

'Beyond Broadcasting': Facing The Future of Australian Content in The Digital Audiovisual Environment

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Abstract This paper discusses some of the practical implications that multichanneling by free-to-air commercial television broadcasters might have on the broadcasting of Australian content. Like most features of media policy, Australian content quotas have long been the subject of criticism and debate. Some cultural critics have sought to interrogate the very notion of promoting 'Australian culture', whilst others have questioned the value and efficacy of such measures as new technologies increase our access to both global content and global delivery systems. Indeed, the looming integration of television with internet and broadband capabilities has been a particular source of speculation about the future worth of Australian content quotas. This paper suggests, however, that there is another, perhaps more immediate challenge to local content requirements – multichannel commercial television.

By freeing up space on the broadcast spectrum, the introduction of digital terrestrial television has provided the technical capacity for broadcasters to multichannel. Although commercial broadcasters are currently prevented from multichanneling, an ongoing Federal Government review is focused on the possibility of allowing commercial broadcasters to offer multichannel services. While raising a host of important economic issues, one of the questions asked in the review is how local content quotas will be accommodated in the multichannel environment, especially considering Australian's bilateral obligations under the AUSFTA. Decisions made would have the potential to change the character and quality of our broadcast content, as well as the market behaviour of commercial broadcasters and Australian content producers. This paper explores the future of Australian content regulation in light of multichanneling and emergent technologies.

Keywords Digital Television; Multichannel; Local Content

Introduction

The regulation of broadcasting has always been based on a desire to achieve certain social or cultural goals. One of the fundamental cultural, and indeed, political, goals for the production of audiovisual content in a democratic, mediated society is the issue of diversity, both in terms of the range of content and the range of media 'voices', as well as the number of media channels (Productivity Commission, 2000: 381). In Australia, part of that concern is to ensure the adequate supply of a range of local audiovisual content on our media outlets (Flew, 1995: 75). As such, since the early 1960s, Australian content quotas have been imposed on commercial networks.¹

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¹ The details of the content quotas imposed on commercial broadcasters are well-known. In short, it is a licence condition for both commercial and subscription television broadcasters to comply with Australian content requirements imposed by Australian Communications and Media Authority.

While content quotas, like most features of media policy, have often been the subject of criticism and debate, there is a general acceptance in policy-making and in broader academic thinking, that content quotas have been effective in achieving a certain level of diversity of content on our televisions. More recently, however, the looming integration of television with internet and broadband capabilities, as well as the recent introduction of digital terrestrial television broadcasting (DTTB), has resulted in speculation about the future of Australian content quotas – and, indeed, about the justifications for broadcasting regulation more broadly. In particular, it has been claimed that these new distribution technologies have the potential to disturb the longstanding technological and economic factors that have supported domestic regulation, threatening the ability for content quotas to be effectively imposed on broadcasters (Feigenbaum, 2002: 3; Goldsmith, 2001). And, while many of the benefits of new transmission technologies in the communications sphere have been enthusiastically embraced, the problems posed for the cultural and social aspects of our audiovisual industry of have been largely avoided.

In terms of responding to new media technologies, it has long been recognised that in Australia their impact has been argued rather narrowly (More, 2000: 129). By reflecting the *quid pro quo* bargain of our media policy, the focus has been on preserving the commercial security of the incumbent broadcasters, rather than broader cultural and social issues. As noted by Elizabeth More, “neither in Australia, nor internationally at large, has there been ample evidence of cultural concerns in political debates about the new media. Overall, our new media politics eschews cultural considerations in favour of matters of economics and structure” (More, 2000: 129, my emphasis). This ‘policy paralysis’ is evident in the media reform discussion paper issued by the government earlier this year, which favours protectionism over competition, and seeks to shape new media to suit incumbent players, rather than vice versa.

Kim Dalton of the ABC has highlighted a number of shortcomings in the government’s paper (Dalton, 2006). He suggests that the government’s reform options deal exclusively with structural rather than content-based issues. Media ownership and digital switchover, for example, are the primary focus. Critical of this approach, Dalton suggests that questions over the future of content need to be dealt with ‘fair and square’. Even the government’s own Convergence Review in 2000 highlighted the need for a more holistic approach to policy formation, stating that the “industry development agenda and the cultural policy agenda are inseparable as cultural outcomes are supported through sustainable industry development” and that “policy responses to cultural issues cannot be separated from industry competitive issues” (Australian Government, 2000: 96).

Currently, commercial broadcasters are required to transmit a certain amount of ‘Australian’ content over a given period of time. Specifically, 55 per cent of the programming between 6am and midnight, averaged over a year, must be Australian. Within this overall requirement, sub-quotas also apply. Thus, a certain number of hours must be comprised of first-release drama and first-release documentaries, in addition to specific requirements with regard to the level of childrens’ programming: see *Broadcasting Services (Australian Content) Standards 2005*.

This paper explores the future of Australian content in light of digital television and emergent, internet-based technologies. The first section considers the challenges facing the regulation of television for cultural and social goals, with a particular focus on the implications that internet-delivery will have for the current regulatory scheme. The second section discusses solutions to achieving adequate levels of Australian content in the converged media age, including a consideration of a possible solution not yet fully explored in the Australian context – the introduction of a public service publisher, or a PSP. Also explored is how this and other policy responses might be limited by Australia's recent accession to the free-trade agreement with the United States.

A. New Technology and New Challenges: What is The Problem?

As new digital communications technologies arise they increasingly place media-specific regulation under strain (Flew, 2002: 121). In relation to broadcasting, two main drivers of such technological change are DTTB and the dramatic improvement in the ability to deliver audiovisual content over the internet. These technologies are likely to disturb the *quid pro quo* arrangement at the core of the current regulatory framework (Goldsmith, et al, 2002: 95; Flew, 2002: 123).² Under this arrangement, access to 'scarce' radiofrequency spectrum and protection against new market entry is granted to broadcasters in exchange for their fulfilment of certain cultural objectives and obligations, including Australian content requirements. Market protectionism guards against the fragmentation of a broadcaster's audience share, which, in turn, generates adequate revenue from consolidated audience levels used to fund the production and purchase of relatively expensive, but culturally valuable, Australian programming. Internet-based distribution of audio-visual content and DTTB, however, is likely to undermine the highly regulated relationship between economic privileges and social and cultural burdens within the *quid pro quo*, meaning that the role of the commercial broadcasters as 'investment engines' for desirable Australian content will be placed under pressure.³

The implications of DTTB on regulation, including the impact of multichannelling on the fulfilment of content obligations and the possible range of solutions, has to a large extent, been discussed elsewhere (Goldsmith, et al, 2001; Goldsmith, et al, 2002). But, even despite this discussion, it is difficult to predict with any certainty what new and enhanced services might characterise the future of digital television in Australia (Goldsmith, et al, 2002: 61), let alone what particular regulatory solution, or combination of solutions, might be appropriate. This is largely, I would suggest, due to the government's restrictive approach to DTTB, and the consequent lack of investment in, and experimentation with, DTTB capabilities within the Australian context. At least in the short term, therefore, while the government maintains a prohibition on multichannelling and a moratorium on the introduction of new market players, the threat posed by digital television is much less imminent than it otherwise

² Many media policy commentators also argue that because digital technology, in particular DTTB, is much more bandwidth efficient than analogue transmission, the traditional spectrum scarcity justification for the *quid pro quo* approach to broadcasting regulation has been called into question.

³ See similar comments by UK regulator with regard to public service broadcasting: Ofcom, 3.

could be. In direct contrast to this there is overwhelming evidence that investment in developing internet-based delivery of audiovisual content, including traditional 'television' content, has been dramatically increasing. Thus, the impact of internet-audiovisual applications on the traditional *quid pro quo* might be much greater, and much more disruptive, than that posed by DTTB. It is also probably much more imminent.

The increase in transmission speeds and compression technologies has enabled content to be delivered using the Internet Protocol over broadband connections – otherwise known as 'IPTV'.⁴ This, coupled with the ability to digitally record and store content on Personal Video Recorders (PVRs) and computer hard-drives, has signalled the rise of the 'on-demand' revolution – viewers want to watch what they want, when they want it. In the past few years there has been a wave of newspaper articles which foretell of the 'death of television' as we currently know it (Weekes, 2006: 7). Numerous reports claim that viewers are increasingly turning to legal and illegal internet sites for their audiovisual content. Indeed, according to British internet consultancy Envisional, Australia is the second largest market for pirated TV shows in the world, responsible for 15.5 per cent of illegal downloads in 2005 (Griffin, 2006: 3; Ghandour, 2006: 50). And, some estimates suggest that 75 per cent of worldwide internet traffic is occupied by the transfer of pirated TV shows and movies (Davidson, 2006: Perspective 17).

The increased use of the internet to transmit programming is likely to result in significant market changes for commercial broadcasters (Ofcom, 2004: 8). Most notable will be the fragmentation of audiences, in terms of audience numbers, time and place. The chief executive of AOL, the American internet service provider, recently remarked at an industry trade show that "[v]ideo consumption is exploding on-line and on-demand is going to be the dominant way to consume content" (The Australian, 2006: 3). The BBC also recently announced that its future rests on the global internet-delivery of programming (The Age, 2006). Inevitably, this consumption will draw viewers away from traditional free-to-air television (Fitzpatrick, 2000: 238) with one media analyst suggesting that internet-delivered audiovisual content could reduce revenue growth of local television networks by as much as 20 per cent in the coming few years (Davidson, 2006: Perspective 17). Some commentators even believe that the internet will ultimately spell the end for commercial free-to-air television delivered via the airwaves (Weekes, 2006: 7; Burton, 2006: 27; Idato, 2006; Ziffer, 2005: The Green Guide 8), although opinions are sharply divided on this issue.

In addition to the challenges posed for traditional media businesses, however, the convergent internet-based environment, like fully-enabled DTTB, also poses equally difficult social and cultural challenges (Goldsmith, 2001: 17; Slade, 1997: 102; Leiboff, 1999: 50; Phoon, 1992: 16). But, unlike DTTB, the government cannot effectively control the transmission and reception of internet-based audiovisual services in order to maintain the *quid pro quo* in the

⁴ 'IPTV' was initially used to describe a closed, proprietary system for the delivery of television over the Internet Protocol. Its common usage, however, is to describe internet television more generally.

same way that it can with terrestrial broadcasting. This arises from the inability to impose effective entry controls in the global internet environment, where there is a technically unlimited capacity for audiovisual material to be distributed seamlessly across national borders (Coroneos, 2000: 26; Fitzpatrick, 2000: 239).⁵ Thus, in the fully digital and converged internet environment, as the Productivity Commission notes, “the current system of technology specific content regulation is unlikely to be appropriate, effective or sustainable in meeting the community’s social and cultural objectives” (Productivity Commission, 2000: 379). The question for the future, therefore, is how, in the absence of the traditional *quid pro quo* arrangement, to maintain and promote the production and distribution of acceptable levels of new Australian content?

B. Regulation and Content in The Online Digital Environment: Dealing with Australian Content, ‘Fair and Square’

As the discussion in the previous section suggests, Australian content is essentially a problem of funding, or more precisely, a problem of ‘market failure’. The quota ‘solution’ to the funding problem shifts the burden of supplying a public good to the private sphere by imposing private ‘positive’ obligations on commercial broadcasters to ensure a diverse and viable Australian production industry. This effectively creates a working market for Australian content where one would not otherwise exist. Some of the solutions already proposed to the regulatory difficulties emerging from a fully-enabled DTTB environment seek to further regulate the private sphere, including the modification of the current quota system, the regulation of the distribution of Australian content and, finally, the use of market mechanisms to achieve universal access to Australian content (including tradable regulatory obligations) (Goldsmith, 2001; Goldsmith, 2002; ABA, 2003).

As we already know from the above discussion, internet-based distribution has the capacity to undermine private obligations in the terrestrial market. It is unclear, however, whether or not content quotas or other private obligations would be a workable regulatory solution if applied to the internet environment. While internet regulation has been widely talked about in terms of preventing certain undesirable content (including negative obligations), very little discussion has focused on the possibility imposing positive obligations on internet content providers (except in the context of ISPs providing filtering software for its customers to block out specific types of content, as well as the standard requirement that websites contain certain legal information). Certainly, requiring content providers to create or host Australian content, or to provide hyper-links to such content, has not been the subject of rigorous discussion in Australia.

⁵ Although technically it is possible for domestic Internet Service Providers (ISPs) to block communications to and from foreign jurisdictions, the experience in China demonstrates that this is a difficult as well as politically and culturally controversial. In particular, internet censorship, which is what blocking communications effectively amounts to, has important implications for freedom of speech. So, although it is technically feasible to regulate internet content, there are overwhelming countervailing reasons why this would not be appropriate in the Australian context.

In practical terms, of course, almost anything can be legislated for at the *domestic* level. Australian websites which make available a specified amount of audiovisual content can have imposed on them certain Australian content requirements, either in terms of the percentage of content or by requiring the prominent display of any Australian content that is hosted on local sites. The problem with this solution, however, is that it attempts to impose some of the burdens of the traditional *quid pro quo*, but without providing any of the necessary benefits – for example, protection against audience fragmentation by limiting the number of distribution channels. Thus, the economic problem of Australian content will persist under this solution. Businesses will simply refuse to host audiovisual content on Australian servers or the quality of the hosted Australian content will be poor, in addition to there being no guarantee under such a scheme that new content will be created and distributed. Furthermore, I suggest it is doubtful that any system to promote the production and distribution of Australian content which relies on private obligations will be workable in the future. The future of Australian content would be much better served by some form of public intervention,⁶ either via an expanded role for national broadcasters and/or the replacement of quotas with public subsidies and grants. Another option is greater incentives for private investment, such as greater tax incentives for investment in local productions. Others have raised the need to redefine the relationship between the commercial and national broadcasters and public funding bodies regarding the creation of Australian content, with a view to exploiting the material across multiple platforms (Dalton, 2006).

Of course, demands for greater public funding of local audiovisual content production have long been made (Fitzpatrick, 2000: 238-241; AFC, 2003: 5) and, at least from a political and practical perspective, issues arise in relation to whether additional funding for the Australian audiovisual industry could be granted. Considering the lack of funding given to our national broadcasters, especially compared to public broadcasters in countries such as the UK and Europe, it is doubtful that this would be a short-term political reality. Even if there was political will to do so, there are doubts about the manner in which such funding could be granting in light of the Australian government's recent commitment to the AUSFTA. While government subsidies and grants can be maintained and even extended under the agreement (Articles 10.1.4(d); 11.13.5(b); and 16.4.3(c)) (as can taxation concessions where eligibility is subject to local content or production requirements (Annex II)) subsidies and grants (Article 11.9.2(a)) and direct government investment (Article 11.9.1(b)) must *not* be subject to certain 'performance requirements', including conditions intended to "achieve a given level or percentage of domestic content" (Given, 2004: 16). Jock Given contends that these 'performance requirements' would appear to "preclude the kind of local content test covering subject matter, place of production and post-production, source of finance, copyright ownership and personnel, which is a precondition for Film Finance Corporation and Australian Film Commission investment" (Given, 2004: 16). Thus, the restrictions posed

⁶ For this in the context of local UK content, see Ofcom, 2004: 56.

by the AUSFTA present obstacles for the future of public funding, especially considering that most current public funding for film and television usually comes in the form of subsidies, as well as direct government investment in intellectual property (Given, 2004: 13).

I argue, however, that funding is only part of the solution. There is also a need, assuming that in the future most content will be sourced online, to ensure that Australian content is both accessible to audiences and sufficiently promoted. While empirical studies have consistently shown that domestic is more popular than foreign programming on traditional broadcast television where there are limited output channels (Britton, 1997: 41; Fitzpatrick, 2000: 237), it is not clear that this will also be true in the online environment. There are two related reasons for this. First is that choice on the internet is technically unlimited. Unlike conventional broadcast television, there are not only four or five channels to select from, but millions, perhaps billions of links to a variety of audiovisual content. With this breadth of content available, it is not clear that Australian content would be as attractive to viewers as it currently is on terrestrial television. Second, compared to the analogue world, it is difficult to find content online. While content 'portals' and search engines are increasingly available to locate and access content online, distinguishing and promoting Australian content may be almost as important as finding ways to financially support its production. In addition to this, trust is an important imperative in the online environment, meaning that branding has an all important new role to play. Consumers want to know where to find content and services which are of a particular quality and which are closely tailored to their tastes.

One option is for the promotion and accessible distribution of content to be undertaken by a public service publisher (PSP). Such a proposal has been explored in the UK by the industry regulator, Ofcom, as a solution to the future of public service broadcasting in the digital age. It was recommended in the UK that a PSP be established using public funds to both commission and to distribute content was widely as possible on all forms of media, including on digital television, broadband, and mobile networks. It was also envisaged that the PSP would ensure that content was effectively promoted and branded, and that it was easily accessible (Ofcom, 2004: 81). Building a recognisable brand for Australian content and promoting access to content through an Australian PSP website would help to ensure the future survival of Australian content in the new media age.

It might also be desirable that an Australian version of a PSP follow in the footsteps of the BBC and provide a web-based interactive site for the showcase of short films and other audiovisual material produced by new up and coming film-makers. On the BBC site, BBC Film Network, films are submitted by users and selected by an in-house team of experts. Users can rate and comment on films submitted to the site, and the site also provides film-maker with tools to create online profiles and also to exchange production tips and other information relating to the local British film industry. The purpose of the site is to "expose new talent and create a platform for some great films that are rarely seen elsewhere" (BBC Film Network, 2006). This type of initiative is an

example of the types of innovative services that could be experimented with by a PSP to promote the creation and distribution of local audiovisual content.

Of course, if an Australian PSP were to be established, some of the following questions would need to be answered?

1. Would the PSP role be undertaken by a current government funded body, such as the FFC, AFC or the ABC, or would it be better to create a new body? It has already been suggested that the ABC should position itself as a distinctive provider of Australian content (Dalton, 2006). However, as Goldsmith, et al, have pointed out, the exclusive provision of Australian content is not within the ABC's current charter (Goldsmith, 2002: 66), and it is nevertheless doubtful that this should even be the sole purpose of a national broadcaster.
2. Could the PSP be undertaken by a private company?
3. Would an Australian PSP commission productions, or just publish and promote them?
4. How would funding work? How much would it cost?
5. Would the PSP distribute content free of charge, could it be partly advertiser supported, or could it be provided on a subscription or pay-per-view basis?

Another issue is how these questions would be answered in light of the AUSFTA. Under the 'cross-border trade in services' of the AUSFTA, Australia must treat US companies, goods and services no less favourably than those from Australia (Article 10.2). A PSP, which deals in and promotes exclusively Australian content would, prima facie, offend this aspect of the agreement. There are, however, two exceptions in the agreement which might allow the government to adopt an Australian content PSP.

First, in relation to 'interactive audio and/or video services', which would appear to include the internet (Given, 2004: 12), Australia is permitted under Annex II to adopt measures which ensure that access to Australian programming is 'not unreasonably denied' to Australian consumers. However, such measures can only be adopted where it is first found by the Australian government that Australian audiovisual content is not readily available (Annex II), which may be a high threshold test to meet (Given, 2004: 12). This exception would apply to both a publicly or privately owned PSP, and whether or not the PSP was engaged in commercial activities, for example, offering pay-per-view or selling advertising space.

Second, the 'services supplied in the exercise of government authority within the territory of each respective party' are excluded from Chapter 10 (Article 10.1.4(e)), but not those which are supplied on a commercial basis, or 'in competition with one or more service suppliers' (Article 10.1.4(e)). While this means that the government can fund public broadcasters, such as the ABC and SBS, their commercial activities, for example, the ABC Shop and the sale of commercial advertising by the SBS (Given, 2004: 14), would appear to not be covered by the exclusion. So, to the extent that an Australian PSP would compete with other media outlets or would engage in commercial activities, any

requirement that it provide and promote exclusively Australian content would offend the AUSFTA.

Conclusion

As I have discussed, the efficacy of government regulation that mandates the production and distribution of Australian content on Australian television is under threat from new technologies and new modes of distributing content. Any government response to this will, as I've suggested, most likely involve additional production subsidies and grants. But, in the new media environment, the cultural and social objectives of creating and promoting Australian content will only be achieved if there is also a focus on ways of distributing, branding and promoting Australian productions. This may be through a PSP, as I've suggested, or it could be through some other means. What is clear, is that Australia cannot afford to look at sweeping media reform, especially reforms which appear to strengthen the privileged positions of Australia's incumbent media outlets, without also thinking about how cultural and social objectives can be achieved into the future.

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