

Submission to the Inquiry into the
Broadcasting Services Amendment
(Media Ownership) Bill 2006 and
related bills

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Setting the aim of media reform

Reform to the regulatory framework of the Australian media should be unambiguously directed towards liberalisation of the sector.

It is important to place the relatively recent, and highly publicised changes in production, distribution and consumption of media made possible by communications technology in a context of long term and continuous radical media change. The table opposite illustrates the vast changes that have occurred since the 1970s.

Technological and commercial innovation have provided Australians with a multitude of choice over the content we consume, the way we receive and display it, and our capacity to store it for future consumption. Not only this, but the cost of production has rapidly dropped for seemingly mature industries like print, which has allowed niche and specialist publications to flourish. Never before have Australians had access to so much information packaged in so many formats.

Many more services, like digital radio, are slated to appear in Australia in the next few years. Others, like digital download services for films and television, are at embryonic phases but promise to make their full significance felt in the near future.

These massive changes have occurred because of innovative and entrepreneurial companies predicting and responding to consumer demand. These companies have utilised emerging technologies to bring new products to the market. As a result, both the quantity—and the quality—of the media we consume everyday is richer.

This has come about despite the Australian government's historic ambivalence towards new communications technologies. Many new technological developments have been needlessly delayed by regulatory restrictions and government reluctance to allow their introduction. Franco Papandrea nominates three major examples of 'the disgraceful record of attempts by policymakers and regulators to burden major development initiatives with ill-conceived and inefficient schemes': the FM radio decision which was not reached until 1974, Subscription television's delayed introduction until 1994, with advertising restrictions until 1997, and the current digital television transition.²

It is the position of the Institute of Public Affairs that government is an inappropriate body to manage the introduction of new and future media services, and that any attempt to do so will needlessly hold back uptake. Furthermore, attempts to pursue peripheral policy goals like universal access and cultural development by enforcing new regulatory restrictions will needlessly retard development in the delivery of new services.

These changes have undermined the monopolistic aspects that might have previously been said to have been

in place. As almost anyone in Australia can access media from anywhere in the world, a much wider variety of print, audio and visual entertainment than ever before, and has new forms of local and national media, many of the justifications of strict media regulations are eroded.

Finally, while the media is an important sector of the economy, no one medium—radio, television, and the internet, for example—is particularly unique and deserving of medium-specific regulation. The degree of substitutability between formats is only determined by individual consumers' subjective preferences, and attempts to discern the most 'important' or 'influential' medium, for whatever policy purpose, is futile.

The goal of the government should be the steady liberalisation of regulations affecting the media. It is within this framework that we approach the Government's media reform package.

Broadcasting Legislation Amendment (Digital Television) Bill 2006

Digital multi-channelling

The Institute of Public Affairs has had a long history arguing for the release of regulations on the introduction of digital television in Australia.³ Given the government's policy aim of encouraging consumers to switch over to digital broadcasting, many of the policy measures, particularly the relaxations of restrictions on multi-channelling, will certainly provide much needed incentives to consumers to migrate to digital.

Alterations to the current set of regulations on digital broadcasting suffers from the same problem that much of the media reform package suffers from: asymmetrical regulatory burdens which fall harder upon some industry participants more than others. These unbalanced regulations artificially distort the investment and popularity of certain formats which may not be as appealing in a free market for media. The government must be cognizant of the fact that any attempt to increase the popularity of a certain media format—in this case digital television—will harm the financial viability of an alternative format—for instance, subscription television—given the large degree of substitutability between them.

If the government had allowed operators a free market in which to provide these services, then this would not be of any policy concern. But as all media operators are subject to a heavy regulatory burden—usually burdens unique to their specific medium or technologies—or have been given economic protection (or whose competitors have been given protection), this normally natural process of creative destruction is perverted.

While there appears to be no easy way out of this

Media Environment Circa 1970¹

Product or content	Distribution mechanism	Receiving or display device	Personal storage tools
Television programming	Broadcast TV stations	TV sets	None
Radio programming	AM Broadcast radio stations	Radios, Stereos	None
Print news & literature	Newspapers & Magazine delivery	Bound newsprint, Books	Books, personal library
Advertising	TV, Radio, Mail, Magazines	Everything	None
Movies	Cinemas, Broadcast TV	Movie theatre, TV set	None
Music	Radio, Records	Radio, Stereo	Records
Telecommunications	Phone Networks	Telephones	None
Photography	Cameras	Print film	Film, Prints

Media Environment Circa 2006

Product or content	Distribution mechanism	Receiving or display device	Personal storage tools
Television programming	Broadcast TV stations, Cable, Satellite, Internet, VHS tapes, DVD discs	TV sets, Computer monitor, Personal Digital Devices (PDA, mobile telephone, etc.)	Digital Video Recorder (e.g. Foxtel IQ), VCRs, DVDs, Computer discs and hard drives
Cable programming	Cable, Internet, VHS tapes, DVD discs	TV Sets, Computer Monitor, Personal Digital Devices	Digital Video Recorder, VCRs, DVDs, Computer discs and hard drives
Radio programming	AM and FM Broadcast Radio, Satellite Radio, Internet	Home & Car Radios, Stereos, Personal Digital Devices (Walkman, Mobile phone), Internet	CDs, tapes, Personal Digital Devices, computer discs and hard drives
Print news & literature	Newspaper & Magazine Delivery, Internet, Software	Bound newsprint, Books, PCs, Internet websites, Personal Digital Devices (BlackBerrys)	Books, Personal Library, Personal Digital Devices, Computer discs and hard drives, Printers
Advertising	TV, Radio, Mail, Magazines, Cable, Satellite, Cell Phones, E-mail	Almost anything	Rarely stored
Movies	Cinemas, Broadcast TV, Cable, Satellite, Internet (e.g. Reeltime, iTunes), Tapes, DVDs, Camcorders, Peer-to-peer Networks	Movie Theater, TV Set, Computer Monitor, Personal Digital Devices	VCRs, DVDs, Computer discs and hard drives
Music	Radio, CDs, Websites, Peer-to-Peer Networks, Online music services (e.g. iTunes)	Radio, Stereo, Personal Digital Devices (MP3 players)	MP3s, CDs, Tapes, Personal Digital Devices, Computer discs and hard drives
Telecommunications	Phone Networks, Cellular Networks, Internet Telephony, IM	Telephones, Cell Phones, Internet Phones, Personal Digital Devices	Voice Mail, Personal Digital Devices
Internet Content & Services (+ email)	Phone Networks, Cable Networks, Wireless Networks, Power Lines, IM	Computer Monitor, Personal Digital Devices, Cell Phones, TV Set	Computer discs and hard drives, Personal Digital Devices
Video games	Video Game Platforms, Computer Software, Websites	TV Set, Computer Monitor, Personal Digital Devices, Cell Phones	CDs / DVDs, Computer discs and hard drives
Photography	Digital Cameras, Cell Phones, Camcorders, Websites	Print film, Computer Monitor, TV set, Personal Digital Devices, Cell Phones	Prints, CDs / DVDs, Memory cards, Computer discs and hard drives, Printers

NOTE: "Personal Digital Devices" refers to a broad category of handheld devices such as pagers, Palm Pilots, BlackBerrys, MP3 players, cassette and CD players, DVD players, and hybrid cell phone devices

regulatory morass, it would be valuable for every deregulatory measure to be accompanied with similar deregulations across the industry.

Anti-siphoning

Unfortunately the government has chosen to continue the regressive, quasi-egalitarian, anti-siphoning regime and to extend it, at least in part, to the multi-channelling reforms. By targeting much of Australia's most popular content, anti-siphoning laws restrict the capacity for producers to attract consumers to new technologies.

There is a case to be made that consumers and producers have invested in television equipment on the basis that the most popular programming—in this case, the government has nominated sports programming—will be available without further investment. This is an unfortunate legacy of media regulation in Australia, as the government protected FTA broadcasters against competition.

However, given the equal capacity for FTA broadcasters to bid on sporting rights, as well as the reforms in this package which benefit FTA broadcasters at the expense of other media entities, the justification of anti-siphoning laws is undermined. Contrary to the thrust of government policy over the last century, consumers do not have a 'right' to consumer certain forms of entertainment for free.

Broadcasting Services Amendment (Media Ownership) Bill 2006

Foreign ownership

The removal of foreign ownership restrictions is very welcome. However, it should be noted that the desirability of the Australian media for foreign investors will be far greater if and when the sector is liberalised. As News Limited rightly notes,⁴ the artificially finite pool of broadcast media licences in Australia distorts investment decisions across all media sectors.

Cross-media ownership and ownership restrictions

The Institute of Public Affairs has stated its case against the retention of ownership restrictions previously.⁵ If the policy aim of the government is to maintain and encourage diversity of content and opinion, ownership restrictions are a remarkably indirect way of doing so. Concentration of ownership can also accompany greater diversity of content. Similarly, diversity of opinion is not contingent on diversity of ownership—the conspiratorial Chomskyite model of a propaganda-spouting media cartel notwithstanding.

The history of objectivity in the news media is not

as linear as critics suggest. 'Independent' journalism—that is, journalism independent of any formal affiliation with a political party or umbrella organisation—only came into being in the last quarter of the 19th century.⁶ Bias and objectivity have arisen from economic and technological forces, which have made some models of news production more profitable than others. Still more models are being made possible as prosperity grows. In 2006, questions of preserving the innocence of an objective media through rigid ownership regulation need to be re-examined.

Like any other market, producers of media content and the delivery mechanisms they rely upon prosper and fail upon the whim of a fickle consumer. It would be more valuable for regulators and legislators to view the media as a market responsive to consumer demand rather than an influential sector independent of the rest of society.

Public disclosure of cross-held entities

The introduction of a disclosure regime upon commercial television and radio broadcasters places asymmetrical regulation upon some forms of media and not others.

As reputation is often a key part of the news product supplied for consumers, media organisations have a vested interest in maintaining a level of trust. If viewers—and rival companies—feel that that trust is being betrayed, it will have negative financial consequences. A reliance on feel-good regulations to 'provid[e] comfort as to the impact of media ownership reforms on the accuracy of news and information'⁷ (emphasis added) is poor public policy.

Localism

The belief in a decline of localism in regional Australian media is a microcosm of the cultural critique of globalisation—larger, commercial entities utilising economies of scale can under-provide, or even replace cultures unique to small regions. Putting aside questions of what is the 'optimal' provision of local content and culture, this argument is as invalid as the broader critique against globalisation.

In many circumstances consumers prefer national, or even international, content to local. Often the efficiencies commanded by a larger consumer base allow higher production values and better quality and quantity of news gathering. While many comments in the Communications Law Centre's *Content Consolidation and Clout*⁸ (cited in the Bill's explanatory memorandum) display dissatisfaction with the volume of local content, it is notable that a number of those interviewed appear to prefer national products to their local ones.

Given this, and given the near guaranteed dissatisfaction with the results of a regulatory framework that restricts entry to television and radio markets needlessly, it is entirely possible that the current mix of local and national

content in regional markets reflect, at least in part, consumer demand. If consumers demand more local media than is being provided by existing providers, their failure to do so would present an opportunity for entrepreneurs to provide it. As local content can be provided upon any number of the delivery mechanisms listed above, even with the existing restriction on broadcast entry, producers can still strive to meet this demand.

If entrepreneurs have not attempted to meet this assumed demand, then the assumption that the demand exists begs re-examination before regulation is called for.

Anecdotal impressions are insufficient. Despite the perceptions of many interviewed in *Content Consolidation and Clout*, as the Government notes, the 2002 ABA investigation into local content on regional television found that the quantity of local news broadcast had increased rather than decreased over the past decade.

However, it would not be unexpected if, as the available of alternative news sources such as those made possible by the internet increase in popularity in regional markets, the amount of local news broadcast on capital intensive broadcast television and radio decreased. This would not reflect some form of market failure, but instead a reallocation of resources to where they can be used more efficiently.

The Bill's proposals to compel Local Content Plans upon regional radio licences changing ownership represents a further regulatory imposition upon a sector already heavily regulated, and is incompatible with liberalisation.

Consumers may not prefer local content.

New Services in Digital Spectrum

The release of two new channels for television broadcasting is welcome, and hopefully reflects an understanding that the scarcity rationale for spectrum regulation, which states that the broadcast requires regulation because radio spectrum is scarce, is no longer valid.⁹ If the government is to be consistent with that diagnosis, then presumably further allocations are to follow across much of the spectrum. (Although the provision for the Minister to veto future applications to utilise spectrum outside the Broadcasting Services Band for television broadcasting does not inspire confidence.)

There appear to be no compelling justification for the content restrictions being placed upon these two new channels. The designation of Channel A as a free-to-air station, but not one which resembles 'traditional' commercial television, and Channel B as a television service isolated to mobile devices, illustrates clearly that the government has not learnt the lessons of a century of government failure in introducing new media technologies. A cursory glance at communications history shows the

folly of governments which attempt to second guess consumer preferences and the capabilities of new technologies—not least the most obvious example of the Australian government's digital television debacle.

For similar reasons, the ownership of the new television licences should not be restricted.

Rather than dictating the uses of the newly released spectrum, the Government would be better off leaving these decisions to the market.

Conclusion

The Government has been presented with an opportunity to genuinely reform the regressive regulatory framework that the Australian media and communications industry has been burdened with for a century. While this reform package makes a few minor adjustments, its practical effect is not as large as the public debate has made out.

However, this does not mean that the reforms are without value. The removal of cross-media ownership regulations—as absurd an ownership restriction as can be imagined—is welcome. The package needs significant revision; however, the need for reform is clear and should not be abandoned.

Recommendations

- Remove restrictions on Channel A and Channel B television licences.
- Do not impose Local Content Plans on merged local broadcasters. The hypothetical demand for 'localism' does not prove the need for regulation.
- Ownership restrictions should be more vigorously liberalised, and
- The removal of foreign ownership restrictions should be welcomed
- The digital television transition should progress immediately to regulatory harmonisation with other services.
- Anti-siphoning needs to be immediately abolished.

References

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5. IPA Submission to Meeting the Digital Challenge Discussion Paper on Media Reform Options
6. See James T. Hamilton, *All the News That's Fit to Sell: How the market transforms information into news*, Princeton University Press, 2004
7. Broadcasting Services Amendment (Media Ownership) Bill 2006 Explanatory Memorandum, p32
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9. For a contemporary criticism of the scarcity rationale, see John W. Berresford, 'The Scarcity Rationale For Regulating Traditional Broadcasting: An Idea Whose Time Has Passed' Federal Communications Commission Media Bureau Staff Research Paper, March 2005

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