

Australian access to digital media markets



AUSTRALIAN CONSUMER ACCESS TO DIGITAL CONTENT

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August 2017



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Published in **2017**

The operation of the Australian Communications Consumer Action Network is made possible by funding provided by the Commonwealth of Australia under section 593 of the *Telecommunications Act 1997*. This funding is recovered from charges on telecommunications carriers.

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ISBN: 978-1-921974-48-9

Cover: Design by Richard Van Der Male with image from Roundhouse Creative



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This work can be cited as: Suzor, N., Van Geelen, T., Pappalardo, K., Burgess, J., Wikström, P. & Ventura-Rodriguez, Y. 2017, *Australian consumer access to digital content*, Australian Communications Consumer Action Network, Sydney.

This report was funded with support from ACCAN and conducted by researchers at QUT. A/Prof Suzor is the recipient of an Australian Research Council DECRA Fellowship (project number DE160101542). The authors are strongly committed to independence and integrity in research and the ethical norms of funded research in intellectual property.¹ No third party, including ACCAN, exercised any control over the design of the research or our findings and analysis.

¹ See Robin Feldman et al, ‘Open Letter on Ethical Norms in Intellectual Property Scholarship’ (2016) 29(2) Harvard Journal of Law & Technology 1.

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Acknowledgements

We are very grateful to ACCAN for the opportunity to undertake this work. This type of experimental interdisciplinary collaboration can be difficult, and the outcomes necessarily involve a degree of uncertainty. We are thankful that the ACCAN grants scheme is able to support this type of research, and that the panel saw the potential value of the project. We are especially grateful for the commitment, guidance, and helpful feedback of Narelle Clark and Tanya Karliyuchuk throughout the project.

We have been well supported in this process by outstanding teams of research support at QUT, including particularly Andrew Kerslake and Maxine Brown. We are grateful to Roundhouse Creative for design work on our accompanying infographic and video materials. The technical component of this project was partially undertaken by Irfan Azeez, and we received assistance with the statistical analysis from Hugh Andersen.

Executive Summary

This report examines the major differences between digital media markets in Australia and the US. We created a list of the most popular media titles over the last five years² and checked their availability and price with Australian and American digital content providers over one month in early 2017.

For all four media types considered in the study (games, music, television, and movies) Australians were disadvantaged compared to American consumers in some way. Australians either cannot access a large portion of content that is available to American consumers, or they have to pay more for the same level of access.

In film and TV, Australians pay the same as American consumers, but have limited access to titles. In our sample, only about 65 percent of movie titles and 75 percent of TV titles available in the US could be accessed by Australian consumers.

For film and TV streaming, Australian services fare very poorly compared to US markets. Nearly two thirds of films available to stream in the US are not available to stream in Australia, and more than half of the television seasons available to stream in the US are not available in Australia.

In TV and film, the Australian market also consists of a much smaller number of distributors, both for streaming and retail. This means less competition and more limited choices available to Australians. Australian distributors do, however, focus on providing the most popular titles. Of the Top 50 most popular films available in the US, Australians could access about 90% of our sample.

For games and music, Australians have much the same access to titles, but pay around 25 percent more for them. The only case where Australian consumers are not at a disadvantage is music streaming, where consumers have access to approximately the same number of titles for slightly cheaper subscription fees.

This report is the first snapshot of a longer term project to monitor changes in digital media markets over time. With funding provided by ACCAN, we have been able to develop the infrastructure to allow ongoing monitoring into the future. Future analysis will be able to provide additional detail about other concerns of Australians – including, for example, the lag between release dates for content in Australia compared to the US.

² For this report, we tracked 6118 albums, 3880 films, 1298 television series, and 346 console games.

Introduction

The headlines and the stories are predictable [...] The day after the first episode of a new Game of Thrones season: Australians pirate in record numbers. Australia is a nation of pirates. Australia has a piracy problem.

*Australia doesn't have a piracy problem. Australia has a distribution problem.*³

This report is a contribution to ongoing debates and public concerns about Australian access to digital content. These debates and concerns have ranged from the relatively expensive prices of content accessed through platforms like iTunes in Australia compared to the US, the release delay and limited options for accessing TV and movies in Australia (again, usually compared to the US), and the limited range of both competing platforms and content that is available to consumers (for example, Australian consumers have only three major providers of streamed television to choose from, and Game of Thrones is exclusive to Foxtel, which is by far the most expensive service).

In online consumer forums like Whirlpool⁴, the conversation around Australian access to digital content reveals a number of key contemporary concerns. Most recently, these largely involve debates over the catalogues and pricing models of TV streaming providers, and frustration with the licensing deals and geoblocking technologies that seem to make Australian access to such content more expensive and limited in comparison to the US. The types of workarounds discussed in online fora also provide an indication of how Australian consumers deal with these concerns. Before the streaming media platform Netflix was officially available in Australia, for example, a significant number of early adopters used complex workarounds to evade geoblocking technologies and access the platform. Even after the Australian version of Netflix was launched in 2015, many users have reportedly continued to use the same methods to access the US Netflix catalogue, rather than the much more limited Australian catalogue.

These debates, consumer concerns and workarounds have been particularly acute around high quality “appointment television” shows from premium US cable services. The evolving story of Australian access to Game of Thrones in particular highlights problems with timeliness and choice of provider. Game of Thrones became extremely popular in Australia, following the social media buzz emanating from the US. With only extremely limited legitimate access options in Australia from the start (the show is exclusive to Foxtel), each episode was widely downloaded by consumers using informal peer-to-peer file sharing—a trend that has continued throughout every season of the show so far.⁵ This mode of informal distribution was frequently framed in the mainstream press and by the copyright industries as ‘piracy’, at times tinged with greed and a lack of impulse control on behalf of consumers. But in the ‘always on’ world of social media, it seemed unfair to intensely engaged, globally connected fans (exactly the kind of audience that HBO is very deliberately trying to cultivate

³ Mark Serrels, ‘I Refuse To Feel Guilty For Torrenting Game Of Thrones’ (27 April 2016) *Kotaku*, <https://www.kotaku.com.au/2016/04/i-refuse-to-feel-guilty-for-downloading-game-of-thrones/>.

⁴ Whirlpool is a large Australian technology-related discussion forum. See <http://forums.whirlpool.net.au>.

⁵ Adam Turner, ‘Game of Thrones piracy boom shows Aussies aren’t afraid of the copyright police’ (27 April 2016) *The Sydney Morning Herald*, <http://www.smh.com.au/technology/gadgets-on-the-go/game-of-thrones-piracy-boom-shows-aussies-arent-afraid-of-the-copyright-police-20160427-gofwp5.html>.

with shows like Game of Thrones) that they would have to wait until after the US television event—and the global cultural conversation—had already passed them by.⁶

This report is concerned not only with these rather dramatic media debates about highly popular television shows, but also with the Australian availability, price, and timeliness of a much more comprehensive range of digital content across a range of media forms and genres, and the degree of choice Australians have in the platforms through which it can be accessed. The report aims to provide robust empirical evidence that can empower consumers to make decisions in their best interests, and to take part knowledgeably in related debates about the ability of Australians to participate in global cultural conversations.

The report focuses on a comparison between Australian and American digital media markets in light of the US dominance in producing and distributing digital content. Many of the biggest producers and platforms for accessing content are based in the US. It is the apparently superior access enjoyed by consumers in the US that drives comparison and complaints among Australian consumers.

Key Terms

The terms ‘digital media’ or ‘content’ refer to the films, television shows, music, and games for which we tracked prices and availability in the Australian and US markets. We refer to the providers of these media products (and services which provide access to numerous titles) as distributors, streaming services, or platforms.

In our data collection and in the report, we make a distinction between different formats – buying, renting, and streaming. Buying refers to the outright purchase of a title digitally, where the purchaser becomes the permanent owner of a media file, such as a film. Renting refers to paying a fee for a specific title for a limited amount of time (for example, one week, or 48 hours after initially pressing play.) Streaming refers to subscription services like Netflix or Spotify, through which customers can pay a monthly fee for unlimited access to a large catalogue of titles.

Objectives

In this report, we assess the availability of digital media content for Australian consumers, in the form of movies, television, music, and games. For each category, we have gathered data regarding:

1. The price difference of content in Australia and the US;
2. Relative availability (i.e. how many titles are available in Australia compared to the US);
3. The relative difference in quality and format choices that are available.

Historically, Australian consumers have been inhibited in accessing the full range of information and cultural goods necessary to fully participate in modern society and global cultural conversations. The

⁶ Tama Leaver, ‘Watching Battlestar Galactica in Australia and the tyranny of digital distance’ (2008) 1 *Media International Australia* 145-154; Paula Dootson and Nicolas P. Suzor, ‘The Game of Clones and the Australia Tax: Divergent Views about Copyright Business Models and the Willingness of Australian Consumers to Infringe’ (2015) 38 *University of New South Wales Law Journal* 206.

2013 IT Pricing Inquiry found that Australian consumers pay significantly more for digital content than their US counterparts and face substantial delays in release dates⁷.

Since the IT Pricing Inquiry, however, there have been important changes in Australian markets. Since 2013, the relative value of the Australian dollar against the US dollar has dropped by over a quarter. Improvements in access have also come from launches of new streaming services in Australia, such as Netflix, Stan and Amazon Prime. While Australian consumers have long complained that they are not as fairly served by the digital media industry as consumers in other markets, until now there has been no rigorous empirical research to establish the extent of this perceived difference.

Our research asks the question: how do Australian consumers fare in terms of access to digital media content regarding price, quantity, and real choice in formats, and how does this experience compare to that of consumers in the US? In future work we intend to create a data-collection infrastructure to allow a longitudinal analysis which will also capture information regarding release delays between US and Australian markets.

(1)

The first objective of this report is to provide a clear view of the current state of Australian digital content markets from a consumer perspective. We have also developed a series of short, accessible information resources to help Australian consumers make informed choices about accessing digital media content.

(2)

Our second objective is to provide the empirical evidence base to inform ongoing copyright law reform efforts, policy making, and effective consumer advocacy in this area. We hope that this leads to improved real outcomes for Australian consumers in global digital media markets.

Context

Australian consumers face a number of barriers to accessing fairly priced digital media in a way that is timely and provides meaningful choice. Geoblocking, for instance, prevents Australian consumers from accessing cheaper global markets. Price-discrimination through the resulting market segmentation can price consumers out of the market.⁸ Economic growth in Australia depends, in part, on the ability of entrepreneurs, innovators, and artists to access knowledge and cultural

⁷ House of Representatives Standing Committee on Infrastructure and Communications, *At what cost? IT pricing and the Australia Tax* (hereinafter *IT Pricing Report*), July 2013.

⁸ James Boyle, 'Cruel, Mean, Or Lavish—Economic Analysis, Price Discrimination and Digital Intellectual Property' (2008) 53(6) *Vanderbilt Law Review* 2007-2039; Joe Karaganis, *Media Piracy in Emerging Economies* (Social Science Research council, 2011).

resources.⁹ In social terms, access to knowledge and culture is a crucial part of human flourishing – it is how we learn, play, communicate, and engage with the broader society beyond our immediate physical vicinity.¹⁰ Humans are influenced by the social and cultural sphere in which they live; they define themselves and their opinions in relation to the people, opinions and cultural objects around them.¹¹ These cultural objects frequently include artefacts of popular culture as represented in movies, television, music and games.¹² High prices, geoblocking, and delays in content availability restrict the ability of Australians to access and participate in global cultural conversations.¹³

Australians were once prepared to wait for delayed content, believing there was no alternative. As Lobato and Meese have noted, however, the internet has changed Australians' perceptions of what is and should be available to them.¹⁴ Australian audiences are now "hooked into global TV fandom in real-time" via the internet,¹⁵ and have become frustrated by the high-cost and slow delivery of digital content from the United States and by "their own self-perceived status as 'second class' media citizens."¹⁶ This perception that Australians are not fairly treated in global media markets has cultivated demand for alternate distribution channels that are fast and affordable.¹⁷

Technological Context: Geoblocking and Price Discrimination

'Geoblocking' refers to the use of technology to identify a consumer's geographical location and prevent them from accessing digital goods being sold in another region. Australian consumers are well accustomed to seeing variations of the message: "This content is not available in your country".

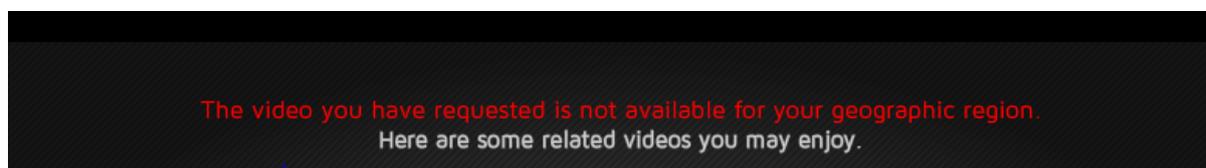


Figure 1 Screenshot taken from CBS.com for The Late Show with Stephen Colbert (28/03/2017)

⁹ Cutler & Co, 'Venturous Australia - Building Strength in Innovation' (Report for the Minister for Innovation, Industry, Science and Research, 2008) <<http://www.innovation.gov.au/Innovation/Policy/Pages/ReviewoftheNationalInnovationSystem.aspx>>.

¹⁰ Martha Nussbaum, 'Objectification and Internet Misogyny' in Saul Levmore and Martha Nussbaum (eds.), *The Offensive Internet: Speech, Privacy, and Reputation* (Harvard University Press, Cambridge Mass., London England, 2011) 68-90.

¹¹ Julie E. Cohen, 'The Place of the User in Copyright Law' (2005) 74 *Fordham Law Review* 347, 370; John Tehranian, 'Parchment, Pixels & Personhood: User Rights and the IP (Identity Politics) of IP (Intellectual Property)' (2011) 82 *University of Colorado Law Review* 1, 31.

¹² Cohen, above n 9.

¹³ Leaver, above n 4.

¹⁴ Ramon Lobato and James Meese, 'Australia: Circumvention Goes Mainstream' in Ramon Lobato and James Meese (eds.) *Geoblocking and Global Video Culture* (Institute of Network Cultures, Amsterdam, 2016) 122.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 120.

¹⁷ *Ibid.*

The practical effect of strong geoblocking is to restrict consumers' access to a cheaper global marketplace. The technological process of geoblocking enables content owners and distributors to engage in the economic practice of market segmentation. This involves the differential treatment of geographic regions for product delivery, most commonly by varying prices for identical goods according to the region where they are accessed. This enables companies to maximize profit by charging "the highest possible price each segmented market is capable of bearing", also known as price discrimination.¹⁸ Market segmentation is not itself inherently predatory, and may in fact help companies respond to and accommodate particular needs or features of different markets. However, in Australia and other countries, the practice has bred resentment in its application to digital goods, where consumers cannot see why like is not treated as like – why the same content, delivered online via the same or similar platforms (and thus without the physical delivery costs normally associated with Australia's isolated location) is more expensive if purchased in Australia than in the United States.¹⁹

The IT Pricing Report

In July 2013, the House of Representatives Standing Committee on Infrastructure and Communications tabled the report 'At what cost? IT pricing and the Australia Tax' ('the IT Pricing report') in the Australian Parliament. The report presented findings from 133 submissions received from individual consumers, consumer groups, and some distributors, including Apple, Microsoft, and Adobe. The Standing Committee also held eight public hearings throughout 2012 and 2013, where it heard evidence from consumer groups, industry, and government agencies.²⁰

The Standing Committee found that distributors typically charge Australian consumers higher prices for digital goods in our regional marketplace (the so-called "Australia tax"). They found that, on average, Australian consumers were paying 50% more than US consumers for professional software, 46% more for IT hardware, 52% more for music, and a hefty 84% more for games.²¹

¹⁸ Cameran Ashraf and Luis Felipe Alvarez León, 'The Logics and Territorialities of Geoblocking' in Ramon Lobato and James Meese (eds.) *Geoblocking and Global Video Culture* (Institute of Network Cultures, Amsterdam, 2016) 48.

¹⁹ Ramon Lobato and James Meese, 'Australia: Circumvention Goes Mainstream' in R. Lobato and J. Meese (eds.) *Geoblocking and Global Video Culture* (Institute of Network Cultures, Amsterdam, 2016) 122-124.

²⁰ *IT Pricing Report*, 7.

²¹ *IT Pricing Report*, 18.



Figure 2 Findings from the IT Pricing Inquiry

To explain the higher prices, manufacturers and distributors of digital content pointed to higher Australian wages, as well as higher shipping and other supply chain costs incurred in Australia.²² The Standing Committee acknowledged that there were features specific to the Australian market, such as Australia’s relatively small and geographically sparse population, which can make Australia a high cost environment for vendors.²³ However, the Committee concluded that in many instances these regional costs could not explain the price differences experienced by Australian consumers for media products, particularly those delivered digitally over the internet. It considered localisation costs, such as tailored Australian marketing and support services, to be “negligible at best.”²⁴ Rather, prices seemed to reflect companies’ assessments of “what the market will bear”.²⁵

In its report, the Committee acknowledged that there were some limitations to the data on which it had relied. In particular, the Committee had relied heavily on public submissions and on simple price comparisons. The Committee echoed recommendations from the Productivity Commission that urged for better data to be collected on the state of Australian retail markets.²⁶

Our report seeks to contribute to this information gap by collecting data about the availability, delay, pricing, and quality and format choices available to Australian consumers purchasing digital media content. This is the first report of an ongoing project to track change in digital media markets over time. Through the support of ACCAN, we have developed the technical infrastructure to allow ongoing collection of data on access to digital media markets, and we are committed to making this data available for others to analyse into the future. In this report, we present an initial snapshot and try to make sense of how Australian media markets have changed since the IT Pricing enquiry.

²² *IT Pricing Report*, 52, 54-6.

²³ *IT Pricing Report*, 83.

²⁴ *IT Pricing Report*, 64.

²⁵ *IT Pricing Report*, 82.

²⁶ Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, 2011, 89.

Methodology and Data Collection

This project is the first snapshot report of a longitudinal study of pricing and availability of popular digital goods in Australia and the United States. In order to identify the barriers to access to digital media products, we focus on the most popular titles in four categories: music, film, television, and games. We build a list of the most popular titles to track from the following sources:

- Music: Billboard 200 – Top 200 albums based on radio airplay, sales data, and streaming figures collected in the US by online music stores and ranked and published by Nielsen Music.
- Film: Box Office Mojo – Weekly box office releases, ranked by gross worldwide takings. For previous years (2012-2016), rankings are collected only annually.
- Television series: IMDB Top 250 television titles, ranked by user search behaviour on the IMDB website. For previous years (2012-2016), rankings are collected only annually.
- Console computer games: Weekly global top video game sales (Microsoft Xbox One and Sony PlayStation 4 titles). No historical ranking data was collected for this category, so the number of console game titles reflects titles detected on the charts in 2017 only.

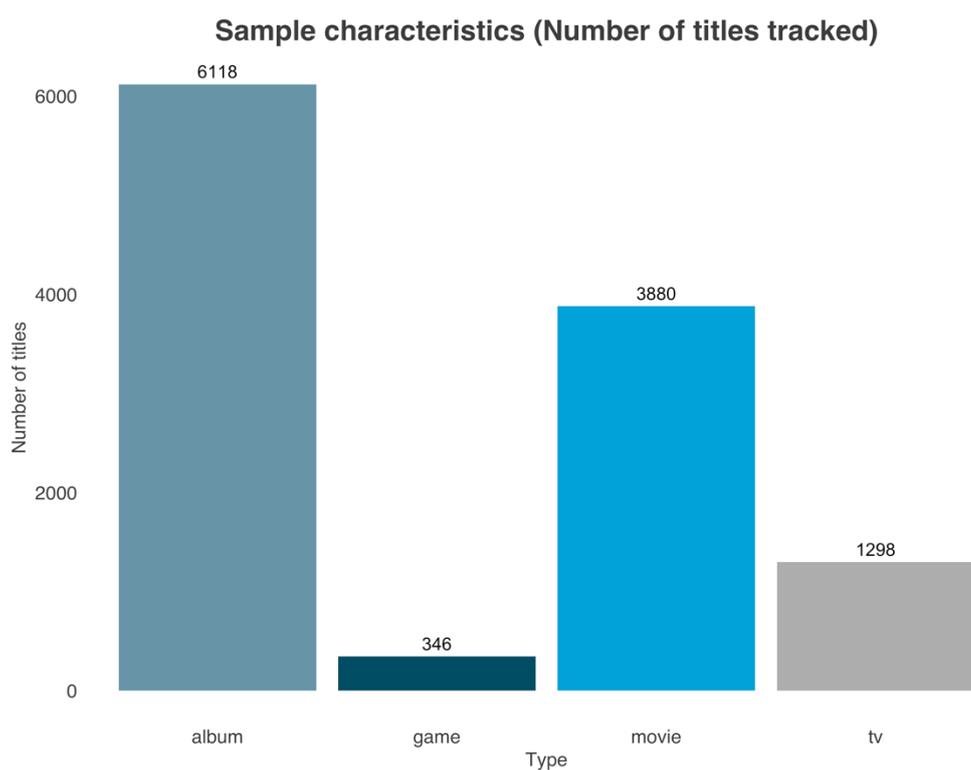


Figure 3 Number of titles in each category that form our sample

These sources provide a list of titles that we track on an ongoing basis. Each list is updated weekly to add new titles to the list. Once a title is added to the list, we track its ongoing availability in perpetuity, allowing us to eventually develop a strong longitudinal data set over time. Where possible, we have also included titles for previous weeks in the five years since 01 January 2012.

Each week, we test each of these titles for availability, quality, price, and other relevant metadata, in both US and Australian markets. Data on pricing and availability of titles in the list are collected through public APIs (Application Programming Interfaces that allow one software application, like a data-gathering tool, to access another, like a digital media platform) where available. We supplement these methods with standard web scraping techniques (automated methods of ‘looking up’ the content on a public website and downloading it in a structured format for analysis). We developed filters to identify the key variables within the results, including availability, price, and quality and format options for the titles. We then used standard statistical software as well as data visualization packages like Tableau and R to analyse and visualize the results.

This report presents the first snapshot analysis of a much longer project. The infrastructure that we have developed for this project will be maintained and improved over time, as far as we are able, to support ongoing data collection. We are committed to making this data available for other researchers as an open data set, and we welcome contributions to improve the data collection software. As this data set grows, it will provide a unique opportunity for researchers to study trends and changes in digital media markets over time.

Limitations

The first and most obvious limitation of our data collection, regarding scope, is that Apple Music was not included. This omission is notable because Apple Music is one of the biggest among a very small number of music streaming services available in Australia. We hope that this data will be included in future work. In film and TV, we did not collect any information on free-to-air services. As such, we do not know how any gaps in the Australian or US markets may or may not be filled by the free-to-air services.

Regarding the methodology, our data focused only on the most popular titles. We are therefore unable to report any findings about total catalogue sizes. Only titles released from 2012 onwards have been included, both for practical reasons and in order to focus on the current state of the market. Moreover, this report relies on a snapshot of data collected over several weeks in March 2017. The consequence of using a snapshot is that we are unable to show changes over time in this report, and we are unable to confidently develop analyses of other time-based measures (like relative release delay in films, for example). These types of analyses are obvious candidates for ongoing research.

Because we do not have access to universal identifiers for media objects, we rely on inexact matching of their titles, which sometimes change between countries or even over time. There is no simple way to match titles across different data sources. Where, for example, an album is released under a different name in Australia and the US, one version will show up as missing in each country. So, for example, the Selena Gomez album titled ‘Kiss and Tell’ on the Billboard 200 was named ‘Kiss & Tell’ on other platforms. The initial version of the software we have used to collect our sample uses simple text matching techniques, and was unable to find a match for this album. We hope to be able to improve this for future reports. Because our goal has been to show differences between markets, we have chosen to focus within the scope of this project on the relative availability of titles within smaller samples, rather than trying to capture entire catalogues. This means that figures about the proportion of titles that match within our sample should not be relied upon. For example, the number of album titles we were able to track is high, but we were able to match fewer than half

of all of the 6000+ unique titles on the Billboard 200 lists over the last five years. The sample we have allows for comparison across markets, which allows for more confidence regarding the relative availability of media titles between jurisdictions. But figures about the total number of titles available as a proportion of all titles on the Billboard 200 list should not be relied upon. The difficulties in matching titles are less pronounced with other media types, but readers should still exercise caution when interpreting these results. Both absolute numbers and proportions reflect the sample we searched for, not the total numbers of titles that have been commercially released.

We have sought to mitigate the impact of these risks by checking any unexpected or unusual findings, as well as by spot-checking random samples. We did this by manually checking the results. For example, if our data indicated that a particularly popular title was available in Australia but not the US, we could try to access that title on the US store ourselves. If we found that our data was inaccurate, for example because the title was named differently for the Australian market, or the website contained an error in the information, we excluded that data. We are confident that the snapshot presented in this report is representative for the bulk of popular titles released in the last five years, and is fit for purpose as an introductory sampling of the Australian consumer experience. As our data collection continues to grow, we expect the accuracy to improve.

Currency Exchange Rates

The economic environment in which the Standing Committee delivered the original IT Pricing report is bound to be different from the contemporary one in which we have conducted our own research. To assess the extent of these changes, it is necessary to understand how the Australian dollar has mapped to the US dollar over the last few years. This enables more accurate price comparisons between digital goods available in the Australian and US markets.

Data from the Reserve Bank of Australia comparing the Australia dollar (AUD) to the US dollar (USD) from January 2010 to January 2017 shows that the value of the AUD against the USD peaked in 2012 and then gradually, but steadily, declined. In 2017, the value of the AUD has begun to climb once more. The effect of the strong Australian dollar during 2012 and 2013 was that American goods appeared relatively cheaper than they did in the following years when the AUD weakened again.

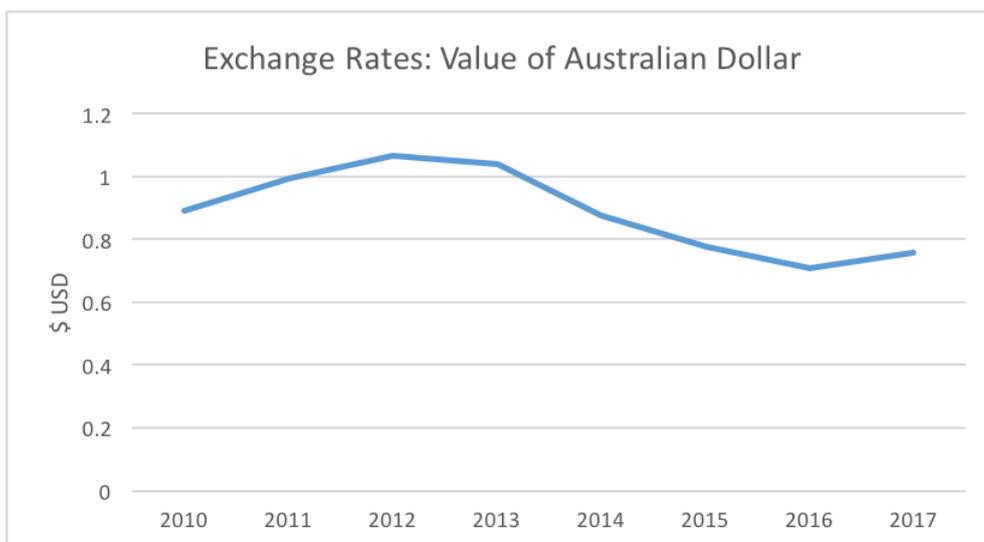


Figure 4 Exchange Rates: Value of Australian Dollar

Source: Reserve Bank of Australia, 'Historical Data: Exchange Rates – Monthly – January 2010 to latest complete month of current year', Reserve Bank of Australia (2017).

Submissions to the IT Pricing Report indicated consumer frustration that media prices do not accommodate changes in exchange rates. That is, the price of goods is not adjusted downwards when the Australian dollar is weak to reflect the lower purchasing power parity of the dollar. However, some distributors argued in favour of consistent and predictable prices to maintain consumer confidence during times of economic instability. As competition among distributors increases, Australian consumers may expect lower prices and greater accessibility.

This report relies on exchange rates to compare the experiences of consumers in Australia and in the US. However, differences in purchasing power—which is related to costs of labour, production, and living—also has an important impact on the consumer experience, by determining how far an individual's money actually goes. Because of limited resources, and because consumer complaints have focused on exchange rates, this report does not take purchasing power into account.

Findings

This report considers whether, given recent market changes, Australian consumers are still disadvantaged in accessing timely and affordable digital content compared to American consumers. All US prices below have been converted to Australian dollars, using the exchange rate recorded by the Reserve Bank of Australia on the date that each piece of data was collected. This ensures that we are recording accurate price comparisons that are in step with the exchange rate.

Throughout this section, these blue boxes will provide a brief digest of what the data means for consumers.

Availability Overall

Our data shows that Australians and Americans have access to a similar number of music and game titles. When it comes to movies and TV however, Australians have access to roughly 20 to 30 percent less than American consumers. In the latter categories, the Australian market also consists of a markedly smaller number of distributors, compounding the limited choice available to Australians.



Figure 5 Availability of titles for purchase

Figure 5 shows the proportion of titles in our sample that are available in Australian markets (blue) and US markets (orange). While availability is similar in both markets for music and games, Australian access is comparatively poor for film and TV. Proportions reflect the number of titles in our sample that were available in each segment. The figure in brackets is the actual number of titles in each segment.

Availability of titles to stream

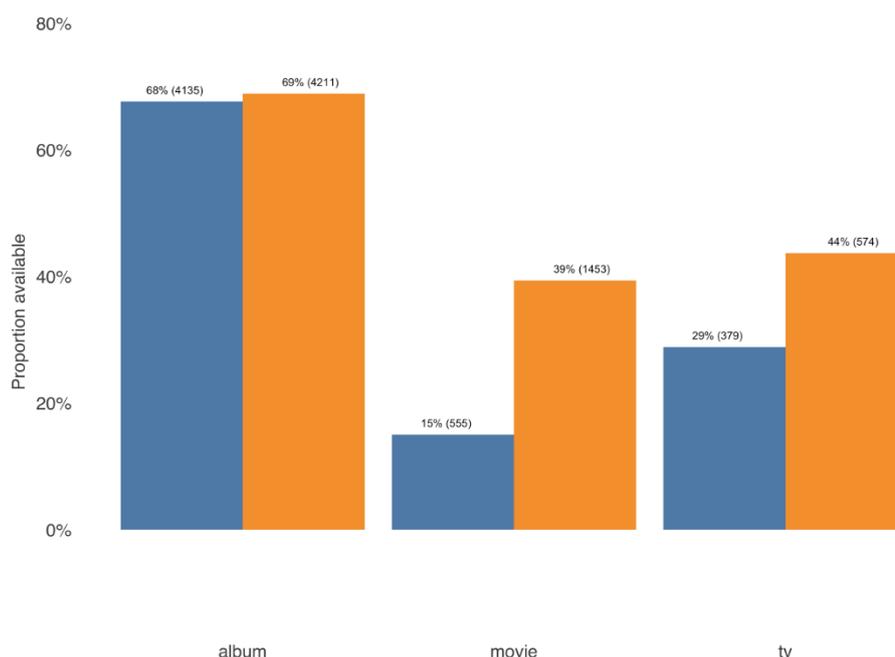


Figure 6 Availability of titles to stream

Figure 6 shows the proportion of titles in our sample that are available to stream in Australian markets (blue) and US markets (orange). The figure indicated in brackets refers to the number of titles in our sample that were available. While Australian and American consumers have access to about the same number of albums via streaming, Australians are much worse off for film and TV. Australians can only access about a third of the film titles and two thirds of TV titles that are available on American streaming platforms.

Australian consumers can access a similar number of games and music titles as American consumers. For film and TV, Australians can only access roughly two thirds of the content available in the US. Australians are generally even worse off when it comes to streaming, with access to just one third of film titles and two thirds of TV titles.

Prices Overall

Our data shows that prices of films and TV episodes follow a generally similar pattern for Australian and American consumers. Importantly, however, average prices for albums and console games are markedly higher in Australia. Australians pay nearly 25 percent more for music and games than American consumers, but much the same for movies and TV.

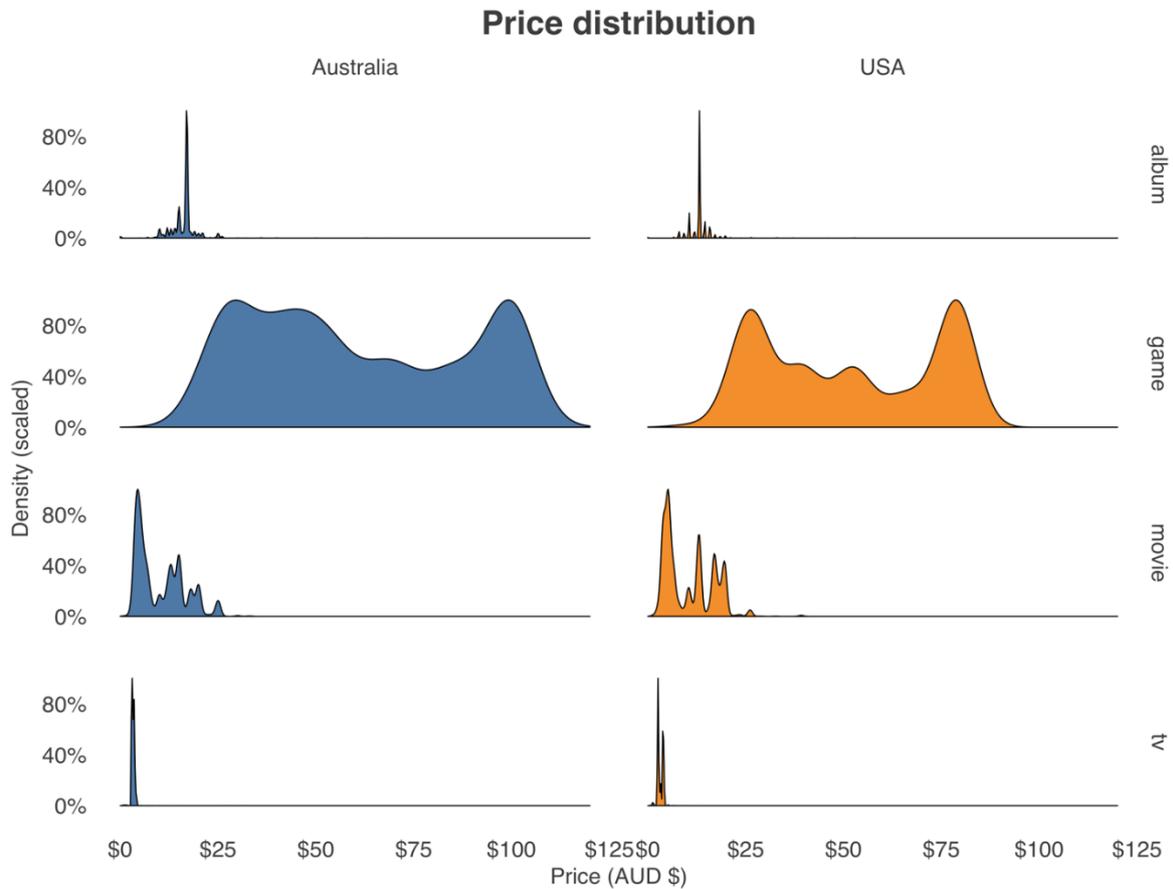


Figure 7 Price distribution

Figure 7 shows the distribution of prices for media titles in Australian markets (blue) and American markets (orange). Our data shows a very broad distribution of prices for games, and a somewhat broad distribution of prices for movies.

For TV episodes, prices are quite uniform in each market, and there is little difference in the price charged to Australian and American consumers. For films and games, however, there is a far wider range in the price difference. Some game titles were more than 4.5 times more expensive in Australia than in the US. Distributors often offer titles with steep discounts for a limited time, and this appears to account for the most substantial variations in prices.

While some TV episodes were more than twice as expensive in Australia compared to the US, the average price of an episode is much lower than that for other media. Paying twice the price for a TV episode in Australia might be \$3 more expensive, but paying double the average game title can mean an extra \$40 for Australian consumers.

Movies

Relative Cost

We compared the prices of movie titles that were available in both Australian and US markets. Netflix, Stan, Quickflix, and Presto were not included in this analysis, as they only provide subscription services, with no option to purchase movies outright. Our data showed that for titles that are available both in Australia and the US, distributors in both markets charged almost identical prices for a film on average – about \$15.50 AUD.

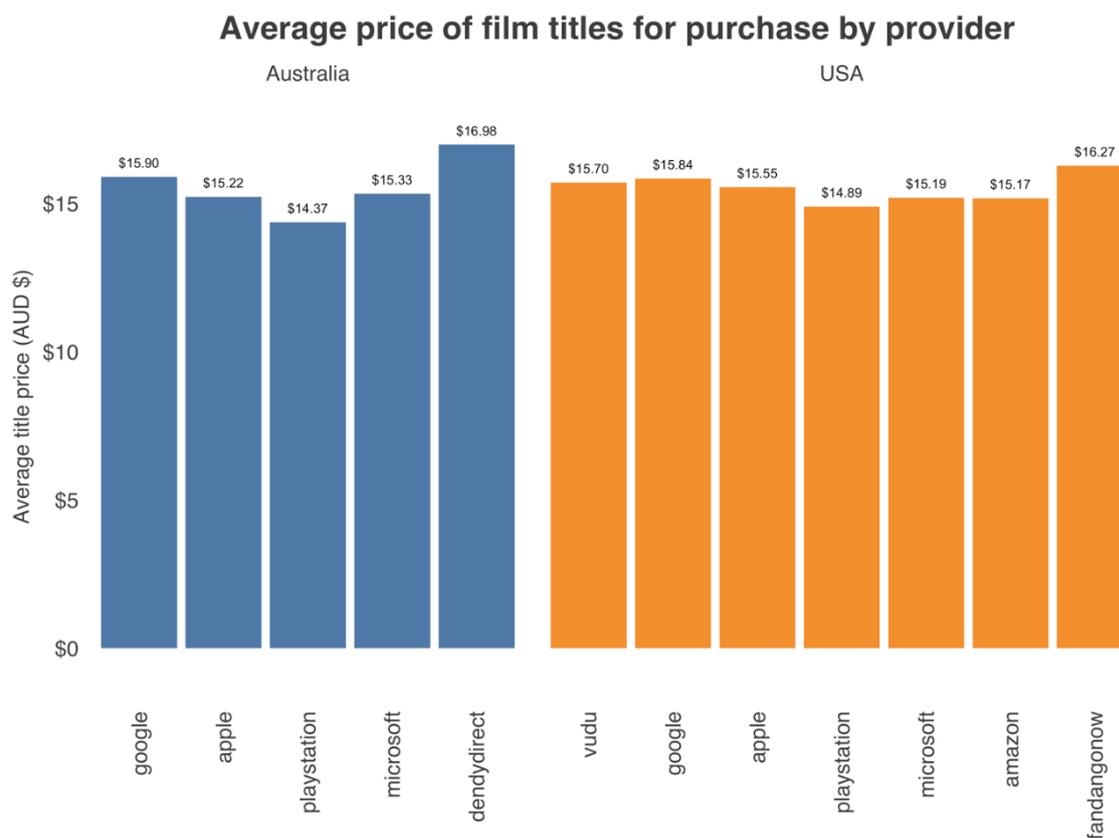


Figure 8 Average price of film titles for purchase by provider

Figure 8 shows a comparison of the average price charged for a film (in AUD equivalent) by each of the major distributors in Australian markets (blue) and US markets (orange). The average price for a film in Australia is approximately \$15.50, compared to \$15.60 in the US (prices in AUD equivalent).



Figure 9 Pricing for films to purchase

Figure 9 shows a comparison of the distribution of the prices for movie titles in Australian markets (blue) and US markets (orange). The average price in both markets is approximately \$15 (AUD equivalent). All of the film distributors that we examined priced a larger portion of their Australian catalogue above \$20 AUD than they did in their American catalogues. We focused this analysis on films that are available both in Australia and the US in order to compare prices charged for the same titles. For example, Google charges \$20 or more for about 20 percent of titles in their Australian store, but only for about 5 percent of titles in their US store (\$15.25 USD).

The distribution of prices overall, however, meant that the average price for a film was almost exactly the same in both markets. The US has a higher median price for films, at about \$16.85, compared to a median price of \$15 in Australia. This means that while Australia has a larger number of the most expensive films, it also has a higher number of cheaper films. In the US, most films are priced in the middle, which results in a very similar average price between markets.

Australian and American consumers pay very similar prices, on average, when buying films

Quality Options

Film prices in our sample were very similar between markets. Customers in both the US and Australia pay on average about \$17 for a High Definition film, and \$14 for Standard Definition. Rental prices for Australians and Americans were very similar, with less than 50 cents difference between the average price for High Definition or Standard Definition products. High Definition usually refers to content in either 720p or 1080p quality. We also looked for films releasing content in the new

Ultra High Definition standard (also known as 4k), but of the distributors we sampled, 4K movies were only available to customers in the US, and prices were on average twice that of a High Definition film.

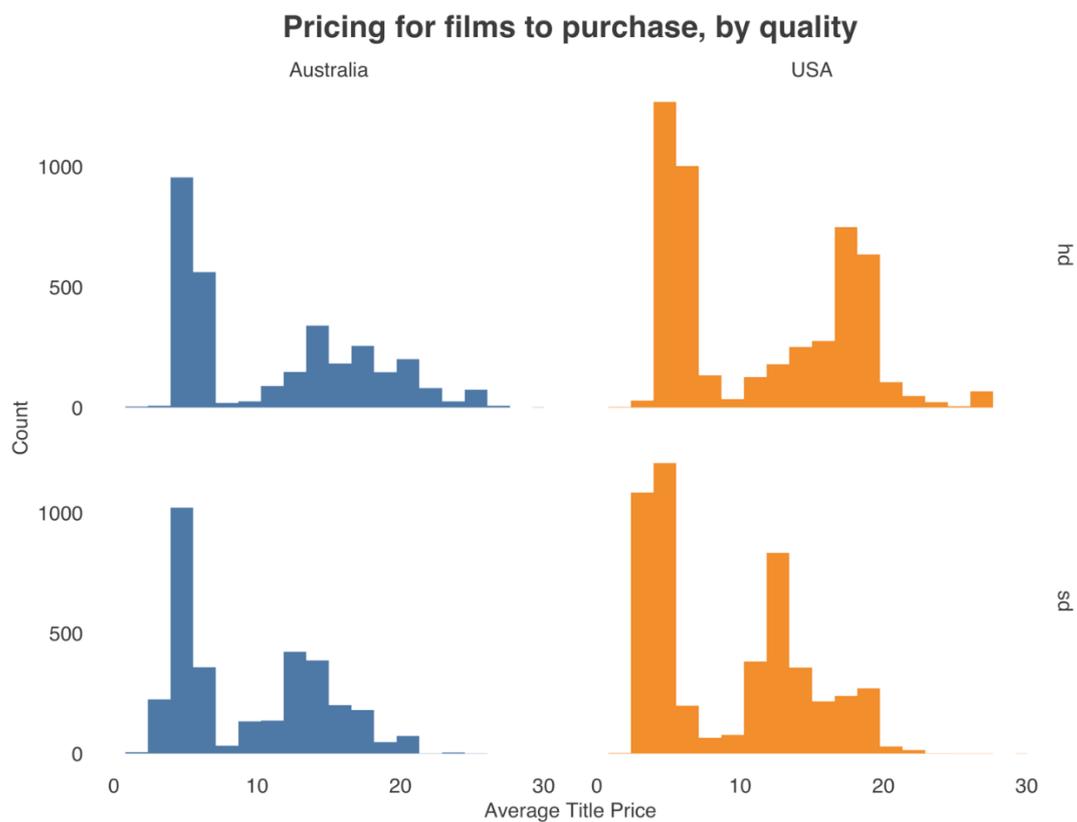


Figure 10 Pricing for films to purchase, by quality

Figure 10 shows the distribution of prices for purchasing films in Standard Definition and High Definition, in Australia and the US. In both markets, High Definition films cost about \$17 on average to purchase, and Standard Definition is about \$14. Distributors are clearly segmenting their catalogues by price; the bimodal distribution here shows that a large number of titles are available at a relatively much lower price than the average.

Australian consumers pay much the same for Standard Definition films when buying or renting, or when renting High Definition films. When buying High Definition films, however, they pay slightly less than American consumers.

Relative Availability

In our sample, Australians were able to access less than two-thirds of the movie titles available to American consumers. Not only are there fewer distributors servicing the Australian market, but each of those distributors offers only a fraction of their US catalogue to Australian viewers.

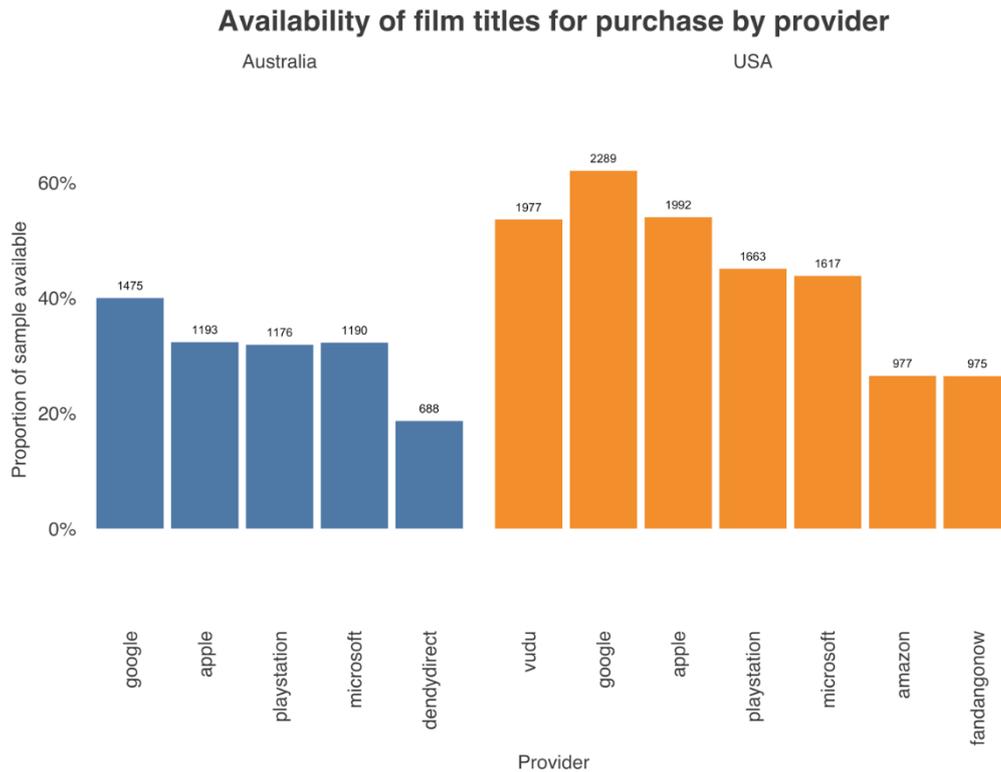


Figure 11 Availability of film titles for purchase by provider

Figure 11 shows the relative number of films available from different distributors in Australia and the US, in our sample. The figures on each bar refer to the number of titles in our sample that were available.

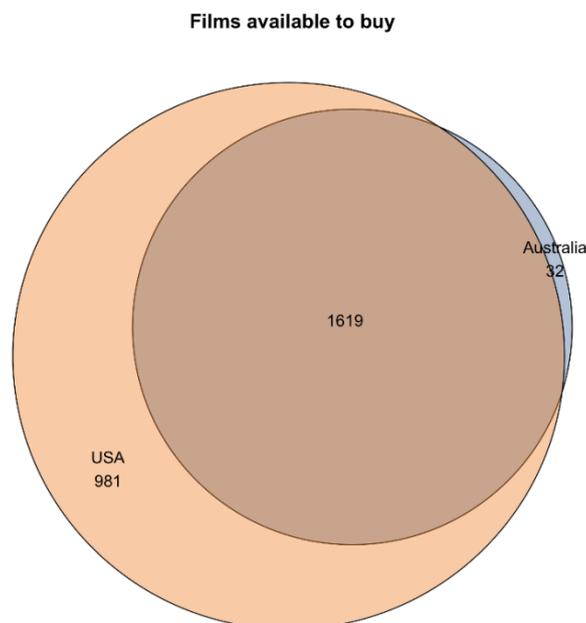


Figure 12 Films available to buy

Figure 12 shows the relative number of films in our sample that were available in Australian and US markets. There was considerable overlap, with only 32 films available exclusively in Australia, about 1600 available in both markets, and about 980 available exclusively in the US.

Although Australian distributors have smaller catalogues than American counterparts, they prioritise providing the most popular films. To understand this, we focus only on films that were in the Top 50 for worldwide box office takings in each of the years 2012-2016. This view shows that the US catalogues are much larger, and in absolute terms have more Top 50 films. But those popular films make up a much smaller percentage of their total catalogues. There is a substantial long tail in American catalogues. This means that their advantage in size over Australian catalogues is largely (but importantly, not entirely) due to their inclusion of many less popular films.

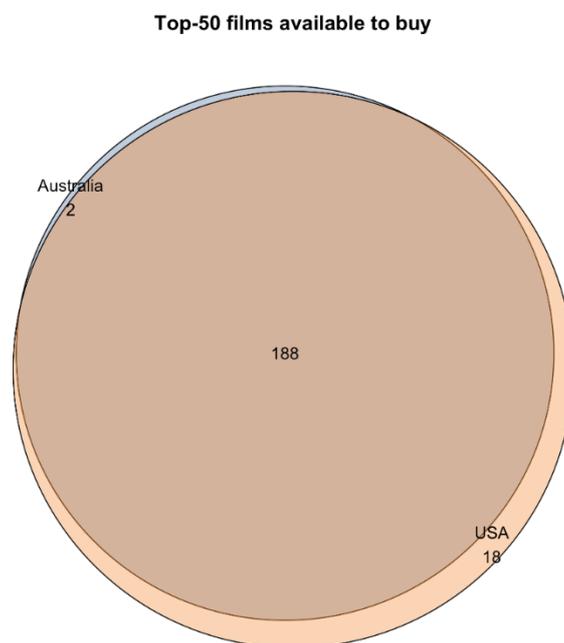


Figure 13 Top 50 films available to buy

Figure 13 Top 50 films available to buy shows the relative number of Top 50 films in our sample that were available in Australian and US markets. There was considerable overlap, with only two films available exclusively in Australia, 188 available in both markets, and 18 available exclusively in the US.

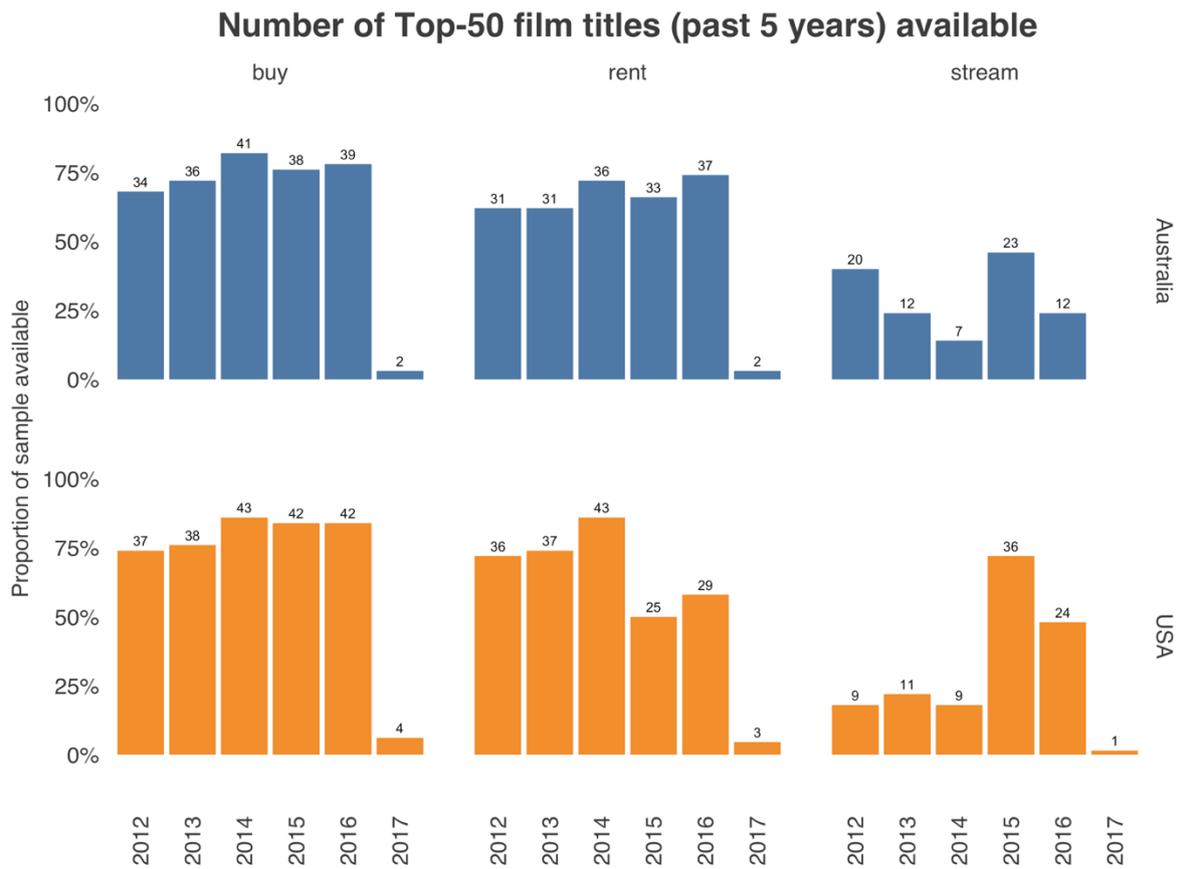


Figure 14 Number of Top 50 film titles (past 5 years) available

Figure 14 Number of Top 50 film titles (past 5 years) available shows the relative number of Top 50 films in our sample for the last 5 years that were available in Australian and US markets, broken down by purchasing, renting, and streaming. The figures on each bar refer to the number of titles in

While access for Australians is better when it comes to the most popular films, there are still notable gaps. Given that the most popular films are, by definition, consumed more frequently, even these relatively small differences are likely to cause Australians to feel frustrated by availability issues on a regular basis. Take, for example, a hypothetical consumer who watches one Top 50 film each weekend. Our data shows that 10 percent of Top 50 films are unavailable in Australia. If our hypothetical user randomly selects a film every weekend for two months, they have a 50 percent chance of being disappointed at some point by their inability to access a film. Over the course of a year, they are virtually guaranteed to be disappointed at some point.

For consumers of more niche titles, the situation is worse. Only 65 percent of all film titles available in the US are also available to buy digitally in Australia. If our viewer watches one random film each weekend, they have an 85 percent chance of being disappointed at least once after just one month. Over the course of a year, they are virtually guaranteed to have been unable to view a film at some point.

our sample that were available.

Streaming

In both Australia and the US, there are considerably fewer film titles available to stream than to purchase, but the difference is considerably worse for Australians. While just over half of titles available to purchase in the US can also be streamed in the US, only one third of titles available to buy in Australia can also be streamed.

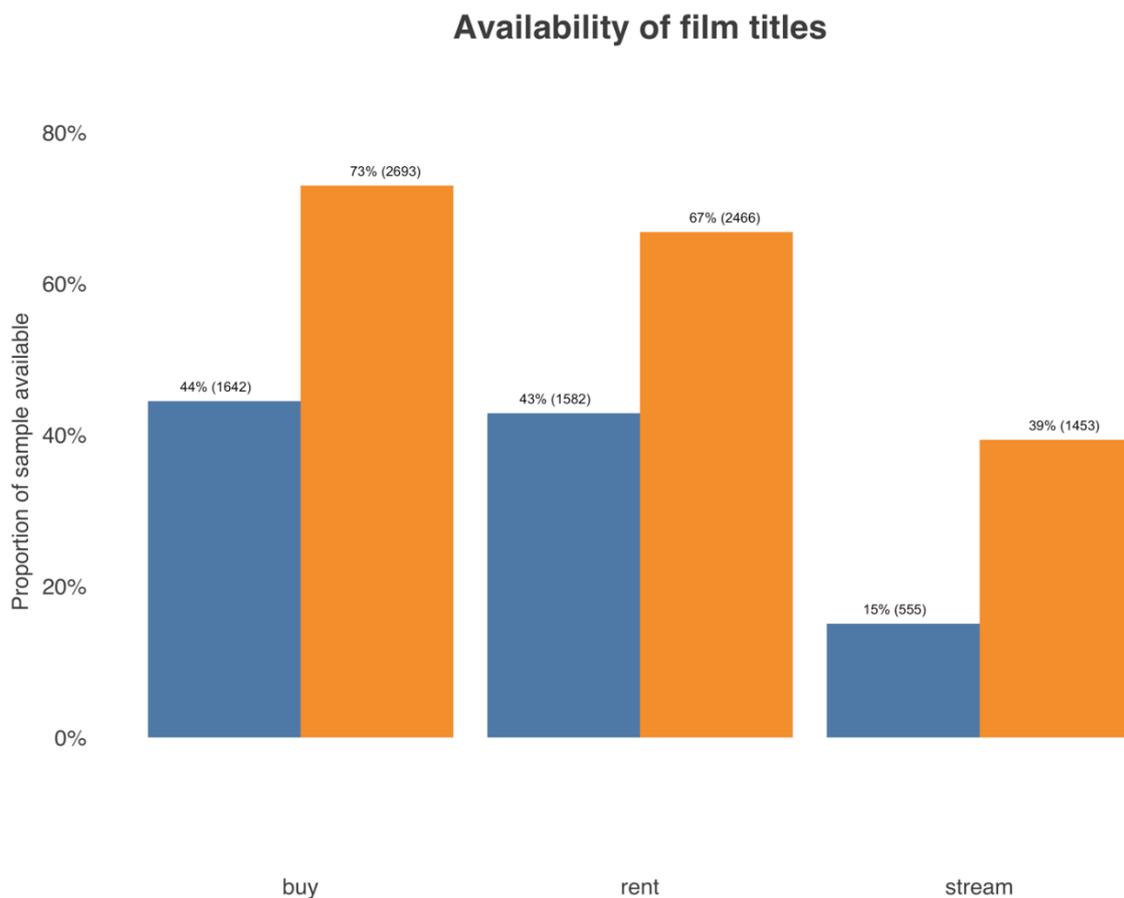


Figure 15 Availability of film titles

Figure 15 shows the relative number of films available to buy, rent, and stream in Australia (blue) and the US (orange). Just over half of the titles in our sample that were available to purchase in the US can also be streamed in the US. Only one third of titles in our sample that were available to purchase in Australia could also be streamed in Australia. Overall, Australians could stream one third of the titles that Americans could stream in our sample. Note that this chart does not indicate the total number of films available to stream in each country -- the figures on each bar refer to the number of titles in our sample that were available.

Australians have access to considerably fewer film titles and have a much more limited choice of platforms than American consumers. Australians miss out on a large proportion of films that are available to American viewers. Of the 1455 titles available to American consumers in our sample, only 377 of those could also be viewed in Australia – just 25 percent. Interestingly, 178 of the films

available to Australians in the sample were not available in the US – these consist mainly of Australian or other foreign (non-US) films, including a number of foreign language films.

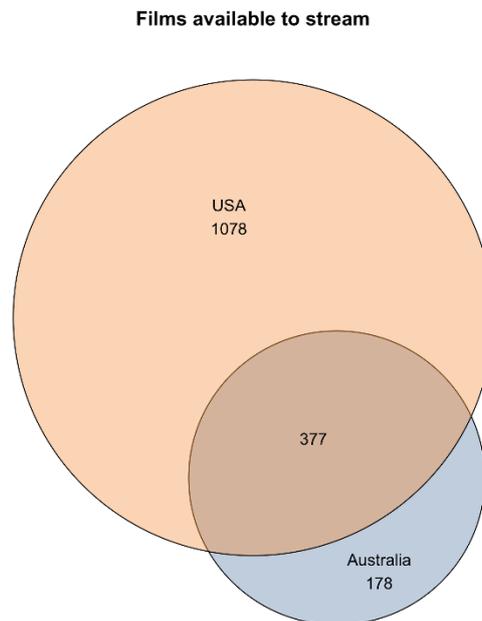


Figure 16 Films available to stream

Figure 16 shows the relative number of films available to stream in Australia and the US, showing overlap of titles available in both markets. We found 178 films in our sample exclusive to Australia, 1078 are exclusive to the US, and 377 are available in both. This chart does not indicate the total number of films available to stream in each country. Only a selection was included in our sample in order to show relative numbers available. See methodology for more information on sampling.

Streaming has quickly become a preferred format for movies and television in Australia.²⁷ For several years, Quickflix was the only subscription option for movies and television in Australia, having launched in 2004. Google Play began retailing digital content in 2012. In 2015, Netflix, Stan, and Presto entered the Australian market for movie and television subscriptions. Amazon Prime followed in late 2016.

Australian consumers can only access one third of the films available to American consumers via streaming. If our hypothetical viewer wants to stream one randomly selected film each month, they have a 95% chance of being disappointed at least once every 3 months.

Australian streaming providers appear to focus on including the most popular films in their catalogues. In our sample, relative access to the Top 50 most popular films was much more similar

²⁷ James Meese, 'The domestic ecology of Australian subscription video on demand services' (2017) *Media International Australia*; Lobato & Meese, above n 11.

between markets than film availability overall. Our data showed that 41 out of 90 films available in the US to stream were also available in Australia. While still less than 50 percent, this is much better than the 25 percent overall noted above.

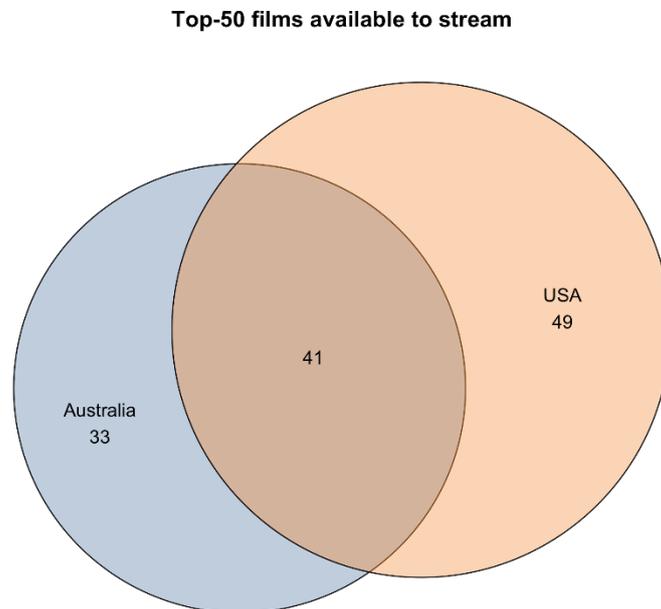


Figure 17 Top 50 films available to stream

Figure 17 shows the relative number of Top 50 films available to stream in Australia and the US, showing overlap of titles available in both markets. There are 33 films in our sample exclusive to Australia, 49 exclusive to the US, and 41 are available in both. This chart does not indicate the total number of films available to stream in each country. Only a selection was included in our sample in order to show relative numbers available. See methodology for more information on sampling.

When we broke down the data by distributor, we found that the three major Australian subscription services – Netflix, Foxtel, and Stan – each carry about the same number of titles as some of the mid-range providers in the US. They have substantially less than the two biggest providers in the US – Netflix and Amazon – but a similar number (or more than) the third and fourth largest providers – Fandor and Hulu. The US benefits from Netflix’s unmatched American catalogue, which is almost twice as large as the second largest competitor in the US (Amazon) or any of the largest providers in Australia (including Netflix’s own Australian catalogue). Besides Netflix’s huge American catalogue, the next largest US providers are similar to the largest Australian providers. The US does, however, have several other niche providers, which Australia does not.

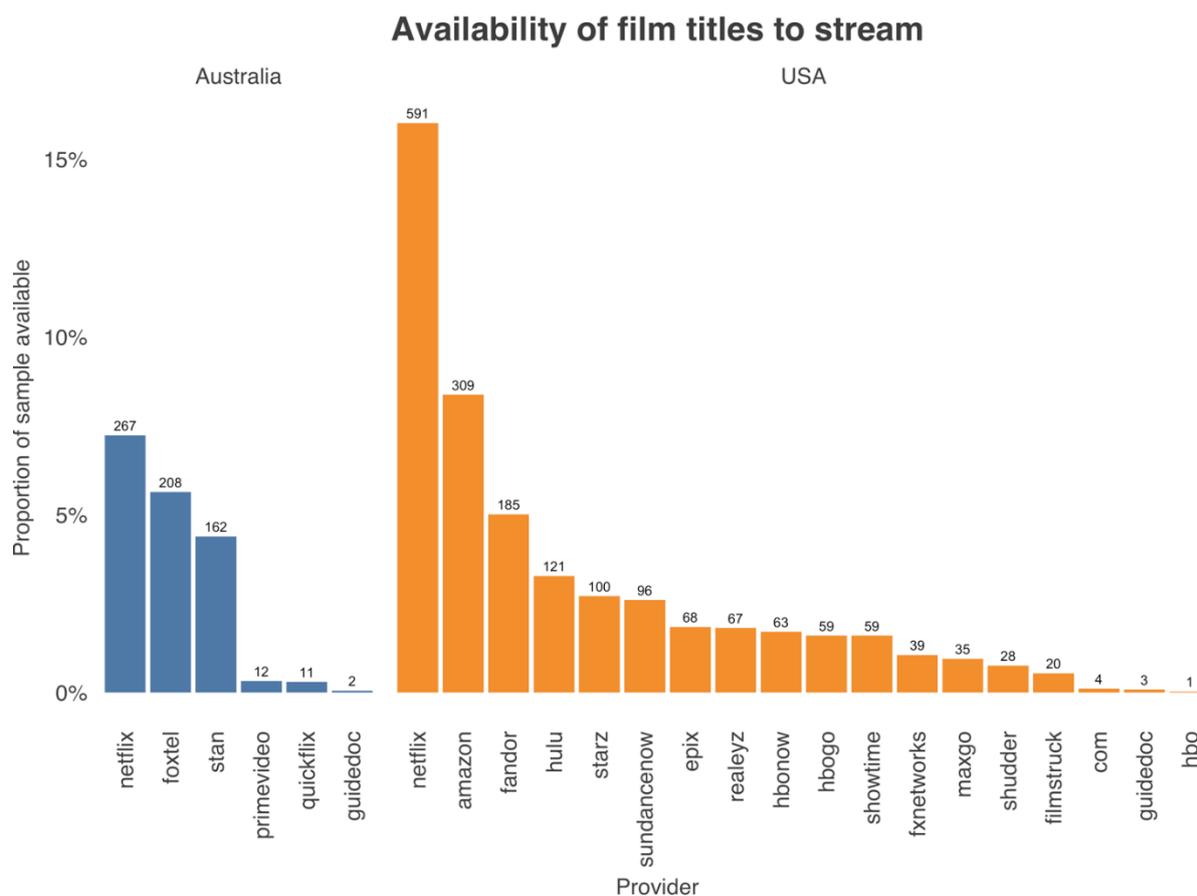


Figure 18 Availability of film titles to stream

Figure 18 shows the relative number of providers and films available to stream in Australia and US. The figures on each bar refer to the number of titles in our sample that were available through that provider in each market.

Overall, the largest US streaming providers provide access to a much larger number of titles in our sample than their Australian counterparts. The figures are very different for the most popular films in our sample. These films are typically available at much lower rates in streaming catalogues. This suggests a strategy to reserve the most popular content for more lucrative purchasing and rental channels, rather than subscription services. Interestingly, these differences are much more pronounced in the US than in Australia; when it comes to the Top 50 most popular films, the US platforms have much poorer access than the Australian providers. Australian streaming platforms appear to be investing proportionally more resources in providing access to more popular titles, whereas US platforms appear to focus more extensively on providing a larger range of titles.

Our data did not capture any American cable TV providers, which account for a large portion of media consumption in the US. We did capture data for the digital offerings of some cable channels, like HBONow. The only Australian equivalent to the cable channel providers in the US is Foxtel, which had the largest offering of Top 50 film titles in Australia, despite having generally poorer availability overall.

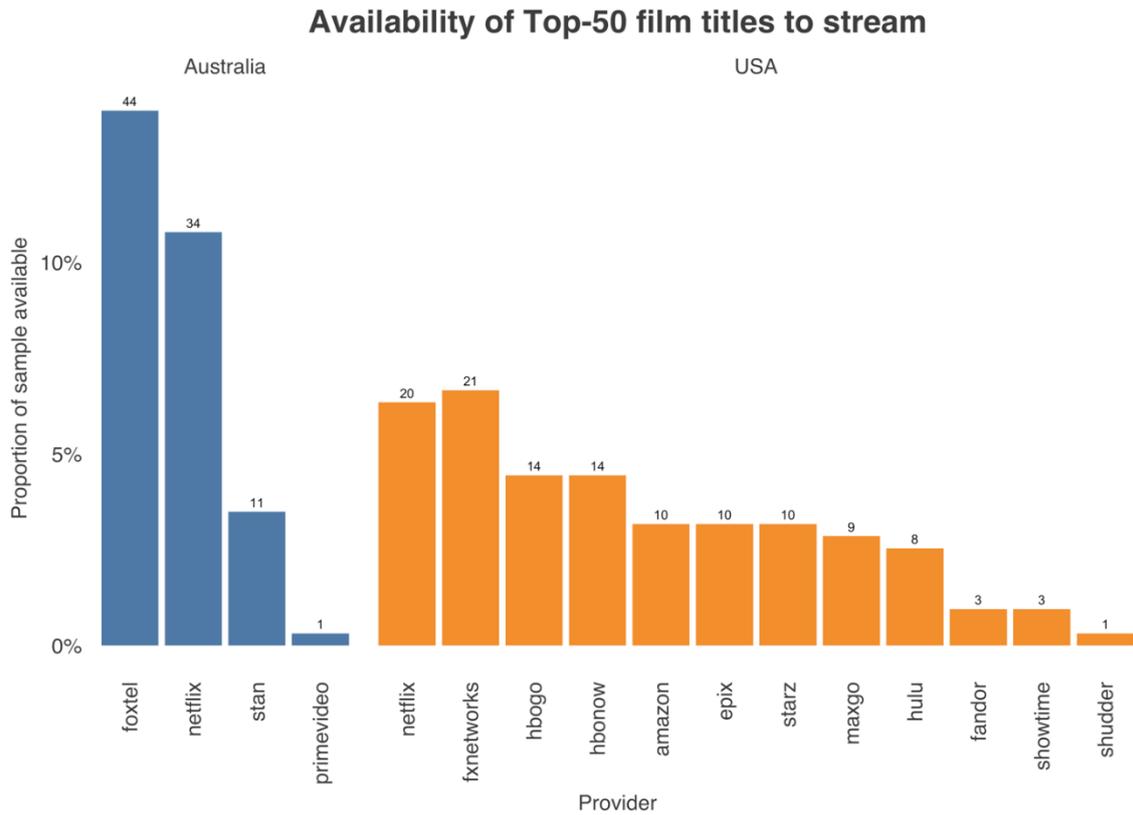


Figure 19 Availability of Top 50 film titles to stream

Figure 19 shows the relative number of Top 50 most popular films available to stream in Australia and US, by provider. Despite more limited availability generally, the major Australian platforms have up to double the number of Top 50 films that are available on the largest streaming platforms in the US. The figures on each bar refer to the number of titles in our sample that were available through that provider in each market.

There is a relatively low degree of overlap between the major subscription services for streaming films in Australia. In our snapshot, between half and three-quarters of the titles in each of the services' catalogues are not available on the other services.

Films in Australian streaming services

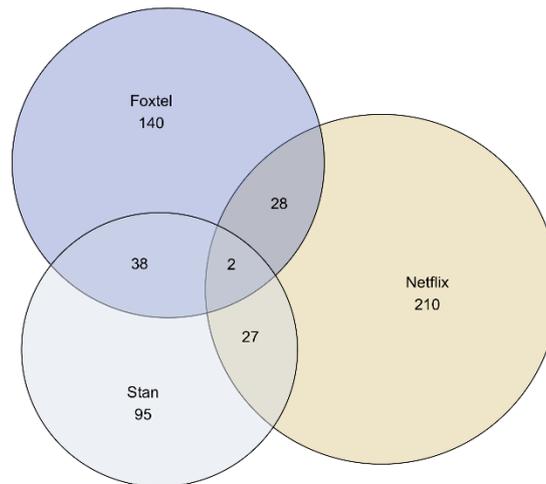


Figure 20 Films in Australian streaming services

Figure 20 shows the relative number of films available from each of the major subscription services, showing overlap of titles between providers. Overall in our sample, Netflix has the largest number of film titles available.

In our Australian sample, Netflix has the largest catalogue for movies, but they do not have the most popular content. When the sample size is limited to include only the Top 50 most popular film titles of the past 5 years, Foxtel is the dominant provider. Despite having more limited access overall in our sample, the Foxtel catalogue is focused on including the most popular titles. As a result, they have about 25 percent more Top 50 films than Netflix, the next closest competitor, and four times as many as Stan.

For an Australian consumer who only wants to (or can only afford to) pay for one streaming service, this is bad news. A subscription with any of the major distributors will only get them access to less than half the titles available with the biggest distributor in the US. This means that consumers may have to take out two or three subscriptions in order to access a majority of the titles available in Australia.

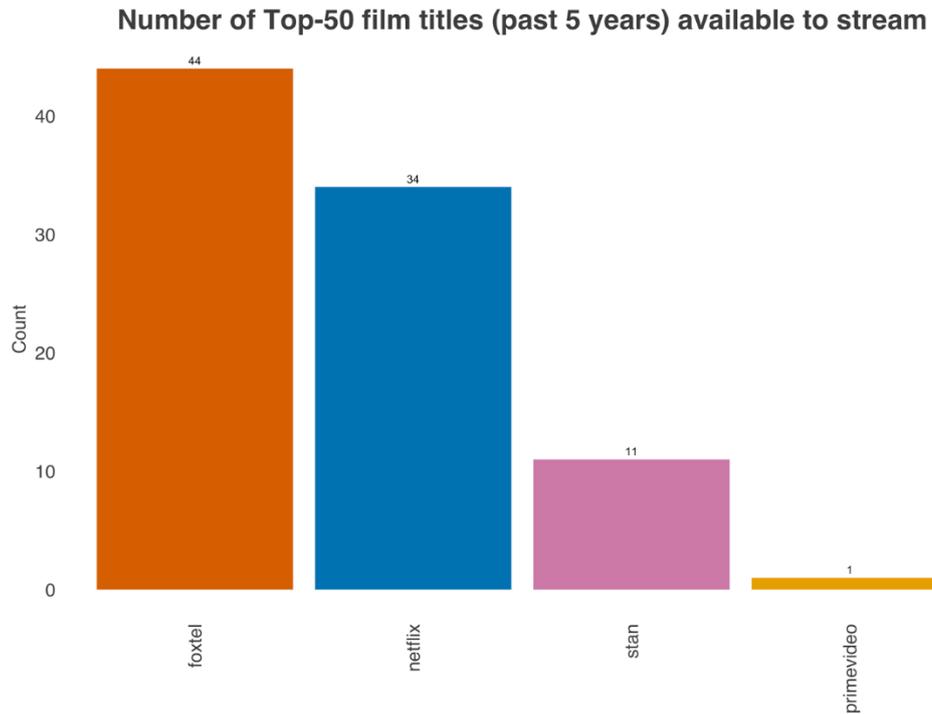


Figure 21 Number of Top 50 film titles (past 5 years) available to stream

Figure 21 shows the number of Top 50 film titles in our sample provided by each major streaming platform. Despite having the smaller overall availability, Foxtel has about 25% more Top 50 titles than Netflix, and four times as many as Stan. The figures on each bar refer to the number of titles in our sample that were available through that provider.

Television

Relative Cost

Consumers in Australia and the US pay very similar prices for TV episodes. Our data showed that Australians pay only about 10 cents more on average.²⁸

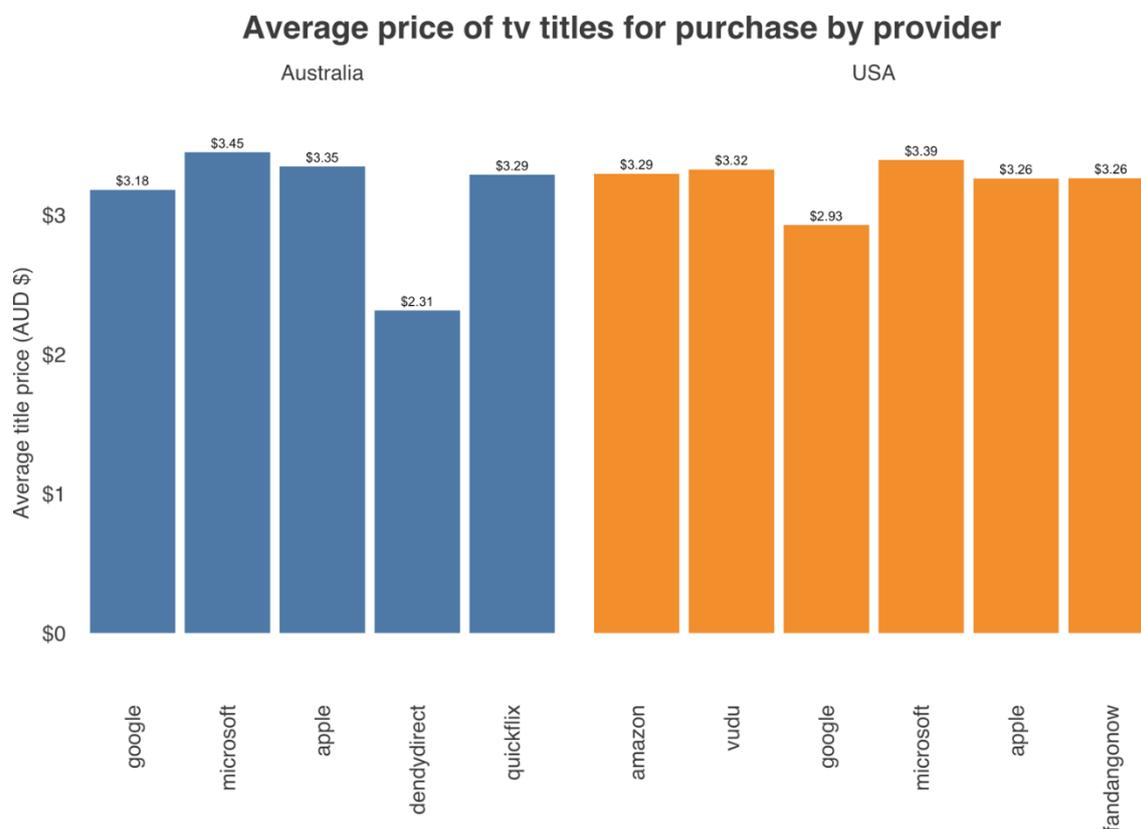


Figure 22 Average price of TV titles for purchase by provider

Figure 22 shows a comparison of average price charged for an episode of television by different distributors. In both markets TV episodes are priced very homogenously, at around \$3.30 each.

TV show providers in the US and Australia charge very uniformly for episodes. The vast majority of titles are priced between \$2 and \$4 per episode, with a consistent difference of about \$1 between High Definition and Standard Definition. These prices are very often matched between providers.

²⁸ Our data was collected from Justwatch.com, which is an aggregator of film and TV distributors. The website displays prices and links to purchase television programs either by season or by episode on the websites of major distributors, including Microsoft, Google Play, PlayStation, Amazon, and Apple's iTunes store. In the data we collected, a small number of prices were recorded for episodes where Justwatch had incorrectly displayed the price for a season or movie as the price of an episode. These errors were identified because the prices returned were far outside the normal range of prices. For example, our data recorded a price of \$30.99 for episodes of the television series *Orphan Black*, which is ten times the average price for a television episode. By manually checking this price on the Apple store, we found it was in fact the price for an entire season. This error occurred for four titles. The prices were manually checked to confirm that it was an error, and the incorrect instances of those titles were subsequently omitted. The affected titles were *Orphan Black*, *Prison Break*, *Peter Rabbit*, and *Looking*.

The uniform prices for TV episodes charged by different providers means that consumers have little reason to shop around. Australian consumers pay the same as viewers in the US.

Quality Options

The data indicated that average prices in Australia and the US are very similar across different quality types for TV. Australians pay slightly more for Standard Definition, but American consumers pay slightly more for High Definition.

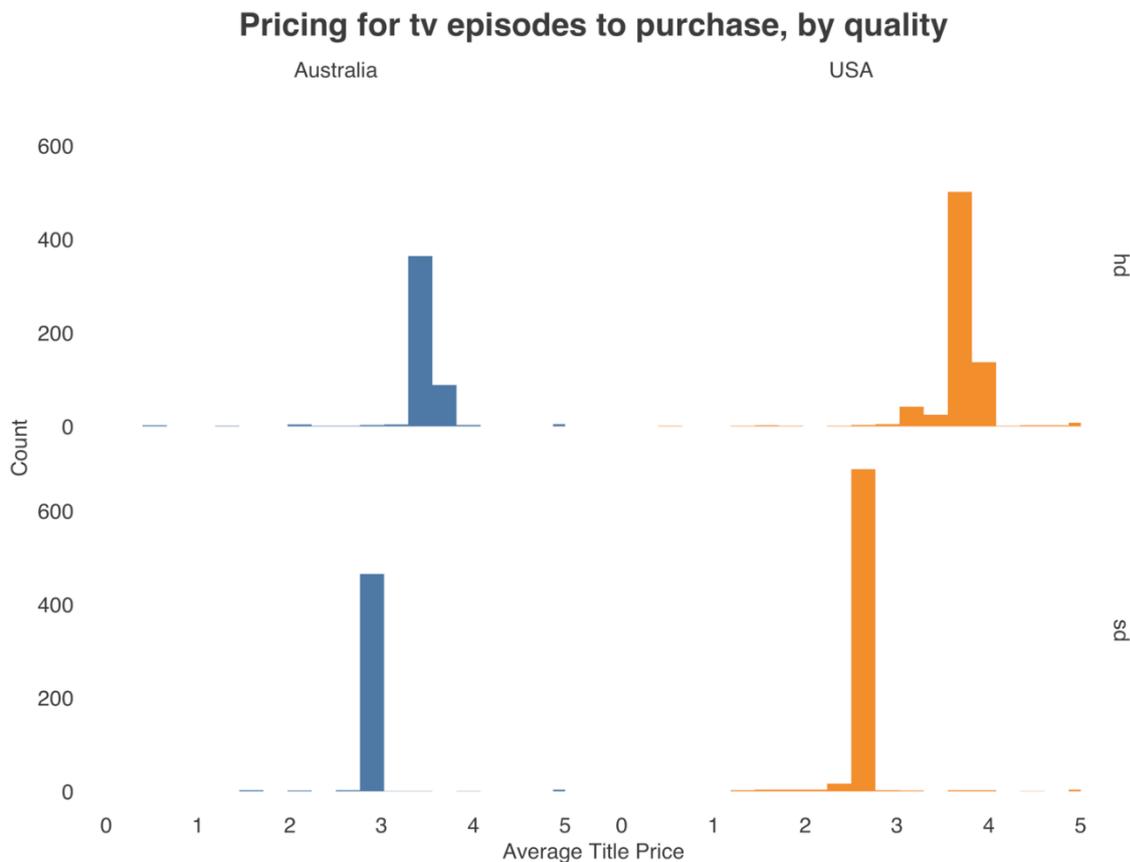


Figure 23 Pricing for TV episodes to purchase, by quality

Figure 23 shows the distribution of prices for television episodes in Australia and the US. While Americans pay roughly \$2.60 (AUD) for Standard Definition, Australians pay roughly \$2.90 on average. For High Definition, Australians pay \$3.50 on average, and Americans pay about \$3.90.

Relative Availability

Australians have access to roughly three-quarters of the television content available to American consumers.²⁹ The total number of titles offered by different US providers, however, showed a

²⁹ The data for television was collected starting from March 21, 2017.

substantially higher number of titles in total, indicating a high degree of overlap in the catalogues of different US providers. This chart also indicates the relatively limited number of titles available to stream compared to purchase availability. Foxtel, Stan and Netflix, all of which only offer titles to stream, have substantially fewer titles than retailers like Google and Microsoft, even within the same market.

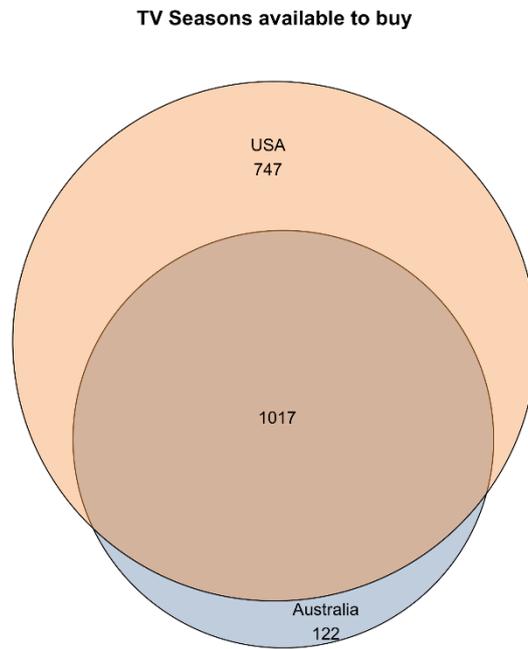


Figure 24 TV Seasons available to buy

Figure 24 shows the relative number of TV show seasons available to purchase in Australia and the US. Of a total of 1886 titles in our sample, 122 were exclusive to Australia, 747 were exclusive to the US, and 1017 were available in both markets. This chart does not indicate the total number of shows available in each country. Numbers indicate the size of our sample, in order to show relative numbers available.

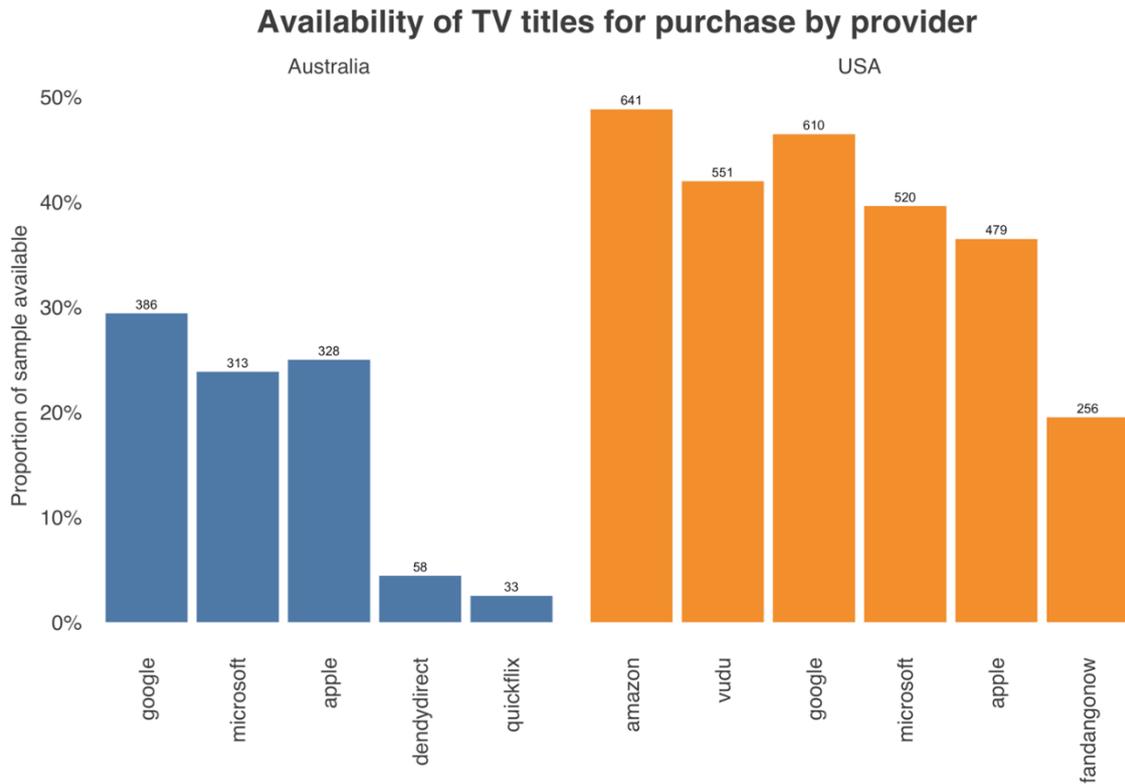


Figure 25 Availability of TV titles for purchase by provider

Figure 25 shows the relative number of television titles available to buy in Australian and US online stores. The figures on each bar refer to the number of titles in our sample that were available through that provider in each market.

Recent TV series available to purchase (most popular series only)

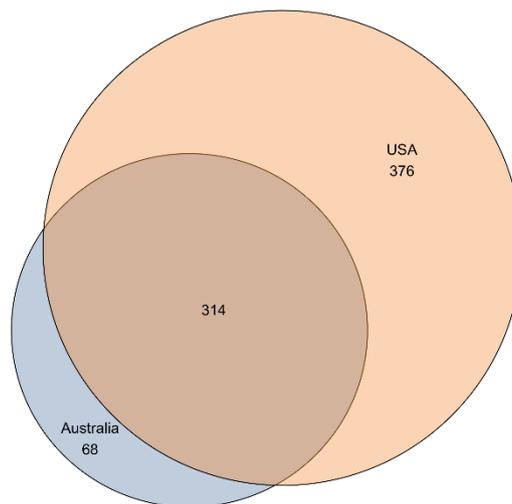


Figure 26 Recent TV series available to purchase (most popular series only)

Figure 26 shows the relative number of Top 100 ranked television seasons available for purchase in Australia and the US, showing overlap of titles available in both markets. This chart only shows the

most recent season for each series. Of a total of 758 titles in our sample, 68 were exclusive to Australia, 376 were exclusive to the US, and 314 were available in both markets. This chart does not indicate the total number of shows available in each country. Numbers indicate the size of our sample, in order to show relative numbers available.

More than half of the most popular TV shows available in the US are exclusive to the US, and not available in Australia. This means that Australians miss out on more than half of the most popular content.

There is a smaller number of digital TV distributors in Australia compared to the US, and those that exist offer a more limited selection. Australians can only access about 75 percent of TV shows available in the US. It is worse for the most popular shows, of which Australians can only access about half.

Streaming

In both Australia and the US, there are slightly fewer film titles available to stream than to purchase, but the difference is less severe than the case for films. In both markets, about 80 percent of TV titles available to buy in in that country can also be streamed there. Overall, Australians can stream about two thirds of the titles available to stream in the US.

Availability of TV seasons

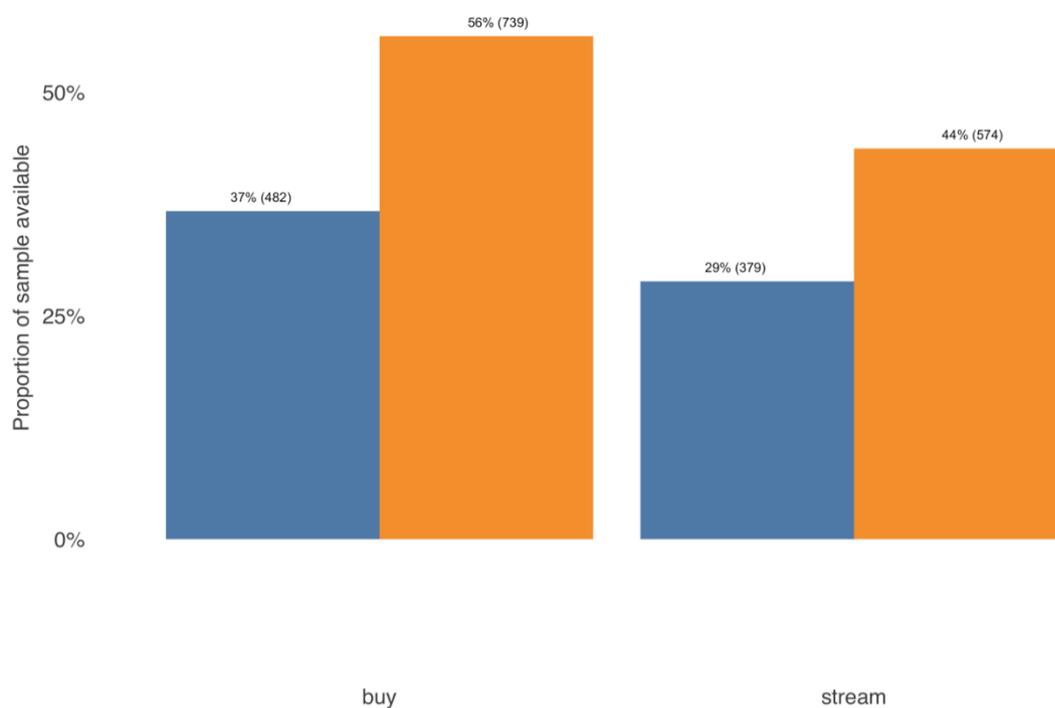


Figure 27 Availability of TV seasons

Figure 27 shows the relative number of TV shows available to buy or stream in Australia (blue) and the US (orange). About 80% of titles in our sample that can be purchased in each market can also be streamed there. The figures indicated in brackets refer to the number of titles in our sample that were available through that provider in each market.

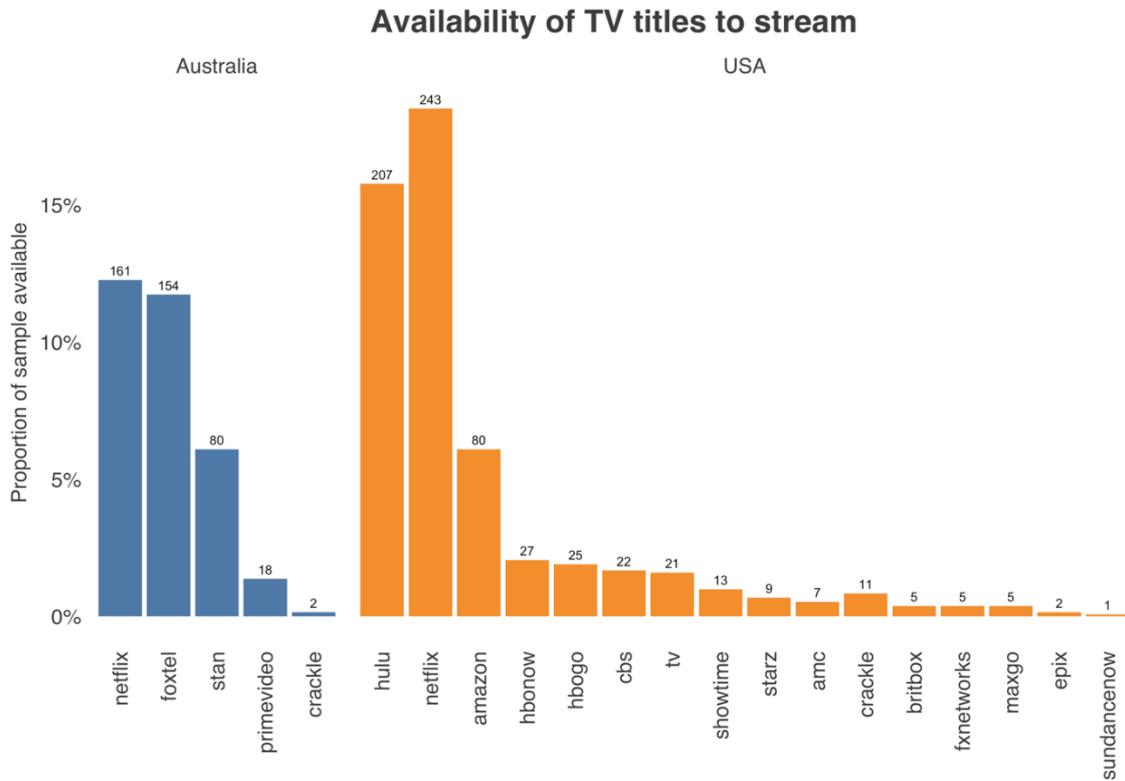


Figure 28 Availability of TV titles to stream

Figure 28 shows the number of television providers and titles available to stream in Australia and the US. The figures on each bar refer to the number of titles in our sample that were available through that provider in each market.

When we focus on streaming services for television content, the proportion of content available to Australian consumers drops to about half that available in the US. Additionally, there is again a far more limited choice of streaming platforms in Australia compared to the US.

TV Series in Australian streaming services

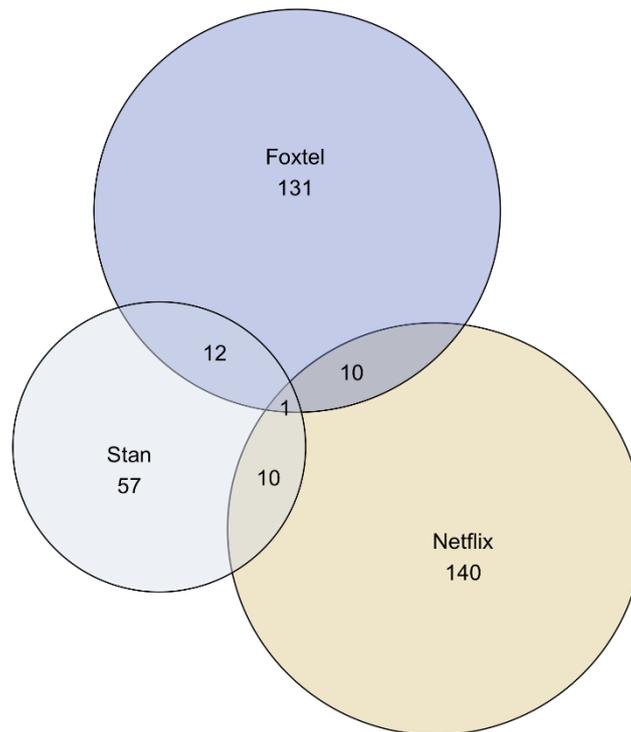


Figure 29 TV Series in Australian streaming services

Figure 29 shows the relative number of TV shows available from each of the major subscription services, showing overlap of titles between providers. Netflix has the largest availability in our sample, with 160 titles. Foxtel carried 153, and Stan had 80. Less than 10% of titles were available on more than one platform.

As was the case for films, there is relatively little overlap between the major providers of streamed television in Australia. At least three-quarters of content is exclusive to that service for all three catalogues. While the catalogues of Australian TV streaming platforms are substantially smaller than the American platforms, the difference is less pronounced for TV than it is for film.

Netflix has the largest number of TV shows available in our sample, and also maintains this advantage when it comes to just the Top 100 most popular shows. However, many of these popular titles are Netflix's own productions. The low overlap between providers suggests that the streaming market is not very competitive, in that providers are able to negotiate for exclusive rights to stream content in Australia. The result is that Australian providers are not in a position to offer access to a broad catalogue of the most popular content.

Number of latest seasons of Top-100 television (2017) titles available to stream

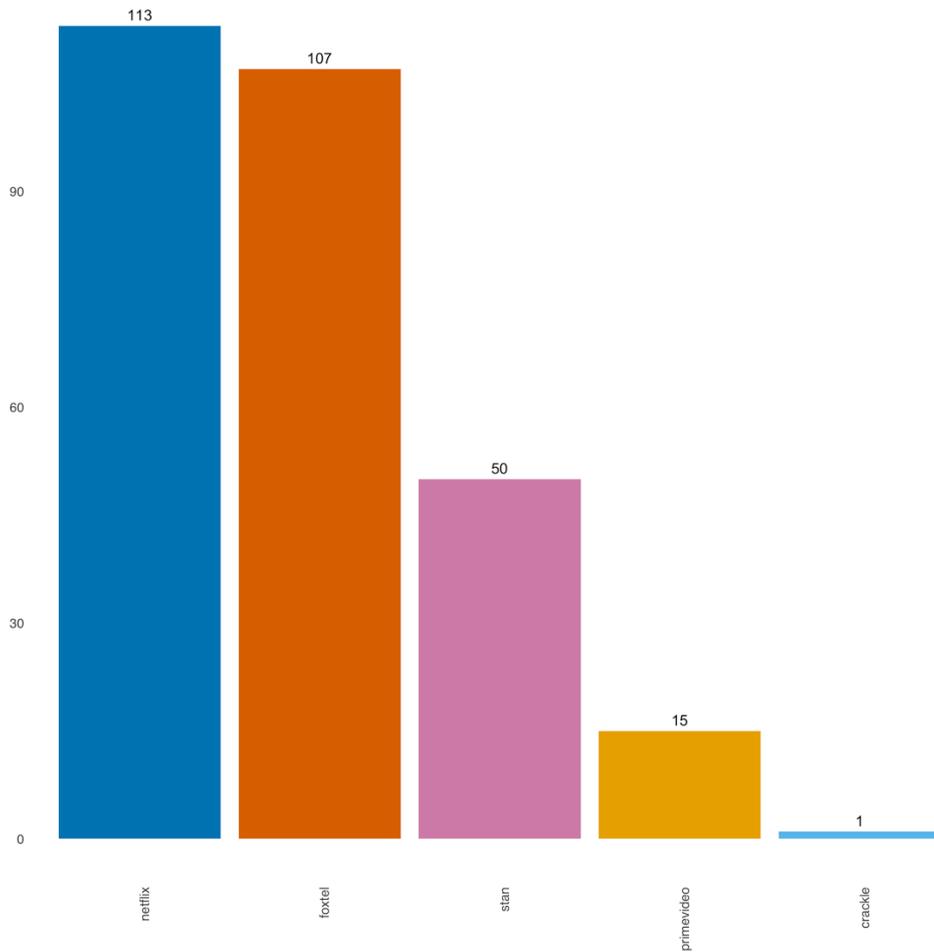


Figure 30 Number of latest seasons of Top-100 television titles available to stream

Figure 30 shows the relative number of Top 100 most popular TV shows available from each of the major subscription services. Netflix has both the largest selection of TV titles in our overall sample, and also the largest selection of the most popular titles. Foxtel has a slightly smaller selection of the most popular titles, while Stan has about half the number of the other platforms. The figures on each bar refer to the number of titles in our sample that were available through that provider in

The low overlap between providers suggests that the streaming market is not very competitive, in that providers are able to negotiate for exclusive rights to stream content in Australia. The result is that Australian providers are not in a position to offer access to a broad catalogue of the most popular content. The low overlap between catalogues does however mean that consumers face large potential marginal gains by taking out a second or third subscription. A subscription to two Australian providers will likely give a consumer access to the majority of content available.

each market.

As with film content, Australian providers have focused their relatively smaller catalogues on the most popular content.

Recent TV series available to stream (most popular series only)

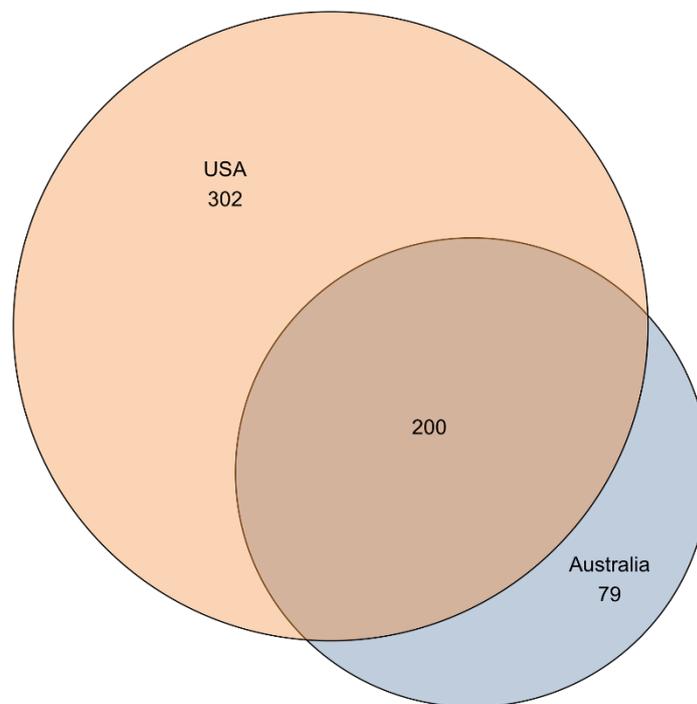


Figure 31 Recent TV series available to stream (most popular series only)

Figure 31 shows the relative number of Top 100 ranked television seasons available to stream in Australia and the US, showing overlap of titles available in both markets. Of a total of 581 titles in our sample, 79 were exclusive to Australia, 302 were exclusive to the US, and 200 were available in both markets. This chart does not indicate the total number of shows available in each country. Numbers indicate the size of our sample, in order to show relative numbers available.

Of the Top 50 shows, Australians can only access just under half of the titles available to stream in the US. If they want to watch anything outside the Top 50, they have a one in three chance of being disappointed.

Music

Relative Cost

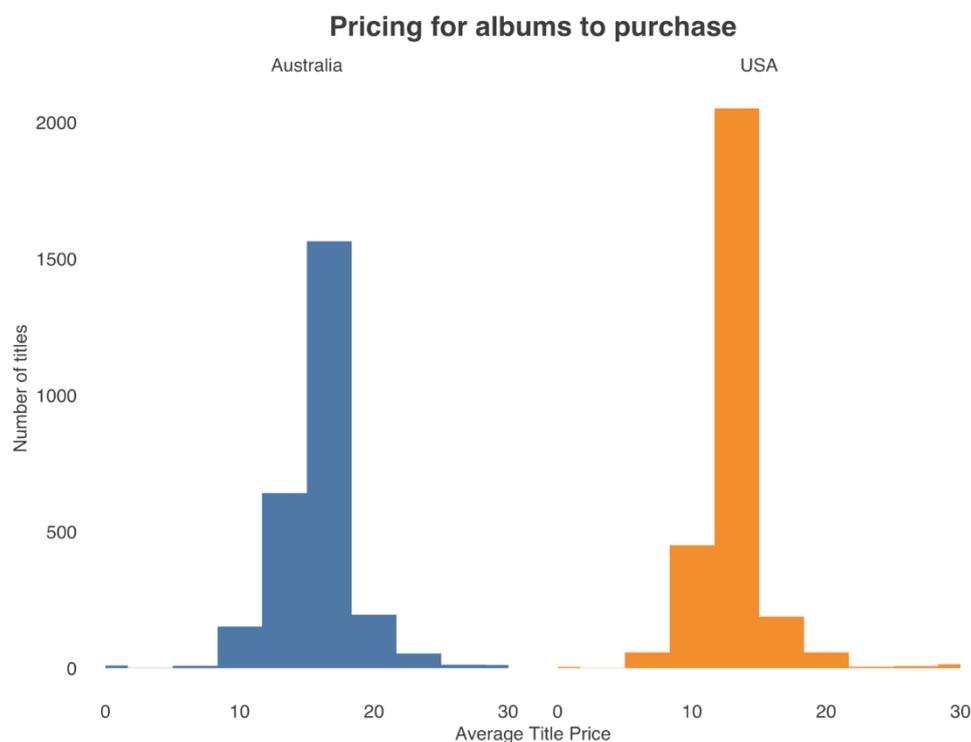


Figure 32 Pricing of albums to purchase

Figure 32 shows a comparison of album price distribution on the Australian (blue) and US (orange) iTunes stores. There are a higher number of albums in the cheaper price brackets in the US compared to Australia, where most albums are priced in the higher range. The peak for Australian album prices occurs at about \$16, but the peak price in the US is around \$13.

The data for music prices consists of the minimum price charged for a given album in the American and Australian Apple iTunes stores. Albums in the Australian store are frequently priced up to 24% more than albums in the American store. The average price for an album in the US is \$13.35, compared to \$15.85 in Australia.

Relative Availability

Our data showed that music catalogue sizes are much the same in Australia and the US. The overwhelming majority of album titles are available in both markets. The small differences between market is often explained by publishers releasing titles under different names in different markets.

Music available (stream and purchase)

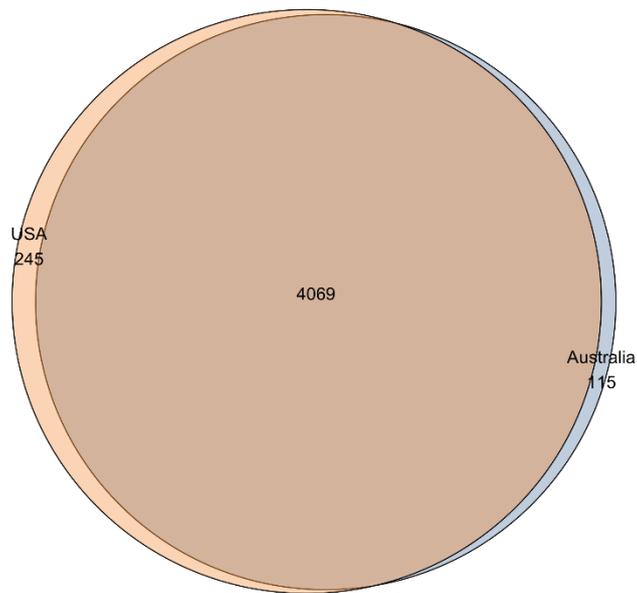


Figure 33 Music available (stream and purchase)

Figure 33 shows the relative number of music albums available to stream or purchase in Australia and the US, showing overlap of titles available in both markets. The vast majority of albums in our sample were available in both Australia and the US, with less than 10 percent of titles exclusive to one market.

Streaming

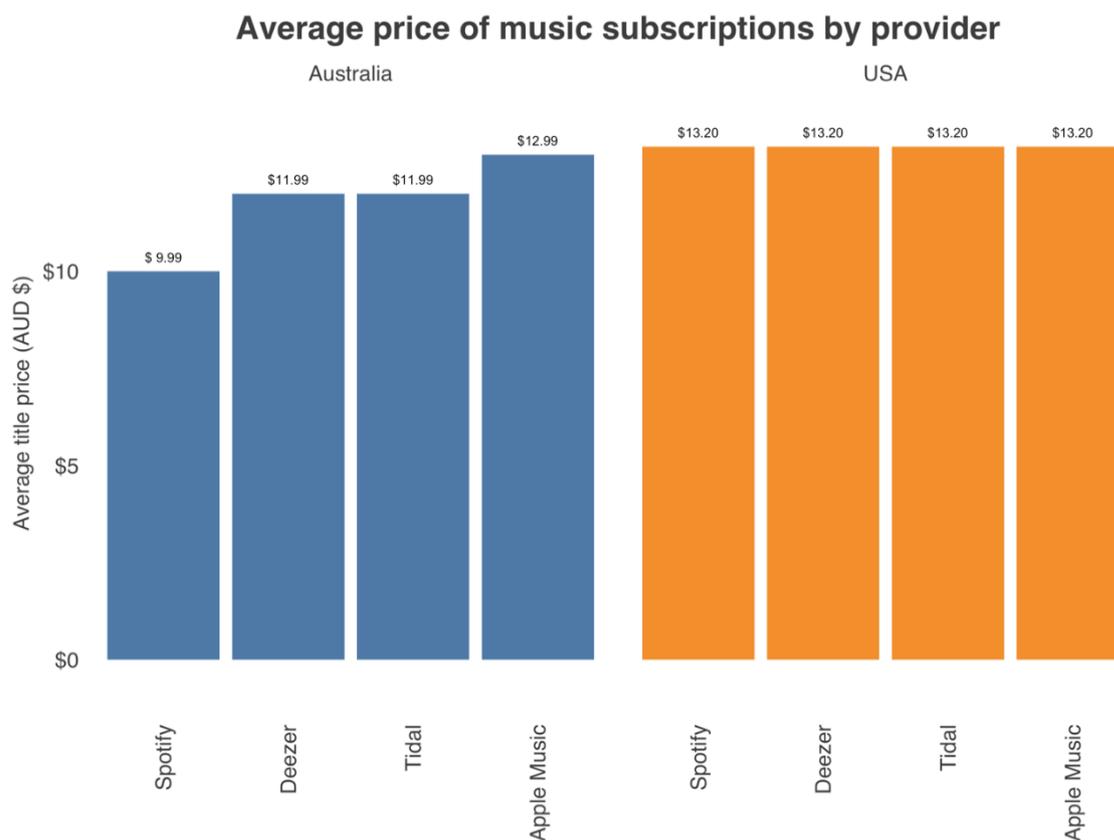


Figure 34 Average price of music subscriptions by provider

Figure 34 shows the monthly subscription prices for major music streaming services. This price reflects the lowest paid subscription option for each provider. Some offer free subscriptions with a limited catalogue or advertisements, and some offer higher tier paid subscriptions with benefits like high quality lossless streaming or multiple devices on the same account.

Comparing the prices of four major music subscription services, we found that Australians enjoy cheaper prices across the board. This comparison is based on the lowest tier of paid subscription available on each platform. Several also offer a second tier, 'premium' subscription which includes higher quality streaming or other benefits, and some offer free subscriptions supported by advertisements. It is difficult to compare providers because their services are not standardized in terms of offerings, but we can see that, in general, Australian consumers pay less for music streaming.

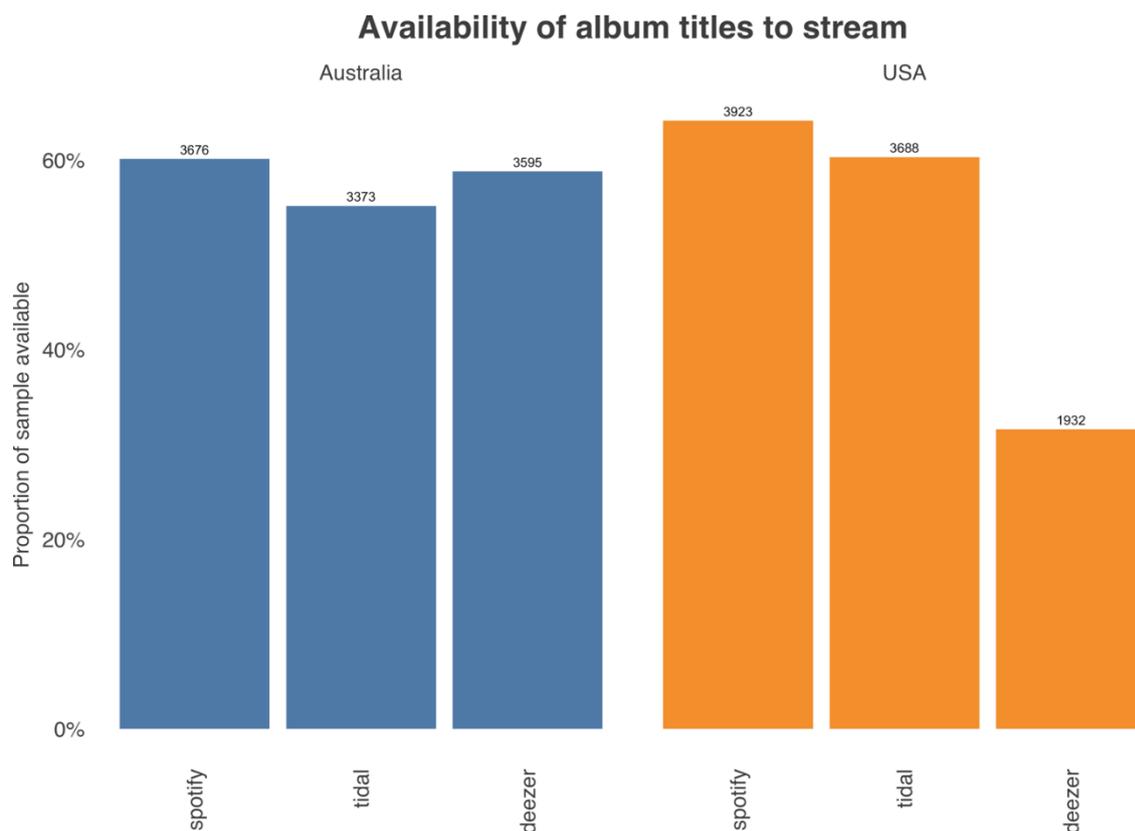


Figure 35 Availability of album titles to stream

Figure 35 shows the number of albums available from the major music distributors. Most providers have similar numbers of albums from our sample available on their Australian and US platforms. Deezer has a similar number available on the Australian platform, but about half the availability in the US. The figures on each bar refer to the number of titles in our sample that were available through that provider in each market.

Recent changes in music subscription services have dramatically improved consumer options. In 2010 Guvera was the first Australian-owned music streaming service to launch in the country. Prior to that, iTunes was the only digital music retailer, and there were no subscription services available for music. Guvera withdrew from Australian and overseas markets in 2016 in the face of ongoing debt issues.³⁰ In 2012 a number of other free or paid music streaming services began serving the Australian market, including Spotify, Pandora, Google Play Music, and Deezer. In 2015 the market grew again with the introduction of Tidal, a high quality lossless streaming service, and Apple Music, the subscription version of the iTunes retail catalogue.

³⁰ Guvera, *Guvera – Notice* (29 July 2016) Guvera <<http://notice.guvera.com>>; Steve Jones, ‘Guvera to Exit Australia but Vows to Press on in Emerging Markets’ on Steve Jones, *Mumbrella* (27 July 2016) <<https://mumbrella.com.au/guvera-exit-australia-vows-press-emerging-markets-383713>>.

Music albums in Australian streaming services

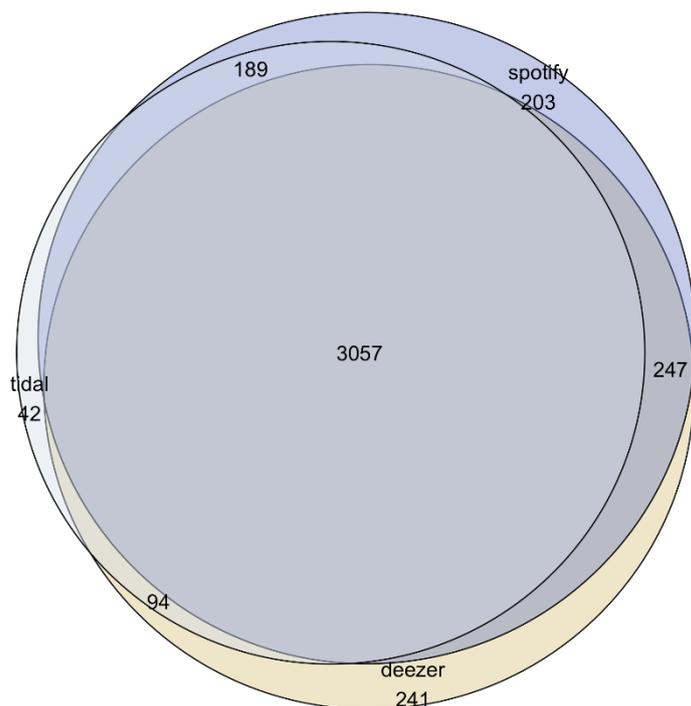


Figure 36 Music albums in Australian streaming services

Figure 36 shows the relative number of albums available to stream on Australian music platforms, showing overlap of titles available in both markets. In our sample, three of the major music streaming services in the Australian market – Spotify, Deezer, and Tidal – offer very similar content, and only about 10 percent of albums are exclusive to one platform.

The three major music streaming services in our sample have extremely similar content and pricing. Consumers should focus on other features that differentiate the services, such as user interface, high quality lossless streaming, and the option for discounted joint accounts through family packages.

Games

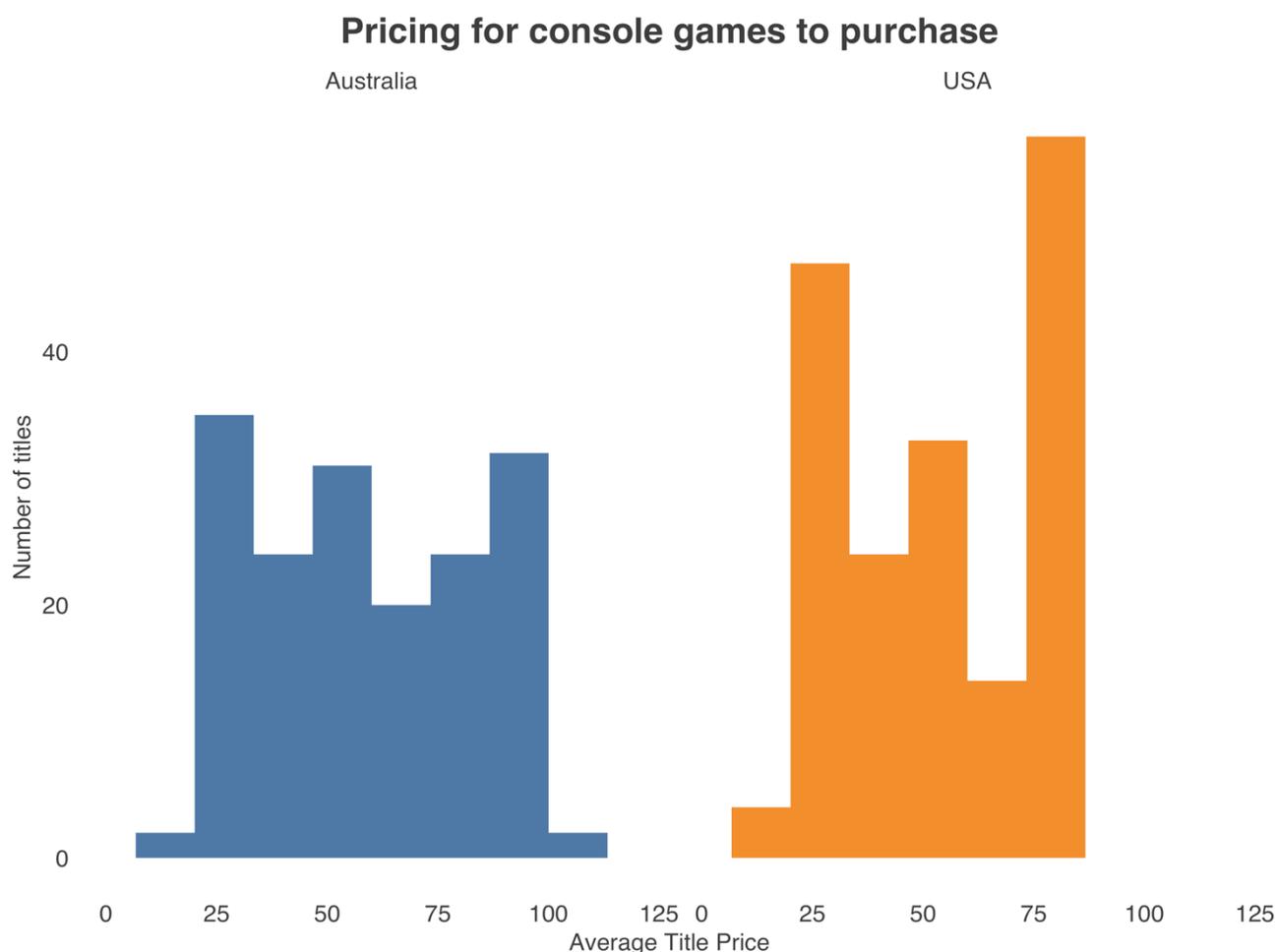


Figure 37 Pricing for console games to purchase

Figure 37 shows a comparison of price distribution for console games in Australia and the US. Australia has a somewhat broader distribution of prices, including a large number of game titles priced between \$80-\$115. The US also has a large number of games priced around \$80, but none in our sample were priced higher than this. The majority of games in the US were priced between \$25-\$55.

The average price for a game in Australia is \$60, compared to \$50 in the US. The average price mark-up for Australian customers across all game titles is about 25 percent. Many games tended to be priced in distinct categories. In both markets, roughly two thirds of games are priced below \$60. Very few games in the US were priced above \$75, and none at more than \$80. In Australia, by comparison, 25 percent of games are priced above \$90.

Australian consumers pay about 25% more for games than American consumers, on average. Some game titles in the US attract heavy discounts, which can result in even bigger price differences – some games in our sample were up to four times more expensive in Australia.

Conclusion

The 2013 IT Pricing Inquiry clearly demonstrated the extent and severity of ‘the Australia tax’ on digital media. The report found that Australians often pay 50 to 100 percent more than American consumers for identical products. In particular, the inquiry found that Australians pay, on average, 49 percent more for software, 46 percent more for hardware, 52 percent more for music, 84 percent more for games, and 16 percent more for e-books.³¹ The report concluded that “in many cases, the price differences for IT products cannot be explained by the cost of doing business in Australia. Particularly when it comes to digitally delivered content, the Committee concluded that many IT products are more expensive in Australia because of regional pricing strategies implemented by major vendors and copyright holders.”³²

While Australian markets have improved, Australians still consistently either pay more for similar content, or can only access a fraction of the titles available in the US market. Our data shows that the complaints from Australian consumers about access to digital media content are still well founded. The only exception to this blanket disadvantage was music streaming, where Australians can access very comparable services for slightly cheaper than American consumers.

Consumers

Australian consumers are worse off than US consumers when it comes to all types of digital media content, except for music streaming. There are fewer providers operating in Australia for most types of media, resulting in less competition and less choice for Australian consumers. While games and music are more expensive, TV and film providers offer smaller catalogues to Australians.

The case is worse still for TV and movie streaming, where even fewer providers operate and available titles are more limited. The small degree of overlap between Australian streaming platforms does, however, mean that Australian consumers can access a substantially higher percentage of titles by taking out a second or third subscription. But even then, Australians will still only be able to access a fraction of the titles available in the US.

Industry

The Australian market for buying digital copies of films and TV shows is competitive. There are many distributors, resulting in uniformly low prices. However, catalogues are still much smaller than in the US, and streaming services are lagging far behind. Given the growing preference for streaming film and TV in Australia, this is a notable gap. Australians still pay substantially more for games and albums.

³¹ IT Pricing Report, 18.

³² IT Pricing Report, vii.

There is clearly plenty of room for improvement in the digital media services currently provided to Australian consumers. Consumer complaints that the Australian market for digital media is under-served are not baseless: companies should compete to provide more content at cheaper prices. In the streaming market especially, which is relatively under-developed compared to others, there is plenty of low hanging fruit. If platforms like Netflix or Stan increased their catalogue sizes to something closer to the largest American services, they would easily become the largest provider in the Australian market.

Regulators

This report suggests that regulators should exercise caution before increasing penalties for copyright infringement. Australian consumers are frequently portrayed as unrepentant pirates of digital media content. This image of Australians is frequently invoked to support demands for lawmakers to introduce harsher and more regular penalties for copyright infringement. The data in our report shows that a large part of the explanation for apparently higher rates of infringement is that Australians are consistently treated worse in many media markets than consumers in the US. From previous work with consumers, we know that consumers are more likely to infringe if they feel that they are being unfairly treated.³³ The substantially higher prices for music and games in Australia, the lack of availability of many film and television titles, and the much smaller catalogues of film and TV streaming services is likely to feed a sense of unfairness among Australian consumers. While markets have apparently improved over the last five years, the continued disparity of access is cause for concern. This is a problem that has larger ramifications for the legitimacy of copyright law as a whole: the more the law seems harsh and out of step with market demand and consumer experience, the less likely it is to be obeyed.

Future Research

We plan to expand and improve on this study in future work. One obvious opportunity is for a larger study to look at longer term trends, especially regarding release delays and growth in digital media markets. Future studies should pay close attention to competition in the Australian market. Fewer providers and the transaction costs of licensing content mean that Australian providers are not able to provide as much content as US providers. This can result in an uncompetitive market that does not meet customer expectations.

Many of the limitations noted in the methodology can be resolved or better mitigated with more resources and a longer study. The lessons learned in this project will inform an improved design that will more accurately capture differences between the Australian and US digital media markets, and nuance within the Australian market. We look forward to collaborating with other researchers on this ongoing work.

³³ Paula Dootson and Nicolas P. Suzor, 'The Game of Clones and the Australia Tax: Divergent Views about Copyright Business Models and the Willingness of Australian Consumers to Infringe' (2015) 38 *University of New South Wales Law Journal* 206.

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