016, p. v.

exports of audio-visual and related services accounted in 2017¹⁸ compared with \$1.69 Billion in imports, representing a trade deficit of almost \$1.5 Billion. Approximately 30% of this trade deficit is with the EU¹⁹. Further according to Screen Australia data, while royalty trade in film and TV has more than doubled over a 10-year period, exports have been in decline, with Australia now exporting less film and TV today than it was 10 years ago²⁰:

TOTAL VALUE OF ROYALTY TRADE IN CINEMA, TELEVISION, VIDEO AND MULTIMEDIA RELEASES, 2005/06-2015/16



15. In the independent sector, 14% of total production revenue (\$163 Million) was generated by exports in 2017, with 80% of production businesses earning revenue from distribution. 43% of independent screen businesses derive at least some revenue from 200 overseas markets, compared to 7.6% of businesses in the broader economy. Only 7% of export revenue was derived from Europe, by comparison with the UK (59%) and the US (32%).

16. These figures highlight the extent of untapped export opportunities and the need to significantly liberalise trade and lower the cost of entry for audio-visual and related services in overseas markets, particularly in Europe. They also reveal underlying issues with distribution rights agreements, where large broadcasters and subscription video on-demand (**SVOD**) platforms often become the main beneficiaries of export revenue at the expense of allowing small to medium sized production firms to exploit their own IP.

¹⁸ [Trade in Services Australia 2017](#), DFAT, August 2018, p.39

¹⁹ See [Australia's Services Trade with the European Union](#), DFAT, 2016

²⁰ [Trade in Royalties 1991/92–2015/16](#), Screen Australia, updated April 2018

Australian film and TV in Europe

17. In spite of this, Australian TV drama and Australian-generated formats are increasingly generating international sales²¹. More than 400 Australian TV shows have been sold overseas to date, which have been distributed in more than 200 territories around the world²².
18. There has been significant market penetration in Europe²³, with \$57 Million in Australian film and television exports to the European Union in 2017. Australian feature films, drama and animations have consistently won awards in Europe, including at the European Film Market, MIPCOM, the Cannes Film Festival and Venice Film Festival. According to Eurodata TV, Australia is the fifth highest in TV exports behind the US, UK, Netherlands and France²⁴.
19. Australian TV has also begun to tap into the streaming services market in Europe with 31 titles on Netflix and 68 titles on iTunes, representing 16% and 19% of international countries other than the US²⁵. Baz Luhrmann's *Australia* was also the most widely distributed international fiction film on VOD services in the EU²⁶.
20. Export opportunities improve the visibility of Australian creative works and local talent, which in turn leads to greater international collaboration opportunities, foreign investment and tourism expenditure in our local industry. They also allow Australian producers to diversify into other export revenue opportunities such as merchandising and arts tourism, as was the case with *Miss Fisher's Murder Mysteries*²⁷.

The unique export opportunities offered by co-productions

21. International co-productions offer significant opportunities to the screen industry and Australia's national interests but are currently being underexploited. The recent *House Standing Committee on Communications and the Arts* considered that co-productions should be fostered and enhanced and that "additional co-production treaties would be beneficial to the industry and would not be detrimental to the future production of Australian stories."²⁸ SPA's 2017 *Screen Industry Business Survey* also found that 76% of respondents considered their businesses would benefit from greater options to develop and produce projects under co-production.

²¹ [Screen Currency: Valuing our Screen Industry](#), Screen Australia, November 2016

²² [Aussie TV around the world](#), Screen Australia, August 2017

²³ [Aussie TV around the world](#), Screen Australia, August 2017; [Screen Production in Australia](#), Deloitte Access Economics, June 2018, p.9

²⁴ [Exporting Canadian Television Globally](#), Telefilm Canada, May 2017

²⁵ [Origin of films and TV content in VOD catalogues in the EU & Visibility of films on VOD services](#), European Audiovisual Observatory, November 2016, p.146

²⁶ [How do films circulate on VOD services and in cinemas in the European Union?](#), European Audiovisual Observatory, May 2016.

²⁷ [TV Drama Abroad – Part 3: Miss Fishers Murder Mysteries](#), Screen Australia, June 2016

²⁸ [Report on the inquiry into the Australian film and television industry](#), House Standing Committee on Communications and the Arts, December 2017

22. Co-production treaties put in place a framework where countries can benefit from each other's regulatory and taxation environments. They are often bilateral treaties but can also be multilateral agreements. They offer an important source of finance and training, marketing, opportunities to develop creative talent, cultural exchange and drive foreign investment and export sales. Notably, they allow film and television produced under co-production treaties to qualify as 'Australian films' for content regulation purposes, which allows Australian films and TV to compete more readily in a global distribution environment.
23. Currently, Australia has official international co-production treaties and MoUs with 12 countries, however France has co-production treaties with over 30 countries and Canada has co-production treaties with over 60 countries. In total, there have been 186 official co-production titles made with total budgets of \$1.9 Billion²⁹. SPA has been actively involved in trade missions with other countries (discussed below) to explore opportunities for co-production treaties with countries in Europe including Denmark, Sweden, Spain, Portugal and the Netherlands.

Establishing a co-production treaty in the EU-FTA

24. Australia has reserved its right to adopt or maintain preferential co-production arrangements for audio-visual productions under the International Co-production Program in several FTAs, including the Australia United States Free Trade Agreement (**AUSFTA**), KAFTA and PAFTA.
25. The provisions set out in Annex II: Schedule of Australia to PAFTA arguably provide the greatest flexibility to Australia relating to 'national treatment'. By way of comparison, Annex 7-B to the KAFTA contains terms which restrict common management, ownership and control³⁰ between production companies, as well as restrictions on personnel, footage and immigration restrictions for temporary stay. Such restrictions increase barriers to multilateral trade and investment and limit opportunities for creative and financial collaboration and therefore ought to be removed. Such restrictions do not apply in other countries such as New Zealand, which uses streamlined visa processes for short stay entrants and those working on approved activities.
26. Nonetheless, there are several important terms which should be recognised in any prospective free trade agreement or separate co-production treaty between Australia and the EU. These include:
- i. that cinematographic and technical equipment for the making of audio-visual productions be free of import duties and taxes, and able to be exported freely as well (Article 6);
 - ii. provisions that allow audio-visual works to be made in conjunction with a co-producer from a 'third country', where this is subject to a separate co-production agreement (Article 7); and

²⁹ [Co-Production Statistics](#), Screen Australia, October 2018

³⁰ [Annexure 7-B to the Korea Free Trade Agreement](#), DFAT

- iii. provisions that allow a ‘reasonable proportion’ of creative contribution from co-producers, rather than a ‘reasonable equivalence’ of creative contribution under the *Screen Australia Guidelines* (Article 8).

27. With 28 Member states in the EU, there are significant opportunities for Australia in entering into a co-production treaty with the EU. Co-productions with EU countries are governed by the *European Convention on Cinematographic Co-Production (ECCC)*, which involves the Council of Europe, not the EU. An updated version of the ECCC was signed earlier this year, which has eased restrictions on European signatories of the ECCC to co-produce with partners outside of Europe, providing further opportunities for collaboration with Australia.

Preserving flexibility under existing co-production treaties

28. There are significant differences between film and television industries and the regulatory and taxation frameworks that support them³¹, particularly across European nations. Differences include:

- i. differential treatment of media and genres – e.g. film but not television, exclusions for web-series, or different minimum contribution levels for animation and non-animation;
- ii. tax offsets and credits for production and post-production;
- iii. minimum budget requirements and project caps;
- iv. minimum requirements for filming in country;
- v. discretionary financial grants for filming in certain regions or in relation to certain linguistic / cultural communities;
- vi. residency requirements for foreign crew, actors, producers and directors; and
- vii. ‘cultural tests’ and ‘citizenship tests’³².

29. These asymmetries can serve as trade barriers but also opportunities. Careful consideration is to ensure that Australia retains the same rights and benefits afforded under existing co-production treaties, while also being sensitive towards the regulatory regimes in individual EU member countries. By including minimum Australian contribution levels that are no greater than 20%, Australia would ensure consistency across existing co-production treaties with EU members.

30. As an example, under Australia’s with France, both countries benefit from different “minimum contribution levels”, which allows producers greater flexibility in financing screen content as well as creative control³³. There are also no restrictions on common management ownership and control between co-production partners. EU classifications also override foreign content restrictions, which improves sales potential as local distributions can be granted access to marketing these films³⁴. France also has a unique system whereby a proportion

³¹ [Report on the inquiry into the Australian film and television industry](#), December 2017, Table 2.4

³² [Countries with the Best Film Incentives](#), Rodrigues Law, September 2017

³³ [Administrative Arrangements Governing Franco-Australian Film Relations](#), Screen Australia.

³⁴ [Flying Bark Productions: Submission 141 to the Inquiry into the Australian Film and Television Industry](#), House Standing Committee for Communications and the Arts, December 2017

of revenue from box office sales as well as broadcasts and SVOD revenues goes towards supporting local production³⁵ (discussed below).

Co-production treaties between the EU and other nations

31. The EU-Korea Co-Production Protocol³⁶ contains a number of terms that would help facilitate trade and therefore ought to be incorporated into any co-production treaty between Australia and the EU. These include:
- i. provisions that allow the temporary importation of materials and equipment for purpose of shooting audio-visual works;
 - ii. the establishment of a domestic advisory group, which is to be consulted on issues related to the implementation of the EU-Korea Co-Production Protocol;
 - iii. no restrictions on ownership management and control between co-producers, but rather producer residency requirements; and
 - iv. flexibility to allow parties to collaborate across EU member states at different contribution levels, as well as with non-EU countries.
32. The EU-Korea Co-Production Protocol contains minimum contribution levels between the EU and the Republic of Korea of 30% for non-animations and 35% for animations. As stated above, for consistency with Australia's existing co-production treaties, minimum Australian contribution levels in any co-production treaty with the EU should not be more than 20% and should be applied consistently regardless of medium or genre.

The effects of Brexit on existing co-productions with the UK

33. As co-productions between the UK and European countries are governed by the ECCC, these remain on foot and would not be affected by Brexit. However, this may have implications for co-produced films and television programs made under Australia's co-production treaty with the UK, as these may no longer qualify as European content, which may in turn limit Australia's access to European markets. It may also mean that Australia-UK co-productions would no longer be able to access European cast and crew as qualified nationals.
34. Such restrictions on access to incentives in other markets as well as and the free flow of recognised actors and skilled crew serve as trade and investment barriers and would significantly hamper Australia's co-production opportunities in the northern hemisphere. Trade negotiations with the EU should therefore seek to preserve rights and benefits conferred on Australia under existing co-production treaty with the UK, which could be enhanced by means of a multilateral co-production treaty involving Australia, the European Union and the United Kingdom.

³⁵ [Netflix, YouTube to Pay Tax on Turnover in France Under New Law](#), Variety, September 2017

³⁶ [EU – Korea Audio-visual Co-productions](#), European Commission, 2011.

Comprehensive review of Screen Australia's guidelines

35. Screen Australia is the 'Competent Authority' that administers the International Co-Production Program. Given the number of differences in co-production treaties and, Screen Australia's *International Co-Production Guidelines* should be reviewed to ensure they are effectively facilitating trade, export and market access opportunities with partner countries.

Australia's sovereign need to protect its screen industry

The need for Government intervention

36. It has become increasingly more difficult for screen industries in many countries (particularly English-speaking nations) to compete in the global distribution environment given the market dominance of America's screen industry and streaming services.
37. Global imbalances of power have significant downstream effects through the audio-visual supply chain in Australia and are felt most acutely by Australian producers.
38. ABS *Australian Industry* survey found that 14.4% of businesses engaged in motion picture and sound recording activities were making a loss³⁷. This figure is higher for the independent sector, with 22% of the production businesses surveyed reporting making a loss³⁸.
39. The overall health of the local Australian screen industry is precarious balance that requires careful policy considerations. Specific and targeted interventions are required by the Government to address market failures and preserve multilateral trade opportunities both now and in the future.
40. Critical to supporting the industry has been the *Australian Screen Production Incentive (ASPI)*, which includes the Producer, Location and PDV offsets. Research estimates that the gross direct value add of these offsets to the Australian economy was at \$386 Million and growth in jobs of almost 25,000³⁹.
41. Treasury has received \$1.05 in total taxation for every \$1 spent on the Australian Screen Production Incentive (including discretionary top-up funding) over the 10 years the offsets have been in operation. Not only does this demonstrate positive taxation revenue, but with 43% of productions reliant on some form of Government funding, the ASPI is vital to the industry's sustainability⁴⁰.

The sovereign need to protect Australia's cultural assets

³⁷ [Australian Industry, 2016-17: Industry Performance by Industry Subdivision](#), ABS, released May 2018

³⁸ [Screen Production in Australia](#), Deloitte Access Economics, June 2018

³⁹ [Impact of Film and TV Incentives in Australia](#), Olsberg SPI, March 2018

⁴⁰ [Impact of Film and TV Incentives in Australia](#), Olsberg SPI, March 2018

42. Australian film and television is an important cultural and sovereign asset. Screen Australia's research showing 91% of Australians believed it was important that Australia had a film and TV industry producing local content⁴¹.
43. There has been an increasing need for Australia to protect the diversity of its cultural expression in response to a globalised market place. Cultural output of a nation cannot be substituted with the cultural output of another nation, which requires Australia to pursue its national interests more vigorously in a more competitive and contested world.
44. Accordingly, international treaties should not constraint the Government's ability to foster cultural industries in a manner it sees fit now and in the future. More recent free trade agreements such as PAFTA, CIA-FTA and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**TPP**) have expressly acknowledged the importance of this. For example, the National Interest Analysis to the TPP has acknowledged Australia's sovereign need to protect culture and the arts by preserving policy space for "sensitive sectors...such as audio-visual services."⁴²
45. Australia is also a signatory to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression, which reaffirms the sovereign rights of all states to maintain, adopt and implement policies and measures they deem appropriate for the protection and promotion of the diversity and expression of culture in their own territories.

Lessons from Europe

46. The EU has been a strong supporter of its creative industries. Cultural and creative industries contribute around 2.6% to the EU GDP and had a higher growth rate than the rest of the economy⁴³. Creative Europe, as well as its MEDIA sub-programme for film and television, has a dedicated budget of €1.46 Billion to support its cultural and creative sectors between 2014-2020. The 'Television Without Frontiers Directive' has played a pivotal role in supporting Europe's audio-visual policy, allowing both for the free movement of European TV programs within its internal market as well as broadcasting quotas that reserve more than 50% of their transmission time for European works.
47. The EU has taken a firm state on protecting its cultural and creative industries as part of its trade negotiations on the Transatlantic Trade and Investment Partnership (**TTIP**). It has stated the following:

"in both multilateral and bilateral trade negotiations the EU traditionally excludes the audio-visual sector from any commitments it makes to open its markets to foreign

⁴¹ [Australian screen stories are important to Australians](#), Screen Australia, 2011

⁴² [National Interest Analysis ATNIA1 to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#), DFAT, March 2018

⁴³ [TTIP and Culture](#), European Commission, July 2014

competition...[T]he EU and its Member States are fully free to discriminate against foreign providers of audio-visual services”⁴⁴.

Flexibility to regulate digital trade in the audio-visual sector

The rise of digital platforms

48. The rise of SVODs like Netflix and Stan in recent years has significantly changed market dynamics within the Australian audio-visual sector. Recent figures show that nearly a third of Australian households now have a SVOD subscription⁴⁵. As at June 2017, Netflix Australia is estimated to have 2.02 million subscribers, followed by Stan with close to 1 Million subscribers⁴⁶. Despite significant market share, such streaming services have invested less than \$30 Million in Australian content on a combined basis⁴⁷, demonstrating a significant distortion in the regulatory environment as well as a significant deficit in foreign investment.
49. Further, business models of SVOD platforms force Australian producers to face direct competition from overseas productions. There are also many examples of SVODs requiring local producers to sign-away ‘rest of the world’ rights, as well as digital rights ‘in perpetuity’, which significantly limits export opportunities and Australian businesses’ ability to make sufficient return on investment of their IP⁴⁸.

The need for content regulation of SVODs

50. As new market entrants and media delivery platforms become more established and dominant in the audio-visual sector, it becomes essential that the Government reserve its freedom to regulate them.
51. SVODs are currently not subject to Australian content obligations and until relatively recently, were not subject to taxation requirements either⁴⁹. Part of imposing GST requirements to digital products and services imported by consumers in 2015 was to ensure that GST revenue from streaming services was not forgone and to address the tax disadvantages to Australian businesses compared to overseas businesses.

The EU’s approach to SVOD regulation

52. Europe has shown leadership in the regulation of SVODs and requires digital downloads and services sold to European retain consumers to be taxed at VAT (value added tax) rates of up to 27 percent, making the digital retail economy a significant source of tax revenue⁵⁰. The European example has shown that taking

⁴⁴ [TTIP and Culture](#), European Commission, July 2014

⁴⁵ [Screen Production in Australia](#), Deloitte Access Economics, June 2018

⁴⁶ [Communications Report 2016-7](#), ACMA, December 2017

⁴⁷ [Drama Report 2017-8](#), Screen Australia, October 2018

⁴⁸ [FreeTV submission to Digital Platforms Inquiry](#), FreeTV, May 2018, p.5

⁴⁹ [Budget Review 2015-6: Applying GST to digital products and services imported by consumers](#)

⁵⁰ [VAT on digital services \(MOSS scheme\)](#), EU, updated October 2018

a firm stance on SVOD regulation can significantly boost taxation revenue, increase foreign investment and increase the availability of local content without compromise.

53. The EU has also brought SVOD services into its regulatory environment. The proposed revision the EU Audio-visual Media Services Directive impose minimum quota obligations on SVODs (i.e. 30% share of the audio-visual offer of their catalogue) as well as obligations on SVOD platforms to give prominence to European works⁵¹. The effectiveness of these quotas has begun to show, with Netflix recently announcing its commitment to making 221 new projects in 2019, which will contribute \$1 Billion on original productions across Europe⁵².

The case study of French SVOD regulation

54. In France, taxes are levied on subscription revenue for streaming services such as Netflix and on advertising revenue for video-sharing websites such as YouTubes, which are then funnelled into France's National Film Board, *Centre National du Cinéma et L'image Animée (CNC)*. CNC then uses these levies to help finance original local content in France, including movies, TV, video games and digital platforms⁵³. The regulatory model in France offers a unique and prescient model of SVOD regulation that should set a precedent for regulation of SVODs in Australia.

Digital trade under free trade agreements

55. While Australia has promoted trade liberalisation and equivalent treatment for digital products in most free trade agreements, it has also recognised the importance of retaining flexibility regarding its existing broadcasting regime. Several free trade agreements expressly state that the non-discriminatory treatment of digital products between treaty parties "shall not apply to broadcasting"⁵⁴ Similar provisions apply in relation the "electronic supply of services" reserves Australia's rights to adopt or maintain any measure relating to streaming services so as to "make Australian audio-visual content reasonable available to Australian consumers"⁵⁵.
56. There is some lack of clarity in PAFTA as to whether it retains flexibility for Australia to regulate "digital products" in the same way as 'digital services'. In SPA's view, exceptions for both should apply if there is the capacity to transmit Australian content. SPA considers that the current provision under PAFTA, which reserve's Australia to make Australian content "reasonably available to Australian audiences", does not go far enough. Rather, the EU-FTA should be expanded reserve Australia's ability to adopt measures that would allow Australian content to be made "equivalently available" on streaming services as other broadcasting

⁵¹ [Europe moves forward with content quotas for Netflix and Amazon](#), Engadget, October 2018

⁵² [Netflix aims to increase European productions by a third in 2019](#), The Logic, November 2018

⁵³ [Netflix, YouTube to Pay Tax on Turnover in France Under New Law](#), Variety, September 2017

⁵⁴ [Chapter 13: Electronic Commerce - PAFTA](#), DFAT, Article 13.4.4

⁵⁵ [Chapter 13: Electronic Commerce - PAFTA](#), DFAT, Article 16.3

services. This should be clarified as part of negotiations with relating to the EU-FTA.

Protecting the IP of Australian content creators

57. The Government has recently introduced measures to strengthen protection against online copyright infringement, the *Copyright Amendment (Online Infringement) Bill 2018*, which was passed by both houses on 28 November 2018. Piracy is a perennial issue for all creative industries that trade in intellectual property and these changes are welcome. The European Parliament has also recently adopted similar measures against piracy, which also strengthen the ability of rights holders to negotiate royalty payments from online platforms that use their work⁵⁶.
58. The Government also intends to make changes to the *Copyright Act 1968 (Cth)*, following the Productivity Commission's *Inquiry Report into Intellectual Property Arrangements*⁵⁷ and has recently concluded its consultation process. Recommendation 5.1 and 5.6 of this paper sought, among other things, amendments to the *Copyright Act 1968 (Cth)* that would permit consumers to circumvent technological protection measures for legitimate uses and also allow consumers to circumvent geo-blocking technology. The Report recommended that the Government avoid any international agreements that would prevent or ban consumers from circumventing geo-blocking technology.
59. The Government has noted Recommendation 5.1 and "supports in principle" Recommendation 5.6⁵⁸, as to whether such measures fall within the requirements of section 249 of *Copyright Act 1968 (Cth)*. It also suggested that any changes would be monitored by a new 'IP Policy Group'. However, it is unclear whether or not the Government will allow such exceptions.
60. SPA has vehemently opposed these recommendations, as set out in its paper on geo-blocking⁵⁹ as well as its submission to the Productivity Commission's Inquiry⁶⁰. Both Recommendation 5.1 and Recommendation 5.6 would undermine the international financing and distribution of films and television content and reduce the capacity for content owners in film and television to protect their work online. This in turn exacerbates the trade deficit between Australia and countries that are major importers of content into Australia, such as Europe. SPA recommends that DFAT consult with the Department of Communications and the Arts 'IP Policy Group' to ensure copyright measures are not introduced in Australia that would serve as trade barriers for the screen industry.

⁵⁶ [Parliament adopts its position on Digital Copyright Rules](#), European Parliament, September 2018

⁵⁷ [Inquiry Report into Intellectual Property Arrangements](#), Productivity Commission, November 2016

⁵⁸ [Australian Government Response to the Productivity Commission Inquiry into Intellectual Property Arrangements](#), Federal Government, August 2017

⁵⁹ [Geo-Blocking Fact Sheet](#), Screen Producers Australia, 2016

⁶⁰ [Submission to the Productivity Commission, Intellectual Property Arrangements, Inquiry Report](#), Screen Producers Australia, 2017

The screen industry as a catalyst for ‘soft power’

Screen as a flagship Australian industry

61. In an increasingly globalised world, the screen industry plays a vital role in advancing Australia’s ‘soft power’ and cultural diplomacy objectives. The screen industry is a flagship industry in the arts and the most popular broadcast medium worldwide, with wide potential to influence behaviour and thinking for diplomatic ends.
62. Australian screen content is able to quickly and effectively convey understandings of Australian lifestyle, cultural, artistry and values as well as our significant natural resources and world-class produce. This fosters mutual understandings and helps build trust and familiarity, which in turn enhances Australia’s reputation and supports peace-keeping and security initiatives.
63. The *Foreign Policy White Paper* notes that the Government has committed “to promote Australian content and also Australia as a world-class filming destination⁶¹”. While this position is welcome, it understates the central importance of screen exports as catalyst for Australia’s cultural policy objectives. Export sales of Australian film and television and co-productions and co-ventures provides a sound platform for leveraging cultural diplomacy objectives. Both require deep collaboration extensive networks with international partners, allowing Australian artists and creators to serve as ambassadors.

The export potential of Indigenous screen stories

64. Indigenous screen content is one of Australia’s most unique cultural asset and is capable of engaging wider global audiences of stories and traditions of Australia’s diverse Aboriginal and Torres Strait Islander communities.
65. As outlined in its *Annual Report 2017-8*, Screen Australia recently celebrated 25 years of its Indigenous Department as well as several other important milestones along its “Indigenous timeline”⁶². Australian films like *Sweet Country* have won several awards across Asia, Europe, North America as well as in Australia. SPA is a passionate advocate of Indigenous producers and Indigenous stories and hosts the Media Reconciliation Industry Network Group, Media RING, at its SCREEN FOREVER conference every year.
66. Promoting export opportunities for Indigenous screen businesses as part of its trade negotiations and under its *Charter for Promoting the Economic Interests of Indigenous Australian Business Overseas* should form part of a broader cultural diplomacy strategy. This would help promote overall export opportunities as well.

⁶¹ [Foreign Policy White Paper](#), Department of Foreign Affairs and Trading, 2017

⁶² See “Indigenous Department Timeline” in [Annual Report 2017-8](#), Screen Australia, p.16

Shared cultural values with Europe

67. The National Interest Analysis to the Framework Agreement between Australia and the European Union states that the EU and Australia “have a common interest in cooperating in the area of culture”, and which requires “the promotion of closer cooperation between the two regions in the cultural and creative sectors.”⁶³

68. Australia and Europe have extensive cultural ties. For example, nearly 70 per cent of Australians have European ancestry, almost 30,000 new European migrants arrive annually and over 1.3 million Europeans visit Australia and 1 million Australians travel to Europe each year. Similarly, Australia and Europe share a rich history in the screen industry. Cinema was born in Europe, with Auguste and Louis Lumière patenting the cinematograph in 1895 and Georges Méliès building one of the first film studios in 1897. Australia also produced the world’s first full-length feature film, *The Story of the Kelly Gang*, in 1906.

How industry-led trade missions enhance cultural diplomacy

69. SPA has actively supported the screen industry and its members by exploring export opportunities through trade delegations to Canada, Hong Kong, Korea, the United Kingdom and the United States and Europe. This includes exploring opportunities for co-production treaties with Sweden and Denmark and offering production masterclasses at the Copenhagen TV Festival in 2017, which was opened by her Royal Highness, Mary the Crown Princess of Denmark. As outlined above, SPA is also also exploring opportunities for co-production treaties with other European nations with significant film and television industries including Spain, Portugal and the Netherlands.

70. SPA takes a leadership role in promoting international trade opportunities by hosting the annual SCREEN FOREVER conference. This includes sponsoring officials and key industry players from partner countries through its ‘International Partnership Market’. SCREEN FOREVER has also attracted trade delegations from Canada, Korea, New Zealand and the UK.

71. Trade delegations and Australian-led international events play an essential role in building strategic alliances and networks with international broadcasters and distributors and improving investment conditions for Australian businesses seeking to establish offshore commercial presence. This significantly improves the marketability and export sales potential of Australian screen content. It promotes bilateral cultural exchange and showcase Australia’s industry capabilities and encourage tourism.

72. SPA is also a member of a Screen Industry Roundtable, led by Austrade. This roundtable is currently exploring trade opportunities for the Australian film and

⁶³ [National Interest Analysis ATNIA2 to the Framework between Australia and the European Union](#), DFAT, August 2017

television industry. Participants include DFAT, the Department of Communications and the Arts, the Australian Film Television and Radio School, Screen Australia and Ausfilm.

73. SPA is currently exploring options to promote a whole-of-government export strategy for the screen industry as it a coherent strategy is required across all levels of Government to improve co-production and export opportunities for Australia as a whole. This would allow Australia to identify priority markets and coordinate its 'soft power', trade and cultural policies together more effectively.
74. SPA considers that leadership is required at the federal level to adopt a singular strategy in Australia's national interest. This includes through establishing a 'Screen Export Advisory Council' and expanding the current [Export Market Development Grant Scheme](#) and [Australian Cultural Diplomacy Grants Program](#) to establish an specific 'National Screen Export Fund'. This could be used to assist independent producers market their content overseas and promote diplomatic objectives. This could be designed along similar lines to the UK's [International Strategy for Creative Industries](#). SPA considers that a representative industry association like itself, rather than national authority, would be best placed to administer such a fund.