

*Any there examples of other jurisdictions where government uses procurement to regulate the use of artificial intelligence (AI) technology (e.g. by controlling/monitoring the use of grant money or withholding funding)?*

Having surveyed the landscape in like jurisdictions (USA, Canada, UK), it is our view that because of how new AI technology is, foreign jurisdictions are not currently at the stage where they are using procurement as a means to regulate the use of AI technology in the arts sector (or in other sectors).

## **1. International legislative reform**

Legislative reform in the European Union has progressed furthest. The EU AI Act is expected to become EU law in May 2024. It is intended to regulate the development and use of AI across all sectors, including the creative sector. For example, in the music industry, the AI Act includes a number of provisions which are relevant, including:

- A requirement for AI developers to obtain permission from copyright holders before using copyrighted material in their AI models; and
- A requirement for AI developers to carry out due diligence to ensure that their AI systems are used in a responsible and ethical manner.

In Canada, the Artificial Intelligence and Data Act (AIDA) is expected to come into force from 2025. AIDA outlines general principles and obligations for developers and operators of AI systems. AIDA is a broad piece of legislation that lays the groundwork for more detailed regulations introduced in different sectors where AI is used or has an impact.

## **2. Screen offset regulation in Canada**

While Canada does not yet have any specific regulations relating to AI use within the arts sector its approach to arts funding in general can serve as a good model for Australia.

Canada, like Australia, uses a number of economic incentives to promote the development of local Canadian content and protect its local screen industry. Like Australia, Canada imposes quotas on broadcasters and tax incentives are available to Canadian production companies that produce Canadian content.

In order to qualify as “Canadian content” screen content must satisfy a number of requirements including employing Canadian creatives in key roles on a production (as writer, director, lead actor, or head(s) of department with each role being worth a number of points and the production company being required to accumulate 6 out of a total 10 points). Please refer to Appendix A below.

The Canadian points system is objective and transparent and, in our view, is superior to any discretionary test.

We submit that similar clear guidelines – perhaps using a similar points system – may be introduced by funding agencies to control and limit the way in which AI is used to develop creative work that receives government funding as well as incentivising other, positive behaviours from funding recipients.

We note, finally, that Screen NSW already has the power to “withhold or revoke funding or terminate a funding contract” if it finds that a funding recipient has treated third parties in a way that it considers not to be fair or reasonable.

As we noted in our original submission, the Screen NSW Terms of Trade (and the terms of trade all the state agencies, as well as Screen Australia) already include provisions that requires funding recipients “to act fairly and reasonably to third parties involved in funded activities by “complying with all relevant laws” and “respecting other people’s rights, whether the rights are **intellectual property rights such as copyright or moral rights, Indigenous Cultural and Intellectual Property (ICIP) rights**, or the rights of people encompassing diverse cultural backgrounds, disability status, or sexual orientation and identity.”

This makes this more a question of enforcement and emphasis of existing provisions, rather than a radical departure.

## Appendix A – Canadian content requirements

A minimum of 6/10 creative points is required for certification.

The Production must receive a minimum of 6 out of 10 creative points.
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<b>Live Action:</b> The Director OR Screenwriter <b>AND</b> First OR Second Lead Performer must be Canadian (3 points). The remaining 3 points can come from any other key roles.	
Director	2
Screenwriter	2
First lead performer	1
Second lead performer	1
Production Designer/Art Director	1
DOP or Chief Camera Operator	1
Music Composer	1
Picture Editor	1
<b>Animation:</b> Screenwriter OR Storyboard Supervisor OR Director <b>AND</b> First OR Second Voice <b>AND</b> Key Animation must be Canadian (3 points). The remaining 3 points can come from other key roles.	
Director	1
Scriptwriter/Storyboard Supervisor	1
Picture Editor	1
First Voice	1
Second Voice	1
Design Supervisor	1
Camera Operator	1
Music Composer	1
Key Animation (performed in Canada)	1
Assistant Animator and In-Betweening (performed in Canada)	1
Layout Artist and Background Artist (performed in Canada)	1

For television series: If individual episodes do not meet the minimum 6-point requirement, then they may be certified if:

- At least 60% of the series episodes attain 6 points or more.
- The episodes are broadcast or otherwise distributed at equitable times.
- The entire series attains an average of 6 points per episode.