



Implementing Australia's TV prominence framework - Submission

22 October 2024

Thank you for the opportunity to provide input on the Implementing Australia's TV Prominence Framework Consultation Paper ("**the Paper**").

Netflix has been closely involved in consultations on Australia's prominence scheme ("**the scheme**"). We recognise the importance of a competitive broadcasting and media ecosystem that ensures viewers have freedom of choice, and can access diverse content, including local news programming and Australian content.

Netflix is committed to telling authentic Australian stories. In the past four years (2019-2023) that we've reported our investment to the Australian Communications and Media Authority (ACMA), Netflix has invested over \$1 billion AUD on new Australian and Australian-related Netflix films and shows.¹ We have also announced a number new Australian stories for our members to look forward to including *Heartbreak High* returning for its third and final season; *The Survivors*, a crime-mystery series adapted from Australian bestselling author, Jane Harper; the drama series *Apple Cider Vinegar*; and the return of Superwog brothers, Theo and Nathan Saitden, in *Son of a Donkey*, with more soon to be announced.

When it comes to prominence, Netflix supports a scheme that respects freedom of choice, competition and innovation, for the benefit of Australians. To that end, we support the government's stated intention, being to develop a scheme that is "*intentionally broad, which will allow the prominence framework to be flexible as market conditions and technology changes*".² Netflix also supports a number of elements of the scheme outlined in the *Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023* ("**Bill**") and the *Broadcasting Services (Minimum Prominence Requirements) Regulations* ("**draft Regulations**"), including:

- the commitment outlined in the Government's second reading speech of the Bill, that the regulations "**would not prescribe the exact position of tiles, tabs or links on the primary user interface**";³ to allow for innovation in user interfaces (UI) aligned with viewer preferences;
- the ability for consumers to customise a device's UI or make choices about the content or applications (apps) they access, outlined in Section 130ZZN of the Bill, which provides consumers with control to manage their experience;
- the commitment in the Impact Analysis that the prominence scheme would not interfere with

¹ Netflix, *Netflix Surpasses \$1 Billion Investment in Aussie Storytelling*, 8 November 2023,

<https://about.netflix.com/en/news/netflix-surpasses-aud1-billion-investment-in-aussie-storytelling>

² Parliament of Australia, November 2023, '*Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 - Explanatory Memorandum*', available at

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7132

³ Second reading, Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023.

contractual arrangements, so that “existing and future commercial arrangements with international firms could remain in place”;⁴

- the exclusion of prominence requirements in search, which will ensure consumers can rely on search functions for unbiased results that best match their search term; and
- the exclusion of prominence requirements for ancillary hardware which will ensure the scheme does not interfere with long product manufacturing timelines that are already in train.

However, we are concerned that the proposed approach for defining the ‘Primary User Interface’ (PUI) in the Paper - that is, a virtual space that extends to double the initial view - does not align with the government’s intention of providing a flexible approach that can adapt to changes in market dynamics and technology changes. Limiting the PUI to a prescriptive definition has the potential to:

- **Hamper innovations in UI that benefit viewers.** Competition in the device market stimulates rapid innovation and changes in UI design to improve the user experience. [Appendix A](#) illustrates the variety of approaches to UI design that some of our partners take in Australia, with there being no “one size fits all” approach. These approaches have changed over the years. A prescriptive definition of the PUI may interfere with innovation in device UI, preventing a device manufacturer from pursuing a dynamic arrangement of UI elements (both apps and individual content titles) to align with consumer preferences and usage.
- **Limit the real estate available on the PUI, ‘crowding out’ non-regulated television service apps and consequently interfering with the viewer’s ability to easily access their preferred apps.** The broad definition of ‘regulated television service’ would afford prominence to a minimum of five apps based on the current BVOD services available in Australia, with potential for an additional four or more apps to be added if prominence is extended to include community and children’s television apps. There is also potential for this number of ‘regulated television service’ apps to increase, as there is currently no limit contemplated on the number of apps per ‘regulated television service’ that would receive prominence.

This broad definition coupled with the proposed, prescriptive definition of PUI would limit available the real estate on the PUI, and require that space to be disproportionately occupied by ‘regulated television service’ apps, impacting the ability of consumers to easily find the services and content they are looking for.

- **Distort competition between non-regulated television service apps for primary placement.** Netflix, like many of our competitors, has non-exclusive commercial arrangements in place with various third parties that manufacture and/or distribute connected devices. These commercial arrangements can include technical collaboration to set performance standards to improve platform performance, and integration of the Netflix app on partner devices to improve the reliability of the Netflix app and customer acquisition. Device integration is a win-win: it increases the value of hardware manufacturers’ devices to consumers, and allows Netflix

⁴ The Office of Impact Analysis, 29 Nov 2023, *Prominence Framework for Connected Television Devices*, <https://oia.pmc.gov.au/published-impact-analyses-and-reports/prominence-framework-connected-television-devices>

members to conveniently watch Netflix on a connected device.

Limited space on the PUI coupled with a high number of ‘regulated television service’ apps has the potential to drive up demand for primary placement, distorting current competitive market dynamics. This would be further exacerbated if the ACMA “set a limit for the number of apps that can be displayed before ‘regulated television services’”, as proposed in the Paper.⁵

Below, we provide recommendations - based on principles of viewer choice, competition and innovation - that aim to address each of these concerns.

Please note that Netflix’s recommendations focus specifically on the proposal for the ‘Primary User Interface’. We are not in a position to comment on the definition of a ‘regulated television device’ and ‘what a regulated television service is offered’.

Recommendation 1. ‘Regulated television service’ apps should be made available through a single launch point or folder. This will futureproof the regulations, ensuring they don’t limit real estate on the PUI or result in the PUI being disproportionately occupied by ‘regulated television services’ apps.

As mentioned above, the breadth of the definition of ‘regulated television service’ could create artificial scarcity in the PUI and result in the unintended consequence of ‘regulated television service’ apps occupying the majority or all of the PUI. This has the potential to impact a viewer’s ability to easily access their preferred apps, including the services they most frequently use.

To avoid this, we recommend that ‘regulated television service’ apps are consolidated into a single launch point or folder. This would act as a ‘one stop’ access point for viewers to all ‘regulated television service’ apps, whilst still meeting the requirements outlined in Section 6 of the draft Regulations that apps must:

- *“be of a similar size and shape to the other applications”*; and
- *“be located in the same area of the primary user interface as those other applications.”*

It would also align with Section 7 of the draft Regulations that state:

- *“a user must be able to access each of those services by selecting a single icon or visual representation, and the icon or representation must be visible on the primary user interface of the device”*; and
- *“the single icon or visual representation is a similar size and shape to SVOD applications that are displayed on the primary user interface of the device”*.

This approach would address concerns around ‘regulated television services’ releasing multiple apps, as all apps would be housed in a single location without risk of crowding the PUI.

⁵ ACMA, September 2024, ‘Implementing Australia’s TV prominence framework’, p. 19

This approach would also align with international jurisdictions. For example:

- In the UK, Ofcom highlighted in its recommendations to the UK Government that giving identical prominence to all broadcast services may not be practical given the limits on how many apps or tiles can fit on the home screen.⁶ To address this, Ofcom suggested that all public service broadcaster apps be accessed from a single tile on the user interface;
- In France, the French regulator, Arcom, published the final version of its prominence rules which state that broadcasters should be grouped into a single tile or app;⁷
- In Italy, the media regulator Agcom requires that general interest services need to be accessible via a distinct icon (in original Italian: “*icona*”);⁸ and
- In Germany, the German prominence regime in practice resulted in device manufacturers grouping general interest services into a single tile.⁹

We recommend the Australian Government take a similar approach. This would ensure that consumers can still easily access any number of ‘regulated television service’ apps from the PUI, whilst also being able to easily access other apps.

Recommendation 2. Regulations should make clear that their requirements will not interfere with existing contractual arrangements.

The Government’s Impact Analysis clearly states that the prominence scheme will not interfere with existing contractual arrangements:

“The potential revenue impacts of a prominence framework would be mitigated by the fact that the must-carry model proposed would not prevent manufacturers from continuing to sell the highest profile tile and app positions on the primary user interface to international streaming services such as Netflix and Disney+. Rather, the must-carry model would only require the services and apps of Australia free-to-air TV broadcasters to be available on the ‘home screen’ of the device and to be pre-installed. The highly valuable existing and future commercial arrangements with these international firms could remain in place ... the must-carry prominence model would not require

⁶ Ofcom, 4 July 2019, ‘Review of Prominence for Public Service Broadcasting’, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0021/154461/recommendations-for-new-legislative-framework-for-psb-prominence.pdf

⁷ France’s Arcom has published its final rules for implementing Article 7A of the AVMSD related to the UI findability of General Interest Services (GIS) which state that “Taking into account **user personalization capabilities**, appropriate visibility of general interest services **can, for instance, be achieved by grouping them in a single location** [...]”, see <https://www.arcom.fr/presse/visibilite-des-services-audiovisuels-sur-les-ecrans-connectes-larcom-precise-les-conditions-de-mise-en-oeuvre-du-regime-des-services-dinteret-general-sig>

⁸ See Agcom’s according decision 390/24/CONS from 9 October 2024, <https://www.agcom.it/provvedimenti/delibera-390-24-cons>

⁹ See the statute of the German Media Regulator, <https://www.die-medienanstalten.de/service/rechtsgrundlagen/public-value-satzung/>

*free-to-air services and apps to be promoted above or ahead of competitor services, including the larger international streaming services”.*¹⁰

However, these intentions are not reflected in the Bill or the draft Regulations.

It is critical that this intention is made explicit in the regulations. This will provide certainty for device manufacturers and app providers, like Netflix, that future contractual arrangements can be negotiated without the risk of being in breach of prominence regulations. In turn, it will ensure the ongoing competitiveness of the existing market for device integration.

Recommendation 3. Regulations should make clear that the prominence framework will not constrain a device manufacturer from positioning apps to reflect user preferences and practices.

The Government has stated in the Bill’s Explanatory Memorandum that “*The regulations are not intended to, and in many cases cannot under section 130ZZ, do the following...**constrain the capacity of the manufacturer of a regulated television device to promote, preference or recommend particular content or services to users, including their own-brand content and services.***”¹¹

The Media Release for the draft Regulations also stated “*The proposed framework and draft regulations **will also not constrain device manufacturers from promoting or recommending other content or services.***”¹²

However, these intentions are not reflected in the Bill or the draft Regulations.

We recognise that Section 130ZZN of the Bill provides a user with the right to customise their device’s UI or make choices about the content they access.¹³ However, the same concession is not made for device manufacturers seeking to design their UI in a way that optimises the user experience for their customers. For example, device manufacturers may prioritise content on the PUI based on a user’s preferences and viewing history, where the ‘first row’ of a user interface is populated with ‘most frequently used apps’ or ‘recently watched content’. These features are highly useful for viewers who can easily find their most used and preferred services.

¹⁰ Office of Impact Analysis, 29 November 2023, ‘Prominence Framework for Connected Television Devices’, p. 26, <https://oia.pmc.gov.au/published-impact-analyses-and-reports/prominence-framework-connected-television-devices>

¹¹ Parliament of Australia, November 2023, ‘Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023 - Explanatory Memorandum’, available at https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7132

¹² The Hon Michelle Rowland, 6 February 2024, ‘Exposure draft Prominence Regulations released’, available at <https://minister.infrastructure.gov.au/rowland/media-release/exposure-draft-prominence-regulations-released>

¹³ Section 130ZZN(2)(b) states that a regulated television device must take reasonable steps to ensure that the device continues to comply with the minimum prominence requirements...ending at “the time when an action by a user of the device results in the device not complying with those requirements”

We therefore recommend that any future regulations or definition of the PUI makes clear that device manufacturers will not be constrained from positioning apps to meet user preferences.

This would ensure the framework supports competition and innovation in the device market by prioritising consumer preferences.

It would also bring the scheme in line with other jurisdictions, such as the UK's draft Media Bill, which aims to protect innovation and flexibility by clarifying that "*arrangements so made do not disproportionately restrict how the provider of a regulated television selection service may make innovations in the ways that users may select and access internet programme services or programmes*".¹⁴

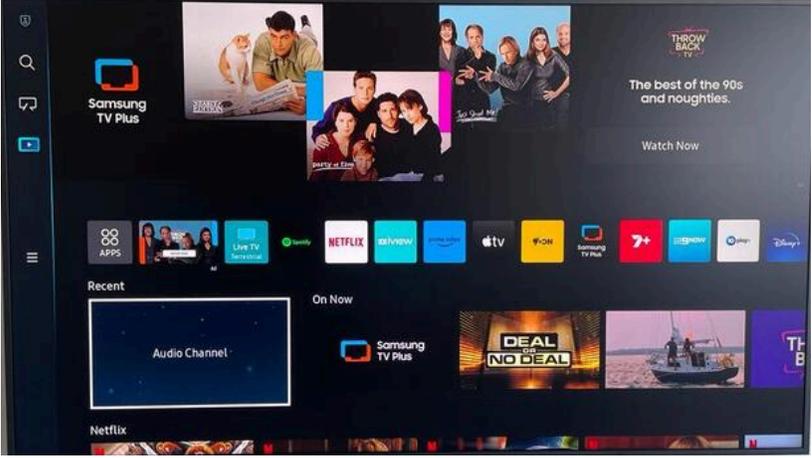
Recommendation 4. Regulations should limit the number of apps per 'regulated television service' that would receive prominence. Only a single app per regulated television service should be awarded prominence.

Should the ACMA seek to pursue its proposed approach to the PUI, we recommend introducing a limit on the number of apps per 'regulated television service' entitled to receive the benefits of the prominence framework. This would ensure that non-regulated television service apps are not 'crowded out' of the PUI, and that additional competitive pressure is not placed on non-regulated television service apps for primary placement.

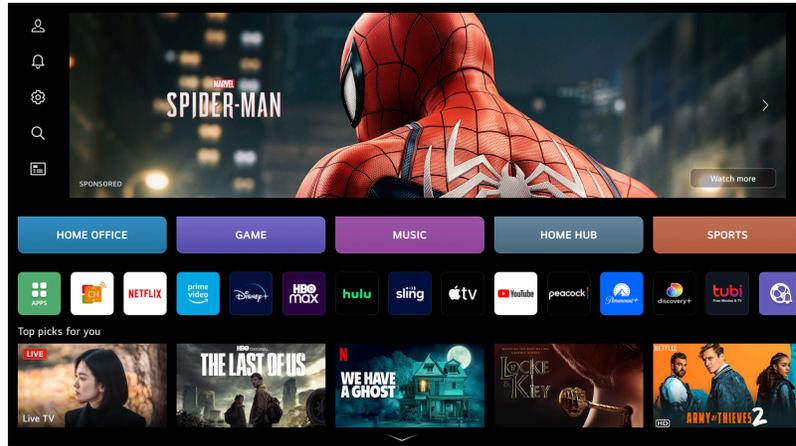
We are committed to working constructively with the Government on the design of Australia's prominence regime, and look forward to the opportunity to discuss these matters with the ACMA.

¹⁴ UK Parliament Media Bill, 362AM (1)(C).

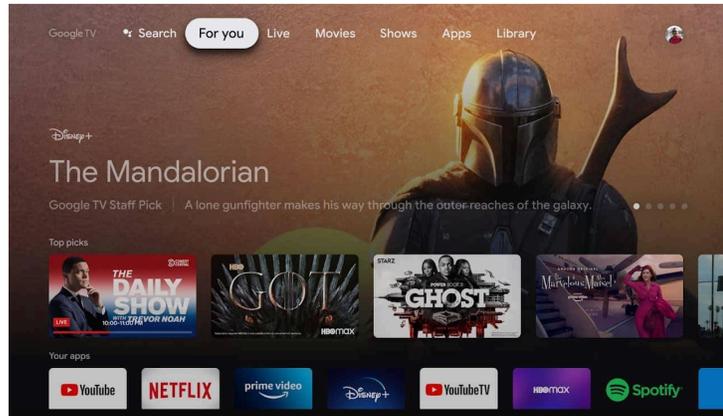
Appendix 1: Netflix Partner UI Design

<p>Samsung</p>	 <p>The image shows the Samsung TV Plus interface. On the left is a vertical navigation bar with icons for home, search, and other functions. The main screen features a 'Samsung TV Plus' logo at the top left. Below it is a row of content recommendations, including a 'Party at Five' poster and a 'Throw Back TV' promotional banner with the text 'The best of the 90s and noughties. Watch Now'. A horizontal row of app icons follows, including Netflix, iView, Apple TV, Foxtel, and others. Below the app icons are sections for 'Recent' (showing 'Audio Channel') and 'On Now' (showing 'Deal or No Deal'). At the bottom, there is a 'Netflix' section with a row of content thumbnails.</p>
<p>Hisense Vidaa</p>	 <p>The image shows the Hisense Vidaa TV interface. At the top, the 'VIDAA' logo is displayed in a stylized font, with the slogan 'It's all about U' and a large 'U' icon. The time '8:59' and a Wi-Fi signal icon are visible in the top right corner. Below the header is a grid of streaming service logos: Netflix, YouTube, Disney+, Foxtel, Stan, Kayo, and Binge. A second row of logos includes Prime Video, iView, Tubi, Plex, NRLTV, and a 'My Apps' button. At the bottom, there is a 'Top Picks' section with a row of content thumbnails, including 'HOME' and 'DEFENDING JACOB'.</p>

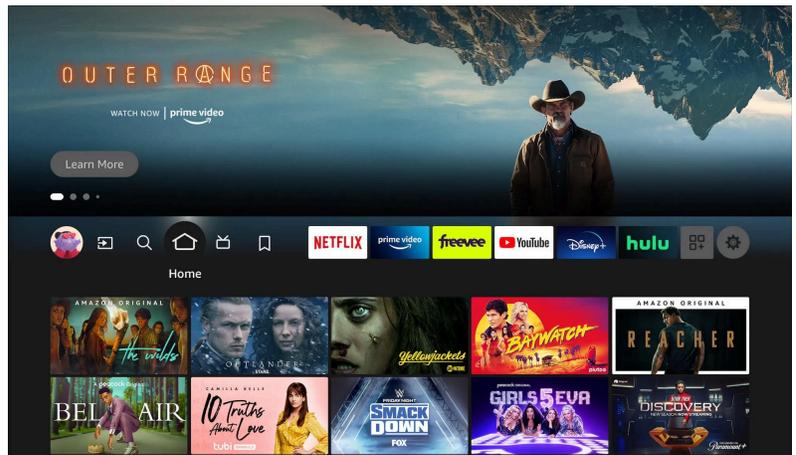
LG



Google TV



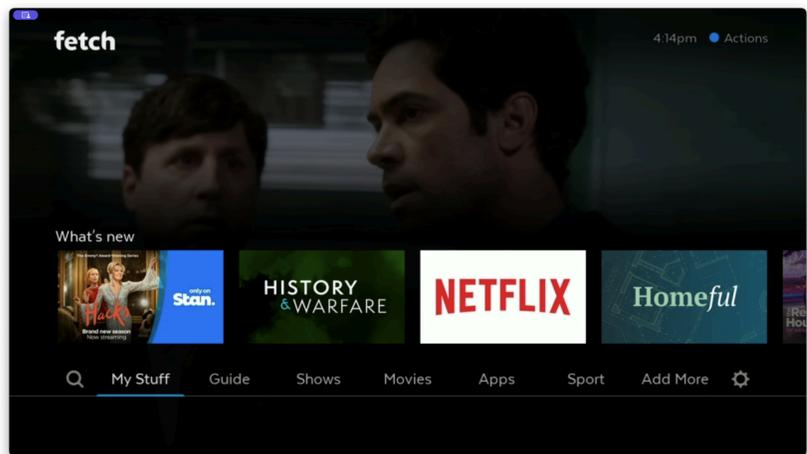
Amazon Fire TV Stick



Telstra TV



Fetch



Foxtel - Hubbl

