Response to Convergence Review Interim Report

Thank you for the opportunity to respond to the proposed recommendations in the 11 key areas outlined in the interim report from the Convergence Review.

We agree that the regulatory environment should adapt to accommodate the increasingly prevalent digital technologies, and that Australia must invest in the creation of new content. We understand that this is only an interim report and take this opportunity to emphasise some issues we believe will be central to Australia harnessing the opportunities offered in this digital age.

Key issues that we urge the Convergence Review team to recommend to government are:

- a quantified commitment from Government to invest in Australian content along with taxation and other measures which will be conducive to third party investment in the creation of Australian content;
- ensuring a secure online environment in which cultural content can be traded by creators with confidence;
- that export of Australian cultural content be a foundation block of a policy responding to convergence;
- support for marketing that will ensure Australian creators gain profile in the globalised online environment; and
- the alliance of policy recommendations with other key reviews commissioned by Government, such as the Book Industry Strategy Group, the Cultural Policy Review and the ALRC reference on copyright.

About Copyright Agency

Copyright Agency is a member-owned, not-for-profit organisation founded by Australia’s authors and publishers in 1974 in response to the increased reliance on photocopying by teachers to supply their students with content in classrooms. We are appointed by the government to manage statutory licences which provide access to the education and government sectors (for analogue and digital use) and voluntary licences for commercial and other organisations, on the basis that remuneration is paid through Copyright Agency back to the creators and publishers whose works are used.
Copyright Agency membership comprises more than 20,000 Australian authors, artists and publishers. We collect and pay over $120 million per year back to the creative community for use of their work and to reinvest into the creation of new quality content.

Copyright Agency and Convergence

Our members are part of the converged environment. Our membership includes Australia’s journalists who are almost universally now required to publish content for digital consumption, and to utilise the growing number of social media to communicate with their readership relying on an array of sources for stories. With most traditional broadcasters now distributing content to their audience online, they are increasingly relying on text based content where previously they have only been involved in the provision of radio and television content.

Another example of Copyright Agency’s member creators being involved in converged creation of works is the growing number find their skills are now involved in the creation of audio-visual interactive games.

A complement to our members’ operating directly in the converged environment is a requirement from our members and our licensees that we develop collective licensing to cater to the converged environment where individual licensing would be less efficient. Licensees are looking for ‘one-stop-shop’ licensing terms which allow them to go to the one party to secure the right to access and use all copyright works.

We therefore believe that distinctions between broadcasters and other parties creating and distributing content will become less relevant – and all parties who have a significant role in content making and delivery, including Copyright Agency and our members, should be contemplated in this policy review.

Promoting Australian content

We are pleased to see recognition in the interim report of the importance of Australian content, and the ‘ongoing need for government intervention to support production and distribution of Australian content.’

The interim report recommends three types of government intervention aimed at providing funds for content production:

- extension of the existing 40% producer offset tax rebate for feature films to ‘premium television content exceeding a cost threshold’;
- extension of the existing 20% producer offset tax rebate (for productions such as television, TV, documentary and animation) to ‘interactive content such as games and other applications’; and
- funding from the converged content product fund for ‘key genres’ (such as drama, children and documentaries); local, regional and community content; and ‘innovation in content and platforms’.

Convergence of content forms

While the focus of the inquiry and interim report is on the convergence of delivery mechanisms, we think that there needs to be clearer recognition of convergence of content forms. Where once there was a clear distinction between, for example, ‘audiovisual content’ and ‘text content’ those distinctions are becoming increasingly blurred, and all sorts of content can be ‘interactive’.
These distinctions can be a useful starting point for public policy (for example, funding interventions), but may not deliver the right outcomes if applied too rigidly. We therefore submit that other attributes (such as the ‘Australianness’ of the content, or the nature of the intended audience) may need to be taken into account.

The convergence of content is recognised in some recommendations (in particular, the recommendation for a ‘converged content production fund’), but other recommendations are based on the form of the content (in particular, the 40% tax offset for audiovisual content). By contrast, eligibility for the 20% producer offset scheme is, at least in part, determined by the nature or functionality of the content (that is, ‘interactivity’).

Uniform scheme for Australian content

The interim report recommends that the government move away from the focus on commitments by free-to-air television broadcasters to support Australian audiovisual content, and impose obligations on all ‘Content Service Enterprises’. Possible criteria for a ‘Content Service Provider’ are set out in Chapter 4 of the report, and include factors such as the number of viewers or subscribers, and the commercial scale of the enterprise.

The recommendation is that a Content Service Provider support Australian content either by:

- committing a percentage of total program expenditure to specified Australian content; or
- contributing to a converged content production fund.

We support the imposition of obligations on Content Service Enterprises to support Australian content, but we do not agree that these obligations should be confined to Content Service Enterprises ‘that provide audio-visual content’. The criteria developed to determine whether an enterprise is a Content Service Enterprise should not include the form of the content it delivers, and neither should the obligations to support Australian content be affected by the form of the content.

We also submit that the final report should quantify the levels of support that would be required of the content service providers.

We note the similarity of the recommendation in the interim report and that of the Broadband Services Expert Group in its 1994 report *Networking Australia’s Future* that “providers of broadband entertainment and information services be obliged to commit at least 10 per cent of their expenditure on content to new Australian content.”

40% rebate

In support of the recommendation to extend the 40% rebate, the interim report says (at page 13): ‘Submissions argued that the offset should reflect the “high end” nature of the investment made by the producer rather than the format of the content.’

The term ‘format’ is used here to mean the primary delivery mechanism (cinema vs television). We submit that the argument applies equally to the form of the content: if the criterion is the level of the investment (and possibly the level of risk associated with that investment), then it should not matter whether the form of the content is audiovisual or something else. To date, these high level investments (with high risks) have largely applied to audiovisual content, but that may change in the future.

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20% rebate

We support the recommendation that ‘interactive content’ be supported by the 20% producer offset scheme and the converged content production fund. We are pleased to see that the report appears to take a broad view of the content that may be regarded as ‘interactive’. Many publishers of content that is primarily text are now producing interactive content – particularly those who produce educational resources.

We note that the policy driver is not the functionality of the content per se (interactivity), but rather that this type of content ‘can make a significant contribution to developing Australia’s identity and cultural diversity’. It is important that this criterion remain the major factor for support.

Converged content production fund

The interim report recommends the establishment of a converged content production fund, which would be funded by the Content Service Providers, and could also be resourced from spectrum fees and direct government funding.

We support the establishment of a fund, and the examples given in the report of the sorts of content and projects that could be supported by the fund.

We submit that the examples should expressly include Australian educational resources. A sense of Australian identity is shaped at an early age, and policies aimed at fostering production and consumption of Australian content need to cover the production and delivery of educational resources. Australian educational publishers are embracing the online environment, but successful, innovative online educational resources can involve significant investment and risk.

Other government intervention to support Australian content

There are other forms of government intervention that can be fundamental to the financial successful of new content.

These include:

- funding and technical assistance with marketing; and
- funding and technical assistance with export.

Development of export market for Australian content

We agree with the observation in the interim report (at p 11) that:

>The maintenance of Australian content levels will be challenged as more content becomes freely available from overseas sources. Ultimately it is likely that increased direct government funding will be required.

A fundamental area for support is export. While some assistance is currently available, for example through Austrade’s Export Market Development Grants Scheme (EMDG) and the Australia Council, we submit that additional forms of assistance are required.

Ways in which export support could be provided include:

- Australia should look to the development of export councils to promote Australian cultural content to the world. For this we should emulate the best of what the British Councils around the world do for British cultural content. Such missions should act as ‘one-stop-shops’ to promote Australian books, art, film, music and other cultural works. Such a strategy would be consistent
with the Brand Australia which the Australian embassy in China has developed as part of ‘Imagine Australia’. The policy in China is just beginning to pay dividends in the publishing sector – with a number of Copyright Agency’s publisher members who have attended the writers’ weeks and publishers’ forums over the last several years reporting that rights exchange is only now crystallising.

- Analysis of potential markets should drive the location of such missions, and Copyright Agency acknowledges the initial steps taken in Beijing, and thinks they should be heightened in accordance with the widespread acknowledgement that this is the Asian century led by China.
- Physical one-stop-shops for Australian content should have an online equivalent which provides a point of access for consumers of all sorts to quality, unique information about Australian culture and appropriate links or facility to distribute content. Content would of course need to be organised in a manner which made navigation for users intuitive and simple, and frequently supplemented to ensure that it is a relevant and current resource.
- International examples we could learn from include the online initiative founded by our NZ collective management counterpart to showcase their publishing industry to the world; and the Canadian eBound project.
- Support for Australian presence at international art and publishing trade fairs, especially where especial profile of Australian content is offered – i.e. the Frankfurt and Bologna book fairs, art biennales in Venice, Istanbul and other locations.
- Promotion of Australian works, whether as part of an export strategy or to ensure a thriving local publishing industry, will require successful advertising and marketing strategies for the digital market place. Copyright Agency submits that funding is required to support training and skills development in this area – especially for the smaller and medium sized Australian publishers who do not feel that they have the necessary resources to work effectively in this area. A similar requirement exists for artists and galleries to promote the works of local artists to foreign markets.
- The sector of the Australian publishing industry that appears most concerned about its future, and which Copyright Agency thinks should be central to it, are booksellers – who work as promoters of the works they sell. Successful booksellers run a program of book launches, readings, author talks and other experiences which create a close bond between them, the creators of works they profile, and their consumers. Booksellers need to be assisted into moving their services online. Many Australian booksellers either do not have a presence online, or have a very primitive online presence. They need to be provided with the resources to build websites and other digital infrastructure, including professional skills.

Other forms of intervention

In our initial submission to the Convergence Review and in our submission to the National Cultural Policy, we supported the recommendation of Artspeak for a percentage of the National Broadband Network (NBN) budget to be set aside for the creation of Australian content.

We understand that the NBN would not itself be a Content Service Enterprise, but would provide delivery channels for Content Service Providers.

We also support the recommendation of the Book Industry Strategy Group that funds from the Education Revolution be allocated to the creation of quality Australian content.

Other factors affecting commercialisation of online content

Other factors affecting the successful commercialisation (and thus return on investment) include:
Efficient copyright licensing arrangements

Efficient copyright licensing arrangements can provide important sources of revenue for those creating and producing content for online dissemination. While direct licensing to customers can be managed by content producers, the ‘downstream’ use of content by others in appropriate circumstances can be enabled by rights management organisations such as Copyright Agency. Such arrangements can provide much wider access to the content, while providing fair returns to the content creators. Such arrangements have worked very successfully to date in the education sector. Australian teachers have immediate access to virtually all text and images to deliver to their students, without any copyright clearances. The fair payment made for this access and use is paid to the content creators and producers for investment in new content.

Ensuring secure online environment for the trade of content

We are keenly aware that digital creation, distribution and consumption of creative content is still in its infancy. Copyright Agency recently undertook a survey to which over 2000 of our members responded about their perceptions of the digital environment. For around two thirds of the authors and publishers who responded, digital publishing still only accounts for less than 5% of their revenue.

One of the main issues publishers and authors identified as a concern for them in the digital environment is the threat of online piracy. Digital copies can be made in limitless numbers of a quality equal to the original without geographic restriction. For our members to invest in the creation of new content they must have an environment in which they can offer their works with confidence – without the fear of piracy.

To address this issue we submit that the development of a code of practice for internet service providers is necessary, along with the appropriate training and staffing of enforcement agencies.

Indigenous Cultural Content in a Converged Environment

In 2007, the Indigenous arts industry was estimated to be valued at $400-$500 million. If managed appropriately this unique content should play a significant economic role in the converged marketplace for online games, stories, movies, documentaries and other content. This material is a key point of difference for Australia – and something in which foreign markets have shown a large interest, especially in the visual arts sector where the UK’s leading auction houses now hold dedicated Australian Indigenous Art Sales.

If Indigenous cultural content is going to be used, it should be treated in a culturally appropriate and sensitive way. This can be done by referring to Indigenous cultural protocols such as those developed for the Australia Council for the Arts. Awareness of the sensitivities around the use of Indigenous cultural content on the web, including development of protocols and the process for gaining necessary permission from Indigenous communities whose Cultural content is used, should be supported and promoted by government.

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2 Detailed analysis of the responses to this survey can be viewed from the following address: [http://www.copyright.com.au/Latest_News/CAL_releases_results_from_digital_publishing_trend.aspx](http://www.copyright.com.au/Latest_News/CAL_releases_results_from_digital_publishing_trend.aspx)
Should you wish any further information from us in relation to the convergence review, do not hesitate to contact Copyright Agency.

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