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ARTICLE



Cultural policy between television and digital platforms: the case of SVOD regulation in Australia

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ABSTRACT

As subscription video-on-demand (SVOD) services enter new markets, they become subject to national laws and regulations. This incorporation into national governance is driven by various priorities that include cultural diversity, censorship, and local protectionism. In this article, we provide a critical analysis of the attempted process of SVOD policy-making in Australia, where the entry of services including Netflix, Amazon Prime Video and Disney+ has prompted much concern about the future of local content production and distribution. Focusing on the years 2017 to 2022, under the former centre-right Liberal/National coalition government, we excavate the origins and outcomes of a protracted ‘harmonisation’ process that ultimately prioritised the interests of national commercial broadcasters. We also show how SVOD production incentives came to be preferred over catalog quotas as a mechanism for cultural policy. In this way, our analysis explores how one mid-sized, English-speaking nation initially grappled with the challenges inherent in regulating global platforms, amidst a charged public debate about the future of local screen content.

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Introduction

Over the last decade, leading subscription video-on-demand (SVOD) services have evolved into global media platforms. Netflix progressively expanded its international operations between 2011 and 2016 and is now available in 190 territories. Amazon Prime Video followed shortly thereafter, becoming a global service in late 2016. Disney+ and HBO Max – whose operations are complicated by pre-existing output deals with national pay-TV and broadcast operators – are currently available in more than 70 territories each. Meanwhile, China’s iQiyi has expanded aggressively into Southeast Asia.

As SVODs expand internationally, they become subject to national laws and regulations. Governments of diverse political persuasions have recently passed laws on SVOD censorship, content classification, operational licensing, taxation, local content quotas, production obligations, and contributions to national production funds (Bizberge 2021; Kostovska et al. 2022; Oliver and Associates Ltd 2021). This incomplete process of incorporation into national governance is driven by diverse priorities that include cultural diversity and anti-hegemony, censorship of ‘western’ services for cultural and religious reasons, and local protectionism (Bondebjerg et al. 2017; Lobato 2019). Several territories have introduced far-reaching reforms: the European Union’s revised 2018 Audiovisual Media Services Directive brings SVOD services firmly under the umbrella of cultural

policy, with a 30% European-content catalog quota and the option for member states to impose on SVODs investment obligations, levies, and promotion requirements (Farchy, Bideau, and Tallec 2022; García Leiva and Albornoz 2021b), while Canada's Bill C-11, the Online Streaming Act (passed by the House of Commons but awaiting Senate approval) empowers regulators to introduce Canadian content production and discoverability obligations for major SVODs. Meanwhile, other territories have focused their attention on specific issues such as content censorship (India, Turkey, China, Indonesia, Russia) or national production obligations (Brazil) (Bizberge 2021).¹ Regardless of their preferred approach, countries developing policy for SVODs must decide on whether and how such regulation should be harmonized with national rules governing broadcasting, pay-TV, internet, and/or digital platforms, and in so doing address complex questions about the interaction of different kinds of media and media institutions: foreign and local; emerging and incumbent; online, broadcast, and cable- or satellite-delivered. Existing literature has highlighted both the diversity of national policy responses to SVODs (see, inter alia, D'Arma and Giovanni 2021; on Italy; Zboralska and Davis 2017; Wagman 2017, on Canada; and Kitikamdhorn 2021, on Thailand) and the many difficult and significant challenges involved in regulating digital platforms at national scale (Flew 2021).

This article explores the policy reform process in Australia, where the entry of SVOD services since 2015 has been particularly disruptive. Our focus is on the specific domain known in Australia as *local content* (i.e. measures to support the production and distribution of Australian screen content – a.k.a. national content). Australia, a mid-size, English-language market in the 'democratic neoliberal' tradition (Curran and Park 2000), has an existing policy architecture in place to support local content, comprising film and TV production incentives, direct production funding, local content quotas on commercial broadcasters, and two national public-service broadcasters. Together, these mechanisms – which draw variously on British, U.S., and Western European traditions of cultural policy – aspire to maintain a 'dynamic equilibrium' (Flew 2007, 121) between domestically produced and imported screen content.

Australia's local content regulation is distinctive in the sense that it has been developed for a contained and broadcast-centric television market that was, until recently, insulated from many of the shocks that have shaped comparable markets overseas – namely, multichannel TV and transnational satellite TV (c.f. Chalaby 2009). Australia's geographically isolated television market has long been dominated by broadcast services, with pay-TV never exceeding 30% market penetration. Consequently, the arrival in Australia since 2015 of SVOD services such as Netflix (initially at very low entry cost, compared to the monopoly, high cost, pay-TV service Foxtel) has provoked widespread policy disruption, as Australian audiences migrate in huge numbers to SVODs and policy-makers are forced to rethink the purposes and effectiveness of a broadcast-centric local content regulatory framework. Meanwhile, the obvious regulatory imbalance between unregulated, mostly foreign-owned SVOD services and heavily regulated, advertising-strapped broadcast services has become a major policy issue, as reflected in the current emphasis on regulatory harmonisation in Australian media policy (Australian Government 2012, 2020).

Responses to this imbalance have included numerous official inquiries (no fewer than eight since 2017) to clarify the position of SVODs in the local content system. By early 2022, this protracted process had produced some firm policy proposals, including a 5%-of-revenue production obligation and discoverability reporting requirements for major SVODs (Australian Government 2022), although a change of government following the 2022 federal election has since placed that trajectory in doubt. Along the way, various other options, including an EU-style local content quota for SVOD catalogs, were considered but discarded. Across this rather uncertain and as-yet incomplete policy process, Australia has selectively chosen elements from a wider menu of available policy options for regulating SVODs, in ways that align with its regulatory histories, industry needs, and stakeholder expectations. Yet the stop-start nature of the process has provided little opportunity for reflection on its outcomes, the choices, and compromises made along the way, and how the Australian approach to SVOD regulation grapples with the 'unprecedented difficulties of application' (Farchy, Bideau, and

Taltec 2022, 2) inherent in SVOD regulation – a problem faced by many, if not all, nations seeking to develop policy for digital media services.

With this aim in mind, the present article provides a critical analysis of the attempted process of SVOD policy-making in Australia up until May 2022, when the centre-right Liberal/National government was replaced by the centre-left Labor government. We identify two key stages in the policy debate. The first stage (2017–2020) was driven largely by the interests of Australian broadcasters and producers and focused on retrofitting existing regulatory mechanisms to include SVODs. This involved expanding the existing system of production incentives to include SVODs and reducing the regulatory burden of broadcast and pay-TV incumbents under the guise of harmonisation. The second stage, beginning 2020, saw demand-side issues (discoverability) added to the policy agenda. This involved a belated reckoning with the distinctive cultural form of the SVOD service – a digital library rather than a linear schedule – and saw government address, reluctantly and minimally, cultural policy issues related to the disarticulation of content availability and discoverability in SVOD services.

Our approach in this article is informed by the critical tradition of media policy research, which explores ‘whose voices are heard, whose interests are weighed, and which proposals are deemed acceptable’ in the policymaking process (Galperin 2004, 19). Working in this tradition, scholars of Australian screen policy in the digital era including Thomas (2000/2001) Given (2003), Cunningham (2013) and Lotz and Potter (2022, 2022) have studied policy choices by the Australian government over the last 30 years in response to the ‘evolving convergence of broadcasting and telecommunications’ (Given 2003, 237), exploring the underlying political contexts and stakeholder interests that shape these choices. Our close attention to the policy process – taking in its historical and political contexts; submissions to, and results of, eight official inquiries and reviews addressing SVODs and/or digital platforms (see Figure 1); trade coverage; and observational analysis at numerous industry events² – allowed us to comprehend stakeholder ‘position[s], views, visibility, power and relationships’ (Van den Bulck 2019, 451). Weighing up the numerous factors influencing this policy process, one vector stands out as explicatory: the overarching deregulatory political disposition of a Conservative (Liberal-National Party coalition) government in power from 2013 to 2022, saddled with a historical bipartisan settlement to support local content but faced with the distinctive challenge posed by popular, foreign-owned SVOD services.

There is a certain historical symmetry to our investigation. Australian politics is dominated by two mainstream parties, Labor and the Liberal-National Party Coalition. Labor left office in 2013 without the political capital or time to implement the central recommendations of its Convergence Review (Australian Government 2012), a platform-agnostic policy that sought to determine local content production obligations based on the reach and revenue of media providers, rather than their mode of distribution. Under this model, broadcasters and major streaming services alike would have been equitably required to ‘invest a percentage of their Australian market revenue’ in local content production (Australian Government 2012, 66).³ Subsequently, the Coalition, which governed Australia from 2013 to 2022, has left a legacy of engagement from an anti-regulationist perspective, very ambivalently designed to address the local content problem in the wake of Netflix’s (and, subsequently, many others) disruptive entry into the Australian audiovisual market. At the same time, their engagement can be regarded as a prime instance of Murray Edelman’s (1985) notion of ‘symbolic’ policy, glossed by Cunningham (1992, 32) as the ‘tendency for policy making to invest its energies in the appearance rather than the substance of reform’. The policy process during this period produced considerable heat but little light in the way of substantive reform, with many important issues excised over time from the national policy agenda. By excavating the history of this policy process, our analysis clarifies the political logics that structured the SVOD debate in Australia, and shaped both government intervention and strategic inaction on the local content issue.

Year	Inquiry	Recommendations/options proposed in each report		
		Production obligations	Production incentives	Catalogue and discoverability
2017	House of Representatives #1 <i>Factors contributing to the growth and sustainability of the Australian film and television industry</i>	SVODs to ‘invest a percentage of the revenues they earn in Australia, for example 10 percent, in new Australian content.’	Increased tax offsets for SVOD production	N/A
2017	Australian Government Department of Infrastructure, Transport, Regional Development and Communications, Screen Australia and ACMA <i>Australian and Children’s Screen Content Review Consultation Paper</i>	(Report not publicly released – recommendations unknown)		
2017-2019	Senate Standing Committee on Environment and Communications <i>The economic and cultural value of Australian content on broadcast, radio and streaming services</i>	SVODs to invest at least 10% of programming expenditure on local content (Australian Greens, minority report)	Increased tax offsets and extension of eligibility to include SVODs (Australian Greens, minority report)	Promotion obligation for local content (Australian Greens, minority report)
2017-2019	Australian Competition & Consumer Commission <i>Digital platforms inquiry</i>	A platform-neutral ‘harmonised media regulatory framework’ for entities involved in content production and delivery		
2019-2020	ACMA/Screen Australia <i>Supporting Australian Stories on our Screens Options Paper (Model 3 – Significant)</i>	SVODs to invest ‘a percentage of their revenue’ in local content; financial reporting requirements	Platform-neutral harmonization of production incentives	‘Flexible, principles-based promotion and discoverability requirements’
2020-2021	House of Representatives #2 <i>Sculpting a National Cultural Plan: Igniting a post-COVID economy for the arts</i>	SVODs to invest 20% of AU revenues in new Australian production or acquisition of market-failure genres	N/A	N/A
2020-2021	Australian Government Department of ITRD&C <i>Media Reform Green Paper</i>	SVODs and AVODs to invest a ‘proportion’ (5% suggested) of their AU revenues in new Australian production; SVODs owned by a broadcast licensee exempt	N/A	Unspecified ‘discoverability requirements’ to ‘make Australian content discoverable to Australian audiences’
2022-	Australian Government Department of ITRD&C <i>Streaming Services Reporting & Investment Scheme Discussion Paper</i>	SVODs to report on local content expenditure – expectation is at least 5% of AU revenues – then formal obligations applied at ministerial discretion	N/A	SVODs to report annually to ACMA re local content discoverability on their platforms

Figure 1. The Australian SVOD policy agenda: relevant official inquiries, 2017–2022.

The politics of local content, then and now

To understand the factors driving Australia’s policy response to SVODs, it is helpful to consider the socio-political context of local content policies. While such policies for film and television have a complex historical lineage, with origins in early film quotas and other trade restrictions following World War I (Thompson 1985), the local content debate in Australia can be traced more specifically to

battles over cinema import and exhibition in the 1920s and debates about radio quotas throughout the interwar years. The first local content quota was legislated in the Australian Broadcasting Act 1942, which required commercial radio stations to devote at least 2.5% of their music time to Australian composers. Later revisions of the Act extended this precedent to commercial television stations, ratcheting up the quota over time to its present level (55% local content between 6 am and midnight) and requiring broadcasters to screen a minimum amount of drama, documentary, and children's content – the 'so-called "market failure" genres that are most vulnerable to substitution because of their cost' (Cunningham and Scarlata 2020, 156) – based on a points system in prime time and children's ('C') time.

Two important points need to be made about such prime time points regulation. First, it exemplified a central policy tension in that it is *both* a recognition of the economic vulnerability (as the costliest of all television programming) of prime time drama and social documentary *and* an assertion of its prime cultural value for audiences, whose sense of identity is bolstered by 'the shock of self-recognition' (Appleton 1988) rendered through these quality television genres. It is industry policy articulated through cultural policy.

Second, this broadcast quota was also a de facto discoverability measure as it required local content to have a guaranteed share of the most watched hours of the broadcast schedule. The end result of this system was that local content has been highly visible – indeed inescapable – to viewers of Australian broadcast television for several generations now. With the introduction of subscription television (pay-TV) operators in the 1990s, this approach was modified to comprise a 10% local content expenditure requirement (as opposed to a schedule quota) imposed upon their drama channels, via the New Eligible Drama Expenditure (NEDE) scheme. Given that this latter regulation was for first-release drama, it also was highly discoverable as it routinely occupied favourable viewing slots and was heavily promoted. As we will see, this historical nexus between regulated production and discoverability/prominence has now been definitively broken.

During the 2000s, Australian screen policy increasingly focused on the problem of internet distribution and the regulatory disparities it was destined to create. The aforementioned Convergence Review of 2012 dealt with the question of what to do about streaming services by proposing a harmonised system of content regulations which would apply equally to all major media providers regardless of their mode of distribution (i.e. online services and broadcasters would have equal obligations in terms of local content). While such an end state of harmonisation was repeatedly invoked in the policy moves of the subsequent years, the appetite for following through with substantive reform of the type raised in the Convergence Review lapsed. Consequently, Australian screen policy was left with a suggestive template but without sufficient policy capacity to introduce substantive reform.

The entry of Netflix into the Australian market in 2015 once again brought the harmonization problem to a head. Netflix was the first major SVOD to launch in Australia, arriving shortly after the launch of local streamer Stan. Amazon Prime Video arrived in 2016 and Disney+ and Apple TV+ in 2019. Of these various streamers, Netflix has been the most consequential from a policy perspective. Netflix was immediately and staggeringly popular with Australian audiences, and the trend has not abated: an estimated 12.8 million Australians are Netflix users (Roy Morgan 2022), out of a population of 25 million. Ampere Analysis (2020), a specialty SVOD research firm, has described Australia as the world's 'most highly penetrated Netflix market'.

Industry and government figures were initially optimistic about the arrival of SVODs, predicting an end to the digital piracy wars that had raged in Australia since the 1990s. However, a solution to one problem raised another. While Netflix and other SVODs proclaimed their intention to actively invest in local content production (Netflix 2017), these SVODs had no formal obligation to do so. This was in stark contrast to the incumbent free-to-air broadcasters charged, under the broadcast quota system, with commissioning hundreds of hours of Australian content each year. Consequently, local producer and creative sector groups called for SVODs to be brought into the tent of existing regulation. Industry advocates Screen Producers Australia (SPA) issued a press release welcoming

Netflix to Australia ('we are pleased to see a new player like Netflix enter our expanding market'), but making clear their expectations for reciprocity: 'while everyone is invited to the party, polite guests offer to bring a plate!' (Screen Producers Australia 2015).

While SPA and the production industry argued the case for regulating the SVODs, Australia's commercial TV broadcasters took a different approach in their lobbying. Rather than advocating for an extension of local content obligations, they used the arrival of Netflix as an opportunity to argue for a *reduction* in their own broadcast licence fees and other regulatory obligations, on the basis that they now faced unprecedented competition from digital services (Davidson 2015). The conservative government, historically protective of broadcaster interests, was receptive to these demands and cut the broadcasters' licence fees by 25% in the 2016 federal budget. This decision aligned with a long history of appeasing broadcaster interests by the conservative Coalition government, whose digital television policy decisions in the 1990s effectively ceded power over the new medium of digital broadcasting to these same commercial broadcasters. Meanwhile, the ABC (Australian Broadcasting Corporation), Australia's premier public broadcaster – which had been co-producing comedies, dramas, and kids shows with Netflix, including *Glitch* and *The Letdown* – argued the case for continued regulation of local content as a national priority, in contrast to the commercial broadcasters' position of maximal deregulation.

So, when the SVOD local content debate started in earnest in Australia, it was structured as a debate between the *regulation* of new services versus the *deregulation* of legacy services – two diametrically opposed positions in response to the same phenomenon, the entry of SVODs into the market. Furthermore, any cultural policy initiatives attentive to audience interests, such as local content discoverability and prominence in SVOD catalogues, initially had no representation in this policy debate, dominated as it was by the economic interests of broadcasters and producers. This brings us to 2017, when the first of a series of official inquiries into SVODs was announced.

Bringing SVODs into the local content system, 2017–2021

So far in this article we have described the historical trajectories and tendencies of local content regulation in Australia, and how the arrival of SVODs impacted the matrix of policy positions. In this section, we consider the specifics of policy reform between 2017 and 2022, before moving on in the final section to explore some wider implications for cultural policy debates. Before we begin, it is important to note that the political and policy climate in Australia was highly volatile during the years of SVOD arrival. The Liberal/National government floundered through three Prime Ministers and the same number of Communications Ministers between 2015 and 2018, which affected government capacity (and accountability) for policy reform. Nonetheless, a remarkable amount of policy attention was occupied by the SVOD issue during these years (see [Figure 1](#)). This convoluted policy process, which we narrate below, produced some clear policy preferences which can be summarised as follows:

- narrowing down the options for SVOD regulation to a shortlist of acceptable approaches, of which a minimal production obligation (5% of revenue earned in Australia) was the preferred model;
- rejecting the possibility of an EU-style content quota, despite earlier consideration of this model in the SVOD regulation debate;
- redefining existing production incentive schemes to include SVODs, giving Netflix and other SVODs access to a valuable source of federal government funding;
- protecting incumbent media companies (commercial TV broadcasters) by scaling-down legacy local content obligations and licence fees; and
- only the most perfunctory, non-specific, attention paid to demand-side discoverability issues for SVODs.

The starting point for this long policy process came in February 2017, when the then-Communications Minister, Mitch Fifield, instructed the House of Representatives Standing Committee on Communications and the Arts to commence an official inquiry into ‘Factors Contributing to the Growth and Sustainability of the Australian Film and Television Industry’. The committee consulted throughout 2017 and delivered a series of 13 recommendations in December. These mainly concerned reforms to the existing Australian Screen Production Incentive and television content quota systems, but among them was also a projection that ‘future reforms’ should ensure that SVODs invest a fixed percentage of revenue in new Australian content, offering 10% as an appropriate example (Australian House of Representatives 2017, 55).

As has previously occurred in Australian history, the mere prospect of regulation seemed to spur an industry response. SVODs released a spate of locally produced dramas in 2018 including Netflix’s supernatural thriller *Tidelands* and Stan’s quality dramas *Bloom* and *The Gloaming*. Netflix also coproduced seven shows with the ABC and commercial broadcaster Seven Network between 2015 and 2018 (the rate of coproductions would decline significantly in later years, as Netflix began to develop its own original production resources in Australia). Meanwhile, Stan pursued international sales of its originals to network and pay-TV partners abroad, refraining from coproductions with local networks or other streamers.

Netflix and Stan offered the launch of these shows as proof that SVOD regulation was unnecessary, pointing to their other production investments and acquisitions as evidence of their commitment to the local industry. Netflix’s Reed Hastings cast doubt on the utility of quotas altogether, arguing that such regulations ‘often backfire’, leading to low-quality content (McDuling 2018). Netflix – despite not yet having an Australian office – also took this opportunity to brief journalists on the scope of its local investments (McCauley 2018) and sent a delegation to the annual SPA conference for the first time.

By late 2018, the momentum that had gathered around the SVOD policy issue was starting to dissipate. The Australian Screen and Children’s Content Review final report disappeared into a bureaucratic black hole, with Minister Fifield refusing to release it. Experts observed that Australia was in a ‘state of policy limbo’ (Potter 2018), and the media fretted that ‘the regulatory framework to support local content on these emerging services [was] nowhere to be seen’ (Quinn 2018). One reason for this policy inaction was the decision by another arm of the Australian Government, the Australian Competition and Consumer Commission (ACCC), to launch a major, overlapping review – the Digital Platforms Inquiry. This sweeping examination of the effects of tech industry disruption in the Australian landscape was driven by the ACCC and Treasury, rather than the Arts or Communications ministries, giving it more resources and clout. As with Labor’s earlier Convergence Review, the Digital Platforms Inquiry was the succeeding Coalition government’s attempt to map out a future-facing framework that would resolve the obvious discrepancies, deficits, and imbalances of existing digital media regulation. While the Digital Platforms Inquiry had little to say about SVODs (its focus was on advertising and journalism), it served to suck some of the oxygen from the local content policy reform process, which was now apparently on hold until the ACCC had finished its deliberations. Everything seemed to grind to a halt. One of the few new measures to emerge from the whole process in these ‘wasted’ years of 2018–2019 was the Minister’s decision to extend the eligibility for existing production incentive schemes (the Location and PDV producer offsets) to SVODs, enabling them to receive government funding for Australian-made shows. Netflix acted quickly, securing the location offset for its A\$51-million series *Clickbait*, which was shot in Melbourne.

The publication of the ACCC final report in July 2019 coincided with the appointment of a new Minister for Communications, Paul Fletcher, and industry observers expressed hope that he would end the ‘policy paralysis’ (Groves 2019). But these events instead signalled something more like a new beginning to the public consultation process, rather than an end. Four further public inquiries were to come. In late 2019 the government requested that the national media regulator and key federal funding body, Australian Consumer and Media Authority (ACMA) and Screen Australia, co-author an options paper; Supporting Australian Stories on Our Screens (ACMA and Screen Australia

2020) was published in April 2020. This proposed four regulatory model options ranging from preserving the status quo to total deregulation of the screen industry. Model 3 – the model preferred by producers – held that all ‘commercial content service providers’ would be required to invest an unspecified percentage of their Australian revenue in new local scripted programming (a proposal broadly comparable to what had been laid out in the Convergence Review 8 years prior). The apparently ecumenical and ‘neutral’ third model would be the basis of further proposals going forward.

The subsequent Media Reform Green Paper in December 2020 (Australian Government 2020) showed the government narrowing in on a specific regulatory position, which was to mandate a minimum local production obligation for large SVODs and AVODs. The indicative figure suggested was 5% – a rate that arrived in tandem with a push by Minister Fletcher to lower the NEDE rate from 10% to 5%, although this was later blocked in Parliament in mid-2021.⁴ This position was further elaborated in the Department’s ensuing Streaming Services Reporting and Investment Scheme Discussion Paper (SSRIS), published in February 2022 (Australian Government 2022). Here, the mandated 5% of revenue figure transformed into a voluntary investment rate, with any services dropping below subject to vaguely defined obligations applied at ministerial discretion.⁵

While these inquiries took place, the Australian streaming market was evolving rapidly with the arrival of AppleTV+ and Disney+ in 2019, Binge in 2020, and the launch of Paramount+ (a rebranding of 10 All Access) in 2021. By this time, Netflix had also opened an Australian office (in June 2019) and was setting up industry scholarships and making donations to arts initiatives. The streamers began to operate more visibly as a stakeholder bloc, preparing a combined response to the 2020 options paper that touted their existing investments and advocated for total deregulation (Netflix et al. 2020). These voices combined with their counterparts in broadcasting to sustain the overall downward pressure on the continuance of the production quota system in Australian broadcast television, although the government seemed less minded to heed the streamers’ calls for a complete deregulation of the audiovisual sector.

In April 2020, the government temporarily lifted the sub-quotas and NEDE system as part of a COVID-19 relief package, followed in September by a more permanent proposed reduction of NEDE from 10% to 5% and a re-setting of more flexible TV sub-quotas. Alongside this, Minister Fletcher announced the harmonisation of the Producer Offset at a rate of 30% for both film and television – a figure which was later increased to 40%. These concerns were intensified by the COVID crisis, which though presenting an enormous threat to the production sector’s income, resulted, at first, in a bullish investment environment when Australia’s initially effective management of the pandemic brought a number of major US movie and TV productions to Australia. But by the time the blush fell off this rose, the production stakeholders were facing down a looming ‘production void’ (Keast 2021); an interregnum between the loosening of broadcast quotas and the possible arrival of SVOD obligations. These concerns and the lack of meaningful policy reform on the local content issue continued until the conservative government was voted out in May 2022.

Implications for screen policy

What can we learn from this unfinished process of policy reform in Australia? What explains its duration and inertia? As we have shown, the job of dealing with the SVOD local content problem fell to a conservative government ideologically hostile to increased regulation and ambivalent, if not openly antagonistic, to arts and creative interests usually expressed through cultural policy. As a result, political will for substantive reform was low. There is also the deeper historical contingency of Australia’s screen policy settings, which includes a longstanding but implicit ‘quid pro quo’ or trade-off (Goldsmith 2014): regulating commercial broadcasters via local content quotas balanced by protecting those same broadcasters from competition. It also includes a complex set of existing legislative dispensations and exemptions that has caused ‘harmonisation’ to be an ‘end-state’ out of

reach thus far. The traces of these long-term path dependencies are plainly visible in the SVOD policy process.

Another key factor was the government's overtly protectionist approach to Australia's 'broadcast regime' (Galperin 2004), a term useful in characterising the Coalition government's preferencing of legacy broadcasters' interests across the policy process. As our account explains, the government was quick to act on broadcasters' demands to dismantle key elements of the quota system during the Covid crisis. Likewise, its response to the imperative of harmonisation was to decisively scale-down broadcaster obligations while moving – much more slowly and uncertainly – toward a modest scaling-up of SVOD obligations. Seen from this perspective, the policy history suggests that SVODs were actually not the main focus for the Australian government, which was arguably more concerned with the broadcasters and their long-term sustainability. The entry of Netflix into the Australian market thus represented a convenient opportunity for the government to further extend its de-regulatory agenda in broadcast policy under the guise of, first, protecting national champions against unfair (foreign-owned) digital competition and then, later, Covid recovery.

Another possible explanation is that Netflix and other SVODs fell in between the multiple different roadmaps or 'shared scripts' (Galperin 2004) that have long shaped Australian screen policy. SVODs are television-like services that use internet distribution to deliver content; they are library-like in their catalog structure; and they have some platform characteristics (but are not multisided markets in the same way as YouTube or other AVODs are). Consequently, SVODs fell in between the gaps of existing policy regimes designed to regulate television, film, and video. Similarly, SVODs were not ideal subjects for the kind of digital platform regulation being developed in Australia by the ACCC's Digital Platforms Inquiry, because they are 'portals' rather than 'platforms' (Lotz 2017) – i.e. they are professional content distributors rather than multisided platforms. Netflix was the ultimate chameleon in these debates, attracting diverse definitions and suggestions for policy solutions from industry stakeholders. To producers, Netflix was just another television supplier that should be regulated via a broadcast-style quota system or a pay-TV-style expenditure obligation. To local film exhibitors, Netflix was a home video release window (Independent Cinemas Australia 2021). Meanwhile, Netflix was busy re-defining itself as a multi-national producer and, of course, an aspiring Australian media organisation firmly committed to long-term local production. As of 2022, Netflix is also now an advertising platform, further complicating Australian policy proposals (which are thus far based on subscriber revenue as the metric for calculating producer obligations).

Meanwhile, the market for high-end dramatic fiction and innovative docu-genre that the prime-time local content quota supported has shifted significantly. Tent-pole prime time programming on commercial television is now dominated by various genres of reality TV (cooking, property make-overs, amateur singing contests, and so on), while SVODs have traditionally built their catalogs around comedy, drama, movies, and documentary. Whatever could or should be made about the value of cultural and national representation in reality TV (see, e.g. Hartley 2004), the fact is that there is no call for policy intervention to support it, as its cost base is much cheaper than drama and documentary. Reality TV is not a 'market failure' genre. Unable or unwilling to compete with SVODs on the ground of high-end quality television, incumbent commercial broadcasters have been happy to cede this ground to SVODs, knowing that it will undermine the basis for the regulation currently imposed on them.

These were some of the factors informing the then Australian government's approach to SVODs, hovering somewhere between 'regulatory forbearance' (relaxing rules for incumbents while prevaricating on rules for *arrivistes*) and disinterest. What is clear is that the government proved both decisive and capable when it came to protecting broadcaster interests, suggesting it was willing to tolerate a weakening of local content in terms of cultural policy objectives (specifically, production of the most costly and refined Australian screen stories) but would not brook further weakening of the institutional structures of Australian broadcasting (the three commercial TV broadcasters, their workforces, tax revenue, and the significant political influence they continue to exert in Australian

public life). In this sense, the Australian government's response can be seen as a protectionist move in the unfolding drama of global platforms versus national policies.

The deferral of discoverability

Throughout this long process, the ultimate cultural policy objective – the benefits to the citizenry of 'Australian Stories on our Screens' – took a back seat to the more urgent matter of production support. In particular, the vexed issue of *discoverability* – whether Australian audiences can easily find Australian content in SVOD interfaces and catalogues – was absent for most of the debate. Discoverability, as defined by Mazzoli and Tambini (2020, 12), refers to the 'likelihood of discovery' within a digital interface, and how this is shaped by 'industry dynamics, strategies, negotiations and curation'. This expansive concept encompasses the more specific notion of prominence as defined in European media law (García Leiva and Albornoz 2021a). As we noted earlier, jurisdictions including the EU and Canada have actively moved to introduce local content discoverability expectations in their current media regulation (Lobato and Scarlata 2022). Yet Australia's position remains unclear, suggesting an uncertain future for one of the most vital cultural policy issues raised by SVODs.

As we outlined above, discoverability of local TV content in Australia has long been achieved by the broadcast TV quota and the ancillary requirement that a minimum 55% of local content to be shown during prime-time hours. This meant that, historically, local TV content was more or less inescapable for viewers of linear broadcast television in Australia. The movement from the constricted offer of linear TV to catalogue-based abundance has fundamentally changed the equation, a problem recognised only sporadically during the national SVOD policy process. For example, the importance of discoverability was initially flagged by the Senate committee report, in which minor party The Greens endorsed an EU-style promotion requirement (Australian Senate 2019, 94), and then again in Model 3 of the 2020 Options Paper, which canvassed the possibility of 'flexible, principles-based promotion and discoverability requirements' (ACMA and Screen Australia 2020, 41). However, discoverability received little attention in the ensuing Green Paper, meriting only three brief mentions in comparison to a whole chapter on production support proposals (Australian Government 2020). This reflects the influence within the debate of production-sector interests, which have made the case for production support as the most effective form of cultural policy. In contrast, demand-side issues did not find representation in a substantive stakeholder constituency. While institutions like film theatres, festivals, and public broadcasting advocacy groups made contributions to the consultation process, none emerged as a champion for the interests of Australian viewers in accessing Australian content.

Eventually, there was some movement on discoverability in the government's Streaming Services Investment Reporting and Investment Scheme (Australian Government 2022). This document proposed a mandated reporting framework which would apply to major SVODs, requiring them to report annually on

how they are making Australian content discoverable to Australian audiences ... including on [the] landing page, through tagging and search retrieval functions, algorithmic-driven processes, and any other mechanisms ... [such as] recommendations, drop-down menus or other user interface elements. (Australian Government 2022, 31–32)

But this was a *reporting* requirement only: SVODs would not be expected to reserve space for Australian soap operas on the home page or boost the visibility of Australian movies in their recommendation algorithms – at least, not yet. Instead, the plan was for government to impose a modest amount of paperwork on SVOD services that would hopefully produce useful metrics on audience engagement with Australian content. Summary information would be published annually by ACMA, and the results would be considered by the government in the context of future policy development. In other words, the government was sending a signal: it was interested in and

potentially willing to act on SVOD discoverability, but was not yet convinced there was a significant problem here worthy of immediate regulation or clear on what such policy would look like.

In the context of a policy process leaning heavily toward production, it is important to reflect on the ultimate objective of local content policy. That objective is the cultural and social uplift, insight, and enjoyment from which citizens may benefit as a result of seeing, sharing, and reflecting on local content. Production of such content is necessary but not sufficient to achieve this outcome. In the broadcast paradigm, Australia's regulatory policy aligned efficiently and effectively with funding policy – the 'market failure' genres that attracted funding support were also targeted in the points system for prime time and children's time, ensuring that what the taxpayer supported sat in a very prominent and appropriate position in a relatively limited set of viewing options. As such, this content was highly discoverable. Additionally, the national pay-TV provider Foxtel has typically over decades promoted prominently and scheduled 'prime time' launches of the Australian original content incentivised by the NEDE.

Yet this equation between production, availability, and discoverability has been disrupted by digitalization in its many forms, which has radically expanded the content landscape, introducing new challenges for audience engagement with local content. The history of digital TV in Australia provides salutary lessons in this respect. Anna Potter and Amanda Lotz have recently chronicled in detail the 'first stage of Australia's digital transition and its implications for Australian television drama' (Potter and Lotz 2022). They make a series of important points that provide a historical context for current policy options. As Potter and Lotz observe, from 2009 onwards the commercial free-to-air networks – incentivized by the prospect of 'double weighting' (Potter and Lotz 2022, 100) first-release drama by scheduling it on their multi-channels – used these multichannels as a dumping ground for local content while simultaneously reallocating investment from drama to light entertainment. The overall effect was to decrease discoverability of Australian drama in the broadcast schedule, resulting in 'enormous erosion of drama viewership' between 2010 and 2019 (Potter and Lotz 2022, 101). As Potter and Lotz argue, this policy and the resulting scheduling strategies adopted by the broadcasters had 'a profound impact on the cultural visibility of drama and children's programmes' (Potter and Lotz 2022, 101). This is a valuable example of the close relationship between discoverability and audience engagement. If content is hard-to-find, demand for that content will decay, as will its production ecosystem. Potter and Lotz note the case of the long-running Australian soap opera *Neighbours*, which lost half its audience (400,000 viewers) and much of its on-air promotion when moved from Channel 10 to Eleven in 2011, and which was cancelled in 2022 after also losing its UK broadcast partner.

These changes in the scheduling and promotion – the discoverability – of Australian television drama occurred with little scrutiny, debate, or review of its cultural implications. Given the radically different way in which viewers come to a knowledge of 'what's on' in the SVOD era and given that most scripted drama and feature documentary viewing has shifted to SVOD services, discoverability is now among the last bastions supporting the fundamental cultural rationale for Australian content regulation.

It should be noted that both the former Coalition and current Labor governments have both signalled their willingness to legislate for a different aspect of this issue: prominence for Australian broadcasters in connected-TV interfaces. At the time of writing, the Communications Minister, Michelle Rowland, is working with broadcasters on new legislation to ensure that Australian TV network apps can be easily found on smart TVs and other streaming devices, to protect broadcasters' 'crucial role in supporting our sense of cultural identity and informing and entertaining all Australians' (Rowland 2022). A government-industry forum – the Future of Broadcasting Working Group – has been established to advance this discussion. This, like the proposed local content production obligations, is also a rear-guard response to the power of Netflix and other SVODs – the argument being that government intervention is needed to ensure that nationally significant broadcasters and their content aren't relegated to the status of 'just another app' on the smart TV home screen. These policy debates belatedly follow other jurisdictions that have developed detailed

proposals for modernising and adapting prominence rules to the current streaming age (Ofcom 2019).

This is an evolving area of media policy and much has yet to be decided. Yet Australia's demonstrated policy preference to date – i.e. disinclination to regulate for SVOD discoverability despite enthusiasm for production incentives, broadcaster handouts, and prominence regulation – points again to what has arguably been the key determining factor in national media policy all along: the desire to protect national *broadcasters* from digital competition.

Conclusion

This article has analysed Australia's changing national policy framework for local content since the arrival of SVODs in 2015. Locating the Australian case in relation to international precedents, we have sought to identify and explain how policy positions have evolved over time. Our analysis has drawn attention both to intent and to contingency in screen policymaking. Much of what we have described falls into the category of policy inaction as much as policy reform. Nonetheless, it is possible to determine in the Coalition's ad-hoc attempts at policy reform between 2017 and 2022 some reasonably clear positions, including continued support for national champions, the 'deferral' of discoverability as a policy issue, the preference for supply-side rather than demand-side interventions, and the changing balance between industry support policy and traditional cultural policy.

Our analysis of these developments contributes to the comparative understanding of national policy responses to multi-territory SVODs. As earlier studies in Canada (Zboralska and Davis 2017), Italy (D'Arma and Giovanni 2021), the EU (García Leiva and Albornoz 2021a, 2021b) and internationally (Lobato 2019) note, the process of regulating transnational digital platforms at national scale is fraught with difficulty. Yet, as D'Arma and Giovanni (2021, 465) astutely observe, this process may also provoke alliances of common interest between domestic stakeholders, along with 'heightened sensitivity on the part of national policy-makers towards issues around the protection of domestic audiovisual industries in the face of strong globalization pressures'. Our analysis of the Australian case supports this view, revealing how the perceived threat of transnational SVODs was effectively mobilised by Australia's commercial broadcasters, who were able to convince a willing government to pursue deregulatory reforms designed to shore up their commercial position in a changing market.

We started by citing Curran and Park (2000), placing Australia in the 'democratic neoliberal' tradition, along with Japan, the US, and Britain. The evidence of extended regulatory forbearance – that is, as noted previously, repeated activity to protect incumbent broadcasters at the same time as prevaricating on SVOD regulation – presented in this article would support such a categorisation. But even in these so-called democratic neoliberal jurisdictions, there are policy developments concerned with giving legacy broadcasters due prominence in SVOD-disrupted viewing environments. And Australia's long held, bipartisan, commitment to local content regulation in support of a cultural citizenship and national identity ideal to be realised through an intervention in the commercial environment suggests that the Australian media system exhibits at least aspects of what Curran and Park dub 'democratic regulated societies' (their single example is Western Europe). In this sense, Australia remains a hybrid policy space that adapts templates from other jurisdictions.

One implication of our argument is that the national cultural policy space must increasingly be defined in such a way as to include foreign and multi-territory SVOD services as much as national cultural institutions, stakeholders, and agencies. It is a mistake to think policy is only made by state actors. Platforms (including SVODs) expend considerable resources seeking to influence public policy globally (Popiel 2022) but it is SVODs' internal policy-making, expressed as business strategy, that exerts profound influence over national jurisdictions and their capacity for response. The core of the Silicon Valley playbook is 'to disrupt highly regulated markets with a consumer-focused and -friendly offer based on world-class software and powerful recommendation algorithms while relying on already established and often publicly-developed and -provided broadband and

telecommunications infrastructure' (Cunningham and Eklund 2022, 194). The playbook also includes strategies to exploit gaps in existing national regulations (especially between telecommunications and broadcasting). Our analysis suggests that these efforts have been quite successful in Australia, but only to the extent that they align with the policy preferences of national incumbents. The increasing prioritisation of supply-side local content measures, including generous production incentives, is evidence of this alignment and its ascendancy in recent national screen policy.

There remains considerable uncertainty about the future of SVOD regulation both in Australia and internationally. Much may depend on whether the category of SVOD, so important to policy debates over the last decade, endures into the future. Given Silicon Valley's 'permanent beta' posture of constant change, this category is increasingly tenuous. For example, Netflix and Disney+ have introduced ad-funded tiers which redefine these services as hybrid AVODs/SVODs. Their challenge in national advertising markets may see the convenient deregulatory alliance of interests they share with incumbent broadcasters break down. Meanwhile, AVODs like YouTube are aggressively becoming TVODs while simultaneously offering an SVOD-like 'Premium', ad-free, service. Amazon Prime Video likewise has extensive TVOD rent/buy options, and functions simultaneously as value-add service for Amazon Prime members (which potentially makes revenue-based measures problematic to enforce for national media regulators).

These business-model mutations pose difficult questions for national media regulation based on a single industrial category such as SVOD. Indeed, will SVOD as a stand-alone category exist in five years? In another case of back to the future, will it move to operate closer to a pay-TV, mixed revenue model? Will Netflix and others threaten to withdraw their service from jurisdictions which mandate production and other obligations – as Facebook and Google have in related skirmishes with regulators? Will SVODs increasingly partner with broadcasters in order to exploit carve-outs in regulation? These uncertainties will pose challenging problems for media regulators and also for scholars of cultural policy, as we seek to make sense of the diversity of national responses to streaming services. We hope that this article, which locates the Australian experience within this wider context, has provided useful ideas to advance the discussion.

Notes

1. Additionally, many other countries have imposed or are considering a general sales tax for digital services (e.g. the OECD's digital tax initiative). This is distinct from 'Netflix taxes' as understood in cultural policy terms – i.e. as production obligations or levies designed to support national screen production (Kerševan Smokvina 2021).
2. Our primary research focused on eight Australian federal government inquiries and reviews addressing SVODs and/or digital platforms (Figure 1). These include two parliamentary committee and one senate inquiries (Australian House of Representatives 2017, 2021; Australian Senate 2019), the Australian and Children's Screen Content Review Consultation Paper (Australian Government 2017), a parallel, Treasury-led inquiry into digital platforms (ACCC 2019), and various departmental options papers and green papers in which a regulatory agenda for SVODs began to evolve (ACMA and Screen Australia 2020; Australian Government 2020, 2022). For each of these inquiries, we analysed the official documents and public submissions to identify policy positions, framing, and coalitions among stakeholders. We also analysed trade sources (*Inside Film*, *Screen Hub*, and major news dailies) to reconstruct media coverage and stakeholder public relations. Additionally, between 2017 and 2022, we conducted observational analysis at numerous professional events hosted by national regulators and screen industry associations.
3. The Convergence Review, along with later policy proposals, also offered the option for major providers to pay a levy into a national cultural fund, rather than produce their own local content.
4. Following the precedent laid out in the prior options paper, this production obligation would not extend to services owned by broadcast or subscription-TV licensees – a conspicuous carve-out for Stan and Binge, local services owned by politically friendly companies (Nine and News Corp/Telstra) that the government wished to keep on side. Minister Fletcher justified this decision on the basis that their corporate owners already undertook content obligations in their broadcast holdings (Slatter 2021).
5. No submissions to, or final report from, the Streaming Services Reporting and Investment Scheme review had been made available at time of writing.

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