FACTS

# Submission to the
# Australian Broadcasting Authority

# Review of the Australian Content Standard

Federation of Australian Commercial Television Stations
44 Avenue Road
Mosman NSW 2088
Australia
Ph: +61 2 9960 2622

# TABLE OF CONTENTS


| | | |
|---|---|---|
| Executive Summary | | 3 |
| Summary Of Recommendations | | 4 |
| 1. | Introduction | 5 |
| 2. | Focus of the Review | 5 |
| 3. | The Australian Content Standard – General Comments | 6 |
| 4. | Adult Drama | 11 |
| 5. | Children's Programming | 20 |
| 6. | Documentary Programs | 33 |
| 7. | Australian Official Co-productions | 34 |
| 8. | Conditions on First-Release Programs | 36 |
| 9. | Thirteen Hour Rule | 36 |
| 10. | Other Relevant Considerations - International Comparisons | 37 |
| 11. | Appendix 1 | 39 |
| 12. | Appendix 2 | 40 |
| 13. | Appendix 3 | 44 |

# Executive Summary

- Commercial television stations have a strong commitment to Australian programming in response to high viewer demand for Australian programs.

- The objective of the Australian Content Standard is a cultural one. It is intended to benefit Australian audiences by ensuring the broadcast of Australian programming. It is not an industry support mechanism.

- FACTS members underpin 78% of Australian film and television production (including commercials).

- Australian Content obligations are financially onerous for broadcasters. There is a strong and direct nexus between the finite advertising revenue in Australia's small market and the capacity of broadcasters to afford the high cost of Australian programming, particularly drama.

- New Zealand programs have had no effect on any of the quotas since their inclusion for the purposes of the Standard. The measures introduced during the last review to combat the perceived but illusory 'threat' of NZ programs should be repealed.

- FACTS does not propose any decrease to the overall transmission quota or individual subquotas (other than restoring the documentary quota to its level prior to inclusion of NZ programs), within the context of the existing legislative framework for broadcasting. No increase in quota levels is warranted.

- Australian drama has a strong presence on primetime commercial television. All networks are providing a range of Australian drama programs that are highly popular with Australian audiences.

- FACTS opposes the introduction of any expenditure based quota system, including minimum licence fees or allocating quota points based on expenditure.

- FACTS opposes the introduction of an independent production quota.

- Adjustments to subquotas are necessary to allow greater flexibility in their operation.

- The C drama quota requires major reform to make it more relevant and appealing to Australian children. The estimated production cost to fill the C drama quota of 96 hours across the industry is $67 million per annum for programs that generally do not rate well with the child audience. These scarce resources could be better utilized.

- FACTS proposes a range of measures to improve the operation of the C drama quota, including broadening it to a 'C Drama and Diversity' quota that targets children aged 14 and under. This would result in a broader range of quality Australian children's programs for the child audience.

## Summary of Recommendations

**1.** A 12-month makeup provision should be allowed for the drama subquota in respect of each annual minimum level and the overall 3 year total points.

**2.** The C drama quota be averaged across a three year cycle. To allow for the situation in which a project could 'fall over' at a late stage in the final year of the triennium, there should be a makeup provision in the following year capped at half the annual quota.

**3.** That eligibility for the C drama quota be broadened to an Australian C Drama and Diversity subquota. This would encourage networks to provide a broader range of appealing high quality Australian programs for children than is presently offered under the C and C drama quotas.

**4.** The age limit for C Drama and C programs should be raised to age 14 to enable broadcasters to provide a greater range of appealing Australian programs to a broader child audience.

**5.** C drama programs shown first on the ABC should be allowed to count as 'first-release' under the Standard where its commercial broadcast occurs within 3 years of its ABC broadcast.

**6.** Up to 2 hours of the C drama quota should be able to be met by 2 hours of promotions for C drama programs, broadcast during times of peak child viewing in the early morning and late afternoon timeslots.

**7.** The minimum licence fee for C drama programs should be removed.

**8.** The documentary subquota should be restored to its former level of 10 hours per year.

**9.** Official co-productions should continue to qualify under the Standard, so that Australia is not placed in breach of its international treaty obligations.

**10.** The definition of 'first release' should be amended to remove all time restrictions in relation to the acquisition of programming which were introduced in the last review of the Standard.

**12.** If the current 5-11pm timeband for first release Australian drama remains in place, the 'thirteen hour rule' should be retained.

# 1. Introduction

The Federation of Australian Commercial Television Stations (FACTS) represents Australia's 48 commercial television stations, and makes this submission on behalf of all its members.

Australian commercial television stations have a strong commitment to Australian programming. The majority of programs in their schedules is Australian, and Australian programs are consistently very popular with viewers. Commercial broadcasters underpin 65% of all Australian film and television production (78% including commercials).

FACTS welcomes this opportunity to respond to the issues raised in the ABA's Issues Paper. The Australian Content Standard (the Standard), in underpinning the provision of a quantity and range of Australian programs, should operate flexibly to enable broadcasters to respond to audience preferences. This Review provides an opportunity to remove unnecessary restrictions in the Standard which impede that flexibility.

Within the current context of the overall regulatory framework for broadcasting, FACTS is not proposing any variations to the levels of the various quotas and subquotas in the Standard (apart from restoring the documentary subquota to its previous level), nor does FACTS consider a major overhaul of the Standard's operation is warranted at this time.

However, FACTS does consider there are a number of areas in which the subquotas in the Standard should be amended to provide greater flexibility for broadcasters to meet audience needs.

# 2. Focus of the Review

FACTS notes the ABA's view that the review should be a "focused exercise that will serve as a stocktake to identify any pressure points on the Australian content standard" (Issues Paper, page 9) and that a radical overhaul of the Standard is not warranted at this stage.

The review should be confined to assessing:

- the measures introduced in 1999 in response to the inclusion of New Zealand programs in the Standard; and

- any changes needed to improve the operation of other quota provisions to better enable broadcasters to provide Australian programming to their audiences.

The impact of New Zealand programs on the operation of the Standard is a primary issue for the ABA. The date of this review was set in 1999 precisely to consider that impact.

As FACTS submitted in 1999, the impact of New Zealand programming has been negligible. As noted by the ABA in the Issues Paper "the inclusion of New Zealand in the standard has not had any appreciable impact on the broadcast of Australian programs on commercial television (page 11)[1].

No Australian program has been displaced by any New Zealand program in any of the Standard's quotas or subquotas. The insignificant number of New Zealand programs that have been broadcast have all been in excess of the quotas and would have been broadcast irrespective of whether they were allowed to count under the Standard or not.

However, those measures have resulted in additional complexity in the operation of the Standard, more onerous requirements for broadcasters and less flexibility in the scheduling of Australian programs.

Accordingly, FACTS contends that the justification for any of the measures introduced during the previous review to combat the misconceived 'threat' of New Zealand programs no longer exists.

All measures introduced in 1999 to counteract the perceived threat of New Zealand programming should be repealed.

# 3. The Australian Content Standard – General Comments

## 3.1 Objective of the Standard

The purpose of the Australian Content Standard (the Standard) as stated in its Preamble is to promote the role of commercial television services in 'developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community's continued access to television programs produced under Australian creative control'. That is, the objective of the Standard is clearly a cultural one.

This overriding policy objective should inform the ABA's analysis and review of the Standard at all times.

The Standard does not have an industry support objective, nor should it. It is inappropriate to measure the efficacy of any of the provisions in the Standard against industry support objectives. There is no basis in the *Broadcasting Services Act* for Australian content requirements that are calculated to achieve a production industry outcome, rather than identifiable cultural objectives.[2]

[1] See also ABA News Release NR 36/2001 "New Zealand programs have little impact, ABA finds"

[2] This was also acknowledged in the recent CMP study conducted in conjunction with the ABA: "The relation between cultural and industry development ... is complicated by the absence of an explicit industry policy objective in the Act such as that embodied in Canadian policy. Instead production industry objectives are claimed to be implied by cultural ones. While a sustainable production sector is clearly necessary for the achievement of content-related screen cultural policy, cultural policy objectives cannot logically be considered a proxy for the development of the production industry." *Cultural and Social Policy Objectives for Broadcasting in Converging Media*

In addition to the primary cultural objective in section 3(e) of the Act, the ABA must also have regard to the object in section 3(b) – 'to provide a regulatory environment that will facilitate the development of a broadcasting industry that is efficient, competitive and responsive to audience needs'. Accordingly, in determining the Standard the ABA must balance the following public interest considerations:

- the cultural needs of the audience, as indicated by viewer demand, which are not already being met by broadcasters responding to clearly indicated audience preferences; and

- the financial capacity of the broadcasting industry to supply a given range and amount of Australian programming content, consistent with continued competitiveness and profitability, and whether there are any production or financing constraints.

The public interest considerations involved in the Standard-making process do not involve assessing competing 'bids' from potential financial beneficiaries of regulatory intervention such as sectors of the production industry. The ABA has no power to take such considerations into account.

In this review of the Standard, the guiding principle for the ABA must be whether or not any proposed course of action is calculated to achieve an identifiable – and significant- cultural outcome as measured by audience response.

## 3.2 "Market Failure" as Justification for Regulatory Intervention

The basis for regulatory intervention in the field of Australian Content and particularly in relation to subquota categories is often described in terms of so-called 'market failure'. That is, although certain program genres such as high quality Australian mini-series may have significant audience interest, they may not generate sufficient revenue in a relatively small market such as Australia to offset their high cost of production. In such cases, it is often argued that regulatory intervention is warranted to deliver outcomes which would normally result from the usual dynamics of "supply and demand".

However, even if it were accepted as a basis for regulatory intervention, 'market failure' is clearly not a concept that could be applied to programs that do not attract reasonable audiences. That is, market failure cannot be cited to justify programs that may be deemed 'worthy' or desirable by certain groups in the community, but for which there is no demonstrable audience demand.

For instance, while 'market failure' may arguably be relevant to justify regulatory support for some 'high end' drama productions, it is not appropriate to apply this principle to the C drama or documentary subquotas, where there is little demonstrated audience demand for the provision of these program genres by commercial broadcasters. In the absence of Australian audience demand for certain program types, there cannot be said to be a 'market failure' warranting

---

*Systems*, CMP, May 2001, page 72.

intervention to ensure supply to balance an unmet demand. In such cases, there is no justification for the Standard to prescribe such outcomes.

Accordingly, FACTS' comments in response to the ABA's Issues Paper are directed at assessing the operation of the Standard in delivering to audiences the range of local programming that Australians want to watch on commercial television.

### 3.3 Australian Programming on Commercial Television

The broad purpose of the Australian Content Standard is to underpin the provision of a diverse range of Australian programs for Australian audiences that reflect Australian culture on screen and tell Australian stories.

The success of the Standard can be measured by the diverse range of Australian programming provided by commercial television broadcasters and the Australian community response to those programs.

As the Issues Paper notes, most programs on commercial television are Australian made, and most commercial television viewing is of Australian programming.

The best measure of community response is audience ratings. Viewing figures in recent years demonstrate that the most consistently popular Australian programs are reality programs, news, current affairs and sport[3]. Local drama programs currently rate well – achieving slightly higher viewing, on average, than US sitcoms and dramas.

What is demonstrated by audience viewing figures is that most Australian programming shown on commercial television is market driven – it is not produced to satisfy quota requirements but rather the perceived tastes and interests of Australian viewers. They would still be produced and screened whether or not the quota required it.

It obviously benefits viewers as well as the industry for quotas to function as safety nets rather than as regulatory scheduling tools. This ensures that scarce resources are not compulsorily devoted to programs of little audience interest.

As noted in the ABA's Issues Paper (page 6) "the hours of Australian programs on commercial television have increased over the years, exceeding the Standard's requirements". The ABA also notes that Australian programming provided by commercial broadcasters is very popular with local audiences, as reflected by audience ratings.

All commercial networks are strongly committed to providing a diverse range of Australian programming for their viewers. That commitment continues to strengthen, driven by audience preferences, and that trend is expected to

[3] The most widely viewed programs of 2001 are listed in appendix 1. 18 of the 20 most watched regular programs (excluding sport) were Australian, and of these 10 were reality programs, two dramas, two quiz shows and a documentary, a news, and a current affairs program.

continue. Audiences are demonstrably well served by the current range and quality of Australian programming, including drama. The objective of the Standard is not only being met, it is being exceeded. There is no policy justification for further regulatory intervention.

Australian commercial audiences also enjoy a selection of the best and most popular programs and movies from around the world. It needs to be remembered that Australian audiences enjoy foreign-produced programs as well as quality local programs, as indicated by ratings figures (see Appendix 1)**.**

Broadly speaking, the present Standard does not prevent this balance from being achieved. As a result of this mix of quality local programming and popular overseas programs, it is often said that Australian audiences enjoy the best free-to-air broadcasting services in the world[4].

FACTS is not seeking any reduction in the overall transmission quota requirements of the Standard in this Review. However, any further increases in quota levels required by the Standard would potentially upset the balance between Australian and foreign programming which is currently able to be achieved, to the detriment of Australian viewers.

## 3.4 Financial State of the Commercial Television Industry

It is important to note that a healthy commercial television industry is necessary in order to deliver high levels of quality Australian content. In this context, a number of factors relevant to the ongoing health of the commercial television industry must be kept in mind.

The industry faces many potential challenges to its revenue base from competitors (including pay TV and new media in addition to its traditional competitors), has extensive and costly regulatory requirements, and its revenue base is unusually sensitive to fluctuations in the economy.

The profitability of commercial television tends to fluctuate considerably over time and the downturn in the economy in 2000/01 saw revenue growth fall to 1.5%[5], a particularly troubling result because the year included the Olympic Games. These normally draw millions of dollars of additional revenue to television, and result in above-average growth. Current revenue forecasts do not predict growth in the advertising market.

The industry manages to maintain profitability through prudent management and rigorous cost control. The level of quality Australian programming on commercial television has therefore been able to be sustained and grown.

[4] "*It has …long been recognised that Australia has one of, if not the best, free-to-air television systems in the world*" - Speech by Senator Alston to "New Broadcasting and Datacasting Symposium" 14 June 2000.

[5] Station revenue figures to 30 June 2001, collated for the industry by KPMG. The ABA's official figures, to be released in early 2002, will confirm this.

The profitability of commercial television is more vulnerable to economic downturns than many other industries because of the high level of relatively fixed costs the industry bears. Australian content subquota requirements are a significant component of these costs, though the largest component is broadcasting licence fees paid to Consolidated Revenue. These currently total over $200 million per year. Even taking into account licence fee rebates to regional broadcasters to assist with the digital transition, television licence fee receipts comfortably exceed all Government outlays to assist the Australian film and television industry. Since 1991, the commercial television industry has paid (after regional licence fee rebates) licence fees of almost $1.5 billion in constant dollar terms.

The transition to digital television is also imposing significant additional costs on the industry which will continue for many years, with no prospect of early financial return. Apart from the large capital costs involved, broadcasters will incur higher operating costs during the many years of simulcasting analog and digital services. The free-to-air industry (including the national broadcasters) is spending over $1 billion on the digital roll-out over the next six years. Apart from the large capital costs involved, broadcasters will incur higher operating costs during the many years of simulcasting analog and digital services. Broadcasters are also incurring significant closed captioning costs to meet new legislative requirements as part of the digital television framework.

There is a strong and direct nexus between the finite advertising revenue available in Australia's small market and the capacity for broadcasters to afford the high acquisition costs of Australian programming in addition to other regulatory imposts. The next few years will clearly be ones of considerable uncertainty and pressure on revenue, expenditure and profitability for the commercial television industry.

## 3.5 Expenditure Figures

FACTS does not consider program expenditure to be the relevant measure of how broadcasters comply with the Standard, or of whether the Australian content standard furthers the objectives of the Act.

The Issues Paper offers a detailed analysis of program expenditure over the past decade and draws significant policy inferences from the expenditure figures. However, the Paper's analysis fails to take account of the following important factors:

- 1991 was an extremely abnormal year because of unsustainable expenditure that led to financial restructuring of each network, and is not a sensible or useful bench-mark for subsequent program expenditure trends;

- Comparison of 1991 figures with later years following regional aggregation need to be adjusted to take account of the different treatment of network affiliation fees in the program expenditure figures;

- There have been significant changes in the nexus between expenditure and the quality and quantity of screen content; and

- Expenditure figures are understated as they do not necessarily include overheads incurred by broadcasters.

As the Paper does not take account of these issues it mistakenly suggests that program expenditure has been static over the past decade, and that broadcasters have reduced their financial commitment to programs covered by quota requirements.

These conclusions are not only incorrect but are clearly at odds with the positive assessment elsewhere in the Issues Paper of the amount, range and quality of Australian programming on commercial television. They reinforce FACTS' view that the only relevant tests of the adequacy of Australian programming is the quantity and quality of what appears on the screen, and how viewers react to it.

Nevertheless, commercial broadcasters spent at least $596.6 million on Australian programming in 2000. Australian programs represent about 70% of the total programming expenditure by commercial networks. It is also worth noting that contrary to the conclusions drawn on page 22 of the ABA's Issue Paper, the average growth of spend over the past ten years on Australian programs has been more than double than the average growth of spend on foreign programs.[6]

Appendix 2 to this submission expands on the above points, and shows that there has in fact been steady growth in real terms in Australian program expenditure by the commercial television industry over the past decade.

# 4. Adult Drama

## 4.1 Overview

Australian drama has a solid presence in prime time in terms of hours telecast, and generally ranks well among most-watched prime time programs. In 2001, seven of the 20 highest-rating regular drama programs were Australian. The average audience of these seven dramas was 1.55 million people nationally, as against 1.42 million people for the 13 highest rating foreign dramas[7].

Australian viewers enjoy a range of drama programs on commercial television. The existing total of points over 3 years and minimum annual points total is working well, and delivers a substantial and diverse slate of drama programs.

In the context of the current overall regulatory environment for broadcasting, FACTS does not propose that the current points levels should be lowered.

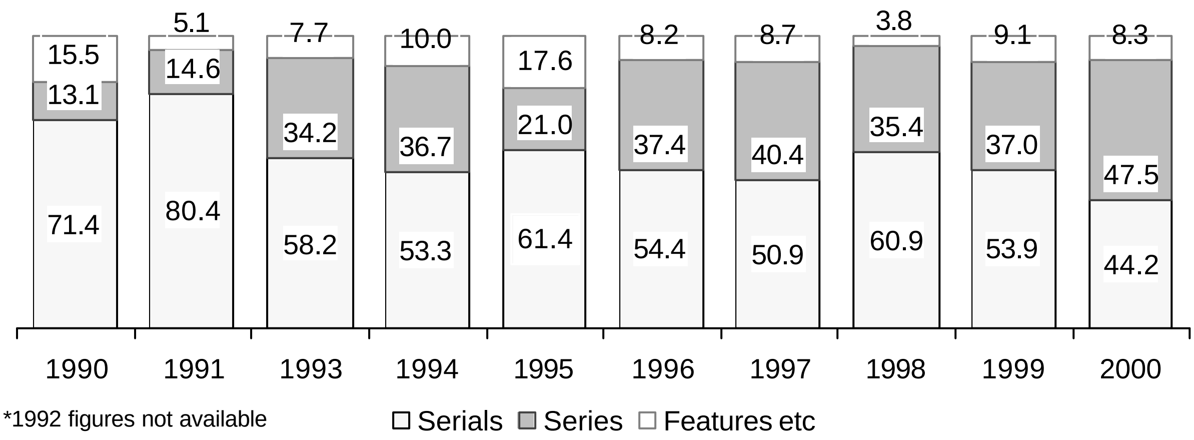
[6] Between 1990-91 the average growth of spend on Australian programs has been 1.5% per annum as opposed to .6% for foreign programs.
[7] OzTAM figures released in December 2001, for weeks 7-48, 2001.

However, we are strongly of the view that there is no justification for increasing the level of points required.

Each network has a slate of drama programs that is performing well. The Issues Paper notes that fewer hours of local drama are broadcast than in the early 1990s. This is because networks now rely far less on serials and twice-weekly series which dominated schedules a decade ago. The following table draws on figures included in Appendix E of the Issues Paper, and shows that serials comprised only 44.2% of network Australian drama hours in 2000, as against 71.4% in 1990.

**Australian drama on commercial television**

Composition by format 1990-2000 (% all hours)*




*1992 figures not available

As the Paper also notes, the Standard provides for a quality/quantity tradeoff through the points system. In addition, the three-year cycle of the points quota and the lead-times involved in drama production means that variations will inevitably occur from year to year.

The strength of local drama screened in 2001 was evident in range, quality and ratings performance. This success is expected to be consolidated in 2002, with highly successful drama series that premiered last year such as *The Secret Life of Us, Always Greener* and *McLeod's Daughters* all returning, to join an expansive slate of new series, pilots, mini-series, telemovies and successful ongoing serials and series across all three networks. Nevertheless, drama quota obligations remain financially onerous for broadcasters.

While the success of the current crop of Australian drama on commercial television is something of which the networks are proud, the broadcast of Australian drama programs is significantly less profitable than the broadcast of equivalent foreign drama series and involves considerable commercial risk. The cost per hour for Australian drama programs is substantially higher than foreign produced drama series. While ratings and consequently revenue for Australian programs are comparable to overseas product in many cases, the higher acquisition costs of Australian programs mean that the return to broadcasters on

such programs is lower. In some cases, the acquisition cost per hour of Australian drama may be six or seven times that of foreign programming.
The economics of Australian programming mean that the quota must deliver sufficient flexibility for costs of acquisition to fluctuate depending on the market conditions and audience demand for particular programming types. It must be recognized that there is only so much drama which can be accommodated in any successful scheduling mix. Where audience demand exists for additional Australian drama programming, market forces operate to deliver increased drama levels.

Audiences expect to be provided with a balance of Australian and foreign programming and a mix of drama and other programming genres, such as light entertainment and factual programming. The current points level provides a realistic safety net for Australian drama programming while permitting flexibility in the programming mix for broadcasters and viewers.

## 4.2 Points System

FACTS supports the retention of the current points system accumulated over three years for adult drama.

The ABA Issues Paper invites comment on the relative weightings and format factors accorded to program genres. This is a matter on which FACTS does not have a position. Individual networks have indicated they may make separate submissions to the Review on this issue.

FACTS supports the continuation of the three year points cycle. This approach works well in providing flexibility in scheduling due to the lead times involved in drama development and produc tion.

However, due to a range of circumstances productions can be delayed (for example, due to financing/contracting issues with overseas partners or due to lead actor/director unavailability). On occasion these delays cause unforeseen difficulties in meeting the annual minimum and/or three year total quotas, resulting in Australian programming scheduled late in the year (in the non-ratings December season) just to make quota to avoid breaching the licence condition.

This is a rigid timing issue that does not serve Australian viewers well, and undermines the objective of the Standard to the extent that access to maximum audiences is impeded. In such situations, networks would like the flexibility to instead schedule programming when the new ratings season commences the following year when larger audiences are available. A makeup provision would allow the required flexibility. FACTS notes that the pay TV drama quota already allows a makeup provision.

***Recommendation 1***

- FACTS recommends that a 12-month makeup provision be allowed for the drama subquota, in respect of each annual minimum points level and the overall 3 year total points.

## 4.3 Expenditure on Australian Drama Programs as a Proportion of Total Australian Program Expenditure

Wide-ranging changes in production funding over the past decade or so mean that it is hard to compare like with like in looking at expenditure on Australian drama over the years.

The ABA's Issues Paper notes that foreign drama spend is the largest category of program expenditure. It is worth commenting that as indicated on page 23 of the Paper, nearly all of the foreign spend is on drama. These programs are chosen from an enormous range of programs available from the world-wide market.

The Paper suggests that networks are spending proportionately less on Australian drama programs as a percentage of total expenditure than they did a decade ago. As indicated above, comparisons with the base year of 1991 are problematic and misleading because of the unusual circumstances of that year. It is more instructive to look at the trends over recent years, such as since the last major review of the Standard which occurred in 1996.

As yearly comparisons can be so variable, a comparison of three-year averages of the proportion of total Australian expenditure spent on Australian drama gives a more accurate trend picture. The ABA's figures disclose that the average of the latest three years' figures (1998-2000) was 16.3%, compared with an average of 14.7% in the preceding 3 year period (1996-98). That is, there is a distinct trend upwards in the proportion of Australian expenditure incurred on drama since the time of the last major review of the Standard in 1996.

## 4.4 Licence Fees for Adult Drama

The Paper discusses licence fees for adult drama. In FACTS view, licence fees or other measures of expenditure are not an appropriate test of whether the Standard is meeting its objectives. The correct measure is the range, diversity, quality and popularity of Australian programming on television.

In the case of licence fees (which are usually matters of commercial-in-confidence), using the level of licence fees as a measure of a network's contribution to a project is an overly simplistic measure to apply to trends over a number of years. Indeed, the level of program licence fees does not provide a reliable guide to a broadcaster's financial commitment to Australian drama.

The variable financing and production arrangements associated with drama programs cannot be equated with purchasing a retail product, where products and price relativities can be easily compared. Each production and investment deal is different and the licence fee paid is only one element of a range of contractual terms that comprise the overall consideration.

Licence fees vary greatly because of the way projects are structured. These differences reflect specific financing requirements, and sometimes restrictions imposed by funding bodies, as well as differing approaches of networks to equity participation, the range of rights sought, and the extent to which network facilities may be used in the production of the drama. As well, a network that produced some or all of its own drama in-house would account for its use of that product quite differently to a network that commissioned its drama from external producers.

Terms of licence agreements have also varied substantially over time. The scope of rights acquired, territory covered, number of runs and licence term have all tended to contract over the years. The result is that comparing only dollar values of contributions by broadcasters over a period of years may not give an accurate picture of financing trends if what is being purchased over time has altered or contracted significantly.

FACTS also notes that the Paper quotes licence fees that are mistakenly attributed to a FACTS submission. FACTS wishes to correct this mistake for the record[8].

***Overseas Comparisons***

Comparisons with local drama expenditure in other countries can be instructive, but are complicated by differences in commercial and regulatory environments. In some countries, broadcasters are allowed to acquire only domestic broadcast rights to programs supplied by independent producers (e.g the ITV in Britain).

In others, there are no restrictions on broadcaster participation in program production and marketing, and it may be very difficult to single out domestic program licence fees from other forms of broadcaster financial participation. Above all, market size is obviously a critical factor in determining how much of a program's budget a local network can meet.

Publicly-available information suggests that the domestic program licence fees paid by broadcasters in broadly comparable broadcast markets range from high to very low proportions of program budgets.

In the US, with its domestic audience of almost 280 million people, free-to-air network licence fees typically meet around 75% of the budget of a drama series or sitcom[9]. In the UK, where broadcast networks can recover costs over a population three times as large as Australia's, independent producers receive between 40% and 100% of a program's budget as UK licence fees, depending on the nature of the program and what rights the producer wishes to retain. The BBC routinely pays only 40% of a program's budget as a domestic licence fee unless it can acquire all rights from the producer[10].

[8] The Issues Paper quotes "FACTS' submission to the Productivity Commission's inquiry into broadcasting" to the effect that "average licence fees for Australian drama programs in 1999 were virtually the same as, or even lower than, those in 1991"(page28). The FACTS 1999 submission to the Productivity Commission did not include licence fee figures for 1991.

[9] Harold Vogel: *Entertainment Industry Economics* (4th Ed.,1998), p.118-26. The vertical integration of the production industry is in any case making US licence fees less central to program production. A majority of new network programs is now produced by network-related production companies that control rights for other markets.

[10] PACT submission cited in footnote 3.

By contrast, Canadian broadcasters – operating in a market much the same size as our own - pay round 25% of drama production budgets for programs funded by the Canadian Television Fund, but as little as five per cent in the case of privately-funded productions. The latter normally require very high levels of foreign participation[11].

## 4.5 Expenditure-Related Quota Requirements

The Issues Paper invites comment on several expenditure-based drama quota options, such as minimum licence fees or broadcaster contribution to production budget.

All expenditure-based models are industry-support mechanisms. They cannot be justified by reference to the cultural objective of the Standard. By contrast the pay TV expenditure requirement has been determined by Parliament and is expressly contained in legislation. Parliament has expressed no such intention with regard to the Standard.

It would be entirely inappropriate for a regulatory body such as the ABA to set minimum prices for the acquisition of programming. Such an unwarranted intrusion into marketplace negotiations would be anti-competitive, and inconsistent with the object in s.3(b) of the *Broadcasting Services Act* requiring the promotion of an efficient and competitive broadcasting industry.

Setting minimum licence fees would create market distortions, and disadvantage producers who were able to deliver product more efficiently to broadcasters or who chose a different deal structure. The approach may result in inflated licence fees, leading to an inefficient allocation of resources away from other program genres, to the potential detriment of audiences. It may also create undesirable potential for circumvention of the quota requirements by contrived contractual arrangements, compared with the objective transparency of the present points system.

Expenditure-based models based on contribution to production budget would raise similar problems as licence fee models, creating incentives for inflated budgets and leading to production inefficiencies.

FACTS agrees with the difficulties the ABA stated in relation to a minimum licence fees model in 1998, quoted on p29 of the Paper. The level at which the minimum licence fees were set would inevitably be controversial and would require constant monitoring and review.

The proposal also mistakenly assumes that drama projects are all financed and acquired in exactly the same way. As discussed in section 4.4 of this submission, the level of the licence fee is only one element of the extremely complex financing arrangements associated with drama licence agreements.

[11] Submission of Canadian Film and Television Producers Association to the review of the Canadian Television Fund, September 2001.

In many cases, the licence fee is usually only one of a number of contributions by the broadcaster in a commissioned drama production. Others may include the provision of studio and other facilities, equity participation and performance bonuses. Each deal is different, the length of the term and number of runs permitted will vary, as will the range of rights granted, the situation with pay TV rights, participation in ancillary rights, terms for subsequent series and so on.

Moreover, it would be impossible to apply such a scheme equitably in respect of in-house drama production, where licence fees do not exist.

A further consideration is that any expenditure-related or licence fees model would require much greater monitoring, accounting and auditing on the part of the ABA and broadcasters – diverting resources into administration of the scheme, without any audience benefits.

FACTS notes that section 4 of the *Broadcasting Services Act* requires that broadcasting services be regulated in a manner that "does not impose unnecessary financial and administrative burdens on providers of broadcasting services".

The 30 pages of legislation on the pay television drama expenditure requirement demonstrate that any expenditure-based drama requirement is inherently complex. Accounting for expenditure is an essential part of the pay TV scheme, as there is no transmission component.

This contrasts markedly with the Standard which, with its focus on cultural objectives and what the Australian public actually receives rather than what is spent, measures compliance by reference to the broadcast of programs. It is a relatively straightforward and completely transparent process to apply the points system to the hours of drama programs that have been broadcast on commercial television each year.

In contrast the administration of an expenditure-based scheme for the drama subquota – comprising the large number of hours of drama broadcast by commercial networks and expenditure of over $100 million (compared with pay TV's spend of approximately $17 million) - would require substantial resources to administer, and for the ABA to monitor and audit.

Regulators in other countries have also found expenditure models to be extraordinarily difficult to administer. In Canada, the CRTC eliminated the regulatory requirement for expenditures on Canadian programming effective September 1, 2000, on the grounds that: *"…the existing expenditure requirements are complex and may not provide licensees with the flexibility they require to adapt their programming strategies. In addition, concerns regarding the equitable application of expenditure requirements have begun to outweigh the benefits."* [12]

Expenditure-based models such as minimum licence fee models are blatant industry-support mechanisms with no audience benefits, and cannot be justified

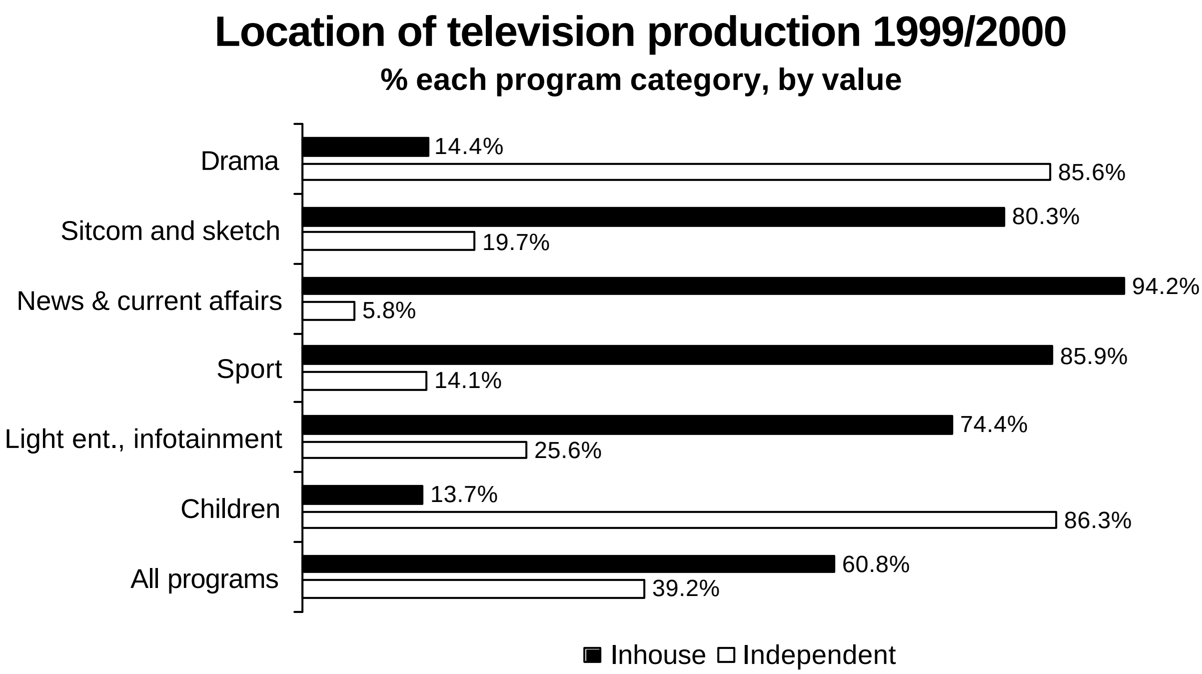
[12] CRTC Decision 1999/97.

under the cultural objective of the Standard. They would introduce significant uncertainty to the Standard, result in market distortion and create unacceptable legal and financial complexity for broadcasters, producers and regulators. FACTS completely opposes all expenditure-based models.

### 4.6 Independent Drama Quota

The issue of an *"independent drama quota"* was raised in previous reviews and was discussed at the ABA's recent forums held in conjunction with the current review. FACTS opposes the introduction of an independent production quota.

Overseas, requirements of this kind have been introduced in broadcasting environments in which most drama production is in-house, and independent producers have little or no access to the broadcast market. Most Australian drama is in fact produced by companies independent of commercial networks, as the 1996/97 ABS industry census (the latest ABS figures available) demonstrated:




ABS figures - includes Commercial, ABC/SBS and Pay TV. Categories are 97.3% of total expenditure.

Long-standing funding rules that preclude production of FFC-funded high-end drama by companies associated with broadcasters also favour independent producers.

In general, Australian broadcasters are free to organise their drama production requirements as they see fit. The current range of approaches underpins a diverse and highly competitive industry. In terms of cultural outcomes – the volume, range and quality of drama programs that appear on commercial television - there are clearly no grounds for regulatory intervention. Any other rationale for intervention - would seem to be well outside the ABA's essentially cultural charter and could amount to nothing more than an industry support program. The ABA should not countenance an independent drama quota.

Calls for an independent production quota ignore the fact that payment of hard cash is not the only manner in which a contribution can be made to a vibrant production community. In-house production gives many people a valuable start or ongoing training in their chosen field, a reliable source of employment (a valuable commodity in an industry often characterized by uncertain financing arrangements) and the ability to move between in-house and independent productions. Many of today's independent production community got their start working on in-house productions for broadcasters.

In a small market such as Australia, in-house production also ensures the availability of alternative production facilities which are often required by independent producers for their own productions.

In FACTS view, an independent production quota would serve only to deliver benefits for a small number of larger independent producers. It would not benefit the majority of the production community. The effect of such a quota would be to encourage broadcasters to enter into 'output agreements' with a small number of independent production companies who could be relied on to meet their quota requirements.

This would result only in the increase in size of a small number of larger production houses. This has been the result in the United Kingdom, where an independent production quota was introduced in the 1980's. In 1999, almost 80% of production companies produced for only one terrestrial channel[13].

Similar effects have also been seen in the United States. While the US does not have a formal quota for independent production, rules placing limits on the amount of programming that a network could produce has resulted in a concentrated number of large and powerful studios, many of whom have then gone on to own or become closely associated with the networks.

One expert assessment of the effect of the US rules stated:

"In fact, however, many independents have not flourished. And given the sizeable risks and capital investments entailed in the development of television programs, production and distribution have become largely consolidated into the hands of the major movie studios and other media companies with deep pockets."[14]

Such a measure also runs the risk that broadcasters may be forced to schedule programs to fill quota requirements rather than because they judge them to be meeting the needs of the available audience. The current system delivers a diverse range of quality programming to Australian viewers, a situation which may be jeopardized by regulatory intervention designed not to meet the needs of viewers but the desire for direct subsidy by a particular industry sector.

[13] 'Out of the Box – The Programme Supply Market in the Digital Age' A Report for the Department of Culture Media and Sport, December 2000

[14] .Harold Vogel, Entertainment Industry Economics, 1999, p 124

In addition, independent production quotas effectively only benefit a small class of the production community, that is producers. The majority of people working on a production (eg writers, set designers, directors, crew) are employed by either the production company or the broadcaster. It would seem to make little difference to these people whether they are employed by a large producer or a broadcaster, provided they are paid and given the robust industrial relations arrangements applicable to production in both sectors.

# 5. Children's Programming

## 5.1 Overview

Australian children are an important part of the commercial television audience. Commercial television broadcasters are committed to reaching the widest possible child audience for the children's viewing programming in their schedules.

This is an increasingly challenging goal for a mass medium like free-to-air television, given that children today have access to an unprecedented array of audiovisual choices, including VCRs and DVDs, four specialist children's channels on pay TV, a new dedicated ABC children's digital free-to-air channel which is retransmitted on pay TV, the internet, playstations etc.

Across the three networks, the Children's Television Standards require the broadcast of at least 780 hours of C primary children's programming – including 96 hours of Australian C drama - and 390 hours of Australian P preschool programming per year.

In addition, all networks broadcast a significant quantity of general G children's programming (such as cartoons in morning timeslots) which do not meet the ABA standard. On average these programs are significantly more popular with child audiences than the quota requirement children's programming. Overall there is a substantial amount of children's programming broadcast across free-to-air commercial television.

While acknowledging the needs of the child audience as one of the sections of the audience that needs to be met, FACTS' members have very serious concerns with the validity of the C drama sub-quota. Most importantly, the C drama requirement leads to the broadcast of a number of programs that do not appeal to child audiences in reasonable numbers. In addition it leads to considerable finances (including substantial public funding) being directed to programs of very low audience appeal and is financially unsustainable at the present levels.

The economics of producing and broadcasting C drama bears no relationship to market realities. While FACTS accepts that there is a cultural argument for Australian children to have access to Australian children's programs, assumptions about the cultural value of the *drama* genre for children (as opposed to other quality Australian children's programming) need to be reassessed as a matter of priority.

FACTS does not propose any reduction in the level of the C or P quotas in this Review. However, FACTS strongly submits that the C drama subquota requires major reform to improve its effectiveness, and makes a number of recommendations that would enable broadcasters to provide a broader and more appealing range of quality Australian children's programs within the current level of the subquota.

## 5.2 Competition for Children's Time from 'New' Media

As noted in the Paper, there is now unprecedented competition from new media formats that did not exist when the C drama requirements were first introduced. Children now have a much wider choice of media entertainment options available to them.

Since peoplemeters were introduced in 1991, in the decade 1991-2000, the amount of viewing time of free-to-air television by children aged 5-12 decreased by 8.3%.[15] This was a more pronounced decline than for any other age group.

FACTS notes the pay TV penetration statistics in the Paper. It is significant that of the 28% of homes with children that subscribe to pay TV, the average share of viewing of pay TV by children aged 5-12 was as high as 75%.

While just over a quarter of Australian families might currently subscribe to pay TV, more than 88% of Australian homes have a VCR[16] In 1999-2000, Australians hired 152 million videos.[17] The sell-through market of children's videos is also substantial.

Playstations and computers are also widespread in Australian family households. The majority of children, in particular boys, regularly play computer games. In a 2 week period in April 2000, 79% of boys and 58% of girls played computer/electronic games.[18] An estimated 7.6 million video games were hired in 1999-2000[19]. It is estimated that over half of Australian households were online by November 2001, and that in the 12 months to April 2000 47% of all 5-14 year olds accessed the internet.[20]

The number of DVD players is increasing exponentially, with DVD penetration recently estimated at 850,000 homes and among the fastest selling audiovisual devices.[21]

In such a technological age, children have become a sophisticated and discerning audience. As the following section demonstrates, children are not choosing to watch Australian C drama programs in sufficient numbers to justify the substantial resources applied to their production and broadcast

[15] Source: ACNielsen
[16] Source TV Trends 2000 - ACNeilsen
[17] Source Australian Bureau of Stastistics (ABS).
[18] Source ABS.
[19] Source ABS
[20] Source – ABS/National Office for the Information Economy website
[21] Source *The Courier-Mail*, 5 January 2002.

In the realm of drama for example, C drama series are competing in the home environment with the special effects and production standards of videos and DVDs such as *Babe, Shrek* and, inevitably, *Harry Potter*. To the extent that children aged 5-12 want to watch ongoing Australian television drama, they are, on average, five times more likely to watch *Neighbours* or *Home and Away* than a C drama program.

## 5.3 Ratings for C Drama Programs

In general, C drama programs do not rate well with the child audience for whom they are intended.

The list of the top 30 programs viewed by children in 2001 aged 5-12 is attached at Table 1 of Appendix 3. While this list comprises predominantly movies, regular programs included *The Simpsons* and a number of ABC children's series.

No C drama programs on commercial television are included in this table – in fact, no commercial C drama series ranked in the top 100 programs for children aged 5-12. Only 2 out of the 15 C drama series broadcast in 2001 ranked in the top 600 programs for the target age group for C programming.

Table 2 of Appendix 3 shows the average audience of children aged 5-12 of all first-release Australian C drama series compared with a selection of other programs broadcast during 2001. This table can also be compared with Table 1.

The highest rating first-release C Drama program, *Crash Zone*, was ranked 116th in the list of program titles viewed by the target age group (5-12) for C drama programs, followed by *Li'l Horrors* which was 133rd. These two series rated unusually well for a C Drama program – both outrating the next highest C Drama program by more than 3 times. The next highest rating C Drama program, *Tabaluga* was ranked 671st. To put this into perspective, more children aged 5-12 watched programs with little perceived child interest such as the Anzac Day march on the ABC, and Nine or Seven's election coverage than all but two of the fifteen C drama series broadcast in 2001.

The C drama program that attracted the median audience was *Ocean Girl* (that is, its ratings performance was 8$^{th}$ out of the 15 C drama series broadcast). The median audience was 31,998 child viewers from across the five metropolitan markets (a population area totalling 12 million), representing 2.3% of the available audience in that age group. The lowest rating C drama series was *The Shapies* which attracted an audience of just 12,177 children aged 5-12 from the five markets, representing less than 1% of the target audience.

A large number of G rated general children's programs rated far higher than any Australian C drama series.
A number of ABC children's series including *Rugrats* broadcast in similar timeslots as C drama programs outrated the highest rating C drama series (*Crash Zone)* by more than 4% TARP points, or by more than 56,000 child

viewers across the five metropolitan markets. *Rugrats* outrated the median child audience for Australian C drama series by more than 6 times.

The average audience of the G children's cartoon program *Cheez TV* outrated the median audience for C drama programs by more than 4 times. The ratings for *Cheez TV* are aggregated for all programs shown within the series; some individual programs rated considerably higher – for example, *Pokemon* recorded a TARP of 14, outrating the median C drama audience by more than 6 times, and significantly outrating *The Crash Zone*. Similarly, the G children's program *Saturday Disney* outrated all C drama programs, and outrated the median C drama program by more than 5 times. These G programs are shown in timeslots in which many C drama programs are also shown.

These figures reflect the findings of the report *20 years of C*, that found on average both C and C drama programs consistently rated lower than general G children's programs[22].

Table 3 of Appendix 3 contains a chart titled 'What do Kids want to watch?' This shows the ratings performance of six of the fifteen Australian C drama series broadcast in 2001 (including that of the series that represents the median audience – *Ocean Girl*), compared with a selection of other programs that five times as many children aged 5-12 preferred to watch.

Table 4 of Appendix 3 contains a chart titled 'Audience Profiles for programs broadcast in 2001' The target audience of children aged 5-12 forms a very small percentage of the viewing audience of the C drama programs that are produced specifically for them. This chart shows the agegroup breakdown of a C drama series broadcast by each network compared with other children's programs. It shows that the audience watching these C drama programs comprised a much lower proportion of children than for the other (non-C drama) children's programs.

For example, it shows that of the total audience watching the Australian C drama series *Wild Kat,* less than 7% of the audience was aged 5-12, the target agegroup for C programs. That is, **over 93% of the audience of *Wild Kat* was outside the target audience of 5-12 year old children**. Furthermore, only 18% of the audience of *Wild Kat* was aged between 0-17 years. This compares with *Cheez TV,* where more than 74% of the audience was aged under 17, with 50% of the audience in the 5-12 agegroup.

The audience profile figures for *Wild Kat* are not an isolated case amongst C drama programs. In fact, C drama series generally do not perform well in targeting their intended audience as prescribed in the Children's Television Standards. The target audience of children aged 5-12 comprised less than 25% of the audience in the case of 11 out of the 15 Australian C drama series broadcast in 2001. These figures suggest very strongly that C drama programs are not well targeted at their intended audience, unlike other general children's programs such as *Cheez TV.*

[22] Table 31 on p43 *20 years of C* showed that in each city non-C children's programs outrated both C Drama and general C programs over two timeperiods, 1993-95 and 1996-98

The ratings figures and breakdowns for C drama programs demonstrate that there is a pressing need to allow additional flexibility in eligibility for the subquota, to allow broadcasters to provide their child viewers with programs that are more appealing and better targeted to their interests.

## 5.4 Expense of C Drama

C drama series are considerably more expensive to produce than adult television series, are continuing to increase in cost and yet attract only a fraction of the audience.

In 1999-2000 the FFC provided funding for three children's drama series – in total totally 26 hours of production. This contribution totalled amounted to $9.3 million, which was 13% of the FFC's total investment slate. The aggregate budget of these children's drama series was $20 million, representing an average production cost of **$769,000 per hour**.

In 2000-2001, the FFC invested $15.1 million in four children's drama series comprising 45.5 hours of production with an aggregate production budget of $29.5 million, representing an average production cost of **$648,000 per hour.** Clearly, budgets vary significantly from project to project, with at least one children's drama project approved by the FFC in 2001-02 with a budget exceeding **$800,000 per hour.**

This average production cost is substantially higher than the hourly production budgets for top-rating adult drama series such as *Always Greener, Stingers* or *The Secret Life of Us.*

The FFC investment in children's drama programs has contracted since 1997-98 when it invested $18.6 million (27.2% of its investment slate), more than twice as much as it invested two years later. FACTS welcomes the Government's announcement to increase funding to the FFC for adult television drama and children's drama, although it is unclear whether the additional funding will be sufficient to return the FFC's investment in children's drama to its 1997-98 levels.

For FFC-funded projects commercial networks have increased their payments in line with the FFC licence fee thresholds. On 1 July 2002 the FFC minimum licence fee threshold will rise to $75,000 per half hour, representing a substantial increase of 36% over the $55,000 threshold last year. For a 26-part series, this represents an increase in the commercial broadcaster's contribution by $520,000 for the series - yet projects will still remain extremely difficult to finance due to their enormous production budgets.

Given the large variance between the audience for adult and children's drama, FACTS queries whether the allocation of $15 million towards children's drama is a productive use of public funding. It is arguable that this money would be better spent on adult drama which benefits a far greater number of viewers.

In FACTS' submission, the available finance for C drama is being stretched over too many projects. Ninety-six hours of C drama production – based on the average budget figures across the past two years of approved FFC projects (approximately $700,000 per hour) – requires approximately **$67 million** to produce the programming to meet the sub-quota each year.

The financing difficulties with C drama have been greatly exacerbated by the doubling of the quota in recent years, requiring an additional 48 hours of C drama to be produced and broadcast each year. As the Paper notes, as a result of the increases in the quota the FFC is no longer able to co-finance most C drama series as they were able to when the quota was set at 16 hours.

The difficulties in meeting the C drama quota are compounded by insufficient depth of expertise in the production sector to meet the quota requirements. As noted by the ABA at page 44 of the Issues Paper, if production on a project is discontinued for any reason, it is extremely difficult to find suitable replacement projects to meet quota requirements at short notice. This is a result both of financing pressures and the number of producers able to provide C drama product in the market.

The cost of production of children's drama cannot be justified by the low ratings these programs achieve and consequently the poor return on investment. The diversion of scarce resources into the area of C drama is inefficient. These sources of funding could be better utilized to meet the needs of a greater number of Australians.

## 5.5 The Need to Allow Averaging of the C Drama Quota Over 3 years

The rigidity of meeting an annual quota when there are so many variables involved in financing and producing a C drama series is creating considerable difficulties for broadcasters, resulting in some programs rushed into production and broadcast in the last few months of a year, just to meet the licence condition. This is not in the interests of the child audience.

As referred to in the Paper, increased costs of C drama (and the need to meet a higher quota) have lead to an increased reliance on financial contribution from overseas sources. However, recent contraction in the international market has made international presales more scarce. Where FFC funding is not involved, raising the finance and the risk of a project falling over is far greater. This is accentuated in situations where international partners are involved in co-financing the project.

In a number of instances in recent years, producers have defaulted on delivery obligations. Despite considerable long term planning of projects networks may have at up to six projects in development at any one time and yet due to financing difficulties only one may actually reach production. Therefore despite considerable long term planning, broadcasters are exposed to the possibility of breaching their licence condition. This is particularly the case given the lead-times involved in scripting, gaining ABA pre-approval, financing and production of a replacement series.

Consequently, there is a pressing need for the sub-quota to be averaged across a three year cycle (which the general drama subquota allows) and makeup provisions to be included for the final year of the cycle (which the pay TV

Australian content obligation allows) to provide some licence condition flexibility in the event of these unforeseeable exigencies.

***Recommendation 2***

- FACTS recommends that the C drama quota be averaged across a three year cycle. To allow for the situation in which a project could 'fall over' at a late stage in the final year of the triennium, there should be a makeup provision in the following year capped at half the annual quota.

## 5.6 The Need to Broaden the C Drama Quota

Given the low ratings, high resource requirements and pressure from alternative sources of children's entertainment, there is a real question as to whether drama is the best or only means of delivering the cultural and social objectives of the Standard as far as children are concerned. The question must be asked whether children are best served by drama programs of little interest to them or whether there is a better way of meeting the objective the C drama quota is designed to serve. FACTS believes that the child audience may be better served by a more diverse range of quality Australian programming aimed at this audience sector and consequently that the definition of programs which qualify to meet the 32 hour quota requirement should be broadened. T

There are two aspects where eligibility for the C drama quota needs to be broadened if the quota is to become more relevant for the Australian child audience:

(i) It needs to include other genres of quality Australian programming to allow greater diversity, and to enable broadcasters to offer quality programs of greater appeal for the child audience; and

(ii) It needs to allow programs that are assessed by reference to suitability for children aged 14 years and under, rather than its current cut-off point of primary school age.

### *5.6.1 Broadening to include other quality genres*

The large expense of C drama diverts networks' children's programming budgets into a small number of hours of programming, which could be better spread across a range of innovative children's productions during the year.

FACTS notes the Paper at p38 quotes from the publication *20 years of C*:

> 'The challenge for the commercial television free-to-air industry is to build a better relationship with the child audience rather than surrender this group of viewers to other media, in particular, the pay TV sector… C classified content on commercial television provides children with new Australian programming that is not commonly found on the new services.'

This passage ignores the fact that it is not Australian children's drama programs on the other services that are attracting the child audience. On the contrary, children are being attracted to innovative forms of programming and media in preference to the traditional format of C drama mini-series that the networks are required to broadcast.

A further consideration is the impact of the international investment on the stories told in C drama programs, with many C dramas needing to include international elements in the program to satisfy international investors. As the Paper notes (at p34), high levels of funding by international partners and the international stories and characters that result, can compromise the cultural integrity of C drama programs. With their focus on the international market, C drama programs are often now significantly less 'Australian' than general C Australian programs that are produced specifically for Australian children and which do not contain international elements dictated by overseas investors.

This trend is in contrast to the general C programs that are broadcast by the networks and retain their Australian integrity and cultural relevance for Australian children. For example, *Totally Wild* follows the school curriculum and explores the wonders of Australia's natural environment in an entertaining format for children), "Y" on Nine demonstrates science experiments and provides general factual information and *Good Sports* on Nine provides factual stories on Australian sports, health and fitness. Seven's "Big Arvo" is a well researched mix of information and entertainment content, designed to maintain the interest of the child audience and to provide informative segments on a range of areas of interest to children including science, music, wildlife and sport.

C drama obligations are impeding the ability for commercial networks to respond to the so-called challenge 'to build a better relationship with the child audience' by diverting substantial resources into a small number of programs that are not competing well with other media.

Amending the C drama subquota would free up substantial resources from the drama genre to invest in innovative new forms of Australian children's C programming for the greater cultural benefit of the Australian child audience. As illustrated above, the networks already produce a number of innovative programs which although not drama are specifically geared towards the child audience.

The networks would like to expand their commitment to providing quality non-drama programming by developing new, innovative formats that involve significant resources but which are not presently offered for children. For example, the popularity of the networks' information-based C programs suggests there would be an audience for high quality documentary and infotainment style children's programming that is not presently offered within the general C quota.

Broadening the subquota to include high quality non-drama Australian children's programs would enable broadcasters to provide a greater diversity of quality programming for their child viewers. FACTS suggests that the term 'Diversity' be used to describe the additional category of programs that should be eligible. (In this regard, FACTS notes that the adult drama quota previously included diversity programming.) To qualify for the C Drama and Diversity subquota, all projects would need to undergo the assessment process currently used for the subquota, which contains additional prerequisites to the assessment process for the general C transmission quota.

If the categories of programming qualifying for the C drama and diversity quota is not broadened as recommended above, FACTS believes that the number of hours of C drama to meet the quota would need to be reduced in recognition of the unsustainabiliy of current quota levels.

***Recommendation 3***

- FACTS recommends that eligibility for the C drama quota be broadened to an Australian C Drama and Diversity subquota. This would encourage networks to provide a broader range of appealing high quality Australian programs for children than is presently offered under the C and C drama quotas.

### *5.6.2 Broadening of the age group to age 14*

Children today are growing up in an extremely different media culture than when the Children's Television Standards were introduced two decades ago. As discussed in paragraph 5.6.2, the explosion of new media options has transformed the media environment in which children interact. Through this broadened exposure, children have become increasingly sophisticated users of media and have developed a much broader understanding of social issues as a result. of this interaction.

The guidelines for assessing C drama projects have not kept pace with these developments, and as discussed in paragraph 5.10 FACTS would welcome a broad review of the guidelines and certification process for C programming as part of this Review.

Children are, of course, naturally curious about the world of those older than themselves. Child viewers regularly watch 'up'. Particularly from the ages of 8-10 children seek to extend their viewing to include programs that appeal also to early teen viewers. The current age ceiling for C programs of primary school age limits the storylines and hence appeal of some C drama programs, that would greatly benefit from being able to appeal to a broader child and early teen audience.

Targeting expensive C drama productions at a small sector of the child audience also makes it more difficult for them to be financed. The current ceiling of 12 years makes it very difficult for Australian producers to find international co-partners who are seeking programs that have a broader appeal.

Extending the demographic for C projects to age 14 would enable programs of broader appeal and attract larger child audiences for C drama programs. It would allow a greater diversity of challenging storylines, whilst still ensuring that projects were targeted at children's interests within a wider range.

FACTS notes this would involve a consequential amendment to the Children's Television Standards, in addition to varying the Australian Content Standard.

FACTS considers that the demographic for general C programs should also be extended to age 14 for similar reasons.

***Recommendation 4***

- FACTS recommends that the age limit for C Drama and C programs be raised to age 14 to enable broadcasters to provide a greater range of appealing Australian programs to a broader child audience.

## 5.7 ABC Children's Programming

The ABC has a strong commitment to children's programming, with specific reference in its Charter. The ABC broadcasts a significant number of Australian children's drama programs, some of which are co-financed by the FFC. Not being permitted to advertise, the ABC does not suffer the same financial pressures that commercial networks experience with programs that are seriously limited in their revenue potential.

Last year the ABC also launched a dedicated children's channel, *ABC Kids*, which is broadcast free-to-air in the digital mode and retransmitted on the Optus and Austar pay TV services.

As shown in Table 1 of Appendix 3, the ABC broadcasts the most successful specifically children's programming (which are not feature films and mini-series) on television.

Given the very high expense involved in producing C drama programs (including large taxpayer contributions to FFC-funded series), there should be incentives to maximise the exposure of these programs to the widest possible child audience. The child audience would benefit if incentives were put in place to allow the quality children's drama programs shown on the ABC to reach the widest possible child audience across the free-to-air sector.

This would be achieved if Australian children's drama programs that have been screened on the ABC could count as 'first release' on commercial television, when they have their first broadcast on a commercial station. This would enable commercial television's child audiences to gain exposure to range of ABC children's drama programs.

To ensure that the programming remained contemporary, FACTS considers that C drama programming should only be considered 'first release' if its first broadcast on commercial television occurs within three years of its first broadcast on the ABC.

This proposal would also offer significant financing benefits for these expensive projects, through encouraging commercial networks to enter into co-productions with the ABC to produce C drama series, thereby raising additional production finance from the Australian market.

***Recommendation 5***

- FACTS recommends that C drama programs shown first on the ABC should be allowed to count as 'first-release' under the Standard where its commercial broadcast occurs within 3 years of its ABC broadcast. As well as potentially reaching new audiences for children's drama programs, this measure would allow for contributions to production budgets from both the commercial and national broadcast sectors.

## 5.8 Promotion and Scheduling

### *5.8.1 Promotions*

The Paper discusses the promotion of C drama by networks. FACTS is aware of some views that C drama programs might attract better ratings if they were better promoted or scheduled in primetime slots.

This ignores the fact that many day time programs and many general G children's programs shown in similar timeslots are either not promoted or are not promoted as heavily and yet attract higher child audiences than C drama programs. None of the top three C drama programs for 2001 received any promotion.

The Paper refers to *Hi-5*, which attracts a substantial child audience. The musical format of *Hi-5* renders it very different from C drama programming in terms of associated promotional opportunities especially via merchandising and concerts.

The recent occasions when C drama programs have been heavily promoted on-air did not translate into attracting sufficient audiences for the programs' timeslots.

For example Nine broadcast 46 promotions for its C Drama O*utriders* during July 2001 during children's viewing hours both on weekdays and on weekends. Seven broadcast *Bewitched* at the same time but did not broadcasting any promotions. *Bewitched* attracted a considerably larger audience averaging 2000 more children in the 5-12 age group each day in Sydney.

Also during 2001, Network Ten undertook an extensive on-air promotional campaign for the C drama series *Cybergirl*. This consisted of 'Coming Soon' promotions (sparingly used on commercial television to promote special programming events) and different promotions produced for individual episodes on a weekly basis which ran prominently during children's viewing times for the duration of the series. In addition, Ten used cross-promotional methods for *Cybergirl* from other children's programs. For example, cast from *Cybergirl* appeared as special guests on Ten's high-rating children's series *Cheez TV* and the series was also cross-promoted from the hosts of Ten's popular afternoon children's program *Totally Wild.* Despite such an extensive promotional campaign, this C drama series was unsuccessful in its timeslot and withdrawn, as is discussed further in the next section.

The Paper invites comment on promotion strategies for C drama programs. Promotion airtime is a valuable and scarce resource. Under the Commercial

Television Industry Code of Practice, promotions count towards the advertising limits set out in the Code. That is, every promotion displaces advertising revenue. Networks use promotions to attract audiences to their primetime evening schedules when maximum audiences are available.

FACTS opposes any regulation that would prescribe mandatory on-air promotion for C drama programs. In addition to the displacement of advertisements and foregone revenue associated with screening promotions, they are time-consuming and expensive to produce. Furthermore, there are strict restrictions on the amount of non-program matter that can be broadcast during children's viewing and mandatory promotions would further erode the limited advertising time available.

However, FACTS would support the proposal in the issues paper to provide additional flexibility in meeting the C drama quota through the counting of on-air promotions towards the quota, at the broadcaster's election.

***Recommendation 6***

- FACTS recommends that up to 2 hours of the C drama quota should be able to be met by 2 hours of promotions for C drama programs, broadcast during times of peak child viewing in the early morning and late afternoon timeslots.

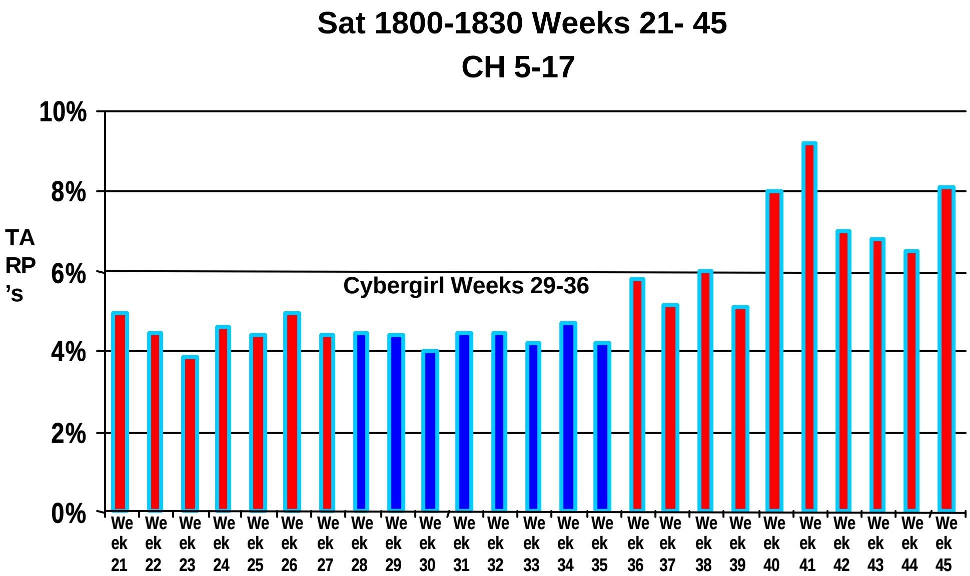
### *5.8.2 Scheduling*

The scheduling of a high quality C drama program at different times and in particular in primetime has been trialed.

In 2001 the Nine Network scheduled its C drama *Outriders* at 5.00pm in some locations rather than the its usual C drama timeslot of 4.00pm. In Brisbane where it was broadcast at 4.00pm the average market share of children aged 5-12 watching was double the share in Sydney, and triple the share in Melbourne, where it was shown at 5pm.

In 2001 Network Ten scheduled the high quality AFI-Award winning series *Cyber Girl* at 6pm Saturdays, a prime family and children's viewing timeslot, to replace a program that was not performing satisfactorily. As discussed above, an extensive promotional campaign occurred in the weeks leading up to the series' premiere and throughout its run. After 8 weeks, it was clear that the series was not working in the timeslot. It was replaced by a general G program that immediately increased audience share the following week, and which continued to build to a level that was satisfactory for the timeslot.

The following graph set out the ratings results. The graph depicts the 5-17 demographic which was the target audience in this family timeslot – the 5-12 and All People ratings showed a similar trend.




Source:OzTAM

The trial was not successful and broadcasters will be extremely reluctant to again schedule a C drama program in a primetime slot under present regulatory arrangements, given the importance of primetime to ratings and revenue.

## 5.9 Minimum Licence Fee

The minimum licence fee for C drama programs was introduced to the Standard in the last review as one of the measures designed to combat the concern that New Zealand children's programs may displace some Australian programs. The ABA considered that a minimum licence fee set at a sufficiently high level would prevent the acquisition of New Zealand children's drama series at secondary market prices – even though New Zealand produces virtually no children's drama programs.

As noted in the Paper, there have been no New Zealand C Drama, or even C programs broadcast by commercial broadcasters since the new Standard commenced. There is no evidence that New Zealand is producing or planning to produce a slate of children's drama programs.

FACTS considers that the perceived need for this measure can no longer be justified. As with the other measures introduced to address the erroneously perceived New Zealand 'threat', the minimum licence fee should be removed as it is unnecessary regulation.

Furthermore, FACTS considers it is inappropriate for a regulatory body such as the ABA to set minimum prices for the acquisition of programming. ABA price fixing is anti-competitive. By setting quotas, broadcasters must source or produce the product to deliver the mandated programming to the audience – further regulatory intervention into the marketplace negotiations between producers and broadcasters is unwarranted.

***Recommendation 7***

- FACTS recommends that the minimum licence fee for C drama programs be removed.

If a minimum licence fee is maintained, FACTS submits that it should not be increased above its current level. As the ABA's June 2000 Report on the issue concluded, there is no evidence to suggest that the $45,000 figure is operating as a 'cap' on licence fees.

### 5.10 Certification Process for C Drama

FACTS is aware of difficulties that independent producers have had with the certification process for C drama programs. As it is the producer's responsibility to obtain ABA certification, the networks are not directly involved in this process for C drama projects, which are independently produced.

FACTS understands that some independent producers plan to make submissions to the ABA in relation to the certification process and ways by which it could be improved, and streamlined and made more contemporary in its approach to the interests of children.

FACTS supports a review of the certification process for C drama projects as part of this Review, and looks forward to further discussion with independent producers and the ABA in relation to this issue.

## 6. Documentary Programs

The doubling of the documentary quota was one of the measures adopted in the last Review in response to the inclusion of New Zealand programs. The documentary quota was increased to 20 hours per annum to address production industry concerns that stations would use significant amounts of NZ material at secondary market prices to meet the quota. The ABA commented at the time:

> *In recognition of the vulnerability of the minimal 10 hour obligation under the current quota the ABA proposes to increase the requirement to 20 hours. This is more likely to achieve the cultural object in a context where New Zealand programs will be equally eligible*[23].

As FACTS predicted during the debate, New Zealand programming has not displaced Australian programs. . Of the 114 documentary programs broadcast in 1999 and 2000 there were only two first-release New Zealand documentary programs broadcast, neither of which displaced an Australian documentary program as their broadcast was in excess of the quota levels. That is, New Zealand programs have had no impact on the documentary quota. As the justification for doubling the quota has proven to be ill-founded, FACTS submits that the quota should be returned to its pre-1999 level.

---

[23] ABA Regulatory Impact Statement, March 1999, page 20.

FACTS notes that the Paper questions the appropriateness of a mandatory sub-quota for documentaries at all. FACTS considers that the sub-quota does not serve the objective of the Standard as there is little demonstrated audience-demand for traditional documentaries on commercial television. Rather, it is a measure that is designed to support a sector of the production industry, which is an inappropriate rationale for a measure in the Standard.

The documentary quota was introduced in 1996 as a result of production industry lobbying, rather than in response to viewer demand. Traditional documentaries rarely attract significant commercial television audiences. Viewers seeking traditional documentary formats generally look to the ABC and SBS, and the three specialist pay TV documentary channels, rather than commercial television.

FACTS questions the basis on which the traditional documentary category is judged as being more culturally desirable or worthy than other forms of factual programming. The 20 hour documentary quota places significant restrictions on the ability of broadcasters to schedule other forms of factual programming which may be of equal or greater relevance and enjoyment to the viewing public.
As noted in the Issues Paper (page 40), there is a large amount of factual programming on commercial television, which is extremely popular with audiences, with reality television programs in particular amongst the highest rating programs. The development of a wide range of factual-based genres over the past decade have expanded much of the traditional documentary territory. While traditional documentary programs find a place in commercial television schedules, they are not the only way in which producers are able to provide a creative treatment of actuality, and other formats of factual programming have proven far more popular with Australian commercial television viewers.
The Paper discusses documentary expenditure by commercial broadcasters. FACTS believes there are serious anomalies in the figures quoted in the Paper. FACTS' members are reviewing the expenditure returns submitted to the ABA and the programs reported as complying under the documentary quota since its introduction, and will provide these updated figures to the ABA shortly.

***Recommendation 8***

- FACTS recommends that the documentary subquota be restored to its former level of 10 hours per year.

# 7. Australian Official Co-productions

While few official co-productions are broadcast on commercial television, FACTS supports the official co-production program and the inclusion of official co-productions in the Standard in accordance with Australia's binding international treaty obligations.

As the Review of the Australian Official Co-Production Program[24] concluded:

[24] DCITA, February 2001

- The Program delivers net economic benefits to the Australian film and television industry and should continue;… and

- Australia has reaped greater benefits from the program than its partner nations, in relation to both levels of investment and creative participation.

The official co-production program has fostered a range of film and television productions, all of which have been produced with specified minimum levels of Australian creative contribution. Concern has focused on those co-productions that do not have an ‘Australian look’, although a number of official co-production projects have had a very Australian look. The issue of whether Australian-ness should be assessed by reference to the providence of the key creative participants or its ‘look’ has been the subject of much debate during previous reviews in relation to the Standard generally. It is widely accepted that the providence of the creative participants is the preferred approach, and the co-production treaties ensure minimum levels of Australian creative contribution in order to qualify.

FACTS notes that access to local content quotas is an entitlement for official co-productions in all treaty nations. FACTS is surprised by the suggestion in the Paper that the Standard might be amended to deny the reciprocity benefits required by each Treaty.

The amendment of s.160(d) of the *Broadcasting Services Act 1992* following the High Court’s Project Blue Sky judgment was not directed at relieving the ABA of Australia’s obligations to recognise official co-productions in the Standard.

Australia is an active participant in the global film and television industry and all co-production partner nations grant access to their local content regulations to official co-productions with Australia. These nations entered into binding treaties with Australia in good faith, with a legitimate expectation that Australia (and its regulatory authorities) would honour its treaty commitments.

FACTS would strongly oppose the ABA unilaterally taking action that denied reciprocity to official co-production partners and thereby placed Australia in breach of its international treaty obligations. The appropriate forum for any reconsideration of terms of international co-production treaty obligations is through the review process set out under the treaties, and through bilateral consultation with each partner nation.

***Recommendation 9***

- FACTS recommends that official co-productions should continue to qualify under the Standard, so that Australia is not placed in breach of its international treaty obligations.

# 8. Conditions on First-Release Programs

The purpose of the first-release requirement for the subquota categories is to provide viewers with Australian programs that they have not previously had the opportunity to watch on free-to-air television.

The last Review introduced a requirement that all programs must be acquired within 2 years of its completion (or 3 years in the case of feature films). This measure was designed to prevent back catalogue of New Zealand programs from being acquired cheaply to fulfil quota obligations.

Not a single New Zealand program has displaced any first-release Australian program under any of the subquotas. No first release New Zealand drama program has been broadcast. That is, commercial broadcasters have shown no interest in acquiring recent New Zealand programs cheaply to meet the quota, let alone old ones which would have even less audience appeal.

These restrictions have no policy justification. They are causing difficulties in the acquisition of Australian productions, particularly feature films due to the considerable time delays that can accrue through the exploitation of the 'windows' of theatrical release, video and pay TV that occur before rights can be exercised by a free-to-air broadcaster.

The restrictions are unnecessary regulation and should be removed altogether, not just amended through an additional time period. If viewers in a licence area have not seen the Australian program on free-to-air television before, it is first-release in that licence area regardless of when it happened to be acquired by the relevant licensee. Any restrictions on that principle compromise the objective of the Standard in its aim to provide to the community access to Australian programs that they have not previously had the opportunity to watch.

***Recommendation 10***

- FACTS recommends that the definition of 'first release' be amended to remove all time restrictions in relation to the acquisition of programming which were introduced in the last Review.

# 9. Thirteen Hour Rule

If the current 5-11pm timeband for first release Australian drama remains FACTS believes that the 'thirteen hour rule' should be retained.

The 'thirteen hour rule' has not been extensively relied upon by broadcasters. However, the rule gives broadcasters confidence to engage in a certain degree of risk-taking in programming decisions by enabling networks to trial new series or reschedule programs that have not worked in more popular timeslots. To remove the rule would result in more conservative commissioning decisions and less diversity in drama programming across the networks.

***Recommendation 11***

- FACTS recommends that the 'thirteen hour rule' be retained if the current timeband of 5pm-11pm remains in place.

## 10. Other Relevant Considerations - International Comparisons

It is instructive to look at how local programming fares in comparison to other countries. Australia is the only English-speaking country with a relatively small population in which local programming not only predominates but generally out-rates what might be called international English-language programming. This is so even though Australian audiences have as keen an interest in American movies, sitcoms and drama as their counterparts in other smallish English-speaking countries (Canada, New Zealand), where non-local programming dominates television viewing.

Canada has an English-speaking population much the same size as Australia's, but its local television programming is much less developed, despite strenuous regulatory intervention over many years. Canada's inescapable problem is massive exposure to US programs that many Canadians regard as local. New Zealand lacks the population and revenue base that has allowed Australia to develop a program production industry that can provide a wide range of highly competitive programs with little public subsidy.

The UK is able to support high levels of local production because it has a large population concentrated in a small area and served, until recently, by only two broadcasters. Its broadcasting industry was for decades deliberately limited to two players in order to maximise revenue for local program production. Even today, ITV (Channel 3) still accounts for over 70% of television advertising revenue, and ITV and the BBC between them fund almost 75% of all programs produced for television[25].

Australia's much smaller population has supported three commercial television networks for 35 years as well as a much more regionalised commercial television service – we have about 60 discrete local markets, compared with the UK's 27. Each broadcaster has a much smaller revenue share to fund its programming, and so is under much greater pressure than a UK broadcaster to produce cost-effective programs that appeal strongly to viewers. The program production and television management skills learned in this testing environment have been widely exported, and have had a profound influence on the development of television in many other countries over the past two decades.

[25] These figures are from the submission to the review of the UK Communications Act in June 2000 by the production industry lobby-group, Producers' Alliance for Cinema and Television (PACT)

Relative to other countries and populations, Australia is well served with a high number of free-to-air services. With five national services plus additional digital streams from ABC and SBS Australia has 1.4 million households per free to air network. In contrast, in the UK there are 4.8 million households per free to air network[26] and 4.0 million households per free to air network in Canada.[27]

[26] UK has 5 free to air networks with 24 million households.
[27] Canada has 3 free to air networks with 12 million households

# 11. Appendix 1 - Top 50 Programs in 2001

### Top 50 Ranking Report - Surveys 1-10, 2001 Excluding Easter Total Individuals

| Rank | Network | Description | 5 City Metro |
|---|---|---|---|
| 1. | 9 | WIMBLEDON D14 | 3,036,289 |
| 2 | 10 | BIG BROTHER FINALE | 2,789,029 |
| 3 | 10 | BIG BROTHER SUNDAY FINAL | 2,615,942 |
| 4 | 7 | AFL: 2001 GRAND FINAL – ESSENDON V BRISBANE LIONS | 2,603,642 |
| 5 | 9 | FINA WORLD SWIMMING CHAMPIONSHIPS D8 | 2,507,071 |
| 6 | 9 | 43RD ANNUAL TV WEEK LOGIE AWARDS | 2,408,652 |
| 7 | 9 | SURVIVOR II: THE AUSTRALIAN OUTBACK THE FINAL VOTE | 2,256,864 |
| 8 | 7 | SOCCER: WORLD CUP QUALIFIER AUSTRALIA V URUGUAY | 2,221,029 |
| 9 | 9 | FINA WORLD SWIMMING CHAMPIONSHIPS D6 | 2,164,512 |
| 10 | 9 | RUGBY LEAGUE FINAL SERIES GRAND FINAL | 2,097,311 |
| 11 | 10 | BIG BROTHER EVICTION 10 | 2,063,583 |
| 12 | 10 | BIG BROTHER EVICTION 8 | 2,056,434 |
| 13 | 9 | FINA WORLD SWIMMING CHAMPIONSHIPS D4 | 2,045,382 |
| 14 | 9 | FINA WORLD SWIMMING CHAMPIONSHIPS D5 | 1,962,902 |
| 15 | 7 | M-NOTTING HILL | 1,946,562 |
| 16 | 9 | FINA WORLD SWIMMING CHAMPIONSHIPS D3 | 1,940,831 |
| 17 | 9 | E.R. | 1,938,078 |
| 18 | 9 | FINA WORLD SWIMMING CHAMPIONSHIPS D7 | 1,927,824 |
| 19 | 7 | GROUND FORCE - BATTLE OF THE NATIONS | 1,924,311 |
| 20 | 10 | BIG BROTHER EVICTION 5 | 1,904,828 |
| 21 | 7 | M-SIX DAYS SEVEN NIGHTS | 1,886,707 |
| 22 | 10 | BIG BROTHER - SPECIAL EVENT | 1,848,600 |
| 23 | 10 | BIG BROTHER EVICTION 7 | 1,837,134 |
| 24 | 7 | GROUND FORCE - BATTLE OF THE NATIONS 2 | 1,834,772 |
| 25 | 9 | 73RD ACADEMY AWARDS | 1,831,391 |
| 26 | 9 | FINA WORLD SWIMMING CHAMPIONSHIPS D2 | 1,831,047 |
| 27 | 9 | JACK & THE BEANSTALK: THE REAL STORY P1 | 1,823,572 |
| 28 | 9 | FRIENDS | 1,821,407 |
| 29 | 9 | BACKYARD BLITZ | 1,816,792 |
| 30 | 7 | M-PAPERBACK HERO | 1,808,418 |
| 31 | 9 | GOODWILL GAMES D1 | 1,804,220 |
| 32 | 7 | GREAT SUMMER IDEAS | 1,792,142 |
| 33 | 10 | SAVING PRIVATE RYAN | 1,784,907 |
| 34 | 7 | SEVEN'S R.U: 3RD TEST - LIONS V AUS | 1,781,604 |
| 35 | 9 | NATIONAL NINE NEWS SUNDAY | 1,769,946 |
| 36 | 7 | BLUE HEELERS | 1,756,657 |
| 37 | 9 | GOODWILL GAMES D2 | 1,756,044 |
| 38 | 9 | THIS IS YOUR LIFE | 1,753,502 |
| 39 | 9 | MILLIONAIRE'S NEWLYWEDS SPECIAL | 1,743,830 |
| 40 | 7 | THE WEAKEST LINK - SPECIAL | 1,742,095 |
| 41 | 7 | ALWAYS GREENER | 1,737,830 |
| 42 | 7 | POPSTARS | 1,730,586 |
| 43 | 7 | M-TITANIC | 1,721,169 |
| 44 | 7 | AUSTRALIAN GARDEN OF THE YEAR | 1,712,516 |
| 45 | 7 | HOT PROPERTY | 1,704,996 |
| 46 | 7 | HOT AUCTIONS | 1,700,676 |
| 47 | 9 | WORLD CRISIS AMERICA UNDER ATTACK EVENING DAY | 11,699,893 |
| 48 | 9 | RPA | 1,698,312 |
| 49 | 10 | BIG BROTHER EVICTION 1 | 1,689,274 |
| 50 | 10 | YOUNG TALENT TIME TELLS ALL | 1,688,139 |

OzTAM Reports Prepared By Nine Network Network Total Individuals

# 12. Appendix 2

## Program Expenditure Figures – Further Analysis of AB A figures

As discussed in part 3.5, analysis of the ABA's program expenditure figures needs to take account of the following factors:

### *1 Changes in the Operating Environment*

The most significant issue in relation to the analysis of expenditure figures in the Issues Paper is the relevance of 1991 as a bench-mark for expenditure over the following decade. The period since the industry's return to profitability in 1992 must be seen as quite distinct from the preceding four years of unsustainable expenditure. It is also distinct from the decade of high-growth that culminated in that brief phase of hyper-competition. Figures reflecting the assumptions of earlier periods are of little use in bench-marking the industry's current performance.

Key changes in the operating environment for commercial television have occurred over the past decade, including periods of escalating program costs in the late '80's and early '90's culminating in massive losses and the financial and corporate restructuring of each network. Most importantly, commercial television is now a mature industry characterized by modest revenue expansion and in which profitability depends on prudent management and cost control.. 1991 is an inappropriate comparison point because of these factors.

Overall expenditure on Australian programs in 1991 was close to the trend line of earlier years, but individual categories (e.g. drama) were hugely inflated. Annual variations in both overall expenditure and expenditure on specific program types were huge. For example, news and current affairs expenditure fell 52% in 1991, before climbing 28% in the following year. 1992 is a more "normal" year, though a stable growth pattern is arguably not apparent until 1994.

Taking 1992 as the bench-mark for industry expenditure figures produces a quite different picture to that suggested by the Issues Paper. There has been steady growth in most areas of Australian program expenditure, averaging two percent per annum in constant dollar terms. Foreign program expenditure growth has been higher in constant dollars, but from a much lower base[28]. Australian programming has averaged 70.5% of all program expenditure since 1988. In 2000 it was only slightly below that, at 69.1%.

### *2 Inclusion of Regional Affiliate Fees in Pre-Aggregation Figures*

Both the Australian and foreign programs broadcast expenditure categories have been affected by regional aggregation. In the late 1980's, regional station expenditure on Australian and foreign programming was a rapidly growing proportion of the national total.

[28] The Issues Paper claims on page 21 that foreign program expenditure increased at a greater rate than Australian program expenditure from 1991.The figures it cites indicate the opposite.

At that time, program negotiations favoured regional station operators as most were in single-station markets, which purchased programs from the three metropolitan networks and from foreign and local distributors. Most regional stations are now in three station markets. Reported regional program expenditure has declined virtually every year since 1990, and is now less than one quarter what it was ten years ago in constant dollars.

This is because program usage and amortisation figures now reflect only purely local expenditure by most regional stations. Stations in aggregated markets now acquire almost all of their programs from the network with which they are affiliated. This programming represents the bulk of the services they receive in exchange for the revenue-based affiliation fees they pay.

Affiliation fees are not included in ABA program expenditure figures. However, prior to aggregation, payments from regional broadcasters to networks for programs were included in the figures (even though, this was in effect revenue for the networks rather than representing additional production expenditure). That is, the 1991 figures are an inflated base with which to compare current figures.

Conservative estimates suggest that this sum would be between $18 million and $50 million in 2001[29]. These adjustments would add between 3.6% and 10.5% to Australian program expenditure by the commercial television industry in 2001. (1990 constant dollars). This further undermines the argument that Australian program expenditure has been static since the early 1990s.

Since regional aggregation changed the way in which most regional stations acquire most of their programs, Australian program usage and amortisation figures now reflect only purely local expenditure by most regional stations. Stations in aggregated markets now acquire almost all of their programs from the network with which they are affiliated. This programming represents the bulk of the services they receive in exchange for the affiliation fees they pay.

This means that a significant sum has been “lost” from national program usage and amortisation figures. What this loss amounts to can only be estimated in broad terms. One approach is to use the regional expenditure share of the national total for 1990 as a guide, and to deduct from the resulting figure all program costs that are now likely to be reflected in network program purchases.

Networks now acquire all-Australian rights from Australian or foreign program producers, whereas they acquired only five city rights when regional broadcasters purchased rights separately. If networks now pay proportionately more for these broader rights this would be reflected in their program expenditure figures. However, network-produced programs acquired by regional stations are not included in current program expenditure figures. This includes news, current affairs, quiz and game shows, information programs, and some documentaries and drama (for example, drama produced in-house by the Seven Network). While FACTS is not arguing for affiliate fees to be included in current Australian content expenditure figures, for the purposes of providing a more accurate

[29] See tables later in this Appendix.

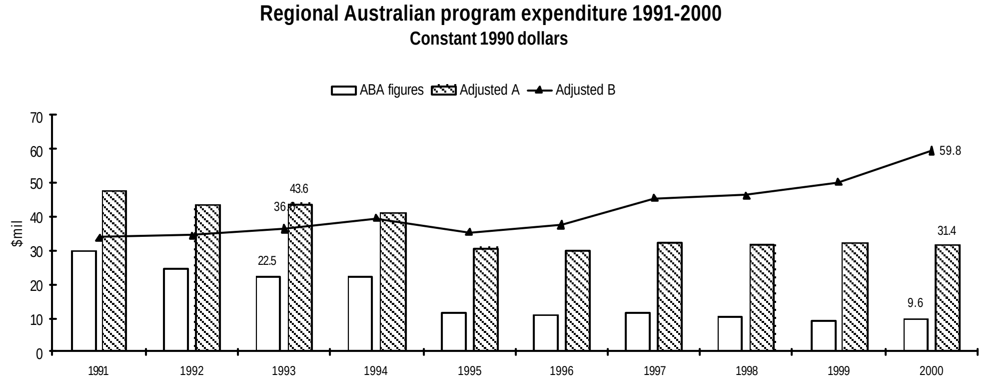
comparison, the table below present figures adjusted in post-aggregation years to takes these amounts into account.

Network-produced programs comprised an estimated 40-50% of regional station usage and amortisation of Australian programs in 1990 (the last year in which the ABT published expenditure by program category for regional stations). In that year, regional stations accounted for 8.5% of Australian program usage and amortisation. Applying the same percentage to 2000 would raise the regional share from the 2% shown in the ABA figures to 8.5% - or $44 million - before deducting expenditure that is arguably now reflected in network program expenditure. Assuming that to be 50-60% of the total, the "lost" amount would be between 40% and 50% ie. $18 - $22 million.

This is clearly a highly conservative estimate, as it assumes an unchanged regional share of national program expenditure. A more realistic – though still conservative – way of estimating regional "expenditure" would be to treat affiliation fees paid by regional stations as program costs, once again deducting costs that are likely to be reflected in network program expenditure[30].

Affiliation fees of $126 million in 2000 might be notionally allocated 78% to Australian program costs and 22% to foreign program costs (reflecting the regional average for the three years to1990, before aggregation affected program expenditure figures). The only costs not subsumed in network program costs would be those for network-produced programs, conservatively assumed to still reflect 40-50% by value of Australian programs in regional television schedules. That suggests that $39-49 million should be added to the national Australian program expenditure total.

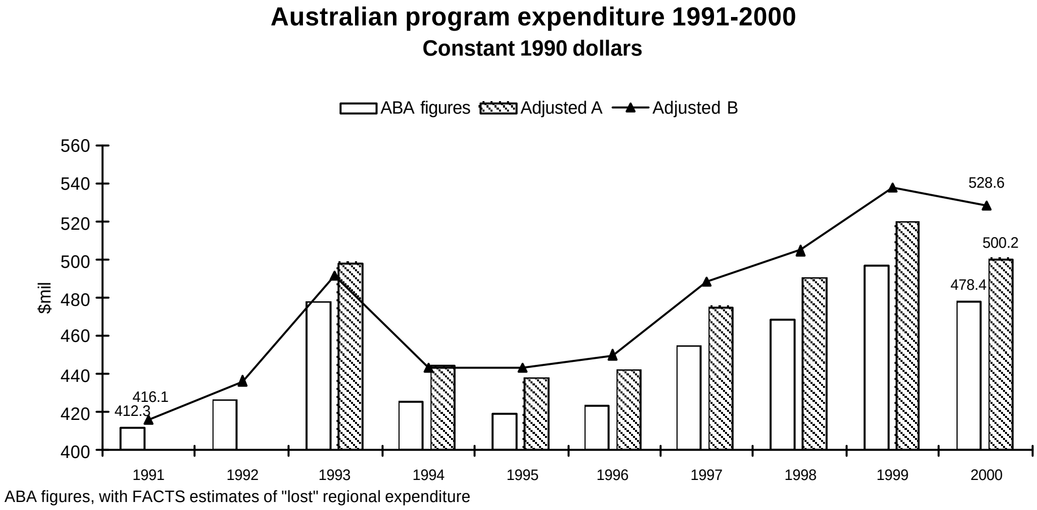
The following chart sets out how these approaches would change the regional program expenditure figures for the decade to 2000:



ABA figures, with FACTS estimates of "lost" regional expenditure

These adjustments would add between 3.6% and 10.5% to Australian program expenditure by all stations in 2000/2001, as the following chart shows:

[30] The ABA Issues Paper describes affiliation fees as transfers between licensees, which should not be regarded as program expenditure (Appendix C). While this is technically correct, the corollary is that the program expenditure figures do not reflect a substantial proportion of program acquisitions within the industry.




## *3 Changes in the Nexus between Expenditure and On-Screen Content*

Any change in the relationship between a given amount of expenditure and the quantity and quality of the programming that it gives rise to will obviously make comparisons over time very difficult. This is precisely what has happened in most program areas because of greater production efficiencies and technological developments.

The Australian program production industry has always been very efficient by international standards, but the tighter financial constraints of the past decade have forced television stations to find new efficiencies in production in-house, and to require similar efficiencies from external producers. New technology has resulted in production efficiencies and cost-savings, whilst maintaining or improving the look of on-screen content.

As noted in paragraph 4.3, terms of licence fees have also varied significantly over time. In general this has meant that the scope of licences granted to broadcasters has narrowed, making direct expenditure comparisons misleading.

## *4 Expenditure Figures are Under-Stated as they do not Necessarily Include Overheads Incurred by Broadcasters*

All broadcasters maintain substantial network programming departments. Personnel in these departments support and contribute to the production process in a variety of ways such as commissioning, script assessment, production advice and expertise, publicity and marketing and scheduling expertise.

These costs are carried by each network. They are not reported as program expenditure, despite the fact that these functions contribute directly to the production process. Consequently, ABA expenditure figures do not fully represent the full level of expenditure by broadcasters on Australian programming.

# 13. Appendix 3

## Table 1

**Top 30 Programs during Ratings period in 2001**
**Weeks 7-48/01 (Exlc Easter)**
**Children 5-12**

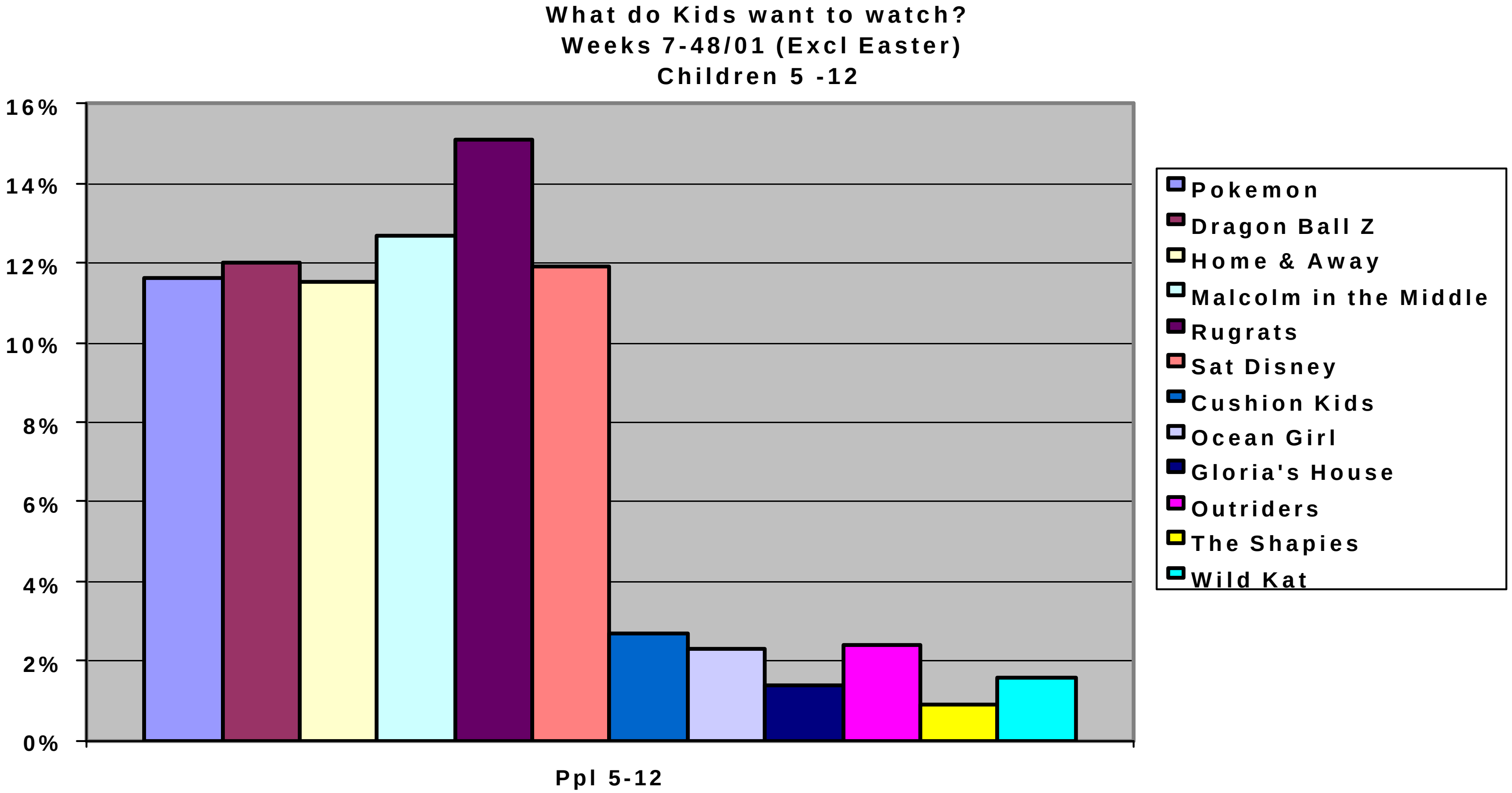
| Description | MARKET | Ppl 5-12 | Ppl 5-12 |
|---|---|---|---|
| | | 5 City Metro | 5 City Metro |
| | NETWORK | TARP | TARP % |
| THE RUGRATS MOVIE | Network 10 | 353,890 | 25.80% |
| WILLY WONKA & THE CHOCOLATE FACTORY –RPT | Network 9 | 339,191 | 24.70% |
| BIG BROTHER SUNDAY FINAL | Network 10 | 299,005 | 21.80% |
| BIG BROTHER FINALE | Network 10 | 294,846 | 21.50% |
| JACK AND THE BEANSTALK: THE REAL STORY P1 | Network 9 | 287,133 | 20.90% |
| JACK AND THE BEANSTALK: THE REAL STORY P2 | Network 9 | 279,649 | 20.40% |
| M-FLUBBER | Network 7 | 275,048 | 20.00% |
| M-THE PARENT TRAP | Network 7 | 264,377 | 19.30% |
| THE SIMPSONS HOUR WED | Network 10 | 256,372 | 18.70% |
| THE SIMPSONS HOUR | Network 10 | 251,253 | 18.30% |
| M-MARY POPPINS | Network 7 | 250,720 | 18.30% |
| BIG BROTHER EVICTION 10 | Network 10 | 237,862 | 17.30% |
| POPSTARS | Network 7 | 235,917 | 17.20% |
| SURVIVOR II: THE AUSTRALIAN OUTBACK THE FINAL VOTE | Network 9 | 235,125 | 17.10% |
| NAPOLEON | Network 10 | 227,685 | 16.60% |
| SMALL SOLDIERS | Network 10 | 225,992 | 16.50% |
| MATILDA | Network 10 | 221,744 | 16.20% |
| BIG BROTHER EVICTION 8 | Network 10 | 219,744 | 16.00% |
| M-HOME ALONE 3 | Network 7 | 218,220 | 15.90% |
| ALL AUSSIE ADVENTURES | Network 10 | 217,478 | 15.80% |
| SEVEN'S AFL: 2001 GRAND FINAL - ESSENDON V BRISBANE LIONS | Network 7 | 213,554 | 15.60% |
| HARRIET THE SPY | Network 10 | 209,356 | 15.30% |
| THE SIMPSONS WED | Network 10 | 208,564 | 15.20% |
| KINDERGARTEN COP | Network 10 | 208,447 | 15.20% |
| RUGRATS -PM | Network ABC | 207,773 | 15.10% |
| WHERES WALLY-PM | Network ABC | 206,363 | 15.00% |
| SADDLECLUB-PM | Network ABC | 206,015 | 15.00% |
| CATDOG-PM | Network ABC | 205,428 | 15.00% |
| WILD THORNBERRYS-PM | Network ABC | 204,274 | 14.90% |
| BIG BROTHER - SPECIAL EVENT | Network 10 | 203,032 | 14.80% |

## Table 2

**Ratings of all first release Australian C Drama series and selected other programs in 2001 Children 5-12**

| Description | MARKET NETWORK | Ppl 5-12 5 City Metro TARP | Ppl 5-12 5 City Metro TARP % |
|---|---|---|---|
| ***C Drama Series*** | | | |
| CRASH ZONE | Network 7 | 150,986 | 11.00% |
| LI'L HORRORS | Network 7 | 143,441 | 10.50% |
| TABALUGA | Network 7 | 47,987 | 3.50% |
| CYBERGIRL | Network 10 | 45,905 | 3.30% |
| FLIPPER AND LOPAKA | Network 7 | 45,869 | 3.30% |
| CUSHION KIDS | Network 9 | 36,420 | 2.70% |
| OUTRIDERS | Network 9 | 32,539 | 2.40% |
| OCEAN GIRL | Network 10 | 31,998 | 2.30% |
| HORACE AND TINA | Network 10 | 30,562 | 2.20% |
| FAST TRACKS | Network 10 | 28,562 | 2.10% |
| ESCAPE OF THE ARTFUL DODGER | Network 9 | 26,028 | 1.90% |
| THUNDERSTONE | Network 10 | 24,323 | 1.80% |
| WILD KAT | Network 10 | 22,004 | 1.60% |
| GLORIA'S HOUSE | Network 7 | 19,022 | 1.40% |
| THE SHAPIES | Network 9 | 12,177 | 0.90% |
| | | | |
| ***Other Programs*** | | | |
| LEAVE IT TO BEAVER (G) | Network 10 | 196,080 | 14.30% |
| MALCOLM IN THE MIDDLE (PG) | Network 9 | 174,881 | 12.70% |
| SATURDAY DISNEY (G) | Network 7 | 162,430 | 11.80% |
| HOME AND AWAY (G) | Network 7 | 157,532 | 11.50% |
| BOB THE BUILDER (PM) (G) | Network ABC | 156,014 | 11.40% |
| NEIGHBOURS (G) | Network 10 | 137,376 | 10.00% |
| CHEEZ TV (G) | Network 10 | 125,923 | 9.20% |

**Table 3**


What do Kids want to watch?
Weeks 7-48/01 (Excl Easter)
Children 5 -12
16%
14%
12%
10%
8%
6%
4%
2%
0%
Ppl 5-12
Pokemon
Dragon Ball Z
Home & Away
Malcolm in the Middle
Rugrats
Sat Disney
Cushion Kids
Ocean Girl
Gloria's House
Outriders
The Shapies
Wild Kat

## Table 4

### Audience Profiles for Programs Broadcast in 2001