



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

INQUIRY INTO THE BROADCASTING SERVICES ACT 1992

**PROF R.J. SNAPE, Presiding Commissioner
MR S. SIMSON, Assistant Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON TUESDAY, 8 JUNE 1999, AT 9.12 AM

Continued from 7/6/99

PROF SNAPE: Welcome to the resumption of the hearings in Melbourne in the Productivity Commission's inquiry into broadcasting. The terms of reference for the inquiry are available just outside the door, as is the issues paper. As you can see, the day's proceedings are all recorded on transcript, and the transcript will be available on the Web site within about three days of the hearings and we send hard copies to the relevant people when they're available. At the end of today's hearings I shall ask anyone present who wishes to make an oral presentation to do so should they wish. So we begin today and welcome Kiss FM Inc. We have one representative to speak from Kiss, and I'll invite him to identify himself and then to speak for the transcript and then to speak to the submission. Thank you.

MR BYRNE: My name is Tim Byrne and I'm the station manager at Kiss FM. We've submitted a report on how the regulation would be as it affects ourselves and community broadcasting in general. We've selected several areas to talk about. One was the social dimensions of the public interest. The government, the CBAA - Community Broadcasting Association and the present government - have identified community broadcasting as a viable and effective way of providing services to the community as well as training people, but our experience is that the act hampers or slows down that process due to primarily the situation we're going through the moment, which is the licence area planning of Australia, and Melbourne in particular.

There are something like 23 community groups trying to get a licence. Not all those are after Melbourne-wide licences. I think there are probably eight after Melbourne-wide licences. The problem we have is that basically we're told to go off and operate in a business world as effectively and productively as possible. In fact, we have annual meetings, or the CBAA has annual general meetings, where the ABA comes and talks, and always the underlying theme is the community sector needs to get more productive, economically efficient and so forth. I believe at Kiss we've been fairly successful at adopting that attitude, yet when we try to act in a proper business world we have the uncertainty of not knowing as an aspirant broadcaster when we're next going to broadcast. This makes it extremely difficult to make a business viable, a community organisation, which is a business, and also to plan for the future when you're unsure as to your income - when it's going to come in and so forth, when you're going to be on air to generate that income.

I've gone on here under Promoting Australian Identity and Culture to talk about the experience we have with Kiss. We are a 100 per cent dance music station and there is a very viable culture, I suppose, of artists, producers, in Melbourne and Australia who are basically ignored by mainstream media. As we are a 100 per cent dance music station, obviously we are interested in Australian dance music artists and promoting them.

Currently we have a situation where we have the quota system for Australian artists but unfortunately there's no quota system for new Australian music, and in our situation basically during the day we program our music and then at night-time it's not programmed. But during the daytime 30 per cent of that program music is Australian, and that's by choice, not by a rule set by ourselves or anything. The amount of music that comes through the place, there's enough to make up 30 per cent new Australian dance music. I just go on to say here that this could become a good export earner for

Australia. Already we're seeing situations often where Australian artists are going overseas and being signed overseas first rather than here because there's no support, apart from ourselves, who aren't full-time, for these artists in getting their product played on air.

Economics of broadcasting: we believe that what we do targets a very niche sort of market, but by no means small, when we say "niche". They tend to be a savvy sort of audience and aged anywhere between 14 and 35. Our research - we just concluded a second survey and we're compiling it. This was actually compiled from our first survey - that about one-third of our listeners turn off radio altogether when we're not on air. I believe that percentage has gone up, but I don't have the final figures. A lot of them go to JJJ, which is the national broadcaster, and from our point of view or our sponsors', the people who are supporting us, that's quite a large audience or market, they view, that they cannot reach through any other means of radio. Commercial radio certainly doesn't get to them, and JJJ - there's no advertising allowed on there. So they are feeling quite frustrated in the fact that they've identified a market and an audience that they want to target but they're not able to do it on a regular basis.

We've got the four minutes an hour rule. I still don't understand why there should be a four-minutes an hour rule when commercial stations are free-to-air as many hours as they like. There were rumours that it was going to be lifted to five but I haven't heard any more of that, but I think it should be abolished altogether. The problem I think here, I go through to say, is that it's extremely hard to plan financially for the future. The act says that it should not impose financial or administrative burdens on broadcasters due to the regulation. There's no doubt that that's what's happening to us.

I just go on to say this is very frustrating. It's very hard to maintain enthusiasm with volunteers to keep staff, to keep trained personnel, when you're unsure when you're going to be on, unsure whether you're going to be able to pay them, unsure if you're going to be there necessarily in another six months. Very shortly I just talked about ownership and control. It doesn't really affect community radio as such. It does in the sense of new licences being available, but we're of the opinion that diversity of ownership is beneficial to Australian media.

Program standards: again I just go on to talk about the fact that perhaps there is a quota system needed. The French example - I'm not exactly sure. I tried to find out some more information on this but wasn't able to in the short time we had, but just the French experience - they have had an explosion of electronic music coming from France due primarily to the laws - I think this is the story - they put in place before the European Union was established to protect their cultural identity, and as a consequence the flow-on of that has been a huge increase in electronic music selling around the world and making it into especially the European charts, not so much the American. But this sort of protection of their culture and art has certainly helped build an export industry for France.

The planning process: it's just ridiculous that for so long we've been told that licences would be issued, 94, 95, 96, and it's gone on and on. No deadline has ever

been really set. Now that digital is supposed to come in in 2001, I'm led to believe that analogue will be concluded by the planning for digital. But we have, like I say, had the decisions moved back and back. The latest I've heard, the draft will appear in the second half of this year, but I'll wait to see. For those of us not only at Kiss but generally in the community broadcasting sector, it is extremely frustrating and confusing as to why this whole process has taken so long. No-one has seemed to want to speed the process up or answer questions or set a deadline.

I've had conversations with the current minister, and he would not give any indication of a deadline, only that, "We're working on it," and so forth - not particularly heartening when you go back to a group of community-minded people and say, "I don't know anything." That's basically what's been going on for something like six, seven years. Every year we have a CBAA AGM, we attend and come back knowing no more. I think it's extremely unkind, and in fact, I go on to say, unethical and immoral, to string people on for so long without proper deadlines being given.

In conclusion, I would argue that the act has certainly hampered productivity for ourselves and generally for the community sector. I'm talking particularly, obviously, about the aspirant community sector but it is a very viable and energetic part of the community sector in general and they're some of our frustrations we've experienced with it.

PROF SNAPE: Thanks very much, Mr Byrne. You're a community broadcaster and seem to be rather professional in so doing. What is the community that you're representing?

MR BYRNE: We represent effectively a cross-section of the broad community who like dance music. This has been ignored by radio generally for a long, long time. Predominantly our listeners, subscribers, of which there are about 3000 - the median age is 24 but, like I say, our age bracket is fairly wide. I suppose we have been described as a youth station, so you could say that it's a youth community, though we call ourselves a dance radio station that is there to serve and promote the dance culture community of Melbourne. That may be people who just like to go out and listen to electronic music, it might be people who don't like to go to nightclubs and listen to electronic music. We have a lot of people that listen to us regularly and subscribe and never go out, but like to hear that sort of music and have no other way of hearing it apart from going out. It's school kids, it's professionals, it's pretty well across the board.

PROF SNAPE: It's, what, rap right through to ballroom?

MR BYRNE: Not so much - the modern connotation of dance goes from, yes, rap and hip-hop through to what's called techno, drum and bass, jungle. House music is probably the most popular style of all the different genres that come under the dance umbrella, but it is a very popular style of music more and more so. In the UK it is the main youth culture. It's not so much so here, but it is certainly changing rapidly.

PROF SNAPE: How many employees do you have?

MR BYRNE: Employees, we have two full-time, myself and one other. We have about 15 contract people when we're about to go on air and on air. Some of them are daytime presenters, some of them are publicity sort of people, commissioned salespeople, and then we have about a 100-odd DJs, presenters, that come through the place each week plus another 70 general volunteers.

PROF SNAPE: They're volunteers, are they?

MR BYRNE: Yes. There are about 200 altogether.

PROF SNAPE: About 200, gosh. Apart from the fact that you've got all these volunteers, what distinguishes you from a commercial broadcaster.

MR BYRNE: We are a non-profit organisation.

PROF SNAPE: Yes, unintentionally so are a lot of the commercial broadcasters. You're non-profit here but you want to carry much more sponsorship than you've got. The way that you've described yourself and your targets and the way you operate seems to me very much like not just as aspirant community station but an aspirant commercial station. Is that a wrong perception?

MR BYRNE: I think it's a wrong perception. As I said, I've worked in the community sector for a long time, through your traditional PBSs and Triple Rs, the stations that are here and have been established for a long time, and there has been an underlying movement to try and make the community sector more professional, more commercial, more answerable to itself. We have adopted - I mean, we have obviously identified a market that's there, but that has been identified after we have realised or known of the popularity of the music in an on-air sense. But there has been a market there, yes. We have adopted a professional approach to it because we try to run the community organisation as a professional concern.

The idea of - when you mentioned the regulation of the number of minutes and so forth, I'm not so much arguing that from an economical point of view really. I suppose it's more from a - you know, why should we be regulated, and I have not been able to find that answer - as opposed to the commercial sector for example.

PROF SNAPE: Well, let me just give an illustration of why that could be, without knowing the rationale, the real rationale. I mean, non-profit organisation - but you have employees, and the employees' salaries can always be adjusted. We could always structure salaries so an organisation is a non-profit organisation. All the profit - what would otherwise be profit goes into salaries. Well, there would be an incentive for that. Presumably if you were unlimited in the extent of the amount of sponsorship that you could take - there's more than one way of skinning that cat. So presumably you've got a commercial sector in there and the idea is to make a distinction between the commercial sector and the other. But you basically want the limit lifted from the sponsorship. Is that correct?

MR BYRNE: Well, I don't see the reason why that limit - I mean, you've given one excuse there. But if it were to be limited or lifted altogether I think it would be more beneficial to the sector. We do have situations where we basically - especially towards the end of broadcast, because the way it is as a broadcaster, you tend to sort of sell it as an event but towards the end of the broadcast you will be stacking up with sponsorship and you're trying to jam it all into the four minutes before the end of your six weeks of a broadcast for example. Those sort of things do limit our earning potential. Yes, that's I guess more my argument, that in our situation of on-air, off-air, on-air, off-air your sponsorship all comes at one time and we have to try and accommodate our sponsors with that four-minute rule and it does get difficult at times.

PROF SNAPE: I'm surprised that you don't broadcast at night.

MR BYRNE: We do.

PROF SNAPE: I'm sorry, I misunderstood what you said before.

MR BYRNE: We have like a six-week block where we can broadcast 24 hours a day.

PROF SNAPE: Okay.

MR BYRNE: Four minutes an hour. But towards the end of that broadcast you will have a lot more sponsors wanting to have - because you've been on air and so forth.

PROF SNAPE: So the six-week block you can do 24 hours a day.

MR BYRNE: Yes.

PROF SNAPE: Then what happens the rest of - - -

MR BYRNE: We operate as a business but we're not on air. We have offices where we plan the next broadcast.

PROF SNAPE: I see, so you go for six weeks and then you stop.

MR BYRNE: Yes.

MR SIMSON: So how long do you stop for?

MR BYRNE: This is the whole thing. We don't know half the time, because of the process that we have to go through.

PROF SNAPE: I see, it's each time that you go for your licence you're only on for six weeks.

MR BYRNE: Yes.

MR SIMSON: What's the pattern of on-air timing?

MR BYRNE: Well, it varies. There's four of us - now five - sharing the one frequency.

MR SIMSON: Okay.

MR BYRNE: So we have to share that.

MR SIMSON: Over a 12-month period, is it?

MR BYRNE: Well, over however long it takes for you to work out how long - see, what we've done in the past, there were four groups up until about a month ago. The four groups sat down once every six months or so and worked out how they would share the frequency for the next six months or so, and then report to the ABA and they would, if they were agreeable - and they normally were - then that's the way it would operate. Now we've got five groups on air. We've been arguing for a start that there shouldn't be five on this frequency. There's only two or three on another frequency, which is 90.7.

So we have had this battle where we believe there should only be four because that's all that frequency can sort of cope with, to keep the four organisations going so that they get on air often enough to make the income to keep it all ticking over. But the act says any new aspirants have to be given equal access to the air time. We have been fairly successful with what we do on the frequency we are on. The new group has wanted to be on this frequency because of the perceived success we have had. That in turn therefore makes it longer before we come on again. There's no limit as to the number of groups that could put up their hand and say, "We'd like to test broadcast." There's no guidelines to vet them at all, before they get to broadcast. So we have a situation where we don't know if in six months there will be yet another group and we will have even less air time. What happens is the more successful we become, the more new groups will want to pop up.

MR SIMSON: But from the ABA's perspective - well, there's a limited amount of spectrum, isn't there?

MR BYRNE: Yes. There's not a limit as to the number of groups who can put up

their hand to test on those.

MR SIMSON: That's correct. So the ABA is trying to give everybody a fair go at that limited amount of spectrum.

MR BYRNE: Yes.

MR SIMSON: Is there any power - any geographical limitation in terms of your particular FM frequency in terms of the power of the frequency?

MR BYRNE: We go for a Melbourne-wide licence.

MR SIMSON: All right, so this is a Melbourne-wide - - -

MR BYRNE: Yes.

MR SIMSON: Okay. So you can hear your broadcast in the outer suburbs?

MR BYRNE: Yes.

MR SIMSON: Okay.

PROF SNAPE: Is there any reason why you have to be on FM? I know it's a better medium for your type of music but would it be better if from your perspective, from community broadcast perspective, if all the commercial stations went FM and left the AM for the community broadcasters?

MR BYRNE: I don't think that's the answer and I don't think that would be a good idea. For us it would be a lot of things. I mean, FM lends itself towards music format, which we are. AM if anything is an older form of radio than FM and our people tend to be younger. So you know, I don't think it's as simple as that and I don't think that would be the answer.

MR SIMSON: Even with conversion to digital so that the quality on the AM goes up?

MR BYRNE: Maybe with the digital conversion it certainly would be worth considering, but then you've also got the expense of going digital.

PROF SNAPE: Well, you're going to have that anyway.

MR BYRNE: Yes. Look, yes, as an AM concern it would be - if it were digital - certainly worth our while.

MR SIMSON: Do you share the facilities with the other three - - -

MR BYRNE: No. We share the transmitter. We share the link to get to Mount Dandenong. But we have our own studios and everything else basically we own. It's

just the transmitter we share. We pay for the use of the public FM site where the antenna is at Mount Dandenong.

MR SIMSON: How many FM frequencies are there in Melbourne for example - in Melbourne - available to aspirant community broadcasters?

MR BYRNE: Melbourne-wide or generally - because there's some metro and there's - - -

MR SIMSON: Well, let's talk metropolitan Melbourne, for argument's sake.

MR BYRNE: Okay. At the moment there's three available - 89.9, 90.7 and 91.5 - and they're saying when they release this draft LAP, if they move a station in Geelong, 100.3 will become available.

MR SIMSON: But that's about it, and that would still leave room for another commercial FM broadcaster?

MR BYRNE: Well, if they decided to.

MR SIMSON: If they decided to.

MR BYRNE: Yes, if they decided to. I know that Austereo, the large commercial group, is arguing that there should be all community licences. They obviously don't want any commercial competition.

MR SIMSON: Sure.

MR BYRNE: We would say that, yes, there are so many groups trying for community licence that they should all go to community licences.

MR SIMSON: As Prof Snape pointed out, this problem solves itself when the show goes digital, doesn't it? I mean, you've got the obstacle in terms of individuals have to have digital receivers, do they not?

MR BYRNE: Yes, and it's going to take a long time - - -

MR SIMSON: It's going to take a long time, yes.

MR BYRNE: Yes.

MR SIMSON: But this is a spectrum problem, isn't it?

MR BYRNE: Yes.

MR SIMSON: It's a spectrum availability problem.

MR BYRNE: It's spectrum availability and the way the legislation is being put in the act to regulate it. It's very frustrating. The frustration I guess in a nutshell is to be told one thing by a body, as in the ABA that, "We want you to operate effectively - you know, proper commercial concern, stand on your own two feet and serve your community - but at the same time we're not going to give you any help as far as letting you know when you're going to be on air, letting you know when a final decision to this whole thing will be made." It's a very murky sort of - - -

MR SIMSON: May I just interrupt. When this LAP comes out, what's the best you could hope for?

MR BYRNE: When the draft LAP comes out?

MR SIMSON: Yes, from your own perspective.

MR BYRNE: The best I suppose would be that they say all four Melbourne-wide frequencies are going to go to community stations, because it increases our odds of being one of the community groups to get one of those licences.

MR SIMSON: Well, to get the lot.

MR BYRNE: A licence.

MR SIMSON: Not shared?

MR BYRNE: No. Our idea is to get a licence, yes.

MR SIMSON: Okay. Does anybody have those licences here at the moment? Does anybody have a 24-hour, 365 days a year, community FM licence?

MR BYRNE: Yes, Triple R, 3PBS.

PROF SNAPE: And 3MBS perhaps?

MR BYRNE: 3MBS as well and 3ZZZ.

MR SIMSON: Okay, so the ABA would need to define another piece of spectrum to a permanent community licensee.

MR BYRNE: Yes.

MR SIMSON: Okay.

PROF SNAPE: You're saying you're broadcasting 30 per cent Australian music and you spoke of a contribution to the culture. You also mentioned the French case and the contribution to culture. If you were to listen to the French broadcast, the French music, or to the Australian music, would you recognise it as reflecting the Australian culture or the French culture?

MR BYRNE: Yes and no. One, it's easier obviously if there's words in it. Let me explain. Dance music - a lot of it, there isn't words, it's just electronic music - machines.

PROF SNAPE: Yes.

MR BYRNE: That is the beauty of it as far as all boundaries are out of the way as far as languages because there is no language involved. But to hear it, no, I probably would not know, without hearing lyrics. But there are certain artists, individuals in Australia, that I would probably tweak that it may be them by the sound of the music, without there being lyrics there, just by the style.

PROF SNAPE: I'm trying to get to this idea of protecting an industry versus protecting a culture.

MR BYRNE: Yes.

PROF SNAPE: It's very hard - it may be that these things are inextricably linked.

MR BYRNE: Yes.

PROF SNAPE: But it seems to me that in this type of music there may be a possibility of de-linking them. That is, what do you mean when you're saying that it is reflecting or contributing to Australian culture, rather than the employment of Australian musicians?

MR BYRNE: Okay. I suppose the press that comes with this sort of music releases tends to focus on where it has come from and the culture of how vibrant that city is, for example, at producing music, what artists there are. Generally I suppose around the world there's sort of five, six, seven, eight different spots that are generally recognised as being places where dance music emanates from. Melbourne is becoming a little bit more of one of those cities, more so perhaps than Sydney, and I think it is recognised as Australia's centre for dance music. But like you say, it's hard to - - -

PROF SNAPE: Let me give you an amplification. Our next participant is the Australian Children's Television Foundation.

MR BYRNE: Yes.

PROF SNAPE: I'm sure that they're going to tell us that the value of the Australian

children's drama and it shows Australian children, like themselves - and one of the phrases that is used in this; that it encourages children to dream their own dreams, dream the dreams of their own country.

MR BYRNE: Yes.

PROF SNAPE: So they think of themselves as being important and getting an identity because they're seeing drama which is portraying people like them and so they're identifying it and reinforcing their Australianness. I hope I'm getting the argument right. If I'm not, then Dr Edgar will tell me I'm not in the next session. But I mean, that's in part the flavour of it. That's a cultural aspect that one can sort of identify. Now, what is the cultural aspect in Australian music of the nature that you're describing, of the type of music that you're playing? I'm not talking about playing Waltzing Matilda. I'm talking about the type of music that - - -

MR BYRNE: But are you saying purely from listening to it you can recognise it as - - -

PROF SNAPE: Yes, and does it do things to the people who are listening to it or dancing to it, to bring out their identification as Australian? What is the Australian cultural - distinctively Australian cultural - aspect of it?

MR BYRNE: There probably isn't unless there are lyrics in it, and often there are lyrics. Then, depending on the song topic, it can come across whether it's Australian or not. I think it's probably more the publicity that goes with it rather than actually hearing it and identifying it and saying, "This is an Australian song." Yothu Yindi with Treaty - I don't know if you're familiar with that - that was a dance song that was made with didgeridoos and all that sort of thing, that was immediately identifiable as being Australian because the didgeridoo was in there and the voices of the band being Koori voices - or they weren't Koori, I think they were from a different tribe - but the - - -

PROF SNAPE: Indigenous voices.

MR BYRNE: Indigenous voices. The whole thing about that was, yes, it was very identifiable of Australian cultural music but it's harder to pinpoint those other sort of track songs out there that are Australian and you can immediately identify them when you hear them. I don't know if I'm answering this the way you want me to answer it but it's more, I suppose, in the - - -

PROF SNAPE: No, you're certainly helping us with the answer. I'm not seeking a particular answer.

MR BYRNE: Yes.

PROF SNAPE: I'm seeking - - -

MR BYRNE: Information.

PROF SNAPE: - - - enlightenment.

MR SIMSON: Could I ask another question?

MR BYRNE: Sure.

MR SIMSON: Do you broadcast on the Internet?

MR BYRNE: Yes, we were the first Melbourne radio station, before the commercials and so forth, to broadcast on the Internet. Electronic dance music, as it says, electronic is the people who take an interest and tend to be pretty computer savvy and so forth. So we've always pushed the boundaries of trying to do that and we have to do that too, to try and make income to keep the place going in between blocks.

MR SIMSON: Yes, I was going to say, when you're outside of your on-air block, do you continue to broadcast on the Internet?

MR BYRNE: It's not economically viable for us yet.

MR SIMSON: That might change though, mightn't it?

MR BYRNE: But that may well change. We're trying to look at - we're constantly working on it and trying to get it to the point where it is, but it's not yet. We do other things as well such as put out a magazine, which is again another way to promote the station and also keep turnover going so we can keep the business buoyant.

PROF SNAPE: Do you get promotions on the Internet?

MR BYRNE: Do we get promotions?

PROF SNAPE: Yes. By that I mean sponsorship?

MR BYRNE: No, we haven't sort of - - -

PROF SNAPE: Advertising.

MR BYRNE: - - - targeted that yet as such because - - -

MR SIMSON: That would be possible, wouldn't it?

MR BYRNE: It would be possible, yes, but there's a difference between the immediacy of radio and the amount of enthusiasm it can create versus, at the moment, the enthusiasm the Internet can create for your volunteers and so forth.

PROF SNAPE: That was very interesting. How big is your audience?

MR BYRNE: We believe in excess of 100,000 during the course of a week tune in at some stage. I mean, we get ideas by how much the other FM figure goes up and down when we're on and off air, though we're not meant to know that.

PROF SNAPE: How do you know?

MR BYRNE: You find the other FM figures and, you know, gauge them.

PROF SNAPE: Yes. Okay, that's very helpful and it's been a very interesting submission from the community section.

MR BYRNE: Thanks very much.

PROF SNAPE: Thank you very much.

PROF SNAPE: We now welcome the Australian Children's Television Foundation and we have two representatives at the table from the foundation and we'd ask them to identify themselves separately for the transcription service please.

DR EDGAR: Patricia Edgar, director of the Australian Children's Television Foundation. Do you need an address?

PROF SNAPE: No, that's all right.

MS BUCKLAND: And Jenny Buckland, the general manager of the Australian Children's Television Foundation.

PROF SNAPE: Thanks very much. Dr Edgar, are you going to speak to the submissions?

DR EDGAR: What I thought I would do is just add a couple of comments. I won't reiterate any of the points that we've made in the submission, but to explain why our submission in fact goes over past history, if you like, and leading up to where we are now and the success of what has been bipartisan government policy in generating children's industry in Australia, but we're very much here representing that audience rather than industry.

When we looked at attempting to speculate on what regulation for children's production might be in a much more diversified system, it's so difficult to do that. What is in place at the moment has evolved over a long period of time. It's been a slow process of evolution and it's been something that has been monitored and checked on a regular basis. I think, given what we do is so fragile in the scheme of the broadcasting structure, that to try and leap into a system that's multichannelled, digitised, without knowing what some of the parameters are, was just a bit beyond what we were able to come up with. Even if you talk about whether it's four free-to-air channels, the models are so many that we're stuck with the way it is, the way it's evolved, but we're happy to attempt to answer any of your questions.

The other thing is that we're not able to provide you with audience numbers; the reason for that, we do from time to time get given the ratings with our own programs but we're always cautioned about divulging this sort of information. But the ABA is currently putting together a picture of the audience and the way it's developed and evolved over the period of children's regulation and I'm sure that that will be made available to the commission and that would be a more accurate and global picture of what's going on than any examples that we could give you.

The other point may be, just for opening, listening to the discussion about culture and Australian culture, I think that in addition to the comment you expressed, Prof Snape, about children dreaming Australian dreams, the other very important thing in terms of culture overall is - and I'd like to read a very short quote from an article that was in the Financial Review on Friday. It's a report of an article by Francis Fukuyama; it's called The Great Disruption. But he is a philosopher and writer who is

actually looking at the way in which there has been certain social backgrounds through economic policies. He's saying that:

True communities are bound together by the values, norms and experiences their members share. The deeper and more strongly held those common values, the stronger the sense of community.

So I would argue, whether it's your local music or your local programming, this is what the underlying issue is. When you are involved in an industry in creating cultural product in a country where you've got a population such as we've got in Australia and you are competing on the global scene with the United States of America and other much bigger countries, then the problems involved in preservation of that culture are very challenging. I think your task to actually balance the social and the economic factors involved in this is a task that nobody has been given in the history of Australia. I mean, it's absolutely mind boggling what you've got to come up with in the next few months in encompassing all of these areas and I think that what we're representing is one of the most fragile of all. So as opening comments, I think I'd like to leave it at that and then respond to questions.

PROF SNAPE: Thanks very much, Dr Edgar. Yes, it is a difficult task. Nevertheless, we have to try and do it or at least attempt to advise the government on these matters which of course is what we're about in providing that advice and recommendations. I suppose that in addressing what you were just saying and thinking about it, we can see the objective of the Australian culture - and it's mentioned in our terms of reference of course, the culture, diversity etcetera - and we do have to take account of the convergence of technologies. So accepting the points that you have been making about the children's television and the way it has developed, its fragility as you've described it, with the convergent technologies, of course when it's fragile, it runs a new set of risks. In thinking of that structure for the future or the way the things are evolving, then one of the things we have to try and do is to think how these objectives can be achieved in this evolving structure. So I would ask you, if you could, to make some comments about how you see your objectives being achieved and the objectives of the foundation being achieved and continue to be achieved. You've achieved them in the way that you've described up till now, but in this uncertain world ahead, how do you think regulations should be cast to give the greatest possibility of your objectives continuing to be achieved in the future? That's the sort of task that we have to address.

DR EDGAR: I certainly think that the evidence is available to make it quite clear that without a decision by government that this is a policy that there will be provision of children's programming, Australian children's programming, that market forces would eradicate it very, very quickly. I don't think there's any doubt about that. In fact, history demonstrated that very early on in Australia. The selling of television sets initially was done through the process of arguing that this was a family medium, that there would be provision for children, and there were some excellent children's programs in the early days. Once the market was saturated and Australians took up television very quickly, in fact the production of children's programming disappeared.

So that was the reason for the inquiry into self-regulation, that was the reason why Australian content and children's programs were regulated.

As we look around the world there is no example - and we've in the last week or so done a bit of work on this - we can find where increased competition has in fact improved the environment for children's programming. There's certainly an increase in hours, but then you've got to look at what those hours are and what is coming out in the form of children's programs. But if you look at your biggest market, which is the United States, where you would expect your competition to be greatest, if competition is going to drive the result you would expect an improved situation in children's programming. Now you're getting more and more and more of it, but it's being paid for with less and less and less money, so the resulting product tends to become very much the same. So instead of diversity with more you get sameness, and that's quite evident. The independent industry in America has been thoroughly squeezed. They are buying programs for the least money they can get and often from Canada in a block, so I don't think competition has improved the area of children's programming.

MR SIMSON: Dr Edgar, following on from that, if the impact of technological convergence is to fragment markets by increasing the number of access opportunities and the way in which people can access media - and there are plenty of examples of that occurring in this country and everywhere else of course at the moment. The current approach in the BSA is to have a content regulation that applies to free-to-air networks and to have an expenditure regulation that applies to pay television. But as other media forms come to the fore and kids consume media in different ways - the Internet is the biggest example, the best example that I can think of - in terms of achieving your objective by content quota and expenditure flats in the case of pay TV, they're going to become less effective, aren't they, in terms of getting what you want in a fragmented market out?

DR EDGAR: It's going to become more difficult but already I think there are signs. We're working, for example, with Telstra who are interested in getting involved more with content and in fact have developed a section within Telstra for leisure services, and they are looking at the - - -

MR SIMSON: For what services?

DR EDGAR: Leisure services. So I think initially with new technologies there is an incentive to try and experiment with the market as to where you're going to get the results.

MR SIMSON: What was it - sorry.

DR EDGAR: Sorry, I'm not going in the direction you want?

MR SIMSON: No, you are. I was just going perhaps to make myself clear. I'm just wondering in that situation whether you might be better off having a different form of assistance, such as an industry subsidy assistance that is not specific to a

particular medium but is specific to generating the content, the programming, that you want, that can then be shown that is neutral, whether it's going over Telstra's platform or whether it's going over other Internet platforms or Web TV platforms, pay TV and free-to-air.

DR EDGAR: I think you need both, and that's what the system has been built on. You certainly need subsidy, because in a market of this size the market is generally not going to return your costs, so you need subsidy, but you need specific regulation or you need specific quotas. You need a direction to each of those different media that they should carry children's material if they are to serve the broader community.

MR SIMSON: Just going back to your Telstra example, what sort of content are we talking here, film based content or are we talking text based content? What's the nature of content that groups such as Telstra might be interested in working with you on in the children's genre?

DR EDGAR: The actual product that we've been working on over the past 18 months is called KAHootz. It's an online club for children. It's a closed club. It also involves Hewlett Packard; Hewlett Packard-built software, Telstra managing the marketing and delivery of it and we're providing the content. It's a hybrid product, a CD-ROM and what it is is a set of tools for children to use so they involve drawing tools, music tools, all sorts of imagery, text and so on which they then on their CD-ROM use and transmit to other members of the Kahootz club. So it's not like a film. It is to do with a set of tools for children to use.

MR SIMSON: Has there been any opportunity so far to repackage or recycle any of the film-based content that is going out on traditional media through the Kahootz?

DR EDGAR: Not at this stage.

MR SIMSON: But down the track do you see that sort of thing happening?

DR EDGAR: It's not what this particular product is about.

PROF SNAPE: Are there other Internet products that you're looking at, through your own Web site or whatever?

DR EDGAR: Through our own Web site, I mean, there's a real dilemma there with the technology in the States that it's at at the moment, that people lose patience very, very quickly if you've got very complicated material to download and so the technology is not yet at a stage where we would be wanting to transmit film of any length. You lose your children very quickly. You can do games. You can do a little bit of interactivity. We're trying to keep pace or keep ahead, just a little jump ahead, but initially our Web site had a lot of images on it and we did find we were ahead of the capacity of most people and their technology, to use it.

MR SIMSON: We've had evidence from participants to this inquiry where they're envisaging that there would be several ways that households would be able to access via broadband, that is a high speed line or signal in the case of satellite on a four to five-year time-frame and they're envisaging that would significantly enhance the opportunity for content developers to do that.

DR EDGAR: Yes, and we're certainly keeping an eye on that. The issue will always be how you raise that budget to do high quality product. It's not so much an issue of transmission. It's just where you get the money together to make product in the first place and what we are finding in Australia is that it's increasingly difficult to raise those budgets.

MR SIMSON: It's interesting that just your name, Australian Children's Television Foundation - the operative word there is "television" and I suppose what this discussion is raising is the issue as to whether that may in fact be too narrow in terms of the objective that you have in an increasingly fragmented multimedia environment.

DR EDGAR: The board changed our articles now six years ago so that indeed we cover all audiovisual product for children so certainly we haven't been constrained by the name.

PROF SNAPE: With the board that you've got I didn't think they would be constrained for very long. The C drama requirement on television refers to newly-produced children's programs, I think. Recycled material that was perhaps done six years ago and with a new generation of children now coming through, is that not acceptable?

DR EDGAR: No, there's a requirement for first release children's programming but there is a repeat requirement as well now within the drama requirement and as well within general C programming. For P programming, preschool, there's a lot of repeats and certainly with your general C, the bulk of the hours are repeats as well. So there is a lot of repeat material but the contentious one from the point of view of the industry is the first release drama which is 32 hours per network per year.

PROF SNAPE: So that really is in part industry development because it refers to the new productions, that is, it is assisting the industry essentially.

DR EDGAR: It's not its purpose. I mean, children's regulation has never been about industry assistance. It's been about creating programs for an audience, for a specialised audience, and what that quota is really about is providing a diversity of program. So with children you do get a repeat factor which, because children are growing you're getting a new audience every few years. If the programs are good enough then they can be repeated but what that quota is allowing is for a build-up in a library of product which is then available for children because 32 hours a year in television viewing is of course a drop in the bucket. It's nothing.

PROF SNAPE: That requirement is between certain hours too, is it?

DR EDGAR: Again, that has been something that has been fairly contentious over the years. Those hours were broader initially but it is supposed to be when children are viewing and certainly the networks do think that a lot of Australian children get out of bed very early in the morning.

PROF SNAPE: So there is a bias in the networks to showing it early in the morning rather than late afternoon, is there?

DR EDGAR: Yes.

PROF SNAPE: You haven't included data on that, I don't think. Do you have data on what times the networks are actually showing the children's - - -

DR EDGAR: I guess any sort of guide, Green Guide - it used to be that they were required to put these programs to air between 4.00 and 5.00 in the afternoon and then over negotiation over the years a lot of it has been moved to early Saturday and Sunday mornings.

PROF SNAPE: You don't have historical series on that, do you?

DR EDGAR: We don't but the ABA of course could give you chapter and verse on it.

MS BUCKLAND: And it will be included in their statement.

PROF SNAPE: It will be included in?

MS BUCKLAND: In their review that Patricia spoke about earlier.

PROF SNAPE: Which is coming up shortly.

DR EDGAR: July.

MR SIMSON: Of the funding from the Film Finance Corporation to local content development, roughly how much of that goes to children's programming?

DR EDGAR: About 50 per cent of what they have goes to feature film, the rest going to television which includes adult television and documentaries and children's. There isn't a fixed amount but I would say that roughly 20 per cent.

MR SIMSON: 20 per cent of their budget.

DR EDGAR: Roughly.

MR SIMSON: Would roughly go to - - -

DR EDGAR: That would vary. They do not have a fixed allocation. It depends on what comes in each year but they do attempt to balance a portfolio so that they're getting a spread over documentary, adult programming and children's.

MR SIMSON: Dr Edgar, could I take you to page 10 of your submission and just ask you to just explore a bit further with us the issue of what if there was a further commercial free-to-air licence granted in a situation where the content requirements for children's programming remained in place and the impact favourably, unfavourably, that you would see it on your genre, could you explore that a bit with us please?

DR EDGAR: It would be unfavourable. The pattern of payment, even with our own licence fees and we don't have access to all of them but in the early years higher prices were being paid for children's drama. Because prices over time dropped the FFC introduced a minimum floor price of \$55,000. More recently the ABA introduced a price which they have never done till then of \$45,000. I would say the trend now is that it's going to be very difficult for any independent producer to get \$55,000 and certainly that's our experience. What the networks - and they've been quite open before this commission in their lack of interest in children's programming. They will get it for the minimum price they may pay. If there is a fourth free-to-air network then it's not something that they're interested in competing on. It's just a requirement that they must meet for a licensing requirement. They do not treat it, for example, in the way that 7 is now looking at its news and current affairs. I mean, if they see something as essentially programming they will pour money into it. If they believe that they have a new program that is going to build, again they will put money into promotion, they will stay with it over a long period of time. Lots of examples of that.

This has never occurred with children's programming. Children's programming and the quota goes to air unheralded on most networks, often interrupted and very, very little promotion. It's a grudging meeting of the requirements. So the effect of a fourth channel is not going to be an impetus to make it better. It's just going to be an argument that there is less money in the advertising pot to go around and this becomes an onerous requirement for them all.

MR SIMSON: To what extent though is the viability from the free-to-air's perspective of children's programming because of the restrictions on advertising, the time and what they can and can't do, without argument; just debating at this point the merits right on - just from a sheer business economic perspective that their hands are somewhat tied by the amount of time they've got and the nature of the advertising they can run in those blocks.

DR EDGAR: I don't think they've ever conceded that in fact a children's program is an attraction for a certain kind of advertising and if you look at advertising around those programs they are sort of confectionary, toys, all the sort of things that you would expect that they would promote to children. To my knowledge in Australia there has never been information released by the networks on the revenue they do get from children's programming and that sort of advertising and there has never been a

study that I've been aware of which reveals that. There is a constant assertion that it's a burden, that it doesn't pay, but on our analysis of the figures which we put in here, what we're showing - page 5 - that on their own figure they are saying that they were spending 850 million on Australian content. Knowing the price of drama, they can only be paying 2.8 to 3.5 million for their children's drama, so they're actually expending 1 to 2 per cent of their expenditure on Australian programs, on Australian children's drama. So it's hardly onerous and I think that the restrictions on advertising are really minimal.

PROF SNAPE: But the times at which they're showing children - or you go back to the thought of 5 o'clock, is that a time in which, in your perception, they would get a lot of advertising revenue? In other words, from other programs are they sacrificing a lot of advertising revenue by running children's programs?

DR EDGAR: I don't believe so. I mean the way advertising deals are done with the networks, my understanding is that they will buy a package so that advertising is - they are not buying a slot for one ad, they are buying time to be distributed across the spectrum and what the broadcaster is guaranteeing them is that they are going to hit their target audience so many times with the number of ads. We have just been through this with Kahootz which was advertised and of course with that product Telstra wanted the children's market, so the deal was done that they wanted to advertise so many times, they wanted the child market, they wanted to be guaranteed the child market. I suspect there is more of that than is often talked about.

A lot of the product they sell we do know from other studies on advertising, children accompany their parents to supermarkets and they are very instrumental in what parents buy. They are sitting watching television. It's more than anecdotal that they then go in and say, "Mum, I'm hungry, I've just seen the Mars Bar or I've seen whatever else". So they are targeted very carefully and it's the time when they are going to be watching, when you have children's programs. So I think it is a mixed argument really.

MR SIMSON: Could I just go back to your observation just to clarify this for me. You said that there is this minimal licence fee now of \$55,000, isn't it?

DR EDGAR: \$45,000.

MR SIMSON: You said they are not paying it, the networks are not paying it. But they have to pay it, don't they?

DR EDGAR: No, the networks are paying 45, they are not paying 55, which was the FFCs minimum.

MR SIMSON: Just taking a big picture of this, how effective is free-to-air television as we sit here today in delivering the objectives that you want for children's programming in Australia?

DR EDGAR: In an ideal world it could be better, but given what we have it is pretty effective, because you have come from a situation where there was nothing. Now, despite their lack of real interest, despite their lack of promotion, children do find these programs and they do watch these programs. The evidence of that comes through to us in very many ways. What it also does is enable us to get the budget together to put a resource to air which may go to air three or four times, but the fact is once made it is then available on video and it is available and accessible to children in an ongoing way. But it is broadcast television that has allowed that to occur.

MR SIMSON: You sell some of your programs through the sell through market in video?

DR EDGAR: Yes.

MR SIMSON: How significant is that?

DR EDGAR: Our best selling video, Round the Twist, is up to 77,000 copies.

MR SIMSON: Is that right?

DR EDGAR: Yes.

PROF SNAPE: Have you investigated and I am sure you have, but have you investigated sponsorship rather than advertising, so that you get the toy manufacturer just saying at the beginning and end that this program has been sponsored in the way that occurs on public broadcasting in the States for example?

DR EDGAR: There are a couple of issues about that. One is that early on in the foundation's life I made the mistake of going to a broadcaster with a sponsor who was keen to back what we were doing and we both got severely reprimanded, because that is not the way business is done. The broadcaster wanted the link with the advertiser, not the leverage that you would bring by doing that. You cannot create a program and have it promoted in that way on the ABC of course. They can do it with their programming, but they won't do it with anybody else's. The other factor is that we don't want to be producing programs that are actually merchandise driven. A lot of the worse programming that is now coming onto the market internationally is merchandise driven.

PROF SNAPE: That wasn't what I was thinking. I was thinking much more the format over the PBS in the United States where the McNeil Lairer show will begin by saying, "This program has been sponsored by such and such, such and such and so and so" and at the end they will say the same. But so far as one can tell, they have had nothing to do with the content.

DR EDGAR: I think that is much more difficult to find in the children's area. The ones who are probably interested in doing that are more like McDonald's or your big franchises or your toys. It is harder to get a sponsor who is simply interested in being

seen to be doing good deeds for the community who is going to put up that sort of money in children's programs.

PROF SNAPE: Yet McDonald's does that for the Children's Hospital.

DR EDGAR: Yes.

PROF SNAPE: In a very big way.

DR EDGAR: Yes.

PROF SNAPE: But they are not interested in doing it for television?

DR EDGAR: I can't answer that in the sense that I have followed up with McDonald's asking them to do it, but I can tell you that sort of approach would not be welcomed, in my experience, by the commercial networks.

PROF SNAPE: There may be a sequencing involved, but I was just wondering if you had looked at it. Have you any measure or any idea of how your children's programming you are undertaking is reaching ethnic groups?

DR EDGAR: Again, we couldn't give you figures on that, because we just don't have access to that sort of form in the market. We do always in the characters use children from diverse backgrounds and so the evidence that we have is more anecdotal than statistical in terms of the interest. I mean one thing that we do, we do have a very good relationship with the schools and in selling the rights of our videos we retain the right to sell to schools. So a lot of our programs go into the schools and what we do know is that they are used in classrooms for all sorts of social discussions.

MR SIMSON: Dr Edgar, could I ask you for your professional opinion as to the quality of news and information on television; the news services, the current affairs shows, from a children's perspective. We have had people tell us that they are concerned about what they see as an increasing trend to stereotyping children and similar type of issues. Could you perhaps provide us with an observation from the news and information perspective what you are seeing happening out there on TV in terms of kids' consumption in that area?

DR EDGAR: Well, as an academic in my earlier life I used to take a lot of interest in this and in the early 80s there was this trend to package news and information and actually turn it into an entertainment format. So you really went away from your news reader to the big set, the dialogue, the exchange. You got much more into news as a form to attract an audience. In my days as an academic I used to do content studies of the news. There was certainly a trend to more sensational news items. The packaging of that was sensational pictures and I think news has become a commodity.

I think from the point of view of children it is the program on air that is most disturbing to them and the time it goes to air when families are altogether. It is the most contentious program of all in terms of its effects to do with violence. It raises

anxiety, it provides models - there has been a lot in the paper recently about - our news very much follows the American format and style - the Littleton massacre at school and the repeat of those sorts of events; the giving you a map, interviewing survivors, graphically going over and over the biographies of every victim.

There have been six schoolyard massacres in the United States, probably each one of them set up to some degree by this endless promotion and coverage. That is symptomatic of the sort of way in which news is going. I know it is a very contentious issue, I know there are all these right to know issues, but it is an issue that I think is of concern to a lot of parents and rightly so in terms of children.

PROF SNAPE: We have had several submissions that have been talking about the influence of television on violence, on children's violence, but most of the submissions have been very anecdotal - "This happened, therefore it is due to this" - and the level of analysis really hasn't been what we have had put before us hasn't gone beyond that. One can understand the concern that the analysis is very deficient. Can you point us to an analysis of recent times that is more substantial?

DR EDGAR: Again, you have hit on a topic that I have a strong interest in, because my PhD was on children's perceptions of violence. That goes back to 73, at which time I reviewed all the research literature - there is a difference that comes out of that literature - and I have continued to do so. I was a member of the ABT's violence inquiry and a consultant to the Victorian government social parliamentary committee after the Hoddle Street and Queen Street massacres. The research, depending on the type of research that is done, clinical studies, experimental studies by a psychologist will show imitation of behaviour; sociological studies less so.

Media violence becomes one of many factors and in the research it has been ranked well below issues to do with family influence, peer group influence, the way a child is doing at school and so on. Talking about children, the factor that comes through is one where self-esteem is very important and all of these things have a bearing on that. People with low self-esteem tend to be heavy users of television, tend to be less well-socialised, often unemployed, often in family breakdown situations and they do prefer violent television and they will watch it more.

The problem is picking in that mix who are the people who are going to then break out, react, explode as these children have done. I think the social circumstances have changed so much over the time in which those studies have been done. I actually do believe now media do have a bigger influence than studies have shown, for a combination of reasons. One is that certainly when I was growing up, when you were growing up, the models ahead of us in family was to actually have a family, to work. You were very circumscribed in terms of the path that you would take in life.

What has occurred now and over a period of time is people do not settle down until much later, sort of well often in their thirties. There is a breakdown in family structures. I think it's 40 per cent of marriages end in divorce, 21 per cent of children are in single parent homes. There is not the same sort of models. At the same time you've had this enormous growth in the leisure and entertainment industry because it is servicing a population that simply wasn't there before. The people who from 20 to

30 years of age are not in their settled domestic patterns, they go out, they want to be entertained. The form of entertainment that is being made for them is a product that really didn't exist before and it certainly doesn't extol family values. And so I think that these sort of issues and the images that are being portrayed are increasingly violent images.

Conflicts are a very easy thing to write about. If you're going to write a script, a quick script, a bit of conflict. Even the trend now coming out of Hollywood, to use teenagers in movies because it's too expensive to use the big stars. So you're getting teen movies that are very violent. I Know What You Did Last Summer is one that I saw recently, all unknown people, but incredibly violent material. So there are influences that are developing that are very different from the influences that prevailed when most of this research, which shows no effect, was being done.

PROF SNAPE: And there isn't substantial newer research.

DR EDGAR: There is not new research that is actually looking at this changed sociological picture.

PROF SNAPE: It's rather a pity because, as I say, a number of submissions are making the point but it's basically anecdotal.

DR EDGAR: But what there certainly is, is a growing perception within the community that violence on the media is making a difference.

PROF SNAPE: When you say on the media, television - - -

DR EDGAR: Video games, music. It's all relevant.

PROF SNAPE: Cinema, is there - - -

DR EDGAR: Cinema, television, video, music, all popular culture.

PROF SNAPE: And Internet. Do you have a feeling of a sort of a ranking of influence?

DR EDGAR: The thing about - I mean, what the ABA's violence inquiry reveal - because they did do research on perceptions of violence - is that women and older people and families are more fearful and are more concerned. Young people, and particularly young men, are not concerned and in fact are the main consumers of the product. Now, with young people, the amount of time that they spend on the media is just being spread across the different forms more but once you get to adolescence, they certainly don't want to sit around watching with their parents. So they're out and about more, they're spending more time with their peers and they are certainly spending more time with games.

PROF SNAPE: I was looking at not so much as the fear, not those who might have it done to them - - -

DR EDGAR: But the model - - -

PROF SNAPE: - - - but those who might do it.

DR EDGAR: It's volume of usage and availability of this material, and that is certainly increasing.

MR SIMSON: Dr Edgar, in the context of our inquiry, which is the Broadcasting Services Act, what should be done about it?

DR EDGAR: I think that they have done - the only thing they can do, which is because of the volume of the material that defies any notion of monitoring, it has got to be a self-regulatory issue but I think it's an issue where, like children's, it has got to be monitored in an ongoing way. They have got to be regularly called to account. I think the system with the regulatory authority now, it's much harder to complain and people just give up, you know. They ring the station and they say, "I object to what I saw." They ring the ABA and the processes are so slow and laborious and - - -

PROF SNAPE: We've had a number of complaints about the complaints mechanism and I wonder if you have thoughts as to how it might be improved.

DR EDGAR: Well, I mean, people want to feel that there is a response, not that they're just being fobbed off by bureaucracy and every time - and I was a member of the Broadcasting Control Board for a while - every time the broadcasters come into a room, they're very accountable with you with the dialogue. It does have an effect. It really does have an effect. When they're left alone for a long time, you know, things fall into a pattern. There are day-to-day pressures on them, there are business pressures to get ratings, and they take more and more risks in terms of what they show. So every now and again they've got to be pulled back and there is no easy solution to it. There's no tidy box to put all this in. It is something which needs an ongoing dialogue, unfortunately. That's the only conclusion that I can come up with and it's what I believe. This process must be an ongoing dialogue.

PROF SNAPE: An organisation separated from the ABA? Do you think that that might - - -

DR EDGAR: For monitoring?

PROF SNAPE: I'm thinking of an ombudsman-type of arrangement.

DR EDGAR: Well, then it's got a singular duty, you know. It's visible and the community knows where to go. I think at the moment there's a lot of confusion about that, and the ABA has just been overwhelmed by that process, and as budgets shrink then these things become expendable. You do less and less of it. If you did have an ombudsman, if you did have a body with that responsibility, then there's more chance it's going to be dealt with.

MR SIMSON: The ABC mentioned to us yesterday that they have a panel arrangement which is responsible for dealing with complaints. Have you had any experience with the ABC? Is the ABC any better or worse than the commercials in managing complaints?

DR EDGAR: I haven't had experience with complaints with the ABC, so I can't answer that.

MR SIMSON: Okay.

PROF SNAPE: Could you go onto the ABC in another direction perhaps, and could you speak about the relationships that you have with the ABC and SBS.

DR EDGAR: Well, we haven't had a relationship with SBS unfortunately because they don't do children's programs.

PROF SNAPE: They're in fact the lowest of all the networks in children's programs I noticed.

DR EDGAR: Yes, except that we have just become a co-production partner with the SBS with the production of a feature film that we're doing in Arnhem Land with Aboriginal children. So that's something that we're extremely pleased about and the SBS have been very supportive of that project and this project couldn't be done without their specialised interest, I'm sure. With the ABC, we've had a lot to do with the ABC in terms of programming. A lot of our programs have been shown on the ABC and I think, were it not for the ABC, then children's programming in Australia would be a good deal worse off than it is. I think that this distinction that they make about their own programs and other programs - the independent industry - is not a useful one in terms of promotion. I cannot see the harm in promoting good product like books, videos and other things, which go along with the program, which are used by children but so - within their charter - - -

PROF SNAPE: You mean in the ABC Shop and what have you? Is this what you're talking about?

DR EDGAR: Well, I'm talking about - they can promote things that are in the shop but if you go to them with a program but the ABC Shop is not selling your product, you cannot promote it on the ABC.

PROF SNAPE: Okay.

DR EDGAR: But I do not believe that the ABC should have the sole responsibility for children's programming. What that would mean would be much less diversity in terms of the product that is produced and seen.

PROF SNAPE: Could I go along another line that's similar, that to think about - or to ask for your thoughts on a transferable quota, for example that each television station, commercial television station, was required to show so many hours of

children's television, that in fact they could pay another station to take their requirement.

DR EDGAR: I think you'd finish up with the same result as what I was just referring to, because they would have no interest in the type of program that was produced. So in other words, you've got one gate keeper who determines all types of children's programming and I don't think that augers at all well for serving the child community in terms of a diversity of product. I also think that ultimately then you'd get a set price. You would not have this ongoing monitoring of the situation with changing conditions. Those paying the fee would certainly have no interest in it going up, quite the contrary.

PROF SNAPE: So if you were thinking perhaps of, say, a fourth channel which was specialising, as Channel 10 Network specialises to some extent these days, would a fourth channel that was specialising on children's programming, say between 6 o'clock in the morning and 6 o'clock at night, and say the other channels then each paid them to be taking their quota and that they were in fact concentrating on children's programming and getting various types of it over through that whole period, that would not be an attractive scenario or a feasible scenario?

DR EDGAR: It's a really nice, tidy theoretical solution and I wish these things did work, but - - -

PROF SNAPE: Well, you were an academic too once.

DR EDGAR: And the trouble is that academic experience does reveal that theories are often flawed. But I don't believe that that would serve the interests of the audience at all and I believe it would become - I did see the comment in the paper that Brian Johns made about a ghetto and I think I agree with that.

PROF SNAPE: Good. I think probably if we were to - you earlier said I think that you saw both content requirements and subsidies were required, so that even if the subsidies were put at a very, very high level so that the stations were actually paid to put them on, that wouldn't be adequate?

DR EDGAR: That's how the Commercial Television Production Fund worked for a time, where indeed that money was allocated to programming. But if you look at the New Zealand example where they do have very, very high subsidies but they do not have quota requirements they came after our quotas, you know, because they still couldn't get their programs made or broadcast in New Zealand because the subsidy system there, which is much higher than ours, wasn't workable in terms of getting broadcasters to - - -

PROF SNAPE: Yet conceptually there must be a level of subsidy. There must be a level of subsidy at which they would find it worthwhile.

DR EDGAR: With Australian content, yes, absolutely yes. With children's programming I've yet to meet the broadcaster who sparkles at the notion of a good children's program.

PROF SNAPE: Well, you didn't go with \$5 million in your hand perhaps.

DR EDGAR: I've yet to meet the government that would provide it, especially as it provides half the cost of making it as well.

PROF SNAPE: I guess that we can perhaps agree that there must be a figure there somewhere, but it may or may not be within the feasible set - - -

DR EDGAR: I'm sure they're trying to find ways of making better use of it than children's programs in their deal.

PROF SNAPE: That has been a very helpful submission, very helpful discussions and elaboration of it and we thank you very much for them. It's possible that the staff may wish to ask you about a couple of the studies that you were referring to and we'll leave that to them to pursue it with you either now or at a later date. We thank you very, very much for your help with this inquiry.

DR EDGAR: Thank you for the opportunity and if there is anything we can do along the way we'd be more than happy to do so.

PROF SNAPE: Thank you very much. We will now take a short break and resume at five past 11, which will be just a few minutes after the appointed hour, to have a cup of coffee. Thank you.

PROF SNAPE: We now resume the hearings and welcome Southern Cross Broadcasting, for whom we have two representatives. I would be grateful if you could each identify yourselves separately for the transcript and then, Mr Bell, I think you're going to open it and speak to the submission.

MR BELL: Thank you, chairman. Tony Bell, managing director Southern Cross Broadcasting.

MR CHIA: Eddie Chia, company secretary of Southern Cross Broadcasting.

PROF SNAPE: Thank you. Mr Bell.

MR BELL: Chairman, we have put in a submission and there are a couple of key points that we raise. On the issue of cross-media ownership we believe that these rules in the Broadcasting Services Act should be repealed. We really can't understand the reason for keeping those rules in place today. As all are aware, radio can be owned 100 per cent by a foreign owner. There appears to be an anomaly in the act that allows a foreigner to own 100 per cent of a radio station, whereas an owner and operator of a television station in the same market cannot have any more than 15 per cent of that radio station radio station.

We also feel that the foreign ownership rules in the act should be repealed. In this day and age we don't really see what purpose they can serve. With globalisation and available media from all parts of the world it's difficult to understand why Australia would prefer to have its media totally owned and controlled by Australians.

We also feel that there should be no change made to the 75 per cent audience reach rule, which serves to preserve localism in non-metropolitan television services. It is vital for the regional consumer to maintain the 75 per cent audience reach rule. The reason for that is that we feel that if the networks were to acquire regional television operations then they can do away with a lot of the local services, including community service, local news, general access to those services by regional people. In many cases that regional television service becomes the daily information centre for particular regions, as not all have daily local newspapers or a local news service on radio.

On another issue, we believe that commercial AM radio services are disadvantaged. They are seen by government as being on an equal footing with FM services. We believe that AM radio, music radio - not to be confused with talk radio, which around the country does perform relatively well - but AM music radio certainly doesn't. The fact is that AM radio, AM music radio, will die with its audience. People who have grown up with an FM service will not accept the inferior quality of AM and therefore will not tune to AM music services as they age. It seems a nonsense that we should be introducing new FM services to any market where there's an AM music service, without looking at giving the AM service the opportunity of converting to FM. There is no sense at all in introducing a new radio service on FM and allowing the AM to drop off on the other end, as it surely would and nobody would argue with that.

One only needs to study the profitability of AM versus FM. In the country there are equal number of services - well, say 106 AM to 109 FM. Whereas FM's profit was close to 80 million, AM's was close to 16 million. I can account for a hell of a lot of that in talk radio. So music radio just simply doesn't have a chance of being profitable.

PROF SNAPE: Music AM?

MR BELL: Music AM, yes. There are two ways that we could remedy this situation. One is to allow for the conversion of AM to FM so as the licence has a life, because quite frankly it cannot wait until digital is introduced into this country. The penetration of digital on radio will be relatively slow. It's estimated that it might take six to eight years before the penetration is great enough to be a viable service in its own right. A simulcast period would need to be over, say, 15 years. So AM music - and AM, let's say, full stop - cannot wait for the introduction of digital. So therefore a system should be allowed to allow AM to convert to FM.

Failing that, perhaps, as we have put in our submission, an operator who has two AM services could have a third service. So one would be allowed to have, say, two FM, one AM; two AMs, one FM; or three AMs - to guarantee viability of the licence for a period, hopefully through to the time that digital is viable.

Just going across to television again, metropolitan and regional television markets cannot afford a fourth commercial television service. I can support this in a supplementary submission but just simply to say that when those who look at media in this country - they tend to look at the networks and the revenue that the networks generate and the profitability that those networks generate. But a network is made up of a number of stations in each market. It's the station in the market that it's serving that must be profitable in its own right.

Southern Cross Broadcasting has Channel 9 in Adelaide. Although from a programming point of view we certainly are part of that Nine Network, we are not from an ownership point of view. On that basis we can isolate Channel 9 Adelaide, which is a profitable station - we have made it that way. We have restructured that station to be much more profitable than it was. We believe that the way we structure our operations would be considered to be among the most efficient television type operations in Australia. You can measure our costs, our staff numbers etcetera, against any other market and you would see that the efficiency of our particular operations are in the higher level.

That being the case, we understand the profitability of such stations in those larger markets such as Adelaide and Perth. We know that if you took the profit levels from the three commercial services in those markets now and applied it to a fourth commercial service that, one, the three services that were there would not be profitable at all, which is not in anybody's interest. Secondly, the news service would not be viable. So markets such as Perth and Adelaide, and possibly Brisbane, could not support a fourth service. The regional markets - there is just absolutely no hope of supporting a fourth service. If a fourth service was introduced, under the

government's equalisation policy, that fourth station would probably go into those smaller capital city markets and regional markets, and the markets could not support it. It's just a sheer case of economics.

It's one thing to put a transmitter tower up in a metropolitan market and serve that market with the one transmitter but it's another entirely to cover the state of Victoria or New South Wales or Queensland, where you have up to, in each state, something like six or seven or eight - depending on the size of the state - transmitters and a couple of hundred translators, and trying to get the signal from A to B and then to set up regional offices to try and serve those markets. Even given that such an act would see the demise of any local content and local access in regional markets, the services would be marginal and one or two of them would simply not be able to survive.

On the issue of digital television, there seems to be an argument over quality versus quantity. Because it hasn't happened, nobody can really tell what the market would demand at the end of the day. But there are some examples. The audience has a demand for quality. It demanded FM quality over AM in radio and it will demand CD quality over FM and AM. Now, I don't think anybody doubts that. HDTV will be demanded by the audience. It is not an issue of quantity, although you could go out and research the market, you may get a mixed view, but once these operations are up and operating the market will demand the highest possible quality and the quality of HDTV versus standard digital television is quite different.

The market will want the highest possible resolution on their screen, and that is totally understandable. If we look 15 years out there is absolutely no doubt that people will demand that over any other form of television. It will produce the best pictures. This country has world's best television, according to us but also according to the minister. It will remain world's best providing we can have HDTV without using up the spectrum to provide quantity, a large number of services, and it will remain world's best television if the stations are not squeezed to the point where they can only purchase or afford to purchase lower-quality television programs. They are my points.

PROF SNAPE: Thanks very much, Mr Bell. The submission yesterday in the process of which the comment was made that all the owners of the AM stations in the country with the exception of perhaps one they could think of had purchased those stations knowing the scenario, knowing that FM was there and they purchased the stations in full knowledge of the scenario that existed and that the price that they purchased those stations for reflected that knowledge that FM was in existence, and so I'm wondering why it is that you're arguing that AM stations should be given a preference in converting to FM, being able to use a section 67, etcetera. Why should in fact the allocation of new FM stations be preferentially given to those that are on AM at the moment? Why not just put it up in the usual competitive way of saying let it go to that that can value it most?

MR BELL: Chairman, there are two reasons. One is, without facts in front of me I don't know, I can't be certain, but most of those AM services have been held by the same owners for many years. Even back to the time when the government argued and

perhaps even the industry argued that the only difference between AM and FM was not the sound quality but was the programming content - that has proven to be incorrect. Those who held the view that the quality would be the dominant factor in future were right, as it works out. So I understand your point if all of those AM stations had changed hands between that time and now or even in more recent times.

PROF SNAPE: You'll find it in yesterday's transcript and submission from DMG. The source was an enterprise that's in the business. I mean, it could be factually correct or not, but they could think of only one AM station that in fact had not changed hands within the time-frame that we're talking about.

MR BELL: My second point is that there's an obligation by government and owners to provide an adequate and comprehensive service. If the quality of their transmission doesn't allow them to provide that service then both have an obligation to do something about it. All the government can do - well, there are a number of areas that they can help. One is they could lift the power output, which may overcome some of the manmade interference but still there's the audience problem. For example, on the power output the ABC in 3LO has an output of 50,000 watts compared to the maximum of a commercial AM service which is 5000 watts. The point is that with that obligation for the AM service to continue to provide an adequate and comprehensive service it probably needs to change mode. I can't see why the government could accept the introduction of a new licence and allow a licence that they treat the same from a licence fee point of view, from a government controls point of view - why they would allow that to drop off at the other end.

PROF SNAPE: Well, all the time you've got some businesses that succeed and some businesses fail and governments don't always prop up those that can't succeed. It's a question of if new FM licences are being introduced into an area and you can bid, the AM stations can in fact bid for those under the provisions, why not let those licences go to the highest bidder who presumably would be those that are judging they can best serve the community?

MR BELL: Because the primary objective should be to replace AM with FM. I'm not suggesting that it be at a cost to the community, I'm not suggesting that the AM operators shouldn't pay for that conversion, but I am suggesting that there should be a plan in place to replace the AM with the FM mode.

PROF SNAPE: Under our act and under our terms of reference we're required to take a community-wide perspective and make our recommendations in the light of the community-wide perspective which means that it's not, if you like from an existing industry, structure of industry perspective. So I'm afraid I still can't see why it would be not in the advantage of the community, rather than perhaps the interests of the existing AM broadcasters, to go in the direction that I was just suggesting.

MR BELL: Well, I can't see that it's in the community's interest to see a reduced number of services because music AM cannot survive in the longer term.

PROF SNAPE: The government is generally quite relaxed about the local milk bar not being able to compete with the superior service given by the local supermarket and it doesn't say that we should prop up that local milk bar.

MR BELL: The licence, the airwaves, is owned by government and it's licensed to the operator. It is a government responsibility to provide that service. The airwaves are owned by the community, they're not owned by the licensee.

PROF SNAPE: Is it a government obligation to ensure the commercial viability of those who currently have the licences?

MR BELL: They must have a view to viability because they share in the value of that licence through licence fees in the community interest.

PROF SNAPE: But if they then let those licences go to those that are prepared to pay most for them then they in fact get greater licence fees or they get greater revenue and presumably there's a better service to the community.

MR BELL: I wouldn't argue that the existing operators are always the best broadcasters who can make the best out of those licences but I am arguing that it's a losing battle if the AM service doesn't have a life because its audience is dying through age.

PROF SNAPE: I think perhaps we have pursued that line. Stuart?

MR SIMSON: Yes, could I, Mr Bell, come in on this. It seems to me there are two things you're suggesting. One is a preferred position for an existing AM operator in purchasing or gaining access to an FM licence. The second one is the opportunity for an operator in a market to have an FM licence and two AM licences. With regards to the latter, what about the issue of concentration in a situation where let's say you had an FM licence and two AM licences - the issue of diversity of influence. Could you talk to that issue that is obviously a key issue to our inquiry and the act.

MR BELL: The chances of three AM stations, given that one may be talk so I accept the talk element can make a very powerful station - but to have two music stations attached to that talk station possibly doesn't increase its influence at all and there is no way that two AM stations could even have the level of influence of a powerful FM station.

MR SIMSON: What if the three were talk?

MR BELL: All three would die.

MR SIMSON: Why's that?

MR BELL: Unless dominated, as one probably would. One would clearly be the dominant station. But a talk format is an extremely expensive format and it would not be affordable or viable or feasible to have that number of talk stations. Talk attracts

about a total of 28 per cent of the total market. That includes horseracing, ABC services, political services and then of course your commercial news-talk type station. That is the level that talk can attract in any market.

MR SIMSON: But if, to use your term, AM stations don't have a life, why would you be interested in having another one anyway?

MR BELL: I guess I'm thinking more of those small AM stations that simply can't survive without coupling something else on to it. The most feasible scenario would be to allow it to have another station.

MR SIMSON: Am I correct in saying that that's really only a sort of short to medium-term lifeline, that your basic proposition is that AM music is dead in the water on a somewhat longer term time-frame.

MR BELL: On the longer term - and will only be rescued by the introduction of digital. Then it's whether that comes in time or not. See, with digital all licences will be on a level playing field.

PROF SNAPE: I understand your point about the regional and television station, a fourth channel in regional areas and in some of the metropolitan areas but we still come back, don't we, do the fact that companies value those licences on their own balance sheets at more than \$3 billion. Now, that's not my figure, that's the figure of the industry. Now, it may be that a fourth channel couldn't be supported right throughout the country in the way that you described, in particular in regional areas, though I suppose that would depend on how it was networked and where the advertising finance came from, whether it was dependent upon the regional areas for the advertising finance or whether it was national advertising and so on, and if one went more to the American model perhaps in the financing of the networks rather than the Australian model. But it seems to be very difficult to sustain that there isn't a place for a fourth network or, to put it differently, that a fourth network would make everyone unprofitable, when the licences are valued by the companies themselves, with all the uncertainties ahead of us, at more than \$3 billion.

MR BELL: There's another consideration in all of that, and that is how you value a masthead and - - -

PROF SNAPE: This is the company's valuation, not my valuation of course.

MR BELL: Yes, I accept that - and how other businesses amortise the value of goodwill. So it's a goodwill versus masthead argument as well.

PROF SNAPE: If you got an area in which there's a restriction on the number of entrants, whether it be taxi licences or whatever it be, and if those licences are being valued at a very high valuation, it does suggest there's an excess demand for them.

MR BELL: You could argue that, but it depends whether you're looking at the networks as a whole. All I can speak to - the markets that we have a station in and

whether those markets are capable of supporting a fourth commercial service, and I can prove that they couldn't.

MR SIMSON: But the market you're in, Mr Bell, are the regional markets and the capital city of Adelaide. You're not in the larger ones of Sydney and Melbourne, and what we're canvassing here is a fourth network. It may be that a fourth network may derive in fact all its profitability from Sydney and Melbourne and may have to carry or break-even or whatever some of those other markets, some of those smaller cities.

MR BELL: That may be, but it would take a market share, a revenue share, from those other markets. It has to.

MR SIMSON: From what other markets?

MR BELL: In your scenario are you not suggesting it's a national service?

MR SIMSON: Correct, yes.

MR BELL: So it impacts on audience share in each market and it impacts on revenue share for each market.

MR SIMSON: The point I'm making is that - - -

PROF SNAPE: Just before that, it may or may not be a national. I mean, not all parts of Australia get the existing three networks, so it does not have to be a national in the sense of actually going into every part of Australia, just as the current three networks don't go into every part of Australia.

MR BELL: I accept that but, Mr Simson, are you suggesting that it would be in our markets?

MR SIMSON: I think that was the point, yes, and perhaps, as Prof Snape has indicated, there are different models for this, where one owner can own all the TV stations in the capital cities and, as is the case with, for example, your case with 9, can have an affiliate arrangement or an alliance-type arrangement in other markets. At the end of the day, I suppose, to sell national advertisers you'd have to have something like that. Is that right?

MR BELL: Yes, and once you're selling to national advertisers it has to eat into the total pie.

MR SIMSON: But just to come back to this question of a fourth licence. Under the government's policy it's said that the effect of it is that it won't look at one before the year 2007, not 2017 but 2007. That's not a long time off. However the commercial stations may be balancing in their books goodwill issues against masthead issues, your comfort factor on this is only good for barely another seven years, isn't it?

MR BELL: That may be, but the industry has given a commitment, that is, the metropolitan stations have given a commitment, to introduce digital into this country. If that commitment wasn't there, it's unlikely that digital services would be available in this country within a reasonable time-frame. So that commitment by those stations is significant just by the sheer amount of dollars it takes to install digital equipment.

MR SIMSON: I suppose the point I'm raising is that you're saying that a fourth free-to-air would make everybody unprofitable, all the commercial operators unprofitable, yet the government's policy at this point in terms of your comfort zone only extends to the year 2007, and yet, as has been observed, in the books there's \$3 billion of asset value in those licences. Something just doesn't make sense there. Either the investment community isn't taking any account of the year 2007 or thinks the government has just said this for the fun of it or that the commercial operators are going to be successful in not having that 2007 opened - because we're only talking seven years away.

MR CHIA: I think when licence valuations are carried out they are based on a set of assumptions, for example interest rates, looking forward, and one of the assumptions could be that there's no fourth commercial licence in the year 2008.

MR SIMSON: Indeed, as a professional accountant with the individual responsibility for Mr Bell's books, would you say that it would be a fair assumption that the commercial free-to-air's are making, that in fact there won't be a change from 2007?

MR CHIA: I have the same valuations done by the three major networks, but it wouldn't surprise me. That's a fair assumption to make.

MR BELL: But one must add to that because there's a new service in 2007 - that's only the introductory stage. It's unlikely that a new service introduced in 2007-2008 would have an immediate impact on the existing licensees. We understand how difficult it is to get programming material that would attract an immediate audience.

MR SIMSON: And advertising share.

MR BELL: And advertising share. So there's a period of grace as well from 2007, most likely, for the networks to adjust their books, adjust their licence values, accordingly.

PROF SNAPE: That suggests then that a fourth one would be of no great consequence.

MR BELL: No it will be of great consequence - that's understandable - but it won't be immediate.

PROF SNAPE: We can't have it both ways, can we?

MR BELL: We can have an introductory period, as you would with any business.

MR SIMSON: In terms of the scale up from a start-up to a business that had some significant share and had lined up its programming and so on, are we talking a period of three years, five years?

MR BELL: I couldn't answer that.

MR SIMSON: But there is a period of years?

MR BELL: There's an introductory period in the life cycle of any business.

MR SIMSON: Mr Bell, could I take you back to the impact of a fourth free-to-air on regional Australia. Would it be conceivable or would it be possible for the government, if it were to decide to introduce a fourth free-to-air, for the reasons that you've mentioned about the size of the regional marketplace, to not allow that fourth free-to-air to operate in the regional markets, in other words, not put an extra player in the regional markets under the equalisation policy?

MR BELL: Would I support that? I don't support a fourth commercial station at all.

MR SIMSON: No, I appreciate that, but my question is: for the purposes of introducing a fourth free-to-air - and that's whether any of us support it or not - if the government were to decide that, could the government take a position with regard to the fourth free-to-air in the capital cities and not allow that fourth free-to-air to participate in the regional marketplace for the economic reasons that you've outlined in your submission and verbally here today?

MR BELL: And metropolitan markets that I've outlined today, as Adelaide is a metropolitan market, and I say it can't support a fourth commercial station as well. Obviously the answer is the government can really legislate how it sees fit.

MR SIMSON: No, it's just that in your introductory remarks today of course you said that you didn't favour a fourth free-to-air licence full stop, and you explained the impact that you believed that would have in capital cities, but you then went on and used a much stronger phrase in terms of the impact it would have in regional Australia. So I'm just trying to understand the market issues here.

MR BELL: I'm not sure that I can add to what I've said.

PROF SNAPE: Your recommendations in the broad are that there should be an abolition of the cross-media ownership rules and of the foreign ownership rules but a retention of the audience reach rule in its present form. In thinking with convergent technology etcetera and the increasing difficulty of distinguishing between some forms of media and the way that they're delivered etcetera, would you see these recommendations and the implementation on them as sufficient to meet the government's diversity objectives?

MR BELL: I guess it comes down to what is the greatest need, and I'm not sure that I can answer that other than to say the community need appears to be far greater. As I see it, the community requires access to its television service in those regional markets. That access may well be denied, and certain services may be denied, where the government allows for the breaking down of that particular rule on 75 per cent coverage, which effectively allows the networks to acquire those regional services.

PROF SNAPE: A number of participants have suggested that there perhaps could be an amalgamation of the broadcasting and the telecommunications legislation so that the same rules are applying across all forms of electronic media and that the cross-media rule should be abolished and the foreign investment rule should be abolished, as you suggest, and that the questions of concentration and diversity and so on should be left to the general rules of the ACCC. You haven't gone quite that far in that you want to retain that audience reach rule in the present form as a specific requirement. Subject to that, would you be advocating that same principle then of "leave it to the ACCC" apart from that - leave it to the general rules of the Trade Practices Act and the interpretations of the ACCC?

MR BELL: I don't believe that there is a law within the act that could govern that influence issue at this point.

PROF SNAPE: With your reach rule. I understand you want your reach rule.

MR BELL: No, I mean with cross-media ownership. So I can't see that there is a clause specific enough for the ACCC to effectively rule on influence of media should the cross-media laws be broken down. Therefore, some other measure may have to be designed to manage that but I do see it as an ACCC issue rather than say an ABA matter.

PROF SNAPE: Have you thought about what diversity rule, other than your reach rule, might be written into the Trade Practices Act?

MR BELL: No, I haven't.

MR SIMSON: Mr Bell, if I could take you to page 4 of your submission where you say:

The products of radio, television and newspapers are not substitutable and common ownership does not offer the possibility that content rationalisation will take place with a consequent loss of diversity.

In the paragraph two paragraphs down from there you say:

Administration savings might present themselves and corporate capabilities might improve.

I'm just wondering if they're not substitutable why do you want a relaxation on cross-media ownership or from a business perspective what's in it for you if for

argument's sake you're able to buy The Age. Where's the benefit? Where's the economy of scale or what's the business benefit in this?

MR BELL: From a business point of view I see it as an opportunity. If you have expertise in media then you should have the opportunity to grow within media and media doesn't necessarily need to be defined as the particular business units that we currently have such as radio and television. That can move across to newspaper or whatever but there are limited opportunities - and this is from a business point of view rather than a consumer's point of view - for media growth within the country. By relaxing those laws it creates an opportunity for growth within a country.

MR SIMSON: So fundamentally - let's take Melbourne - the radio market from the perspective of editorial issues is different to the TV market, is different to the newspaper market as you see it?

MR BELL: Perhaps I could answer that in another way. Would Channel 9 in Melbourne have any greater influence if it owned 3MP in Melbourne? One would have to answer no.

MR SIMSON: What about 3AW?

MR BELL: 3AW is a powerful talk station with a great level of influence and there may have to be some measure of influence in those circumstances but once again, that comes down to that measure of influence that may be administered by the ACCC. We recognise that there may be a need for some influence measure in our submission.

MR SIMSON: If you then had a troika of Channel 9, 3AW and The Age, that would be fairly influential, would it not?

MR BELL: We'd like to own it.

MR SIMSON: Could I now turn to - - -

PROF SNAPE: For profit or influence?

MR BELL: Fundamentally we look after our shareholders.

MR SIMSON: We're discussing influence from an editorial perspective just I think for the moment but if we move to the advertising markets, how substitutable or not are the advertising markets - again, let's talk in Melbourne - of a radio station such as yours and The Age and let's keep the example going, Channel 9?

MR BELL: As you're aware, we own radio and television. We have not been successful and don't believe that we could ever be successful in putting together packages that would have wide acceptance from advertisers that spread across our media interests. We believe that the markets are very clear and it's very clearly defined - those who wish to buy television for whatever purpose, press and radio, each serve their own purpose in the marketing mix.

MR SIMSON: Could I just go back to your answer, your previous question on influence where you've described 3AW as having a strong influence. How would you envisage a regulator being able to measure influence if it were not done quantitatively, that is, by an audience reach rule or as it's done at the moment, by the simple rule, cross-ownership rule? Have you given any thought as to what guidance you would be able to provide a regulator if it were to attempt to come at this measurement of influence for the reasons that you mentioned, where a talk station can be more influential than a music station in an ownership merger?

MR BELL: I recognise the difficulty of that issue and it truly is difficult. The fact is that audience reach in Melbourne, for example, Channel 9 arguably would reach every single person, 100 per cent. Whether they reach them with current affair type programs or not is another thing or news programs, but they certainly reach 100 per cent of the audience. A radio station doesn't. A radio station reaches whatever its share of the market is, in 3AW's case, 14 per cent of the audience, and that's all it reaches, 14 per cent, not 100 per cent. There may be ways of coming up with a measure of influence that could be administered by the ACCC. I don't have that formula.

PROF SNAPE: Channel 10 suggested advertising revenue.

MR BELL: There's some difficulty with that because you could own every radio station in Melbourne as well as a television station and say it was Channel 10's and added to it you still may not come up with the revenue that Channel 7 has.

MR SIMSON: Mr Bell, could I just go back to this question of influence on a talk station. In expressing any concern about - again, let's continue the analogy - Channel 9, 3AW common ownership position, that assumes that the ownership - what would then be that common ownership - could exert influence over the talkback host, does it not?

MR BELL: No.

MR SIMSON: From an editorial perspective?

MR BELL: It could.

MR SIMSON: I'm not suggesting it does but aren't we saying it's implicit if we're talking about a possible deleterious effect of a 9-3AW having a common ownership, that would only follow through if it were possible for there to be an influence of the ownership over the talkback host.

MR BELL: What makes that argument difficult is you're talking about a mix of Channel 9 and a powerful talk station like 3AW but if it was the old stereo stations or AEN's stations, two music stations - two very strong FM music stations owned by Channel 9 - one would ask the question: would they have any greater influence over the people of Melbourne and one would have to say no. Could I just add to my

response to Channel 10's suggestion that it base a calculation on revenue - I didn't take into account that that could be a share agreement so that there would be a maximum limit to the share agreement that one might have.

MR SIMSON: But do you or your station manager - I'm going back to my previous question - of 3AW in Melbourne or the board of Southern Cross, have any influence over what your talkback hosts do?

MR BELL: Of course we have the right - we reserve the right. The board is responsible for the licence. We can't allow a personality, even if it was music, by the way - to express outrageous views or insult the community even though we get close sometimes.

PROF SNAPE: Even if there was a large audience of such activities?

MR BELL: I'm sorry, even if there was a large - - -

PROF SNAPE: Even if that got you good ratings?

MR BELL: Everything has a measure. It has to be within the bounds of common decency. It has to be within the bounds of what is socially acceptable and normally that's what turns ratings as well as public interest does and off-the-wall type programming is not going to attract an audience. To answer your question, Mr Simson, we do reserve the right to manage our airways the way we see fit so that it is responsible and we protect the value of the licence and we protect our shareholders' interest but we do employ people to have an opinion and we do give them editorial freedom so that they can express their views. Really it comes down to the type of people that you employ and whether they reflect the views of the company or what the company might find acceptable.

MR SIMSON: Yes, I've got to say that's in fact the ladder that was in my mind when I was asking you the question. I wasn't coming at it from the perspective of off-the-wall doing or saying things that are not decent and those sorts of things. I was coming at it more from the perspective of editorial freedom in terms of political comment, balanced social comment etcetera. I think that's what we mean - or that's where I was coming from in asking you that question about influence.

PROF SNAPE: So long as it was within the parameters of decency and not racist etcetera then you would give a free hand even if the thrust of it was to be supporting a political party that was not favoured by the board?

MR BELL: That's right. I think we would counsel a personality who was blatantly supporting a political party during an election period but outside that, that person will sink or swim based on their ratings.

MR SIMSON: And political campaigning would generally not be good for ratings on an ongoing basis?

MR BELL: That's correct.

MR SIMSON: May I take you to page 9 of your submission please and the table down the bottom of the page - I'm not quite following this - the profitability, Australian commercial radio table. In the sentence above it very - I don't see where you're making the losses in that table.

MR BELL: The black is a bar, suggests the numbers of licensees that are making losses.

MR SIMSON: But the grey one indicates the number that are, so that there has been significantly more making profits than making losses.

MR BELL: Well, that's right, but my comments earlier were in reference to AM. We're not confusing that, are we?

MR SIMSON: No, I'm just trying to follow this table and the sentences above it.

MR BELL: Well, if you look at the total - if you add the grey and the black, you'll come up with the total.

MR SIMSON: Come up with the white, yes.

MR BELL: Yes.

MR SIMSON: But the substantial majority are making profit.

MR BELL: Well, you could look at that and say that only two-thirds of the industry are in profit. For a third of an industry to be in loss is extraordinary.

MR SIMSON: Hasn't that always been the case in radio though? I mean, if we go back to 88-89 it was even worse, on your judgment there.

MR BELL: That's right.

MR SIMSON: So things have actually got better.

MR BELL: It's about time we fixed it.

MR SIMSON: Yes, but things are getting better.

PROF SNAPE: You mentioned on page 20 that there are high entry costs to radio. Could you tell me why they're high?

MR BELL: Specifically, AM talk is very high.

PROF SNAPE: That's one particular form.

MR BELL: Yes, very high entry costs.

PROF SNAPE: Because that's the cost of the presenter, I take it, is it?

MR BELL: And the period of time it takes for the audience to accept the - with the introduction of any station, whether it's AM, FM, just a new station - the amount of time that it would take for a station to gain an acceptable audience level attractive to advertisers and for that station to meet its costs would be many, many years.

PROF SNAPE: If I were thinking of doing this, of entering, I might be tempted to, say, set up as a community radio to start off with and make sure I had a good salary and then, if I found a format that was successful from a community radio, eventually expand and try to get a commercial licence later on. If one chose that path of going into it, the entry costs seem to be very low.

MR BELL: Well, if you could survive that way. The community station I think is restricted to about four minutes of commercial time an hour.

PROF SNAPE: Yes, that's right, but if I was really successful I could get those four minutes up to a pretty high price.

MR BELL: It's a scenario that I can accept.

PROF SNAPE: In which case the entry costs are very low.

MR BELL: Well, it's unlikely that with a low cost type program that you could gain an acceptable audience - most unlikely. So whatever you were paying out to attract that audience in the first place would be very expensive. It would take you some time to get a return on your investment.

MR SIMSON: Do community operators - do you see them as in any way serious competitors, either the permanent community operators or the aspirant community operators?

MR BELL: Well, certainly they have an audience. In most cases that's because they're attracted to a niche market, which is quite often quite small. But if you look at the number of people that move from their primary station to those community stations it can be considered significant. To that end I have a number of charts here that indicate just how that occurs and how common it is.

PROF SNAPE: Have these been incorporated into your submission?

MR BELL: Yes.

PROF SNAPE: Thank you.

MR BELL: On that chart you will see the highest level there, which is a hundred per cent. Whichever station that is, that's the station where the primary

listening is. The audience then spreads across, as secondary listening, to the other stations where the bars are indicated. Now, if you look at other FM, that indicates the community station. There's one of those charts for each commercial service and for the ABC. So it is significant. It's just that the audience does not choose to spend an enormous amount of time with those community stations, and that is probably because they don't have the programming level to hold the audience for lengthy periods.

MR SIMSON: Just talk to the first chart, the one at the top for example. Just going across there, which are the community stations?

MR BELL: It would be more to your right.

MR SIMSON: Okay. It's OFM.

MR BELL: Yes, that's other FM.

PROF SNAPE: OAM and OFM.

MR SIMSON: Okay, so they would encompass the community - - -

MR BELL: I don't think there are any community stations on AM. Wherever it's not an ABC or a commercial service - so it's all those stations without - - -

MR SIMSON: Okay. So in terms of the four minutes an hour that the community people are allowed to air as advertising or sponsorship, that's not something that troubles you, at the moment anyway?

MR BELL: Well, they are sponsorship messages but they are very much commercial in their nature. So you could play a full 30-second commercial for example for Coca-Cola and at the end of it put, "This program is presented by Coca-Cola," and it satisfies the ABA in a sponsorship message. So it's very, very commercial.

MR SIMSON: We've had a lot of comment from participants on the ABA and its planning processes and the time that's taken. Would you like to comment on that?

MR BELL: Well, it's a very difficult issue. I believe that the ABA perhaps have only battled, the biggest part being the amount of time that they thought it would take in the first place. The planning program is very, very complex. To determine the number of available services and to have full regard for all of the existing services is I think a complex task. I don't believe that the ABA - well, let me say I believe that the ABA have been diligent in performing their role in this and believe that they're serving the public interest.

PROF SNAPE: I wonder if you could just walk me through this table. I thought I understood it but now I'm not quite sure - the chart that is on here. The first one has got "focal station Gold" which shows a hundred per cent on that, and then a number

of percentages which are all less than a hundred on other stations. Can you just walk me through it?

MR BELL: Yes. That particular chart represents Gold FM and the chart shows the primary listening as 100 per cent on Gold. The secondary listening is spread across those other stations.

PROF SNAPE: So that is those people who primarily listen to Gold - what do they also listen to?

MR BELL: Yes.

PROF SNAPE: Okay, thanks.

MR BELL: So they're secondary listenings.

PROF SNAPE: Okay, good. Well, thank you very much for that. We'll get these charts incorporated into a supplementary submission. We thank you very much for your submission, which is most helpful, and also for your patience with us in asking the questions which we do. So thank you very much for your time.

Now, we have next on our schedule the Communications Law Centre. The submission from the Communications Law Centre was rather late and we've only just received the executive summary so I wonder if we might have a break of about, say, five minutes and we shall take that to read the executive summary and try to catch the main messages. Thank you very much.

PROF SNAPE: We resume and welcome the Communications Law Centre and there is one representative from the Communications Law Centre and we do invite you to identify yourself for the purposes of the transcript and thank you.

MR GIVEN: My name is Jock Given and I am the director of the centre.

PROF SNAPE: The centre for?

MR GIVEN: The Communications Law Centre.

PROF SNAPE: Thanks very much, Mr Given. Would you like to speak to your submission, which of course we really received this morning. I know it came in late last night, but we didn't quite receive it at that time.

MR GIVEN: Firstly, my apologies for the delay with that and thank you for accepting a late submission. The executive summary you have there covers the key points that we have wanted to raise. Just working briefly through that, it is presented in the order in the submission not necessarily in any particular priority order. The first broad area about rationale and objects in the legislation, we note in the discussion paper there is quite a bit of discussion about rationales for regulation and particularly the concept of influence and degree of influence.

I think our feeling is that having watched seven years of broadcasting regulation with this idea of degree of influence or levels of influence, having what is supposed to be a reasonably central part in the regulatory framework, we are not really sure of two things. One, whether the centrality of the rhetoric of degree of influence actually informs the detailed regulatory processes or even the structure of regulation to quite the extent that it looks like it does when you read the legislation. The second thing is we are not sure it has been particularly helpful as a guide. We think levels of influence are a concept in relation to media that are subject to an enormous range of views and maybe we are better off, one, adopting a new central idea, but also placing much attention on the actual factors which really influence the sorts of regulatory decisions that we have made and we talk about those in the legislation, rather than trying to agonise too much about levels of influence. That will be a relevant concept to us, but we don't think that the agonies about hinging all of our regulation of levels of influence are really worth it.

The concepts that we are sort of toying with there to look at something that is used elsewhere in communications legislation concept, rather than levels of influence or degrees of influence, the concept of social importance which is used in the Telecommunications Act in relation to universal service. That is the concept that is used in deciding whether a service should be included in universal service arrangements or not. It is not to suggest that that is necessarily a certain concept, but it is one that it seems to me is more likely to admit of the range of factors that we really need to pick up, than is the concept of levels of influence.

The second point broadly on planning and licensing; we are not uncomfortable

with the broad structure of planning and licensing arrangements as they work at the moment. We note in that a couple of crucial things, because we think it is really about striking a balance in planning use of the spectrum. On the one hand we believe it is important that a democratically accountable minister is in a position to make some decisions about how particular parts of the spectrum are going to be used, particularly because that is the major mechanism for trying to ensure or encourage institutional diversity in the electronic media industry and research evidence is really reasonably clear on the contribution of structural diversity to programming diversity.

On the other hand, we think it is important that there is also the capacity for reliance on market mechanisms, either through spectrum licensing if spectrum is not put into the broadcasting bands in the first place, or through market-based allocations for particular licences. It seems to us that a time of change in technologies, uncertainty about technology, the idea of essentially decentralising responsibility for determining what uses particular parts of the spectrum will be put. It is an important idea and we need to keep exploring that. So it seems to us about striking a balance; the current arrangements between the Radio Communications Act and the Broadcasting Services Act seem to us to provide the regulatory mechanisms to allow that balance to be struck at different places, different points over time.

One point we particularly raise in that is about - and I think one of the striking differences between broadcasting and radio communications planning - the nature of the property rights which are acquired by holders of different kinds of licences. That seems to us to be quite fundamental. The issue we draw attention to in that is the allocation of licences for digital broadcasting, where the public discussion in digital television was all about who gets them and what can they do with them. There was not a lot of discussion about if we had thought about whether we went down a radio communications style spectrum licence or apparatus licence approach, or we went down a broadcasting approach. It seems to me perhaps the more fundamental difference is that the broadcasting licensees get essentially perpetual tenure with their licence. That was the case pre-1992, but the language of the 1992 act and the second reading speech in fact entrenches that even further. It was actually all about saying licence renewals are going to be rubber stamps, "That's what we want them to be."

So it is quite clear that broadcasting licences are essential perpetual tenure, whereas the shift interestingly at exactly the same moment in regulatory history, the Radio Communications Act was being introduced with spectrum licences saying, "We actually think it is appropriate that we should have a shut-down time at the end of 15 years." This is not an apparatus licence where there is a presumption of renewal, but the capacity to take it off you, and I think quite strong powers for the ACA now to take the licence off you, to throw you off an apparatus licence, to introduce spectrum licensing, but the whole idea of spectrum licensing is to say, "15 years' term is over and we decide what to do with it again."

So it seems to me that while it is a long way off and obviously there is a lot of investment tied up with the existing licence allocation processes in broadcasting, that is a fairly fundamental point and the way you might think about shifting those quite different forms of property rights is to think that when these digital television licences

are allocated, maybe there is a term for them. Maybe they do expire at some point in time and maybe that duration should be the same duration a spectrum licences. The way I guess of selling that and giving it some policy coherence or integrity is the payment of licence fees, special licence fees to the extent that the services start getting licensed more and more like other services, the rationale for paying licence fees deteriorates. So essentially you trade that. They get something less than perpetual tenure. What they gain is the removal of special licence fees that they pay.

PROF SNAPE: They take the licence up front?

MR GIVEN: Well, no, I guess my view about the politics of it is the digital TV deal is not going to be unravelled fundamentally - - -

PROF SNAPE: No, I mean some time in the future they do that?

MR GIVEN: That's right, at the 15-year mark, which is 2023 at the moment and someone pays for something at that point. Whatever it is we decide to do with it, whether we decide at that point that the best way to allocate that spectrum is in 7-megahertz blocks or whatever, who knows. We draw attention to the fact that we would be concerned about the sort of destabilising nature if free-to-air television is still very important at that stage, if you were to suddenly hold an auction of something that is as important as that, that would not be particularly productive for - that would be highly destabilising for the industry.

You might decide to give different terms for different licences in some ways, so as to stagger the disruption of that. But it is about a long-term plan for accepting that allocation processes in the nature of property rights might need to converge. I don't know if you want me to go further through this?

PROF SNAPE: I am sorry to interrupt you, keep going.

MR GIVEN: That's fine. Diversity in competition; we have suggested some changes in the way the Broadcasting Services Act works and the relationship between the Broadcasting Services Act and the Trade Practices Act. The fundamental issues that affect us I guess are that while we are strong supporters of the need for diversity and competition in the way our media and communications industries function, we are also strong supporters of the existing cross-media rules for the moment. But I think the key factor for us is that it is increasingly clear that some of the key media assets which influence policy goals about concentration of control, of information, entertainment and ideas, are no longer the assets that we direct our regulatory attention to most clearly in the Broadcasting Services Act.

So our regulatory attention is all about commercial and radio licences and indirectly metropolitan daily newspapers or major daily newspapers. We give the Broadcasting Authority virtually no power over some of the most important emerging assets from the point of view of competition and diversity and those are things like conditional access systems, they are things like major program rights particularly. I think it is already clear and will become increasingly clear that for example the person

who controls the rights to broadcasts like AFL football will be just as important as the person who happens to own and control a tower on the top of Mount Dandenong and it is about saying that not that we don't think special regulation is necessary to achieve the policy goals we need, we just don't think the Broadcasting Authority at the moment has got the sort of responsibilities that it needs to be able to do that job.

Our view is do we say beef up the Broadcasting Authority to fix that, pick up a new set of assets and start treating them in some way with new media specific rules, or do we say it is time for there to be some shift in responsibilities for this. Our view is I think the ACCC, in a sense the regulatory processes that it has available to it, the flexibility of those is quite important, our concern would be that if it suddenly had sole responsibility for the decisions, that the thresholds it is applying might not be tough enough. We would be concerned if the sole threshold was substantial lessening of competition. We would prefer something tougher than that.

While not being wedded to particular words, we think the best example is the one that is most often talked about in this context, that where the current chair of the ACCC has indicated on a number of occasions that he doesn't think the Trade Practices Act in its current form would stop a merger between the 9 network stations and Fairfax, so that might not represent an undue concentration from a competition point of view, we would certainly think that would represent an undue concentration from the point of diversity of control of major sources of information, entertainment and ideas. So we think the ACCC in a sense has got the right kind of processes; we think it would need tougher thresholds to be able to do that.

What would it be able to do? One of the key things that has been talked about in this inquiry and particularly in the Fairfax submission I think, was the policy focus should shift away from specific rules like cross-media rules and should focus on open access regimes. I guess we think in one sense that is the right sort of direction, but I think that is a much more complicated step than people seem to be suggesting it is. Access regimes: for a start you have to decide what assets they should apply to and secondly, you have to decide how you would go about requiring the nature of the access that you would require.

If we start off with the Australian situation, facilities-based competition is all about saying we think it is a good idea if people go out and build new facilities. People don't go out and build facilities when they think someone else is going to start using them. With respect to the Fairfax position on it, I think the people who are access seekers by definition, don't control facilities. The people who resist access regimes are the people who risk the money building the facilities. Now, we could equally call for open access to printing presses to allow people to set up new metropolitan daily newspapers, but I doubt that the Fairfaxes or the News Ltds would be particularly excited about that as a mandated obligation.

So we do have to recognise that access regimes are all about striking a balance between the need for people to invest money, risk money building new facilities that do something different from what existing facilities can do, and the danger that those particular facilities will turn out to be economic or diversity bottlenecks. We might

need to do something about that. So we certainly support the focus on access regimes. We draw attention to a few of the kinds of obligations that might arise.

If I just mention - because they're in the submission itself at the bottom of page 27 and over into 28 - the sorts of things, there's no great magic, that have been used in the US. You might have highly prescriptive obligations about carrying a particular service. We already see that in digital TV legislation, with the obligation on one of the multiplexes to carry the community TV service. You might have an obligation to reserve capacity for services of a particular kind.

An example of that - and I think a highly relevant one - might be to impose an obligation on a pay TV provider to reserve space for non-affiliated stations. So Foxtel would have to reserve some space for stations that don't have ownership links with Foxtel. I think, as the Fairfax submission points out, that's a genuine competitive danger - not even down the track. It's becoming a competitive issue now. The third kind might be the sort of thing we see in telecommunications, which is less prescriptive about particular kinds of content and it may just be an obligation to provide fair and non-discriminatory access to any service provider that comes along, subject to capacity and technical constraints. That's pretty familiar in telecommunications, the way we're doing it, but again, as we see, the practice of it is very hard. It's not just a simple solution, we just bang on an access regime and we've solved all our problems. So that's the diversity in competition stuff.

The next very broad area we talk about is access, in the sense of consumer access, to media and communications services. In that we note that - the submission goes into some detail about the range of measures across all sorts of different policy areas - libraries, public broadcasting, telecommunications - where we have made policy judgments that it's a good thing if there is a basic mix of communications services that are more or less available to everyone. We think that that has clearly been an object in broadcasting policy but we don't really say so in the Broadcasting Services Act.

To the extent that the kinds of services being regulated under the Broadcasting Services Act converge with the kinds of services being regulated under the Telecommunications Act, we think that's an important area where the policy goals can be articulated in a coherent way. There are a few principles in there about how we might go about deciding what services we should see as a goal to provide universal access to.

The final few points - Australian content issues. Broadly, we support the kinds of program quotas which exist at the moment. We stress the importance of government maintaining policy flexibility in multilateral trade negotiations, to be able to maintain, adapt and introduce new measures that it thinks are necessary, where it believes the costs of those measures are justified by the benefits.

On the question of service quality, the main point we want to make there is another one about convergence. I think that we have seen a raft of service quality issues come up in telecommunications recently, particularly in the context of Telstra

privatisation. I think it is sensible for us to be seeing those service quality issues as likely to be relevant, in the first instance in pay TV, and in other emerging discretionary services that are licensed under the Broadcasting Services Act. So I think, especially as the pay TV industry rationalises, pricing is one issue but detailed questions about terms and conditions of contracts for example, bundling of services - all of those kinds of things are going to become very relevant. They have certainly been relevant in the UK.

But the particular point here is I think things like customer service guarantee - which applies in telecommunications to ensure that there are maximum time-frames for connecting services, repairing services, keeping appointments, those sorts of things - I think it would make sense if pay TV services were treated in the same way as telephone services at the moment. They will become just as important to many of the people in Australia.

The final broad area about accountability - a couple of issues that I think are worth drawing attention to - just some specifics in ABA processes. While there's all sorts of reasons for these things, we would like to see more attention to the level of public information about, for example, individual complaints processes. In a self-regulatory regime that becomes a kind of jurisprudence. It's just as important that journalists - you know, we do a lot of media law teaching. Journalists have got to know who got nailed for what, what's okay, what's not okay. That means you don't just need a code of practice, you need to know and be able to analyse what sorts of decisions have been made.

We get some information on that from the Broadcasting Authority but I think it should be just a routine process that the results of those get put out into the marketplace. We would make the same point about the Office of Film and Literature classification. We think ownership and control investigations - the same. We think determinations of licence categories - understand that's a problem, because people come forward with a commercial-in-confidence proposal and they want a view about what category it comes into. But it seems to me we have just got to work out a way of doing better to inform the marketplace about, you know, if you want to do an X style of service, whereabouts is that going to land you in regulatory terms.

The very final point about accountability is about research. To the extent that we're proposing changes in the way ownership and control works but wanting to preserve the ABA with some sort of role, we think it has got to be better able to undertake the sort of research and information functions that it I think has probably always wanted to perform but its current research breach is a little narrowly defined. We think it will be quite helpful if it had both the charter and the money to do that.

PROF SNAPE: Okay, thanks very much, Mr Given. That's a very helpful submission. We look forward to reading through it much more thoroughly than we have been able to do so far. You say that the rationale of special regulation lies not in public nature, social, cultural benefits etcetera, and degree of influence. But first I think I would like to go to your comment that you make about spectrum. You say there's no shortage of spectrum.

MR GIVEN: No, not sure I'm saying there's no - and conscious that some of this has been fleshed out a bit more. We would say that the whole point for us in this is where we say it's not about scarcity, the rationale for - scarcity delivers a tool of regulation. It doesn't deliver a rationale for a lot of the kinds of regulation we put in place. What scarcity does is say someone is going to have to decide how to allocate this. But there's no reason why, in giving someone a licence to do it, you have to hang Australian content regulations off it or hang censorship obligations off it or anything else. You don't need to do anything. You can just allow people to turn on transmitters, or the next step is to just have someone at a counter saying anyone who comes in and asks for anything, they can do it. They get a piece of paper.

There is scarcity everywhere, not only in the radio frequencies which allow you to do certain kinds of things. The way the Broadcasting Services Act works, in regulatory terms, is to license people to do certain things and then hang a set of regulatory obligations off it. It says, "You can't do this thing unless you have a licence, and when you have the licence there are certain behaviours that you're going to have to engage in." The best way of crystallising this I think is to look at the new online amendments, which have nothing to do with scarcity at all. They say certain kinds of content - the fact that you are engaging in certain kinds of behaviour is sufficient for government and regulators to intervene and require you to take down certain kinds of content. There's no licence for those Internet service providers. There's no licence for the Internet content hosts. There's no scarcity that relates to any of the activities they perform. It's simply about saying, "This is behaviour that we don't want you to engage in."

What that tells me about broadcasting regulation, particularly when I line it up against what we have done in relation to the cinema, video, publishing, everything else, is say we have imposed these social and cultural obligations because we think we should and because we have got the ability to do it. The government has got some constitutional power and it says, "We're going to impose some obligations." It just happens that the fact that it has got constitutional power of the spectrum, the fact that people want the spectrum and they want it so much that they're prepared to accept a licence for it which has got a number of obligations hanging off it, delivers us a regulatory scheme. But I don't think we have to have scarcity to justify social and cultural interventions into this or any other marketplace. We do it everywhere.

PROF SNAPE: Can I perhaps come from another direction. I think I see part of your point but not all of it perhaps. Let us consider Australian content, which you advocate.

MR GIVEN: Yes.

PROF SNAPE: So then we say, Australian content on what? Now, do we say Australian content on free-to-air television which is using the spectrum or do we say Australian content on pay television or do we say Australian content on the Internet or do we say Australian content on narrowcasting, on radio, newspapers? So once

you get into the Australian content in particular media forms, don't we then get back to spectrum?

MR GIVEN: Where we have something to say about it is I think where we think it matters and, secondly, where we can do something about it. So on the second of those points we say it's not that sensible to be thinking about quota obligations in relation to Web sites, because it's not that easy for us to do it, although the Internet censorship legislation essentially shows we could. It's quite clear. If the government wanted to say, "You can't have a Web site unless 50 per cent of the material is Australian," that legislation says you can do that. Now, all sorts of people are saying it won't work and all of that sort of thing but it's a clear indication that you don't need a licence to be able to impose obligations on people.

So I think the judgment about what kinds of services we apply it to - we say at the moment you apply it to commercial television services because that's where people go. That's where people go when they're watching television. Television is - certainly in time use - the most important single recreational activity people appear to engage in. What we say is where people go there - they generally go to commercial TV - it's a good thing if a fair amount of what they're getting when they go there is Australian sourced.

We have said in relation to pay TV, in supporting the kinds of regulation we've got there - that certainly we're narrower in our focus. Particular program types that are - the language is not great - but economically disadvantaged in a global market, so we say we would like to see some encouragement for that as well. What we need - and why we make the point about trade liberalisation talks is we're not going to know what the most important services are going to be. We're probably not even going to know quite the principles on which we would make decisions about what is going to matter in the future. We just need the flexibility to be able to say at some point in the future, "Look, this has become important. We're going to continue to think that Australian material matters. We want to have some tools available to us to be able to make it work."

Who would have thought in 1880 that something called the cinema was going to become one of the most important drivers of sort of human consciousness? No-one even thought of it.

PROF SNAPE: Perhaps you're leading us to something, to a point that I'm not quite sure that you have quite got to in what you've told us, or maybe I've just not seen it. Maybe you're leading us to say let us think of what we value, whether it be in children's, that is in terms of the activity, and direct our attention to that and promoting that, and the medium by which it is delivered is irrelevant. Is that what you're leading us to?

MR GIVEN: I don't think we can ever distinguish technology or carriage from content because it's simply artificial. The cultural forms that matter have evolved in relation to particular technologies and at the moment if we look at the cinema there was no particular reason why the technology of moving pictures should have

generated the cultural form which is a feature film, a 90-minute thing which gets watched by people in public dark spaces and they pay money for it. That has become one of the most important sort of cultural artefacts of our time. We can discuss why or whatever, but that's what has happened. Now, there's all sorts of other things might have emerged as well but it's simply artificial to think about something called a feature film totally dissociated from the technology which is used to deliver it. So it seems to me we're not - - -

PROF SNAPE: Well, is it? If we're thinking of actors and producers which will produce something, which might be a play or it might be a ballet or it might be an opera or it might be a film - it might be a film of those various things or it might be something because of the different format which is produced with the cinema in mind but what presumably one is trying to encourage is the actors, the producers and the cultural activity, broadly speaking, which is going on there rather than the specific form in which it is distributed.

MR GIVEN: To some extent. But I think we are going to be heavily influenced by our sense of the cultural forms, the media forms that matter at the time and we don't quite know what those are going to be. There is something at the moment that we call the Internet but who knows what we're going to call that in 20 years' time, whether it will exist in anything like its current form. What we want to be able to say is whatever the dominant cultural forms and the dominant media systems of the day happen to be, we think it's going to be an important thing that Australians can get from those distribution systems a fair share of material that is originated here by people who live here. Now, that doesn't mean that we will make those judgments about whether it's a fair share on the basis it has got to be 50 per cent or 10 per cent or 90 per cent or whatever, it just means that whatever is happening we would like people to be able to get access to some of their own stuff.

We have chosen different ways over time. The way we go about encouraging Australian activity from the Commonwealth Literary Fund through to the Australia Council and everything else, we could have discussions about whether that's the right or the wrong way to do it, but we have chosen one form there. We have chosen a different form in the cinema. We have chosen a different form in television. We're choosing a different kind in pay TV. We're choosing still new forms in relation to the Internet although I don't think we can say in any way that we have settled our views about it. Now, it's not to say each of those are totally discrete because as you point out films are turning up everywhere now. So what we do to help someone make a feature film through subsidy affects social experiences in the cinema, it affects social experiences in free-to-air television, it affects social experiences in pay TV. So each of those is going to affect things in different ways. We just want to ensure that we've got the flexibility to intervene in thoughtful ways, whatever the dominant cultural forms and media systems happen to be.

PROF SNAPE: Yes, I'm trying to get it away, which I think is the thrust of yours when you talk of getting away from spectrum allocation, etcetera, to get it away from media specificity.

MR GIVEN: But the spectrum issue might deliver us one of the mechanisms at the time.

PROF SNAPE: Yes, but that then makes it medium specific and that then in fact, because you're focusing on that, if you're encouraging it on one medium then of course you're not encouraging it on the other media. If what we're really about is getting the Australian culture, the Australian perform, and however that interacts with producers, writers, actors etcetera, that's the focus, as I understand it, of what you're about. The medium is incidental and once you started doing it through the medium you may in fact discourage new forms or you may discourage work across different forms and you in fact start to affect the form in which it is done rather than the nature of what you are trying to encourage.

MR GIVEN: I'm not sure that's right if you look at either commercial television or particular pay TV. Pay TV is delivered through all sorts of distribution systems at the moment. It's delivered over cable, it's delivered over satellite, it's delivered over MBS in some areas. What gets licensed is a subscription television broadcasting service.

PROF SNAPE: It's still a television-specific thing rather than something else, rather than stage, rather than Internet.

MR GIVEN: Television is what we call it at the moment. It may become something else but at the moment television is what we understand. We're talking about datacasting services as well. Now, that's what people in the sort of regulatory loop might be talking about but I suspect when it gets out there the public is still going to be calling it television. It's going to be different kinds of television but - - -

PROF SNAPE: I think you're going very close to, as I understand what you're doing, and yet you're not jumping that last hurdle of - I mean, in economic format a good principle of policy is to direct the instrument of policy most closely at the target of the policy rather than indirectly through something else. Now, if the target of the policy is Australian culture and working in whatever one wants to put under that heading, then is not the best policy instrument to be going as directly to that as possible rather than through a media of delivery?

MR GIVEN: I know what you're driving at but I think where else would it happen if it wasn't - where else would someone deliver something that was a mix of moving images and sounds - - -

PROF SNAPE: In the theatre, on the street and I'm not sure what else, but in different types of theatre.

MR SIMSON: Just listening to this discussion, Mr Given, I'm confused as to whether you're having a bob each way. You can either do it by the medium that is TV with the quota rule at the moment, the 10 per cent rule on pay TV or you can be neutral with regard to the medium. If the objective is to foster Australian content, and in this situation we have converging technologies and we have - we do have moving pictures on the Internet today and over the next one or two years they're going to

become much, much more prevalent as new access regimes come into place - aren't we forever going to be having a quota on this or a quota on that? Should we putting a regulation as we discussed with Telstra yesterday a local content regulation on their Internet services or, as is being suggested here, stand back from all that and say we'll just give a big dollop of subsidy to the local industry to build a whole pile of content that can go off any delivery platform, some of which we haven't even thought of?

MR GIVEN: We think you should probably continue to do both but as far as setting minimum levels go or quotas or whatever, it seems to us you can continue to do that at the moment. There is a strong sense that we won't be able to do that in the future but I think that's actually much less certain than some people are thinking. If what we end up with is a series of very dominant Web sites or sort of content centres, whatever they might be, then it might make perfect sense to say that those dominant content centres or content distribution points or whatever do have some kind of content obligation imposed on them but not everyone, and that might be quite - in the way at the moment we impose an obligation on commercial television services but we don't impose the same obligation on narrowcasting services. We might feel it's sensible to say we'll impose this on the place people go most of the time, but we don't want to cut out everyone else from doing whatever they like.

PROF SNAPE: We then come back through that line to the television. We do in fact make it dependent upon the allocation of spectrum, don't we? We say, "We give you a licence and this is the obligation."

MR GIVEN: We've certainly said that in relation to our views on the digital TV allocation which I think has highlighted the issue of scarcity at precisely the point when people were saying there's going to be more bandwidths than anyone can cope with, but we have seen this incredible fight about particular bits of bandwidth. We have said, "Okay, let's continue to impose the sorts of obligations on those kinds of services because the model that is proposed for their introduction is actually quite similar to the structural model of television that we've got now."

So we say if that's the kind of deal you're striking let's do the same kind of deal we've done in the past. Now, datacasting services licence, we know there's some channels likely to be made available for them - not clear exactly what the nature of those services are going to be but if they turn out to be terribly like television it may well be appropriate for there to be some kinds of obligations on them in the same way as we have imposed similarly an object on pay TV operators with a similar goal but a quite different regulatory mechanism. It's only about drama, it's a spend rather than a program quota. It seems to me we're going to have to see how those marketplaces develop. I understand totally your point about sort of trying to be technology neutral but it seems to me we can trip over ourselves trying not to favour one delivery system or another. But the reality is going to be that we are wanting to impose obligations on the services which are most used because they are likely to be the ones - well, I'll leave it there.

MR SIMSON: Fair enough. But if that's the rationale why should the new media - pay TV, Internet in its various forms - why should they be excluded on that rationale from local content regulations for example?

MR GIVEN: I don't necessarily think they should. The issue is going to be how important are they in the overall scheme of Australians' media diets.

MR SIMSON: As you pointed out earlier, in terms of offensive material the government of the day has thought that it's sufficiently important in terms of media consumption in this country to bring down specific legislation.

MR GIVEN: But it highlights the point that we make in the submission that you might reach different conclusions in relation to different policy objects. So on that we would - as we have said in the context of that legislation, we think it's far from clear that these services are having the kind of influence that is being claimed for them, that someone has decided to intervene at a quite early stage of their development to say, "There's certain things you can't do with that." In the same sort of way as we are saying at the moment, not quite sure what we think about Australian content issues in relation to those kinds of content services, we've said, "Not quite sure what the right answer is on the censorship issues yet as well." We're saying let's hang around and see how it develops and work out what the impact is, what the regulatory instruments are, what's the smart thing to do, if anything.

PROF SNAPE: I wonder - - -

MR SIMSON: I was going to shift the topic.

PROF SNAPE: So was I. The social - the degree of influence which you mention is not a solid basis for regulation and differentiating between different forms of media. You suggest instead that the concept of social importance used in the Telecommunication Act should be substituted. I wonder if you would like to elaborate a little bit more on that and maybe in - I'm not sure now or later to consider whether the Telecommunications and the Broadcasting Acts should be amalgamated.

MR GIVEN: On the second of those points, I don't think there's any magic in how many bits of legislation you have. You can have as many as you like. As long as they all talk to each other and the regulators talk to each other, concepts are reasonably consistent.

PROF SNAPE: You don't think there'd be greater consistency by having them within the one act and therefore looked at all at the same time?

MR GIVEN: To be honest, I think the major reason there is as much consistency as there is between the acts is probably due to the consistency of personnel in drafting them over the last 10 years from, you know, the 89-91, 97 Telecom Acts, the 92 BSA and Radio Communications Acts. I think that's a key issue. For example, concepts like class licensing introduced throughout all of those over a period of time are quite consistent. The self-regulatory concepts that are in there, quite consistent. So I think

it's an incremental process, doing that, and as long as the structures and principles work together - - -

PROF SNAPE: Even in a convergent age when it's not clear whether you're one or the other?

MR GIVEN: The point is, I suppose, that there are certain - it depends what things you're trying to regulate, what activities you're performing, and as far as I see, the business of allocating access to the spectrum is a reasonably discrete regulatory function. Whether that happens inside the same body that is responsible for regulating electronic media content or not, I don't think there's any great magic in that. You can keep them separate, you can put them together. We've made some judgments about competition issues and how that should fall. But I don't think on questions of licensing and that sort of thing - I don't think there's much magic.

PROF SNAPE: Back to the social importance question.

MR GIVEN: Yes, the issue seems to me that there is a - and I'm not sure we've quite got straight, as is obvious from the submission, the sort of working model of thinking. Broadcasting is really - the way the regulation works is to say broadcasting is a subset of radio communications. We say there are certain kinds of services that deserve to be treated in a different way. So the first thing we do is, we set up a special planning process for it and the minister says that there are certain bits of the spectrum which are going to be planned in a different way. We're going to consult for different reasons. There's going to be different purposes. We're going to have the ability to reserve for national community purposes, that sort of thing. So there's a threshold choice with that.

There are other steps we then take along the way. We impose ownership and control obligations in relation to broadcasting services, not in relation to other spectrum services, although we are starting to impose competition obligations in relation to the spectrum and at the other end we are taking off ownership and control obligations in relation to narrowcast services. I mean, historically there was no broadcasting service licensed under the pre-1992 regime that didn't have some kind of ownership and control regulation. There are now services licensed under that act that have none. So it's a clear kind of convergence in what's going on. The issue is about saying, for us, we still want to see some judgment made to say there is a higher level of sort of competition and diversity scrutiny which goes on in relation to some services from what goes on in relation to others.

So there has got to be some sort of point. There might be a continuum within the important services but we think there has got to be a dividing point and we're saying that maybe a differently worded concept which is about social importance, which has a life somewhere else in the legislative structure, maybe that is more helpful to us than what I think is a fairly fraught concept of influence. I mean, it's interesting work on all the share of voice stuff that is done and I think if we think of trying to tighten up what we're talking about in that - competition law, we've got - and you would know better than I the indices that are used to measure concentration. But

no-one actually uses those in a decisive way. No-one says, "Because the index is X therefore we know that market is competitive."

What they do is they say, "The index is X, therefore we think there's probably a prima facie case that that's not a competitive market so we're going to look a bit more closely." I think the same thing with the share of voice models - and this thing's very useful in that I think looking at the more - - -

PROF SNAPE: Can you tell us what that thing is.

MR GIVEN: Sorry, the cross-media revolution ownership and control by Condon, Graham Greene and Robinson that looked in some detail at the different measures of market share that could be used if you're looking at a share of voice thing and they go through them all. There are time use, there's weighted time use, audience shares. There's revenue, revenue-weighted audience reach, audience share/reach. They work through each one of them and basically conclude exactly what we concluded, which is that all of those are quite helpful to you but none of them delivers you a decisive answer on why you should impose a particular regulatory step on any of them. You want to know how much time people are spending with different media. You want to know what the audience shares are. You want to know shares of advertising revenue.

They're all helpful to you in working out whether there's an unhealthy level of concentration in that particular medium or across media generally. But I don't think any of them are sufficiently decisive in a sort of arithmetic sense, that you could give them legislative force by saying, "Okay, 25 per cent of some overall media voice is an adequate share and is a limit."

PROF SNAPE: So you clear out all the Broadcasting Services Act that refers to different types of media and you would instead say there should be a judgment to do with media amalgamations or with their mergers, which should be made on the basis of these various criteria and the ACCC or another body. ACCC would be empowered to make the judgments on those criteria.

MR GIVEN: Maybe if I take you to page 28 of the submission.

PROF SNAPE: Okay, it's all set out there, yes.

MR GIVEN: So we'd say you need a new object if you're going to give the ACCC regulatory powers in this area. Since what you're saying is they have already got competition powers, we think whatever you do with new rules you have to maintain all of those competition powers. What we certainly wouldn't want to see is media industries being regulated only on the basis of some new diversity test. We would want to ensure that things didn't get any worse, that industries couldn't become more concentrated than would be possible, clearly relying on competition tests.

PROF SNAPE: It would be the TPA plus the additional test that you'd put in.

MR GIVEN: Yes, exactly.

PROF SNAPE: And that would then clear all of that out of the Broadcast Services Act.

MR GIVEN: It would, except to an extent that we think it would be helpful for the broadcasting authority in its capacity as a specialist regulator, hopefully with an enhanced research function to be providing specialist advice to the ACCC on these issues in the same kind of way as has been done in reverse with the ABA's licence allocation process for satellite licences where the ACCC had to advise the ABA on competitive implications of its decisions. The ABA would advise the ACCC on diversity implications and for example our concept of social importance, to try and do some of the hard work in thinking through what that might mean in relation to new services. So a new bottleneck emerges, to keep working through it. At the moment what we've got is clear prescriptive rules about three kinds of assets: commercial radio, commercial television, metropolitan daily newspapers.

We say we think you're probably going to need some reasonably prescriptive rules about some new kinds of assets as well, not quite ready to have totally prescriptive rules yet, but maybe you could have some kind of declaration process of the kind which happens with access regimes now, and the ACCC with advice from the ABA would say in relation to particular facilities this becomes a declared facility which essentially calls up the higher tests or the tougher thresholds that you've got to get through before mergers or particular contractual arrangements, the sort of section 50, section 46 stuff, before that occurs. In that there might be a range of different kinds of powers.

You're not just saying that a certain kind of merger or arrangement that fails that threshold can't go ahead. You may say that you can impose some kind of access obligations in relation to it.

MR SIMSON: But why would you retain the cross-media rules in that situation? Why wouldn't you, as you said, have a higher level of threshold but without having an arbitrary cross-media rule in that situation?

MR GIVEN: Essentially because you want to make sure that you don't go backwards.

MR SIMSON: But who's to say you're going backwards?

MR GIVEN: Well, to take an example, the Austereo case where we've seen - and why again I think it really underwrites our view that the ACCC is in this game - you know, it's there. The courts have said competition powers sit alongside or on top of whatever the cross-media rules, or in that case the two to a market rule. So you're just saying there is this new test, but just as I would keep the one to a market rule for commercial television I'd keep the two to a market rule for commercial radio. We're just saying don't let's get any worse. Let's not get any more concentrated than we've got at the moment. We're really talking about new arrangements and a test that would apply to them.

MR SIMSON: The tests are irrelevant because if you leave the cross-media ownership rules as they are, it's "Do not pass go" for any prospective merger.

MR GIVEN: No, but if you're talking about for example a merger of - let me think of a good example - either a new kind of entity or new kind of asset which you might think you wanted to impose some sort of access obligation in relation to. It's that kind of entity that would have to pass through the new test. In relation to cross-media, yes, you're just saying the rules as they stand at the moment, they're essentially a sort of surrogate for, you know, a minimum level of diversity that we are going to require.

PROF SNAPE: Yes, I'm not quite sure that - I mean, people make arguments about economies of scale and scope which are important and diversity is also important, and we've got to vary attention between these matters. It's then finding the right combinations to satisfy these different objectives. But if one puts in some arbitrary rule, or inherited rules onto that, one is not necessarily getting the best outcome from a diversity-cum-economies of scale/scope perspective. So if one is just trying to hang onto one because one is frightened one will be going backwards on that particular scale, one might be ruling out all sorts of much more acceptable possibilities, acceptable to those that are emphasising diversity, as well as those that are emphasising economies of scale and scope.

MR GIVEN: It's really a question of balancing what the regulator is able to do and what the parliament says they should be able to do, and I think it's a mistake to think of competition regulation powers, while they have important elements of flexibility in them, that are not available to the ABA with its much more prescriptive rules. The only way the ACCC can work is to invent rules over time so it does draw lines in the sand and say, most importantly, "These goods and services are in different markets from these goods and services over here." Now, that's highly prescriptive, just as prescriptive as saying you can't control a commercial TV licence and a commercial radio licence in the same market. It's just that that judgment might shift over time in response to changing technologies, demand, exports, imports etcetera. So someone is going to make prescriptive rules. It's just a question of who makes them and how long they last.

PROF SNAPE: Right. I think that one is trying to get to a definition of the market. I think you're trying to get to a definition of a market in the relevant sense a market for ideas or a market for whatever, which is not defined according to the current criteria for which you have the rules. So I am not quite sure that insisting on those rules remain while you are trying to explore something else is the best way forward.

MR GIVEN: I suppose we are essentially saying - it is a good way of describing it. We are really saying that by retaining those rules in legislation we are deeming those three markets to continue to be separate markets in a sense and the threshold, rather than imposing a substantial lessening competition, we are also deeming that if one of the existing players with any of those assets were to acquire one of the players with another of those assets, we are saying that would be a substantial lessening of

competition or diversity or whatever the test is. So, yes, it is a kind of deeming process.

I guess our judgment is in a policy sense that although we are familiar with the arguments that are being used as to why it would deliver economies of scale etcetera for the development of these organisations if they could all take each other over, we are a little sceptical, we don't think the public benefits of that would justify the costs.

MR SIMSON: Why can't you come up with a set of factors or assumptions that could underpin the social importance philosophy that would enable you to measure the deleterious effects or otherwise of a newspaper and a radio station getting together or a newspaper and a TV network getting together, rather than having the arbitrary rule that we have at the moment, where there is no science to what we are doing at the moment. There is no rocket science to it, it is just a rule. Intellectually, why not try and flesh out the social importance, the public interest issues and bring them to bear rather than the existing arbitrary approach?

MR GIVEN: I guess a couple of things. If we go back to the context for it, it took us a long time to get to cross-media rules. The first newspaper has been around for ages. Radio had been around 70 years, 60 years and television had been around for 30 years when we got those rules. It took us that amount of time for people to clearly articulate, in Australia anyway, and get political acceptance for the idea that these were the major media forms of our time and it wasn't a bad idea if in the local area different people owned the three of them.

Now, it is a bit arbitrary, it is a bit rough, it equates three kinds of media which, who knows, are they more influential, are they more important or whatever, but in the scheme of things I am not sure it is any more or less arbitrary than making a judgment about whether getting merges between those two would result in a substantial lessening of competition.

MR SIMSON: That is a market judgment though.

MR GIVEN: It is, but when Prof Fels sits down and decides that pay TV is a different market from free-to-air TV, I think there is some rocket science, but not as much as we would always like and I am sure if you had a talk with cable and wireless Optus at the moment or News Ltd 12 months ago, that will be arguing whether there was much rocket science in what had gone on. I don't say that in criticism of the ACCC, but I say it in acknowledgment of the difficulty of the task in a changing environment. We are going to be making up rules as we go along.

The second point I would make about it is the Telecommunications Act has changed three times in 10 years; total, complete rewrite of fundamental principles of regulation. At the same time we are doing that and that is with massive industry support, people are saying, "We have to do this, we have to have change." We also have people coming in saying, "We need certainty so that we can make our investments." You can't have both these things in regulatory terms. We can give broad indications of where we think things are going to go, but we can't say to you

that what you are doing today is going to be fine in three years' time. We don't do that in competition law, I don't see why we should be doing it in diversity law.

PROF SNAPE: Incidentally, there was no Trade Practices Act before the 1970s either.

MR GIVEN: If I could make a final point on that: it is precisely the point. When people came along in the early 1970s and said, "How on earth are you going to possibly - what is this concept, lessening of competition? What does that mean?" We know what it means now, we are not always exactly sure how it is going to apply to particular circumstances. We are agonising in the US at the moment about whether what for example Bill Gates is doing represents a lessening of competition or in fact the height of aggressive competition, innovation, constant reinvention. We are not actually sure. We are learning as we go along.

PROF SNAPE: We do have some time constraints, but obviously we would like to continue this discussion. We do have some television link-up constraints. At 3.30 I think we are linking to Hobart. Is that correct? That is a little bit of a constraint. We have WIN Television - they have arrived. I wonder if we might break until 2.00, about 25 minutes - there are lots of sandwich bars downstairs with fairly quick service - and we resume if we may, if it is acceptable to you, Mr Given, to resume our conversation at 2 o'clock. I am not sure how long that will take and then we have quite a small submission from WIN, and unless they wish to speak at much greater length than is indicated by their submission I think we will still be on time for 3.30 for the television link-up. So we will adjourn now and resume with Mr Given at 2 o'clock. Thank you.

(Luncheon adjournment)

PROF SNAPE: Well, after that sustenance we shall resume, and resume with the Communications Law Centre and Mr Given whom we interrupted for that. I apologise to WIN that we're not quite ready yet. So where are we, is the question. When we're talking about the social importance, who is to judge that?

MR GIVEN: It's going to depend on the nature of the decision being made. If we look at the telecommunications example, services get brought into the universal service obligation through the minister making the regulation. Essentially the legislation sets out the services that are included in the obligation and basically under the legislation that's voice telephony, pay phones and the National Relay Service - the text voice service for people with hearing disabilities. Then there is a capacity for the making of regulations to add an additional service, and the minister has indicated that he's going to be doing that with something called digital data capability, a new digital functionality - sort of ISDN-like functionality.

PROF SNAPE: That's under the Telecommunications Act.

MR GIVEN: That's right.

PROF SNAPE: And you would envisage something similar under the - - -

MR GIVEN: Well, it depends on what we're talking about. It depends what the decision is that is being informed by that concept. If we're talking about the planning decision, if the decision is certain kinds of services will be put through a broadcasting style planning process or certain parts of the spectrum will be put through a sort of Rolls Royce planning scheme and other parts will be put through the current radio communications style planning regime, then it would be the minister that was saying on what basis do we decide that some things should be treated in this special way - currently called broadcasting, it might be called something else - other services would be called something else.

Now, at the moment I think the language of social importance is not a hundred miles away from the sorts of the criteria the minister has got to use to do that at the moment. So the planning decision would be one thing it would inform. Then when the broadcasting authority comes to set its own planning priorities it would be a relevant issue for them as well, when it came to say, "How should we decide what services are available in particular areas?" So to the extent that it decides certain kinds of services are socially important, we would want it to make a judgment that said, "We want to plan the spectrum in a way that people in some parts of Australia get access to a similar range of services to people in other parts of Australia." Now, again that's not radical change. That's exactly what they have done in relation to television. They have planned the spectrum so as to say, "There's going to be six high power frequencies available throughout the country."

MR SIMSON: Mr Given, the actual factors - I think you drew us to a page earlier that had those, the actual factors that you would see underpinning social importance?

MR GIVEN: Where I have done some work on that is in relation to the standard television service review that I checked. Basically there were sort of two elements to

what we saw as social importance; a kind of objective assessment, and what we call a subjective assessment. The objective assessment is saying, do people out there seem to think it's socially important, and that is a judgment based on take-up.

In the telecommunications context what that was really driving was saying, "We don't want the universal service mechanism to" - or the way I would say it now, it's not necessarily a view shared by all members of the group - "We don't want the universal service mechanism to be a sort of leading driver of services to which access is mandated." We don't want to be saying at some point when - as was the case then, you know, 13 per cent of homes had access to the Internet. We didn't want to be saying, "Okay, we're absolutely confident that that's going to become a socially important service, therefore we will require it to be made available to everyone."

The objective assessment was about saying you're going to need to have a fair demonstration in the marketplace that people think this is a good idea. So as with voice telephony, we didn't make it mandatory at the 5 per cent penetration level. Telstra said at about the 60-odd per cent penetration level, "We think it's probably a good thing for us to be making the telephone universally accessible throughout Australia," and they did that in the 70s. So that's an objective assessment of it.

The subjective assessment is the limb that allows you to at least entertain the possibility that at times of rapid technological change a service that has not been taken on terribly widely might become socially important and quickly. I guess what we got back when we talked with people about that was the sense of concern that people get left behind in a period of technological change and that if you don't make a judgment about universal access quite early in the development of a particular technology - - -

MR SIMSON: I appreciate that, but in your submission I'm just wondering have you anywhere actually bullet-pointed the factors that would be important from a social broad perspective in the context of the BSA?

MR GIVEN: We have indicated issues at the start about what we think the broad goals of the act are which inform that.

MR SIMSON: Okay.

MR GIVEN: We have indicated - the second set of dot points in the executive summary - what the sort of processes are where social importance would be relevant as a concept. Then in the submission we say, take a look at the section of the standard telephone services review group that tried to analyse this concept a bit more, to help you towards that. Now, I would add to that the kind of analysis that's done in this report about share concepts, audience share concepts. I think that's all helpful but none of it is decisive by itself.

MR SIMSON: But you could have it in Melbourne, couldn't you?

MR GIVEN: Yes.

MR SIMSON: The bullet points you've got there, the share concept and - all of those would help inform you, quite separate to market or competition issues, as in advertising dollars - putting that to one side, which the ACCC could, arguably, deal with fairly competently at the moment.

MR GIVEN: Yes.

MR SIMSON: It helps you on the public interest - - -

MR GIVEN: Yes.

MR SIMSON: Yes, okay.

PROF SNAPE: Could I go to - I'm referring to the executive summary on page 5 where you go to access. You say that the Broadcasting Services Act:

should include, as an object: To ensure that broadcasting services of social importance are -

and then you go (i), (ii), (iii) -

reasonably accessible to all people in Australia -

etcetera.

MR GIVEN: Yes.

PROF SNAPE: While I can see that that could be required, I'm not sure why you need points (ii) and (iii) there:

are supplied as efficiently and economically as practicable; and
are supplied at performance standards that reasonably meet the social,
industrial and commercial needs of the Australian community.

Under your set of recommendations in general, wouldn't competition ensure the second and the third?

MR GIVEN: Not necessarily. I guess you may be right that I may have drawn too much from the telecommunications experience with that. The concept in telecommunications is really - what we're talking about with social importance in that context is services that go into the universal service obligation. The reason they go into the universal service obligation is because they are uneconomic to provide. If that's the case, we expect that it will be difficult to get competition in the provision of those services. Therefore we are nervous, in policy terms, about performance standards, because we're not going to have much competition.

If we look at the broadcasting context it's clear that the services that are of social importance might not necessarily be uneconomic to provide at all, but we may still feel it is appropriate to ensure that they are available. I guess the point is if you

feel that it is necessary to take a regulatory step to make these services accessible, it must be because you think the market is not going to deliver them on its own. If you think they're not going to be out there at all, you may also think that maybe they're going to be delivered at a lower standard. That may only mean that it takes more time for them to get there. But I think the telecommunications experience, while not crystal clear, certainly leads us to the view that we will probably continue to need regulatory help to ensure that basic services are delivered at performance standards that are reasonably adequate.

PROF SNAPE: Yes, I take the point.

MR SIMSON: On page 4 you refer to "a range of media assets which deliver bottleneck power". Where do you draw the line there? Should that include TV as well as newspapers?

MR GIVEN: The point of this is precisely to try and strike this balance between the certainty that people want, so they can make investments with some confidence that suddenly the rules are not going to change, while on the other hand acknowledging that technology change, market change, all sorts of things can deliver bottleneck power quickly and unpredictably. Now, it seems to us that the declaration process is about having some sort of public process whereby you sit down and say - not just transaction by transaction, merger by merger, contract by contract - "Is this particular thing going to cause us a problem in policy terms?" But it's a way of almost putting industry on notice to say, "We think those particular kinds of assets are delivering bottlenecks or are delivering concentrations of power which we're concerned about."

MR SIMSON: By definition, are they ones that are not easily replicated or - I mean, how do you distinguish between a cable in the ground and \$250 million of printing presses?

MR GIVEN: With exactly the same kinds of difficulties we've got distinguishing that in telecommunications, and that is you have a process with a set of broad goals which are telling you what you're trying to deliver. The legislation sets out some services that have to be declared and then it leaves some flexibility to declare other ones as time goes on and you see that you've got problems in relation to them. Now, as is the case with telecommunications, the kinds of services that might be declared might be incredibly trivial - might seem to be quite trivial. They might not be that important in turnover terms as far as what people earn from them. They may just happen to be particularly central for technical reasons and therefore you want to be able to impose those sorts of obligations.

Importantly, it might not be about - I mean, one of the sorts of obligations you might impose as well - we think access is sort of access to carriage services, access to facilities. One of the sorts of things that may well emerge in an even further rationalised pay TV environment is that certain kinds of program sources - you might actually think that you have to compel the provision of programs from certain sources to be made available to other sources, other distribution systems, because without that other service providers are simply not going to be able to run viable services. If there is a particular set of programs which are so fundamental to the ability to run an

economic service - that is the same sort of "impossible to replicate this" - that it makes it impossible to get competition in the downstream market - now, that may be a way off. It may seem novel. But it seems to me it's just as likely - - -

MR SIMSON: And perhaps, in terms of real debates today, pay television operators being prepared to make available some channels to people to provide content.

MR GIVEN: Yes. The real example we have had in the past is the ABC's inability to get access to the pay TV networks a few years ago, with its news channel. Now, you get a hundred different stories about quite why that happened and whether the ABC was looking for too much money or it could get away with charging too much money. But the outcome of that, whatever the politics and commerciality of the negotiations is, is the provider of news, Australian-based news, on our pay TV networks in Australia it is of a significantly different kind that it might otherwise have been. Now, I don't want to make calls that the ABC would have been a better or worse channel, it's just you might in a perfect world like to think both of those news sources might be available on pay TV.

PROF SNAPE: In discussion with Telstra yesterday the question was raised about free-to-air television and as to whether access should be declared on free-to-air television. I suppose one could particularly think when we get to multichannelling and of course datacasting - but on free-to-air itself should there be a declaration of access there?

MR GIVEN: Look, we have always preferred a model. It has been easier in media regulation and we would like situations where you have competing media entities which are in control of their own distribution destiny. The point for us is we're not sure whether that's sustainable. Why we took the position we did in relation to digital TV, which was quite different from what other groups including at least one consumer took, was that we thought it was quite helpful for major media operators like television broadcasters to be given the opportunity to continue to be in charge of their transmission destiny in the future. So if you've got Telstra out there with its cable, with very significant bottleneck power coming from its control of the local loop, Optus with some capacity but Telstra still in a very strong position, where else can you go to get into homes where you can get through to broadcast? So maybe if instead of that one copper cable into the home the 2.2 co-ax cable connections into some Sydney, Melbourne, Gold Coast homes from Optus we've got 100 per cent, or 99 per cent, into people's homes through television and we said, "Well, let's give those people the opportunity to do something," and maybe that is a quite pro-competitive outcome certainly by comparison with saying, "Let's throw all that spectrum up and maybe Telstra's going to win it or News Ltd's going to win it." So we would prefer not to have these access obligations. We would prefer it the way newspapers are supposed to work where anyone can set up one of these businesses and you've got people in control of their distribution destiny. The reality is that it's probably not going to happen. We do as much as we can to ensure that there's a range of people out there with distribution infrastructure but in the areas where there is bottleneck control - and it's clearly the case on cable, maybe the case on satellite - you impose some obligations.

At the moment we would say in free-to-air television, this is probably one of the most competitive major media businesses around in terms of numbers of players so we don't really like the idea of people being able to come along and tell Channel 9 that it has got to carry something at 8.30 at night. We certainly don't want ministers doing that so we would prefer to resist that for as long as possible. But that example may be far-fetched. The example of saying Channel 9 with 7 megahertz that's allowing 21 - you know, massive capacity to be delivered to homes with a bunch of new services, only part of which is being used for a conventional television signal, we might well be thinking down the track that it is reasonable to impose an obligation that says, "Channel 9", or 9MSN or whatever, "you've got to be providing access into that system somehow to people that you would otherwise not take."

The best example is electronic program guide. It's not about saying you've got to put someone on 8.30 at night, it's about saying, when you hit the screen and it says 9MSN, if the way you've constructed the market is people are buying television sets from Harvey Norman and when they switch them on they say 9MSN, and every television set in the country is getting sold on that basis because that's just the way we've succeeded in the marketplace, we might well be saying at that point, "You're going to have to have an ABC icon in a very prominent place, you're going to have a Channel 7 icon in a very prominent place," and that's precisely what the UK has done with that because that is the bottleneck; that interface is the marketing bottleneck into consumers' wallets.

PROF SNAPE: In digital conversion, and we know that with the current plans that there's going to be a tie-up of analog for a very long time, possibly much beyond 2007 for reasons that - and you've probably read previously, what do you think about trying to accelerate the conversion first of all to ensure that there's a switch-off in 2007 for the capital cities by having set-top boxes available to everyone so that no-one would be worse off, that everyone could through a basic set-top box receive the digital signal on an analog set even if it were high-definition digital signal or even through that process of bringing the switch-off date closer to now so that one could free up all that analog spectrum that's being reserved?

MR GIVEN: Governments have made decisions for a range of reasons in this. As indicated in the submission we think there's some good reasons for this decision, we think there's a fair few bad reasons as well, but we're not uncomfortable with the broad structure of it. One of the key reasons is precisely because we think universal access to the major communications media of the day is an important thing that should be happening in society. In that, television is a pretty good place to start. It's out there in 99 per cent of homes. If Australia is going to deliver this digital track into every home it seems to us that television is not a bad place to start, and for the reasons I've given earlier it's a good idea if we got both the digital, one, through television and though the telephone lines, maybe that's a good competitive outcome.

But beyond that, broadcasters have made a big case that this is a terrific thing to be going. If it is, I think it's their job to sell it and I don't think it's the government's job. The government has been fairly generous - we think for some good reasons, but they've been pretty generous in what they've done. I don't think it's the government's job to be driving this much faster than consumers want it to go. If this whole process

turns out to be a turkey that's not the consumers' problem, that has got to be the networks' problem.

MR SIMSON: Excuse me interrupting. It is a consumers' problem if it turns out to be a turkey because the spectrum for simulcast has been locked up for years and years till someone does discover the turkey and that spectrum could have been used for other things.

MR GIVEN: You're right and it's right to point that out. On the other hand, the nature of the technology means that that spectrum was not available otherwise. The reason it has become available is because broadcasters in conjunction with others invented a technology that allowed you to both of things at once. But, yes, it's right, there is an opportunity cost. Having created value for that spectrum which was not being used, by the invention of a new technology, it could have been done in a different way. But I think for consumers - if we look at the shutdown time-frames that have been set overseas there are countries which have set quite firm deadlines and it seems to me that's government - you know, giving a very clear signal that this is all going to happen. It just seems to me at the moment we don't know enough about - you know, the international experience is pretty recent. I just don't know, is this going to be a 10-year period, is this going to be a 20-year period?

PROF SNAPE: It does look as if in 2007 there will be a major problem, that very few people will have digital sets on current indications so far as one can see it. You're supposed to close down on your analog transmission in 2007? It won't be done.

MR GIVEN: If we take an example on numbers - I'm sure you've seen the numbers but I think video cassettes are quite a good example. They were introduced into Australia in the 1970s. After, I think, 10 years - I can get the number but it was something like 75 per cent. Now, on one hand we look at that and we say that's evidence of massive take-up and enthusiasm for new technologies in Australia. On the other, you look at that and you say, "You're actually going to turn off a service that's not getting to 25 per cent of the people?" At that point that's - you know, 25 per cent is a crisis in political terms. So you're right to point out, but what we say with that is we've done this deal now, there are costs associated with it, we know that, but the costs we're most concerned about now are for those 25 per cent of consumers what you don't do is shut down and have them lose this very important service. We would want very substantial evidence of the - we would be very concerned about moves to shut down analog spectrum at a point where substantial numbers of Australians had chosen in the marketplace not to take up whatever option - - -

PROF SNAPE: Well, I'm sure any government of the day will be, and there will be tremendous pressure that they not shut it down and keep that analog spectrum tied up, which is a much greater amount of spectrum than has been allocated than is required for the digital and shut out forever, for a very long period.

MR GIVEN: Clearly that's part of the politics of the whole process of digital TV which free-to-air networks have been involved in getting access to that spectrum over the last decade or so. I don't think there's any secret that that's what they're hoping will happen.. All I think we can do, or all I think governments can do is try and

communicate two signals: one is that they are anxious to recover analog spectrum, and once we know a little more about what people might be able to do with that we will be able to get better senses of the value of it; but also that they're not going to be in the business of disenfranchising large number of the population.

MR SIMSON: One quick question, please. A fourth commercial free-to-air station, what's your view on that as to whether there should or shouldn't be one?

MR GIVEN: We don't think it's the highest priority in Australian broadcasting policy. As indicated in the material we've given about the digital TV thing, we don't think the shut-out of new stations - while we think there's some good reasons for the digital TV stuff we think that was one of the bad elements of the decision. We're not opposed to it but we simply don't see that at a time when pay TV is being rolled out, the size of the market, everything else, it's not an initiative we would be tripping over ourselves to facilitate particularly if the price of doing it was that it was that that licence was secured by an existing major player in the Australian industry. That would seem to me to be an odd compromise to make.

PROF SNAPE: Industry how defined?

MR GIVEN: Most obviously if we say the reason we need a fourth commercial network is for diversity, if someone who is already a substantial player in another sector of the Australian media industry were to get that, we would question whether that was a net contribution to diversity.

PROF SNAPE: Right, okay. Well, we've held you for quite a long time and I think it's about time we let you eat your lunch we've supplied to you. Thank you very much, Mr Given, for that. As we have got more time to read your submission I think it's quite likely that we will get back in touch, the staff, but thank you very much for it. There's still a few bits missing from it, I think, so we look forward to the complete version. The version we've got is very helpful and I'm sure that the complete one will be even more so. Thank you very much for that.

PROF SNAPE: We welcome WIN Television and from WIN we have two participants and I would be most grateful if you would each separately identify yourselves and your positions for the benefit of the transcript?

MR RUSHTON: My name is John Rushton. I am the CEO of WIN Television Network.

MR STURGISS: I am David Sturgiss. I am the company's secretary.

PROF SNAPE: Thank you very much. Mr Rushton, are you going to speak to the submission?

MR RUSHTON: Yes.

PROF SNAPE: Thank you.

MR RUSHTON: Thank you very much. Our submission was rather short as we are a party to the FACTS submission, but we did want to make comment on the subject of the ownership and control of Australian media, because FACTS didn't get involved in that. We, being a regional operator, are in the business to provide a service to regional Australians that is tailored to service their needs and wants and desires as far as television is concerned. On the geographical limits which stand currently at 75 per cent coverage, we are certainly most in favour that that be retained. We believe that if it was extended to 100 per cent it would mean the disappearance of regional television and any relevance to regional Australians would just disappear.

It would be very difficult for regional operators to withstand the financial pressures and approaches by the metropolitan networks to take over their operations and if that be the case, it would, I believe, not be too long before the regional operations would close down and regional Australia would be serviced direct from the capital cities. It would be much more economic from an operational point of view and it would service the national advertiser, which is the primary objective of the metropolitan network. Regional operators provide a service to local businesses in regional centres to advertise their wares; it provides a service of local news; it provides a service of community announcements and things of that nature, which are extremely important to these communities as indeed they probably are in the capital cities, but they just don't have the opportunity of using television to do that.

For instance the mayor of Toorak, if there is such a position, can't go and get his head on television and tell his constituents what is going on, whereas the mayor of Ballarat can do that. The local member can't get his head on television to tell his people what he has done or what he is going to do or what he would like to do, but they can in regional Australia. In many instances I believe that regional Australians are better served by their television station than what their metropolitan counterparts are, because of this local input. Localism is, as well as news and as well as any other programs, vitally important as are local commercials; telling people what the local butcher, baker or candlestick maker have available this week on special or whatever.

Over the past 38 or 40 years since television has been operating, regional television has contributed immeasurably to local communities through local sponsorships and support of charities and things of this nature. A lot of this is done through free air time given to promote the various causes and it is at the stage now where these announcements are almost needed by these bodies to survive and carry out their duties.

On foreign ownership, we don't have too strong a feeling on this, however, as we approach the new millennium the world is becoming a very, very small place and it just doesn't seem sensible or logical to me that we restrict foreigners from getting into television. They are allowed into most other areas and I believe that these rules ought to be relaxed somewhat, if not totally, then arbitrarily I would pick, say, 49 per cent anyway. Cross-media ownership, I think my perception is that these rules are generally aimed at the major networks, major media players in the capital cities and there may or may not be good reasons for that.

In regional Australia, I believe it is different and I think at the very least cross-media ownership rules ought to be abolished for regional Australia. A lot of regional radio networks, local newspapers have over the years been taken over by capital city conglomerates, major operators and a little bit of local flavour is starting to disappear. Strong regional groups, if they did get together and merge, are going to be much better, offer a much better service to their local communities. I think that is going to be in the best interest of the regional Australians. I really do think that there does require in some areas to be different rules and regulations for the regions as distinct from the capital cities.

We are a totally regional organisation, our corporate headquarters are based in regional Australia, so all of our people from me down, live in regional Australia and we know what it's like, what is required and we know how to serve the people there and their needs. We believe we do that very well.

PROF SNAPE: Thanks very much for that. Some people have suggested to us that in the regions it is not a very good idea if the local newspaper, the local radio station and the local television station are all owned by the same person.

MR RUSHTON: Did they give their reasons?

PROF SNAPE: Well, that was to do with diversity of voice if there is only one voice coming in to the regional community.

MR RUSHTON: You are assuming that if there is one person who owns that is telling the television, the radio and the newspaper what to write each day - - -

PROF SNAPE: I think that - - -

MR RUSHTON: If that is the case, then I would agree.

PROF SNAPE: The cross-media rules, wherever they apply, seem to assume that and so that seems to be the basis of the cross-media rules.

MR RUSHTON: Yes, I am yet to learn how a regional television operator, if he is one owner, gets his message across. Regional television to my knowledge, none of them have their own current affairs programs where you can editorialise or whatever. We produce more local news than any other regional broadcaster. We produce 18 half hours of different news in different centres every day. I don't own our network, I am the CEO, but I don't know what is going to air in any centre any day in our news. I just don't have the time to do that and news of course is just one half-hour program in 24 hours as far as I'm concerned.

PROF SNAPE: Well, take news, if it were to be the same journalist or two or three journalists who were writing the local newspaper, doing the news on the local radio station and on the local television station, one wouldn't be getting much diversity from what - - -

MR RUSHTON: I really like that idea, I mean I think that would be fantastic, but I doubt you would be able to find journalists who would do that. Commercially it would be excellent, but I don't think that would be practical and I think that journalists in each of these areas do require slightly different skills. Perhaps a journalist who is expert as a television journalist may not be quite as good as a newspaper journalist. I don't know that for sure, because we don't own any newspaper. But I think that having a team of journalists in each organisation is going to give diverse views, however, from the administrative point of view there would be significant savings to be made and I think there would be a much better quality of news getting out into the community.

MR SIMSON: What about the advertising market though, the local advertising market, the opportunity if you had cross-media to concentrate advertising power locally, advertising purchase power?

MR RUSHTON: Yes, we do have one radio station which we had prior to the cross-media ownership regulations coming in. We tried for about six months to have one sales organisation servicing both the radio and the television and it didn't work.

MR SIMSON: Where is this by the way?

MR RUSHTON: In Wollongong. It didn't work and it was the radio that suffered. Salesman all see that television is a bit more glamorous than radio in the regional centre. They have the potential to make more money, more commission, so the radio station is suffering. We split them totally and with totally different management structures, sales, promotions and whatever and I am happy to say that both of them are making money.

PROF SNAPE: So you do own a radio station as well as - - -

MR RUSHTON: Yes, one radio station.

PROF SNAPE: Not many organisations seem to be owning both radio stations and television stations.

MR RUSHTON: Ours was grandfather - - -

PROF SNAPE: But even if they were in different cities I mean. Even if they were in different regions would you say the restrictions didn't apply?

MR RUSHTON: Yes, I think Southern Cross certainly do - I don't think there are a lot of others, no.

MR SIMSON: But you are an interesting one, because you have the TV station and the radio station in the one city.

MR RUSHTON: In the one city, yes.

MR SIMSON: Talk to us a little bit if you wouldn't mind about a fourth commercial free-to-air network from the perspective of a regional operator, how you would see that.

MR RUSHTON: Personally I think it is a ridiculous suggestion that we have a fourth network here. For many years people from all walks of life have tried to get Australia to play at being as good as America with 18 million people. We are talking about commercial operations here. Successful quality commercial operations need a large population base. The US have now got four networks and the Fox network has probably started eight or nine years ago. So the population of the US then was probably 240 million people. We have just got to 18 or 18 and a half million. I have heard it said in Melbourne that it wouldn't be too long before Brisbane, Adelaide and Perth's population would be saying, "Why have we got to only have three, while Sydney and Melbourne have four?" Then it wouldn't be too long before the regional people would be saying, "Picking on the bush again. We should have four if the city people have four." It is hard to argue against that.

But I think we have to cut our suit according to the cloth and if we want quality media it has to be rationalised in accordance with the size of our community. Our community right now is about 18 million people and I think in my opinion we have media that is as good as anything else in the world, probably better in television, because I have seen a lot of television overseas and quite frankly I am not all that impressed with it. But you can go to America with cable and sit there all night and click the widget and get a different channel every 10 seconds, but there is nothing there that you really want to watch and it is difficult if you want to find the good stations because there are so many of them. If you are in a hotel you have to ring down to the front desk and say, "Will you tell me where the networks are."

MR SIMSON: Is it correct to say and I should know the answer to this without having to ask you, but the principal regional operators in Australia under equalisation, is it proving profitable for them?

MR RUSHTON: Yes, I think it is. It is much in line with the metropolitan services.

MR SIMSON: In terms of return - - -

MR RUSHTON: No, in the quality of the service which affects their return. We're the major Nine Network affiliate. We do more news than anybody else in regional Australia. Prime is the major Seven affiliate and they do a little less localism than what we do and then there's Southern Cross and Telecasters who are the major Ten affiliates and they do probably very little local programming. The revenue collected by each of those operators is probably in line. We'd probably get a little more than Prime who get a little more than the Ten affiliates.

PROF SNAPE: Could you tell us about the relations with the Nine Network? How does it work?

MR RUSHTON: Sometimes they're very good and other times they're very strained.

PROF SNAPE: What's the nature of the contracts that you have with them, just in general terms?

MR RUSHTON: Yes, we have an affiliation agreement which allows us to take 24 hours per day of their programming for which we pay a percentage of our revenue in return for that.

PROF SNAPE: The terms on which you can drop some of that, not take some of that 24 hours?

MR RUSHTON: We can pre-empt any program that we choose.

PROF SNAPE: You can take anything out if you choose?

MR RUSHTON: Yes, but the percentage of the revenue still stays there.

PROF SNAPE: Yes.

MR SIMSON: To Nine?

MR RUSHTON: Yes.

MR SIMSON: In terms of the local content rules, you fulfil your obligations through the Nine content?

MR RUSHTON: Yes.

MR SIMSON: So that's how you fulfil them?

MR RUSHTON: Yes.

MR SIMSON: Let's take a hypothetical example where for whatever reason Channel 9 were not fulfilling their obligation under the act. That wouldn't excuse you. You would have to - - -

MR RUSHTON: Absolutely, yes.

MR SIMSON: - - - top up or you would be separately in breach?

MR RUSHTON: Yes. We also own Crawford Productions so we might be able to get something else.

MR SIMSON: By tomorrow perhaps.

MR RUSHTON: But I doubt that we could do it profitably.

PROF SNAPE: Depends upon the cost of not doing it.

MR RUSHTON: True.

MR SIMSON: Just talk to us a little bit about the relationship with Crawford Productions because that's a little bit unusual, isn't it? In fact is there another group in Australia that owns a major independent production house?

MR RUSHTON: No, not that I'm aware of.

MR SIMSON: Could you just talk about the business logic in that and how it fits? Do you tend to then source content from them? How does it work?

MR RUSHTON: No, Crawfords is just part of our group and it operates as a totally separate entity. It has a managing director who reports to me and they go about their business as best they can. It's a contract business. If you've got plenty of contracts you do well. If you've got no contracts you don't do so well and it's the same whether you're a road building contractor or a film production contractor. So they do business with all of the networks, ABC and SBS. So that's basically it. They negotiate with each of those guys and have done business with all of the networks. The relationship with WIN doesn't seem to affect that because I think everybody knows that it operates totally separately and independently and there's probably not a great deal of sensitive information that would be passed anyway.

PROF SNAPE: So it doesn't mean that they get more work on the Nine Network than they would otherwise get?

MR RUSHTON: We've tried to infer to them that they should, but it doesn't seem to work that way.

MR SIMSON: Do you have any aspirations if there were a change in cross-media ownership to go into the cities as a business?

MR RUSHTON: We've never looked at any of this, this closely. I wouldn't discount it but we don't have any - - -

MR SIMSON: I tried not to ask that, it was an unfair question. I suppose I was asking more from the context of whether your change to the cross-media really just relates to your regional market as - - -

MR RUSHTON: Yes, that's the way I see it, as just trying to keep the regional areas strong, because a lot of them are getting weaker and weaker for various reasons - I mean, not to do with the media but from the general economy. You know, the rural communities have been having a rough trot for the last 10 years.

MR SIMSON: Incidentally we have heard from at least one participant that an effective equalisation is that you've become much more competitive for local advertising with local radio and local newspapers, whereby you can really marginally cost your advertising time almost at classified ad rates, classified ad times. As I say, I know a little bit about this from my past experience. Is that something that - well, could you just comment on that? I'd appreciate that because - - -

MR RUSHTON: I think that the number 3 guys are probably getting down to rates that low.

MR SIMSON: The number 3 regional television rating.

MR RUSHTON: Regional rating, yes.

MR SIMSON: Regional television operator?

MR RUSHTON: Yes, number 3 rating operator. The effect of aggregation was that number 1, we had to affiliate with a network to be assured of meeting our quota requirements and that was the only way of doing it, and so that's what happened. When it all boiled down in effect the network chose the operator that they wanted to affiliate with.

MR SIMSON: What, just doing a better deal?

MR RUSHTON: No, well, everybody - I can remember it well. Everybody wanted to affiliate with the Nine Network and when the Nine Network said, "Well, we'll affiliate with you," everyone wanted to affiliate with the Seven Network and the Seven Network said, "Right, we'll affiliate with you," and the guy that was left went up and hugged the Tens and that was it.

MR SIMSON: It's probably lucky Tony Bell's not here. He was here this morning.

MR RUSHTON: I don't think Tony was a party to that. But I didn't hug Sam Chisholm at the time either. Regional television for years has provided a service to 35 per cent of the Australian population and only ever been able to get from the marketplace 21 per cent of the revenue.

MR SIMSON: Sorry, just repeat those figures.

MR RUSHTON: They're round figures: 35 per cent of the population, about 21 per cent of the revenue, television revenue. In affiliating we'd take a feed from the network and approximately every 10 minutes of program there's a two or three-minute black hole that has to be filled up. That's the commercial contact, program promotions and things of that nature. Now, if all of these black holes haven't been sold you've got to put something in it. You can't put black to air and you can only put so many community service announcements and things of this nature. So fortunately I think we probably fill up a little easier than some of the others. But nevertheless that is a significant reason for low rates, maybe not so much in prime time but in other times.

MR SIMSON: Thanks for explaining it to us. You just mentioned - I think perhaps before I interrupted you were actually going through that affiliation process and how it actually came about and you mentioned the match making that went on.

MR RUSHTON: Yes.

MR SIMSON: I thought you were going to go on and mention a couple of other stages to that or a couple of other facets to that.

MR RUSHTON: In aggregation it was a staged affair. We didn't have to start broadcasting in every centre overnight and it took four years. Four years we had to complete the installation of new equipment and whatever, and of course we started with the large population centres and worked our way down. I think it worked very well. It seemed to be well managed. We were fairly fearful of what the outcome would be, because it hadn't happened anywhere in the world before that television service would be trebled overnight in a centre and we were all pretty comfortable in our own little monopolies when we were SOLOs operators.

So it was a whole new ball game and when it happened there were some people that - employees I'm talking about - couldn't cop it. They had to be moved and had other people come in, and operating in a competitive environment I think proved beneficial for the operators and also the community. The community was delighted because they were getting choice. Because I don't care how many people like AFL, there's always a few who don't and if you've only got the AFL to look at then it's a problem for those who don't like it.

PROF SNAPE: You, from Wollongong, sort of penetrate into Southern Sydney quite a bit, don't you?

MR RUSHTON: Yes.

PROF SNAPE: Will that be facilitated, if that's the right word, by digital?

MR RUSHTON: I haven't thought about the penetration of our signal up into Sydney. What I'm worried about is the Sydney one coming down to Wollongong, especially if they go to air before we do. For years - I mean, Wollongong didn't come on air with any television until quite a few years after Sydney. So even today there was a very tall antenna that was put up to get the Sydney signals. Now, we fought the good fight and spent a lot of money, time and effort on being a good local station and we succeeded against the Sydney intrusion, and today I would doubt that there would be 5 per cent of the community watch Sydney and they who do it only do it because they can get a better signal from Sydney because of the particular location that they live. I know people in Sydney who watch all of the Wollongong stations because they get a better picture than what they get from Sydney.

PROF SNAPE: I was trying to think of the tapping into the South Sydney advertising market.

MR RUSHTON: We've never been able to do it to any great degree to date. There might be the odd motor car dealer who will spend a few dollars in Wollongong and see if he can get some people to come up the freeway and buy a motor car, but it has been very limited and the same as I don't think - you know, the Sydney people don't get anyone wanting to advertise on their networks.

MR SIMSON: Is the advent of digital something you're looking forward to?

MR RUSHTON: No, I wish that I was a few years older and I could retire. No, I see just a lot of problems in doing this. We've got to duplicate our network so we've got to run two networks and I only got out the other day for instance from my chief engineer just what we are operating in the way of transmission hardware. In our network we have 28 high-powered transmitters, 210 low-powered transmitters and/or translators and 32 individual microwave sites. So a lot of those are dual, so they might be microwave as well as transmission sites. So we've got 270 sites currently operating in analog we have to go and duplicate.

Sydney for instance serves a potential audience of 4 million people. They have one high-powered transmitter and I think two translators, one at North Head and one up Kings Cross. So the effort for them to transmit a digital signal is relatively easy. If it's the Nine Network they've got a transmitter in Brisbane and one in Sydney and one in Melbourne and probably a couple of translators in each of those areas. So it's not a major exercise. But for the regional operators it is a huge exercise and one that we've currently got application in to the government or are negotiating with the government now and we've got everyone trying to get assistance to do it. But it's a huge exercise.

PROF SNAPE: In the longer term you'll need fewer than with the analog system though, won't you? It's a transition problem that you're going to have to duplicate it, but with the digital system in the future for the same coverage you'll need fewer sites, won't you?

MR RUSHTON: I don't believe so.

PROF SNAPE: Because they will in Sydney, as I understand. They won't need the translators in the same way because of the digital signal, but I may be wrong on that.

MR RUSHTON: No, well, my engineers have said that they may need additional. We'll certainly need additional microwave-link sites because a digital microwave won't travel as far as an analog signal does. So we certainly need some more of those and we believe, and it will be a suck it and see situation, once we get up and broadcasting on digital there may be some areas we will have to fill in with another translator, because the government is fairly insistent that all those who currently have a signal should have the signal in digital.

MR SIMSON: I'm done.

PROF SNAPE: Well, I think I am too and for the rest you endorsed the FACTS submission.

MR RUSHTON: Yes.

PROF SNAPE: I won't now get stuck into you on the FACTS submission. We had FACTS last week so we'll spare you that.

MR RUSHTON: Yes, I'm aware of that.

PROF SNAPE: Thank you very much for being with us. Our apologies for holding you up a little bit but we're very grateful to you for coming.

MR RUSHTON: Thank you very much.

PROF SNAPE: Welcome to this hearing on the Productivity Commission's inquiry into broadcasting. We're on video link to Tasmania. I'm Richard Snape and over here beside me is the associate commissioner, Stuart Simson. You'll see him as soon as he starts talking because we've got a voice sensitive microphone. We welcome you. It's Cadence FM. As you probably realise, we have transcripts for every hearing. This is a public hearing, even though it's being done by video link. I can't say there are too many members of the general public in the audience but anyone could come in to that audience. So it is in public. Everything goes on the transcript. I think we've got the technology working now. Yes, it's okay now. So I would ask you to identify yourself and your position with Cadence and then speak to the submission which you have sent to us.

MR DALY: Yes. My name is Chris Daly and I'm currently the president of Cadence FM, community radio 99.3 in Hobart. I would first like to commend the Productivity Commission on making available this facility and discussion. The subject of availability of spectrum is the main topic of discussion I wish to bring to you today. The first part of Cadence FM's submission deals with the history of FM and its inventor's remarks on frequency allocation. We move on to the actual use of frequency spectrum and have brought hopefully some constructive comments to this hearing.

The second part of our submission speaks about the ingress of digital radio. The history of FM and its founder is a subject which sadly has been ignored and efforts have been made by governments worldwide to ensure the public remains uninformed. An inquiry into the State Library of Tasmania conducted on Monday, 7/6/99, reveals the main reference work, Lawrence Lessing's *Man of High-Fidelity*, is now not even listed on the National Library's listing. It was read by myself at the reference library in Hobart, at their premises - and photostatted, I'm not ashamed to admit - on loan from the National Library two years ago. Here is evidence that that book actually exists - *Man of High-Fidelity* written by Lawrence Lessing.

FM as a concept was known at the time of Marconi's discoveries. However, it was considered impossible to implement, Carson of RCA publicly stating it couldn't work. Between 1923 and 1932 Major Edwin Howard Armstrong worked exclusively on FM, having already patented the super heterodyne circuit and the super regenerative circuit. It is now only just finding application. The push for FM as a broadcast standard found Armstrong up against the FCC and the ICA - this is the American scene we're talking about - who were deeply involved in exploiting television and AM radio as a means of communicating with the public. Hence a new form of transmission, no matter how good it is and important it was, was seen as a threat.

In fact the decision by the FCC to use the 88 to 108 spectrum was a decision poised specifically to put Armstrong out of business, as he had contracted GEC's zenith to build a substantial number of radios in the 44 to 54 megahertz region. A lame excuse at the time by the FCC and the RCA, claiming interference from the sun spot magnetic disturbances, which actually would affect TV far more than radio,

convinced a panel to move FM to the 88 to 108 band. Sadly Armstrong, after more than 18 years in court defending his patent rights to FM, suicided, jumping from an apartment to his death in March of 1954.

Armstrong's paper of May 1936 - and the reference is Procedures IRE, which is the Institute of Radio Engineers - volume 24 number 5, pages 689 to 740, entitled A Method of Reducing Disturbances in Radio Signalling, contains pertinent reference to frequency allocation. I quote:

During the course of experiment work in the laboratory a very striking phenomenon in the interference characteristics between frequency modulation systems operating in the same wave band occurred. The immunity of a frequency modulation system from interference created by another frequency modulation transmission is of the same order of magnitude as the immunity with regard to tube noises.

Armstrong goes on to identify the beating of amplitude modulated AM systems along the same frequency and then says:

With the wide band frequency modulation system, however, interference between two transmissions does not appear until the field strength of the interfering station rises to a level in the vicinity of 50 per cent of the field strength of the local one. This summarises that two stations can actually share the same frequency.

Armstrong goes on to say:

With two wide band frequency modulated transmitters occupying the same frequency band, that only in the small area located midway between the two wherein the field strength of one station is less than twice the field strength of the other will be rendered useless for reception of either station.

Armstrong goes on to identify that with directional antennas it is possible to cover some of these areas which may be effectively covered by each station operating alone, subject to the limitations of the noise level. Armstrong goes on to say:

The problem of interference due to overlapping has been completely wiped out. One precaution should be observed. The unmodulated carrier should be offset in frequency by an amount beyond the audible limit.

This sentence briefly summarises that mono stations, having modulation components up to 25 kilohertz, can safely be spaced 50 kilohertz apart. Stereo modulation involving double side band modulation at an upper limit of 73 kilohertz can be spaced at a hundred kilohertz. Conventional receiver design has stations with 100-kilohertz spacing. For every megahertz you've therefore got an 88 to 108 band which occupies 20 megahertz. There is in theory, without risk of interference according to Armstrong, availability for 200 channels.

The FCC in America advocates something quite different. They say 200-kilohertz spacing can sensibly make allowance for three different power categories within that stipulation. A simple adoption where high-powered stations can be spaced at 800 kilohertz - which we firmly believe is quite sensible - and medium-powered stations under 5000 watts at 400 kilohertz, and lower-powered stations below 5000 watts at 200 kilohertz, would provide a level playing field. Rather than simply being told, "Sorry, there is no spectrum available," full stop, some allowance should be made for stations with lower power ratings, particularly geographically hard to operate at 100-kilohertz spacings.

The ACA and the ABA, to their merit, are allocating frequency with the future in mind; ie, that stations may increase their output over time. Therefore initial planning incorporates this. A sensible compromise, particularly with inference to power usage then, would be certainly advantageous to aspirants being given some air space. An understanding of limitation of final output over time could be agreed upon. It is unlikely any community radio station would ever use the levels of power emanating from the commercial radio station site.

History will show legislation was introduced in Australia in the Australian Broadcasting Act of 1948, section 44(2), that prohibited commercial stations from even using frequency modulation, which was repealed in 1956 by the Broadcasting and Television Act. A similar hearing to this very one today, in June of 1972 by the Australian Broadcasting Control Board, recommended FM be developed in a UHF band as FM between 88 to 108 - under its first hearings 90 to 108 - would interfere with Channel 5 television. The 1972 hearing also considered the use of 400-kilohertz spacing, item number 107, with a pertinent point about analog-tuned radios not being able to discriminate. Receivers in the intervening period of 27 years have improved immensely, being able to easily differentiate digital display models tuned with precision in 100-kilohertz steps.

A further hearing in June of 1979 recommended the clearing of Channel 5 TV and conclusions paving the way for commercial licences and no mention of community radio at all. In these early times it can be clearly seen that commercial radio would, after all, pay well and the government would be doing the taxpayer a service by looking after them.

The present make-up of frequency allocation sees community radio under guidelines of spacing applicable to commercial stations. There are currently 19 community stations using NTL facilities - the NTA recently being sold to the British - and 384 stations doing it on their own, 384 community stations that is. Sharing frequency on the same mast at 800-kilohertz spacing is eminently sensible, I agree, due to the higher power involved. 800-kilohertz spacing applying to all stations is unreasonable, as they are often located remotely from each other and often have differing power outputs.

Community radio stations have been told by the ABA to change their frequency

as commercial entities need the space. Aspirants are being told that there is insufficient frequency spectrum. It is sad to say that the monetary interests in the radio and television spectrum - which is after all a natural resource - heavily controls to this very day the ability for aspirants to get on air. The make-up of this monetary interest has even in the last year seen narrowcast licences being auctioned to the highest bidder, which naturally would end up in commercial hands.

A system whereby the CBAA - which is the Community Broadcasting Association of Australia - negotiated with government for justified spectrum and then CBAA allocated to aspirants making application to the CBAA for community based licences with overview from local councils would benefit community radio and represent its ideals more favourably. It would also place the CBAA closer to government in negotiating rights for community stations. That ends the first point of our discussion.

The second point I would like to raise is the ingress of digital networks and how they may deter community stations from establishment or even uptake of conversion. Digital, invented by Alec Reeves in 1932 under a form called pulse code modulation, answers a lot of frequency allocation problems, if this isn't too much of a contradiction on what I previously said. The multiplexing, which Armstrong invented in 1932, of stations' output onto one carrier is certainly fascinating from an electronics perspective. However, it has serious ramifications for community radio in that ownership of that multiplex and its use must and will have substantial pricing.

There are many technical problems that associate with digital - mainly over sampling, clock control or stability - which no doubt can be overcome, once again at a price. Digital will create an entirely new industry. This, despite its fortuitous heralding, is actually bad news for Australia. Australia, despite being 1999, still has no semiconductor industry. So we are to become buyers, not the makers of the equipment, which once again has a substantial price which community radio can ill afford. Another pertinent point is unemployment. Here is an opportunity to employ many people. It simply just requires planning to make it happen.

Governments worldwide have brushed with digital, realising on more income from allocation of spectrum without much regard for its social digression. For instance, the public are not being told every radio and TV will either be redundant or will need a digital to analog converter so that the programs on the new medium can be heard. With the prediction that community radio, due to its poor financial status, will stay analog, community radio may well benefit once the public wake up to the dollars departing their wallets with the same service they currently now enjoy on analog networks. That's basically where I'd like to finish today, and thank you.

PROF SNAPE: Thank you very much for that, Mr Daly. Could I ask you, just where you were finishing up on the community staying on analog, is that option available?

MR DALY: Currently the digital system as has been discussed - there's a lot of

standards being agreed on. So it's really in a state of flux. The federal government are allocating a lot of funding and commitment to digital radio. However, everybody is sort of being told that television might go with it first, which would be in about another year or two, and possibly radio in about another five years. That's as far as we know at the moment.

PROF SNAPE: So you haven't heard anything about what might be decided about community radio?

MR DALY: No. Currently there are 19 stations using NTL facilities. The idea of a multiplex is that they all be placed on the one carrier. As a result, it would then be natural for those stations to be using NTL space. The statistics show that with 384 stations out doing it on their own and only 19 using NTL it's pretty unlikely that community stations will ever get onto a digital network - or very few of them anyway.

PROF SNAPE: And you were saying you think that's probably a good thing?

MR DALY: Possibly it would be. It depends on the public's acceptance of a digital system. Also, if the digital system proves to be more popular then, yes, it's definitely bad news for community radio, as their unique content is then left out.

MR SIMSON: Stuart Simson, Mr Daly. Could you just explain - I didn't quite get the point as to why you may not get onto the digital spectrum.

MR DALY: The aspect of a digital system involves multiplexing a lot of radio stations on one carrier. The system currently running in the BBC in England - and there's evidence of this - that you might have six stations all on the one frequency. It's just a matter of either selecting A, B, C, D, E, F, G depending on which station you want to listen to. In other words, the multiplex infers that a facility is shared in one location, rather than being broadcast as community radio does from separate locations, and possibly maybe in the future an opportunity for community radio to organise itself to multiplex within its own jurisdiction. It looks as though a digital system currently is for those who can afford it, and community radio is going to be left quite out in the wilderness.

MR SIMSON: Do you have to broadcast from one physical place?

MR DALY: Yes. A multiplex is a bit like - the best way of describing multiplex is stereo radio. Stereo radio is made up of right plus left and then right minus left. The two signals which appear on your radio as left and right signals have been multiplex. They have been joined together early on in the transmission chain. It's a very simple form of multiplexing. A second form I can give as an example is television, which is both sound and vision on the same thing, which we're currently doing at the moment. It is a very good example of multiplexing; that two things can happen on the one location. With digital, once again multiplexing is going to be the paramount thing which holds it together. Multiplexing involves single location transmission.

MR SIMSON: Do you have a permanent community licence?

MR DALY: We have a temporary community broadcasting licence. We have been on air since June of 1998.

MR SIMSON: Sorry, are you an aspirant?

MR DALY: No, we hold a temporary community broadcasting licence.

MR SIMSON: Just refresh my memory. How does that compare with an aspirant community broadcasting licence?

MR DALY: An aspirant would be a person seeking a licence, whereas a TCBL actually holds a licence and is going through a probation period with the ABA to make up a community station.

MR SIMSON: So you don't have to share your spectrum?

MR DALY: No. Particularly in Hobart - Hobart is fairly free of problems like that, which certainly create problems in larger cities.

MR SIMSON: What I mean is, you don't have to share your frequency with other holders of temporary licences or aspirants or anything?

MR DALY: No.

MR SIMSON: You've got it yourself 24 hours a day.

PROF SNAPE: You have had LAP down there and that is being implemented. Is that right?

MR DALY: Are you referring to narrowcasting?

PROF SNAPE: No, the assessment of the area by the ABA has gone ahead. You've already had that down there. Is that correct?

MR DALY: Yes, we've had it, and we have been on air for a year on 99.3 megahertz.

PROF SNAPE: Yes. Are you aware of any technology that's available - or the cost of it - for a conversion of a digital signal to the analog radio sets?

MR DALY: For the end user?

PROF SNAPE: Yes.

MR DALY: Yes. It's currently - a radio available in England - I just can't recall the manufacturer's name. It's currently retailing for about \$A5000, to receive digital radio signals.

PROF SNAPE: So that's receiving digital signals, but I was thinking of a device to attach to an existing analog receiver that would in fact receive the digital signal and convert it into analog so it could be received on the existing receiver.

MR DALY: Do I know of any output product?

PROF SNAPE: Yes.

MR DALY: No. There are none currently available. There are a lot of electronics manufacturers who have digital to analog converters, no doubt about that - like Burr Brown, Analog Devices, just to name two - but they as yet haven't committed themselves to radio as a means of exploiting digital to analog conversion. As far as I know there's only one manufacturer currently in England and I'm pretty sure that's Arcam. There's a group behind Arcam that's actually done all the research into it. So there's very little software available for the end user currently.

PROF SNAPE: Okay.

MR SIMSON: What sort of format is your station? Is it a music station?

MR DALY: We are a community station and we invite community involvement in what we do. We broadcast 24 hours a day. Yes, we do have music, and we interview community groups. We have interviewed approximately 20 community groups, some of those being the Asthma Foundation, the Epilepsy Association, the Tasmanian Gay and Lesbian Rights Group, the Pregnancy Support Service. The Multiple Sclerosis Society we interviewed last week and we actually received a letter today thanking us for our interview.

MR SIMSON: Okay, and you sell advertising or sponsorship onto your - - -

MR DALY: As yet we have failed to attract sponsorship income. It's a dire situation for the station. We're currently in debt of around about \$7200 and we have no income other than the membership from our members. So the station is seriously looking at sponsorship. It's very difficult for us to do it because our station is so small and can't be heard - because basically we have been given no publicity by the local media. The local newspapers hasn't even bothered to cover us. It's amazing, isn't it.

PROF SNAPE: How big an area do you cover?

MR DALY: We try to cover Sandy Bay, West Hobart, the eastern shore we cover very well, South Hobart obviously, where we are positioned. Our signal will actually reach to Kingston. It comes in at Kingston but very poorly. So we're trying the best we can, with the limited resources we have, to provide a community service.

PROF SNAPE: Good.

MR DALY: I was going to say it's not just me, it's all of our other announcers as well who are contributing to the station. We currently have a world music program, which I would rate as good as anything on the ABC. We have a variety program on Sunday afternoons. We have a new program starting this coming Monday. We have a blues and jazz program on Thursday nights. We have been receiving quite a lot of praise about what we do. The people are finding us on the radio and they'll say, "Oh, this is great, we'll tune to you in future," which is very encouraging. It certainly keeps us going day to day.

PROF SNAPE: That's good. Well, thank you very much for your submission and also for your presentation today. We're very grateful to you for it. I guess we say good luck and thank you.

MR DALY: Thank you.

MR SIMSON: Good luck.

PROF SNAPE: We have got through to Adelaide on this videolink. The hearing is the Productivity Commission's inquiry into broadcasting. This is a public hearing, even though I must confess there are not too many members of the public present at the moment at this end, but it is public and anyone can come in.

MR PHILLIPS: We have two members of the public here at this end.

PROF SNAPE: Splendid. We are taking transcript as we do of all the public hearings and that transcript will be available on the Web site of the commission, normally within about three days and we will endeavour to send you a hard copy of the relevant part. I am Richard Snape and on my right is Stuart Simson and Stuart is associate commissioner on the inquiry with me. We welcome you and it is of course only being recorded in sound and not recorded on the video and so we would welcome the Festival of Light. There are three of you at that end I can see. I would be grateful if each of you in turn could introduce yourselves and state your position so that we have your voices and names on the transcript please.

MR PHILLIPS: I will start. My name is Dr David Phillips. I am chairman of the Festival of Light in South Australia and I'm sitting in the middle. On my left - - -

PROF SNAPE: No, it has to be the voices of the people themselves please.

MRS PHILLIPS: My name is Mrs Rosalyn Phillips. I am the research officer of Festival of Light in South Australia.

MR D'LIMA: My name is David D'Lima and I am the field officer for South Australia.

PROF SNAPE: Thank you very much, that has that part of it done. We have received your submission and thank you for it and now I would invite whoever is going to open the bowling to speak to the submission.

MR PHILLIPS: I will start by just making a few general observations. First of all we are participating in the inquiry as consumers of broadcasting services or representing people who are so, our members and I will make a few brief general comments on the six issues identified in the discussion paper. First of all, the changing nature of broadcasting. We are aware of the convergence of technologies from the changing nature of broadcasting at the present time and we believe that as a result of the convergence of the technology the whole area of broadcasting is going to have an even bigger impact on the lives of individual people and families than ever before. So it is a more important issue than ever before and the fact that you are conducting this inquiry at this time I think is highly relevant and I am very pleased that you are doing so.

On the second issue that you raised, the public interest and the objectives of broadcasting policy, that is the issue that we want to respond to at the greatest length, because as families and individuals who are consumers of broadcasting, our members

are very concerned about the public interest and the effect that broadcasting is having on them. We believe in general terms that at present the balance pays insufficient regard to the public interest, it is biased in the favour of the transmitters of the broadcasting or the broadcasters, rather than the public interest. We believe the public interest needs to be protected more strongly than it is at the present time.

On the third point of economics of broadcasting, there is always a balance between protecting the public interest and the economics of an industry and we recognise that stronger protection of the public interest would involve an increased cost to the industry, but we believe it is justified. To use an illustrative example, in the public health area where foods are sold in all sorts of conditions, there are health regulations that are designed to minimise the risk of transmission of disease and we have had some unfortunate outbreaks of salmonella and other things when health regulations have broken down.

So the imposition of health standards is protecting the public interest, but it does impose an additional obligation on the suppliers of food and it does incur additional costs, but these are justified in the public interest. So we believe in an analogous way protecting the public interest, though it causes a cost for broadcasters, it should be borne when it is clearly in the public interest.

The fourth point is Australia's current broadcasting regulation which has been described as a policy or philosophy of largely self-regulation, we believe that is not working very well. The impediments to people providing feedback to broadcasters aren't too great. It is relatively difficult for ordinary people to provide feedback to broadcasters and we believe that the feedback mechanisms need to be expanded, strengthened and shifted to give greater opportunity for the public to respond and hence for the public interest to be taken more seriously than it is at the present time.

Point five: the role of the Australian Broadcasting Authority. The Broadcasting Authority is involved in the acceptance of standards and such like, but it seems not to have a very proactive role in the enforcement of standards. Where there is a complaint by a member of the public the ABA doesn't get involved for some six weeks afterwards and I believe it does very little of a proactive nature to check out the broadcasters are adhering to the standards and we would like to see the ABA take a more active role in the scrutiny of standards and protection of the public interest.

Finally, point six, international agreements. We believe it is important that while it is desirable for Australia to participate in the worldwide exchange of media programs, nevertheless we believe it is important for Australia to have the freedom within international agreements to protect its own interests as a nation in terms of Australian content and Australian standards where there may be other countries that don't adhere to the standards that we would like to be upheld in this country and we should have the freedom to make our own determinations in that so we are in control of our own destiny in that sense.

So that is a brief overview of the matters of concern to us. Do you want in more detail our research officer to go through the submission or highlight some other points, or would you rather ask questions at this stage?

PROF SNAPE: I think perhaps we will ask questions which whoever wishes to could address and then if you feel that there are additional points which you wish to highlight - we have of course read the submission and so we are aware of that - but if there are points of highlight that you think might need more elaboration in the time available, then we could come to that.

I would like to ask you a little bit about the complaints mechanisms and for you to elaborate a little bit on what you see are the problems with the existing complaints mechanisms and how you could get a workable complaints mechanism. Obviously a mechanism which perhaps has 10,000 people ringing up at the same moment is not workable.

MRS PHILLIPS: Certainly. Could I respond to that by just giving an example which I am familiar with. I often get phone calls from members of the public and also from our supporters who are very upset about a particular TV program they saw last night and don't know what to do about it. Now, in one instance that happened this year, I think it was in February, a mother contacted me and she had been watching a Channel 10 program called The Panel and the topic for discussion was heroin and various other drug problems.

They had as part of the panel a heroin addict and she was talking as if she was a perfectly normal citizen, enjoying life, there was no problem, it's just that she needed regular heroin and she thought the government ought to supply her with regular heroin. Everybody else on the panel was quite happy with that. The mother who rang me was very concerned that this gave the impression that there was nothing wrong with the illegal drug heroin. She thought that shouldn't be promoted in that way, because there was no balance on that program.

So I said, "The first thing you do is ring the station", which she did. Her complaint to the station was again lack of balance and she said, "Could you tell me the phone number of the people who produced this program over in the eastern states, because I feel that if they came along the next night and put it into context, any damage done would be very limited indeed." They refused firstly to take her name and address. They refused to pass on her complaints. They refused to convey the substance of her complaint to the people who made the program in the eastern states. They said she had to write a letter, put it all in writing, then they would decide what to do with it and they may or may not pass it on to the people who produced the program.

So she was very upset at this initial stage, but they were quite within their legal rights. The Broadcasting Services Act allows them to do precisely that. So she duly wrote her letter. She also rang the Australian Broadcasting Authority hotline which fortunately for people interstate is free and they said all they could do at that stage was to send her out a copy of the code of practice so that she could check for herself what the rules were and see whether she felt The Panel program really did breach the rules. That duly arrived and that reinforced her view, because it said in black and white that material that is simply not ever allowed on television is any material which promotes the use of illegal drugs. That's what she felt the program did.

She got a letter back from Channel 10 completely justifying everything they had done. She told me that apparently one of their excuses was that The Panel was supposed to be a humorous program, so they couldn't be expected to give a serious balanced debate. She felt that was irrelevant, because humorous programs or whatever, should not promote the use of illegal drugs. So she was unhappy with that and then she did as she was told and passed her complaint onto the Australian Broadcasting Authority.

I happened to be talking to her about something else a month or so later and asked her the result of her sending her complaint to the Australian Broadcasting Authority and she said she hadn't heard a word. I believe it was something like two months later she still hadn't heard a word, so she wrote to them again. She contacted me again this week. Now, remember the original program I think was in February and it is now June and she finally has had a letter of acknowledgment from the ABA saying that yes, her complaint does have some substance and they will be investigating further. At least she has got that far, but it is only because she was literate and consistent and able to write not one, but three letters and to follow through, which is most unusual in members of the public, that she was able to get anywhere at all. Of course we don't know whether in the end the ABA will uphold her complaint.

So we feel the whole system is biased very strongly against the typical Australian. Studies show that the typical Australian is literate, but only barely so. Something like 40 per cent I believe have difficulty reading instructions on a packet of pills from the chemist. They have difficulty reading a street directory with unfamiliar names, they certainly have difficulty filling in a tax form, they're not the sort of people who would readily write a letter.

I feel, to be fair, any complaints system must have some sort of free hotline. You could have voicemail these days, with modern technology it would be very easy to have a hotline where you can leave a recorded message giving your name, address and phone number, the substance of your complaint and that could be handled as a valid complaint by the broadcaster and the broadcast could very easily refer the complaint, again via electronic technology, to the ABA. So it would all be on record and at least they would get valid feedback from ordinary members of the public, not only the highly literate, focused and persistent ones.

PROF SNAPE: Thanks very much.

MRS PHILLIPS: I believe too - sorry - that the time scale of allowing the station something like, is it 60 days, to reply before you can then forward your complaint to the ABA is just ridiculously long. Very few members of the public would keep going for that long and then take further action.

PROF SNAPE: Yes, 60 days does seem a long time. I suppose that there are some cases where it would be valid to have that, depending upon the nature of the thing. If it was a legal challenge, perhaps, of some nature. But I take the point. That point has been made to us by a number of people that that 60 days does seem to be a very long

time to get any response. I was reading in your submission and one or two others that made points along similar lines. Quite an account of links which you perceive between the media and increased violence in the community.

Unfortunately I think that in your submission and in the others it was largely anecdotal, that one was referring to particular incidents and saying such and such an incident happened and such and such lay behind it. They were important events but in order to establish the sort of connection that you are trying to draw I think that one needs a rather more analytical study that is more of a scientific nature. That's not to say that the point isn't valid, it's simply that to substantiate it well one needs more than a number of very serious anecdotes. Do you know of solid, empirical, analytical work that you can refer, of recent times?

MRS PHILLIPS: Yes, can I refer you to a joint parliamentary select committee that produced a very extensive report back in 1988? You, David, have a copy of some excerpt from that that we published as a resource paper in our Light magazine. Chapter 13 of volume 1 of the joint select committee on video material, reporting to the Australian Commonwealth Parliament in April 1988, Chapter 13 documents a great number of studies showing the link between violent media and subsequent violent attitudes and violent behaviour in those who watch it. It was not just one study but quite a large number of them.

It also showed the links between erotic and pornographic and subsequent damaging attitudes and behaviour in those who watch it. There's more and more evidence accumulating. It's not always easy to show a causative link in this area in social science. There are so many factors involved in behaviour that it's difficult to prove a causal link for anything. It was difficult, in fact, to show a causal link between smoking and lung cancer and it was quite some decades before the medical profession accepted that there was indeed a clear link there. I believe more and more evidence is coming in. Do you have access to these parliamentary reports.

PROF SNAPE: Yes, we'll be able to get those. Thanks for the reference.

MR PHILLIPS: Will that be sufficient or do you want us to send you this abridged version that we have.

PROF SNAPE: No, we'll chase that up, thank you. We'll be able to get hold of it, thanks very much.

MR PHILLIPS: Very good. You picked up the question of the 60 day delay before the ABA becomes involved. You didn't respond to the question of considering verbal complaints as equal in status to written complaints to broadcasters.

PROF SNAPE: I noted the point, yes. Do you think that some ombudsman system would be appropriate?

MRS PHILLIPS: Only if there's a hotline that people can ring up straightaway and have it recorded and then perhaps the ombudsman could respond to that recorded message.

MR PHILLIPS: I think accepting verbal responses is a very important part of the whole process. After all the broadcasters are either radio or television, they are not written broadcasters they're verbal or visual or both and I think in this day and age we have the technology to be able to handle oral information. With voicemail you can treat it like a document and shuffle it round and file it on computers and pass it from one person to another. I see that there should be no reason whatsoever why a verbal message can't be treated with the same seriousness as a written complaint.

PROF SNAPE: I noted the comments there, yes.

MR SIMSON: Stuart Simson speaking. Could you comment, please, on the issue of regulation and codes and standards to the new media, the Internet for example, in addition to the traditional broadcasters where these do exist - perhaps in your view they're not working very well but could you talk about your interest in regulation or self-regulation for new media or of new media?

MRS PHILLIPS: We have made a submission to the recent senate inquiry into Internet regulation. We welcome the government's initiative in introducing this bill even though, in our opinion, the bill does not go far enough. We also recognise the great difficulty in regulating the Internet, particular as so much of the offensive material comes from overseas and it's difficulty at the present time to adequately control that. But they're making new advances in technology every week, every day. We see the time is not far off when the methods of blocking harmful messages on the Internet effectively and allowing the good and the neutral to flow through should be possible. So we welcome the government's initiative.

Our problem is that, as we said in our submission, that the standards or the tests applied for harmful material on the Internet are much - the bar is set much lower than it is for TV and radio and so on. We feel the standards should at least be the same. The problem with the Internet is that it's easily accessible by children down to quite a young age these days and they have available to them not just certainly illegal material like child pornography, like bestiality, bondage and so on. They also have very violent images available to them and instructions on how to make bombs and other deadly weapons. But they also have things that we would say and TV rate as MA or R and I gather there's no plan to limit this on the Internet.

Parents find it very hard to supervise their children all the time on TV let alone on the computer on the Internet. I feel they need all the help they can get and I feel in Australia's long-term interests more research should be done on ways in which the same standards can be applied to the Internet as are applied to other media. I would like to see the standards higher than they are at present.

MR SIMSON: The interesting thing is that as moving pictures become much more readily available via the Internet and other access technologies the issue is, as you've

put it, whether regulation, common regulation should exist across a whole bunch of access platforms. It may not be easy given that there'll be technologies in a couple of years that we haven't even thought of today.

MRS PHILLIPS: Indeed.

MR PHILLIPS: I think the standards of regulation should take account of the likely typical impact of the technology in the home. The new technologies are likely to be far more intrusive. I think it will not be long before every child in a family is likely to have his or her own computer as a necessary part of doing homework. It may well be that the computer is plugged into a cable modem where it's possible to download videos and audio clips and so on which would not be practical at the present time but it would mean that the new technologies could go straight into a child's bedroom where, if there were several children in a family in different bedrooms in a house, it becomes very much more difficult, if not impossible, for parents to monitor the use of that material compared with, say, in the typical home where there's a television in the family room and several family members are around it at the time. So I'm just making a general observation. The greater the potential impact of a technology in the home the more strongly we would like to see it regulated.

MR SIMSON: It's interesting. It was in the paper - - -

MR PHILLIPS: There may well be - - -

MR SIMSON: Sorry, go on.

MR PHILLIPS: Saying that, I recognise the major technical difficulties in doing that but I think they should at least be addressed and attempted.

MR SIMSON: I haven't had an opportunity to follow the current amendments which are before the parliament in the context of the online area very closely at all but there is a real balance to be struck, isn't there, in terms of access to information as opposed to people imposing regulations as they see fit on various types of content?

MRS PHILLIPS: Yes, indeed.

PROF SNAPE: I noted the recommendations that you have got in your submission and there are a number of them. Some of them would be easier to implement than others but I'm sure that you're aware of that too.

MRS PHILLIPS: Yes.

PROF SNAPE: So perhaps it's redundant to point out the problem of selectively blocking from overseas countries that are known to be harmful sources because we could see that it would very easily hopped from one country to another and we'd finish up blocking them all.

MRS PHILLIPS: Yes.

PROF SNAPE: But I'm sure that you're well aware of the problem and we accept it in that spirit. I think your submission is very clear in what you see is the problem and your recommendations for at least thinking along the line of solutions. In some cases we wouldn't say they are solutions but simply lines that you see as being worthwhile being pursued and we take it in that spirit. Stuart, do you have - I'll pass it over to Stuart.

MR SIMSON: The only other one that I wanted to raise with you is the issue of Internet gambling in the context of really where you draw the line in terms of people having the freedom to use the Internet. I mean, we've heard clearly what you've had to say about social violence and pornography and so on but this really becomes a pretty long piece of string, doesn't it, once you start saying that Internet gambling should be - - -

MRS PHILLIPS: I'm not the only one saying that. You've probably - - -

MR SIMSON: I'm not disagreeing with you by the way either.

MRS PHILLIPS: You may not realise, as we do in South Australia, where we've only had poker machines since 1994 and it really has had a devastating impact on our society here because you can now go to the corner pub and gamble to your heart's content for most of the day. Part of the problem is it's so accessible, being in the corner pub, and once you extend that principle to allowing Internet on interactive gambling in the home I believe that social impact will be far more horrendous. We even have a no-pokies MP elected purely on that platform here in the South Australia parliament and he is very concerned that the problems that we see now with gambling in pokies in hotels is nothing like the problems we'll see, should Internet gambling become established. We would like to see it nipped in the bud, quite frankly, because of the damage it does to families.

PROF SNAPE: As you possibly know, there is a parallel inquiry in the Productivity Commission into gambling and the people conducting that have certainly been in touch with Mr Xenophon and vice versa. So the points have been taken and there will be a draft report from that inquiry within a couple of months, so those points have in fact come to that inquiry. You will, I'm sure, be interested to read the draft report when it comes through.

MRS PHILLIPS: We will.

MR PHILLIPS: In terms of drawing the line, I think, one of the things that can be said is that poker machines are particularly addictive. A lot of psychological studies have been done on the things that contribute to addictive behaviour and one of them is a quick response time, and if you compare a poker machine where you can get a response to feeding in some money within a few seconds compared with, say, a lottery where it may only be drawn at the end of the week and you have to wait several days before the answer is obtained, the poker machine model is far more liable to result in compulsive behaviour. Some people who have had a problem with compulsive

gambling on poker machines have said one of the difficulties they find is that if they go down the street and walk past the pub where they have gambled in the past it's very hard to resist the temptation to walk in and gamble some more, even though they need to walk past the pub to do their shopping.

So if that is a temptation that's difficult to resist from a local pub, if it's on the computer in the family room at home, there 24 hours a day, seven days a week, the likely problem with compulsive gambling in the home could well be a much more severe problem than the problem of poker machines already used in the community. So it may be that if you wanted to draw a line to make some kinds of gambling illegal it ought to be those which are known to be most likely to induce compulsive behaviour.

PROF SNAPE: Yes. Without anticipating anything in the draft report on gambling with which I'm not involved personally, I know that they are addressing issues of that kind in it. I think that covers the points that we wanted to raise and we have read the submission and as I see, it's a very clear submission. Is there anything else that you would wish to raise?

MRS PHILLIPS: No, thank you.

MR PHILLIPS: I think we've just done a quick consultation and we are satisfied that the matters that we wanted to raise have been covered.

PROF SNAPE: Thank you very much for your submission and for discussing it with us. We're very grateful to you for that and thank you.

MR PHILLIPS: Thank you for the opportunity to experience a new technology in giving this level of submission.

PROF SNAPE: Good. Well, it did make it much easier actually from our point of view and we're grateful that you were able to cooperate with us in this way. Now, is the Young Media group with you?

MRS PHILLIPS: Yes, they have been listening to every word.

PROF SNAPE: We now welcome Young Media Australia and thank you for cooperating in fronting up to the cameras in this way, and it makes it much easier from our perspective. We have two members of Young Media in Adelaide and I'd invite each of you to identify yourselves for the purposes of the transcript please.

MS BIGGINS: Thank you. I'm Barbara Biggins and I'm executive director of Young Media Australia.

MS JUPE: My name is Toni Jupe and I'm the media and communications manager for Young Media Australia.

PROF SNAPE: Thank you very much. We should introduce ourselves at this end. I'm Richard Snape and with me is the associate commissioner, Stuart Simson. You can't see him at the moment but when he speaks you will as the camera moves around. Ms Biggins, would you like to speak to the submission please.

MS BIGGINS: Yes, I would. I wanted to say first of all that we are very pleased to have this opportunity of speaking to the commission on this important topic. I would like to add briefly to our introduction before we move on to summarising our submission. I might also point out that if the commission would like to know more about Young Media Australia we do have a web page, www.youngmedia.org.au. By way of introduction I'd like to say that we are a unique national organisation. In fact we are the last of several consumer groups which were set up to represent the needs of children's interests some 30 years ago, after the introduction of television. But we are the last consumer group specifically devoted to children's interests in this area and we are somewhat of an endangered species. That is because it is terribly difficult to maintain an organisation to represent consumer interests today and I think that's an important point for the Productivity Commission to take on board.

Our organisation has great relevant experience in this field because our members have served on advisory committees for the ABC at national level and we've also served on advisory groups for a local commercial channel. We have made submissions to most major broadcasting inquiries since 1975. We have extensive overseas information links which were developed via a Churchill Fellowship study tour. I have served on the children's program committee of the Australian Broadcasting Tribunal for nearly nine years, between 1982 and 1991. So I have extensive knowledge of working with the Children's Television Standard and am currently chair of the Classification Review Board, as an individual I might say.

My colleague Toni Jupe is a professional journalist, so between us we have a fair bit of experience related to the media across print and electronic form. Toni has also served on the Australian Broadcasting Authority Consultative Committee on Internet Content and Children. The organisation maintains an up-to-date information service on media and children and we supply information on request to academics and parents and children's professions across Australia on a regular basis. We have also acted as a conduit for community concerns, particularly parental concerns, about the media that their children are exposed to, for 20 years or more. We've also played a

major part in the inquiries that led to the acceptance by the government in 1978 that they need to regulate children's programs and Australian content.

I have to say that Bruce Gyngell, who had only got as far around Australia in his self-regulation hearing in 1977 - had only got through Perth and Adelaide before he was saying the concerns about children's television had shone out like a beacon light and it was gratifying then to find that the government had actually moved to do something about it. The organisation also holds national conferences to explore the needs of the child audience in a changing media environment and it might be useful for the Productivity Commission - and we extend you an invitation to attend a conference called Developing Child, Developing Media which we're holding in Sydney on July 20 and 21, because we're going to be exploring some of these very issues with a group of people across the spectrum of community and industry, in particular going to be looking at issues of regulation and harm to children in the new media area, and I will table somewhat symbolically the conference program but we will post it to you.

PROF SNAPE: If you could post it to us, thank you.

MS BIGGINS: Thank you. Now, you have our written submission which was, of necessity, brief. But we would just like to cover our main concerns and then we'd be happy to answer questions. We note in giving this summary that your brief is to advise the government on practical courses of action to improve competition, efficiency and the interest of consumers in broadcasting services and I guess it's the third area that we want to major on. Our standpoint in our submission is that it will not be in the best interests of the child audience to reduce the regulation of the children's standards that are presently in place, which require the production of programs to meet quality children's quotas. We also hold the view very strongly that it won't be in the best interests of Australian children if in fact they don't have access to Australian-made programs so that they can see that their own culture is important.

We also hold the view that the area of protection from harm for children in our current broadcasting regulatory regime needs much more work. We use the phrase fairly glibly, "We will protect children from harm," but I don't think that we have really looked into what that means. We sometimes think that if we save children from seeing splatter movies that we've protected them from harm, but there is a whole lot more work to be done in the area of socialising children into the acceptance of certain attitudes that is also, in our view, putting the children at risk from harm and I guess in this area we would like to just do a bit of a leap sideways to tackle very briefly the issue that you raised with the previous submitters on the issue of violence and in relation to protecting children from harm from violence.

We have a whole library of material of the current studies that have been done on the impact of violence on children and we can tell you that there is now close to 20 years of reliable evidence that we put children at risk of harm from a diet of media violence if we continue to do what we are currently doing, and if we continue to allow the expansion of access to violence in the media. The evidence shows that children are put at risk in three ways - and we can give you chapter and verse on all of these - that we increase the likelihood that children will use violence. We increase the likelihood that children will be desensitised to the use of violence by others and we

increase the likelihood that children will be fearful about the world they live in. What's more, the research has now moved on to the questions of what sorts of media violence and what context for it are most likely to increase the harm and we would gladly send the commission more evidence in that field if that is an area of your interest.

PROF SNAPE: Perhaps you could send us a list of some of the principal publications that might be of assistance to us, recent publications and particularly if they are Australian oriented. I should say that we had the Australian Children's Television Foundation in this morning and we were talking to them and Patricia Edgar there also made the same request for them to - - -

MS BIGGINS: Just to move on to the last couple of major points that we wanted to raise with you. We hold the view that self-regulation in areas of programming other than children's, both by the government and children's standards have not been a great success, because the essential ingredient for a self-regulation system to work are not present. These essential ingredients are that there is a well-informed and well-resourced base of consumers.

A second element is that there is easy access to well-identified and effective complaints mechanisms and there needs to be a responsive media. We hold the view that none of those three elements which are essential if self-regulation is going to work, are present in the present system. We also hold that with the expanding media that it is getting harder and harder for parents to cope. More and more responsibilities are being put on parents to keep their children away from harmful media and less and less help is being given to parents to actually achieve that. Again, we would want to table a further paper that was written in this area called Can Parenting Mitigate Harm From Media Content, where we go into all the pressures that are on parents these days and the increasing responsibilities that are put on them as more and more the catchcry comes that it is getting too hard to regulate the media, so it is going to be the parents' job to fix it up.

Finally, we would also like to raise the point that we believe that technological convergence should not be used as an excuse to do away with regulations. New developments in the media supply do not necessarily have to mean that old media don't need to be regulated, or that the new ones don't need to be regulated either. In terms of the consumer, they view the product in much the same way as they always have done and they expect the same sort of standards to apply. Technological means of delivery might be different, but the impact on the viewer is going to be much the same.

We also ought to point out that not all areas of Australia have access to all of these new media and particularly in areas like South Australia, we are still highly reliant on free-to-air television. Pay television for instance, according to Stuart Fist this morning in the Australian in the computer section, says that pay TV is still only reaching 10 per cent of Australian homes. I must say they have stopped cabling in Adelaide. Even if we wanted to get pay TV we can't in some areas. So that is a point that I think needs to be kept in mind.

A large number of Australian homes still do not have access to new media and in particular we might say that access to the Internet by families and children is still relatively low in Australia. So that is a summary of the major points that we wanted to make. We can elaborate on some other points in our submission or we can answer questions; whichever way you would like to go from here.

PROF SNAPE: Thank you very much, Ms Biggins. I think where you speak about codes of practice in your submission and reading that, I wonder if you would like to elaborate on the points that you were making there of codes of practice.

MS BIGGINS: One of our concerns about codes of practice is the great difficulty that the average broadcasting consumer has in keeping up with all of the different codes that apply to the different arms of the media. My colleague here is holding up a kit which we have prepared called Talking Back. It is information for media consumers. That contains over 20 different codes that apply to the forms of media that are available in Australia. What hope has the poor consumer got of keeping up with all of these codes? If he is concerned about something that he has seen, is it the ABC that he has to complain to? Is it commercial television? Maybe it was pay TV I was watching. Who is responsible for that?

It is an absolutely hopeless situation. Broadcasting consumers are not up with the great range of codes and as a consequence they are also not up with to whom they are supposed to complain. So we believe that there needs to be some rationalisation of at least the place to which consumers could address their complaints or to which they could go to get information about what codes apply. Many years ago in Australia we actually had set up a broadcasting information office. I do believe it is time we had such a thing back again. At the very least a hotline for consumers that covers all media and where there is a sympathetic consumer oriented person who will then redirect the call to the right place to go to.

I guess a particular area of concern in codes of practice was the recent FACTS code review. That FACTS code review was produced after public consultation in 1993. It was supposed to be reviewed after three years. The review has taken almost three years. That is an appalling state of affairs. It means that problems that were identified with the code in the first three years of operation has taken nearly six years to have rectified and we are still not sure that they have been rectified.

Submissions were called to review the code very shortly after the first draft review was put out at the end of 1996. Consumers then heard nothing about the progress of the review until March this year and we were then given about three weeks to reply, to see whether we liked the latest draft code. We replied by the deadline. The code was out on the street within a week. We just were totally frustrated in terms of how much notice was taken? We spent about three weeks getting our response ready and they didn't even take that long to review. So we are not confident that this code that is now in place is actually reflecting consumers' concerns.

MR SIMSON: Just on that, given the complexity of the codes as you have shown us in that book on the screen, perhaps there are a couple of issues here. Firstly, it may not be so important that the consumer actually is even aware of what is in the code, so long as they have a simple access point along the lines that you were explaining and perhaps that will become increasingly so, given the complexity of media that we are dealing with and the breadth and scope of it.

Then there is the second issue which you have just addressed which is what is actually in the codes and arguably that so long as the community is happy with what is in the codes, that is one issue, but the other issue is the management of the codes which was your first issue. That is clear.

MS DUPE: Another point that we have made time and time again about simply the FACTS code, but other codes with standards, is that the need to know what is in them, or more to the point to understand them in many cases is anathema to parents in that they are frightened off by the idea that they have to go through the sort of complaints procedure that Ros was talking about earlier and so they don't make the effort and if they make that comment to the TV station or the ABA themselves, the response almost always is, "Well, if you can't be bothered to put it in writing or to elaborate on your complaint, or more to the point, if you can't be bothered to have noted the exact time of day and what station or network the program was on, then we are not going to treat the complaint as a formal one," and therefore it doesn't get into the record books as such as something that really reflects community concern.

So it is easy for even the regulatory authority to a certain extent to say that there isn't any community concern about a particular issue or not much, because nobody formally complained about it or not many people did. That is not the real situation as far as we are aware.

MR SIMSON: Ms Biggins, could I take you back to your earlier comment about violence on television. There are two aspects to this at least. One is the regulation that occurs of children's programming, with regard to children's programming and the hours the children watch it, that is children's programs. But the other area is news and information and current affairs which is shown at any time of the day which children can presumably watch if they are near a media access point, a television or whatever. Have you got any recommendations or suggestions or what are you actually seeking here in terms of the regulation, if you are in fact seeking this, of news and information content as it relates to the impact on children, or is this just too hard?

MS BIGGINS: It certainly is a very vexed area and there have been a number of attempts with codes over the years to call on greater sensitivity of news editors in what they put to air in the early evening hours. I can't say that I have ever noticed over 25 years of observing the field that those codes have made the slightest difference to the sorts of footage that the news editors will put to air if they think they have a good story and some good footage.

I think what we are calling for is for greater note to be taken and even to go back a step further, for there to be an ongoing effort to collect the latest research

about the impact of particularly media violence on the young, because there is so much of it and to be reviewing that research and then actually to be applying it to our classification systems and to our codes. We do not see that that research and what we know from child development theory and in addition to the specific research on violence, we don't see that being applied in our classification system. We see a fairly entrenched attitude that somehow or other we are doing our job if we keep kids away from the most frightening and scary stuff.

We are paying very little attention to the research that says we are socialising children into the acceptance of violence with certain material. We are socialising children into being scared about the world that they live in, because we thrust pictures of the worst and most bizarre and most sensational events that have happened around the world down their throats early in the evening in the middle of G viewing time.

MR SIMSON: May I just interrupt for a moment. Let's assume that what you are saying is correct in terms of the impact of this and what's going on. My question relates to what can be done about it. Let's assume that the factual matters that you put before us are of course correct. Now, what can be done about it? Given your experience, professional experience in a number of areas and forms over a relatively long period, what are you saying should be done with the news editors. What should the ABA be doing or saying in a regulatory sense with the TV networks, with their news bureaus?

MS BIGGINS: It would be a really big step forward if in fact those news services which are screening in the G viewing time and which parents believe is okay for their kids to watch, if those news services in fact had basically a G content. It is quite possible to tell what is happening in the world without showing the worst pictures at 6 o'clock. We could follow the British model quite well with having major news services with the major pictures at 9 o'clock instead of so early in the evening. We have this strange Australian habit that somehow or other we have to have the major service at 6 o'clock with all of the pictures and parents keeping kids out of the way.

MR SIMSON: Could I just clarify a point there. There is the issue of when the TV networks wish to program their news and I don't think we can do much about that, but in the case of the UK is there in fact a code or a standard or something that says that more violent stuff is shown in the 9 o'clock news rather than the 6 o'clock news?

MS BIGGINS: There's a recognised watershed in British television at 9 o'clock. Before that it's recognised that it is a family viewing environment. The worst material is kept until after 9 o'clock..

MR SIMSON: But is that codified or standardised in any way in any of the regulations that exist in the UK?

MS BIGGINS: I'm pretty certain it's in the BBC's own code of practice, but I can check on that.

MR SIMSON: I mean, we could check on that also, but if you do have any information along those lines, that supports that, we would certainly be interested in having a look at that.

MS BIGGINS: The point that we were trying to make about research is that the research is telling us that exposing children to graphic pictures in the news is making them extremely anxious about the world that they're living in and it's very difficult for parents to apply any consumer education in this field because you can't explain to a young child the probability that something like that won't happen to them, because they don't understand probability and chance.

We're also arguing that the research hasn't been taken notice of in our classification systems and so we are having more violent material for instance - quite problematic violent depictions showing in children's cartoons, most of which are toy-linked. So they're classified G. We're having a lot of problematic violence shown in 8.30 pm M-rated movies, simply because we're not taking on board the research that says that violent heroes who perform attractive violence, whose violence has very few real life consequences and perhaps even if it's put in a comic or a humorous context, is the most dangerous form of violence that we can be exposing to our young people.

MR SIMSON: Just to talk hypothetically on this - of course we all understand what you're saying. What is the quid pro quo, though, for the TV networks though, in this? I'm asking this question rhetorically. Why should the commercial free-to-air networks be obligated to listen to what you're saying and to respect - let's say the codes were toughened, hypothetically. Why should they do that? Why should they do that in terms of their responsibility or the benefit they receive as broadcasters? Why, as a business, should they have to do this?

MS BIGGINS: Well, because they're in the business of putting out a product into the family home, they have got a responsibility to their viewers not to do harm. The Broadcasting Services Act actually requires them - it's an objective of the act to prevent harm to children. Now, we would say that there is a responsibility on the broadcasters to take notice of research which says they are doing harm with some of their practices now.

PROF SNAPE: That's because they've got a - - -

MS BIGGINS: As part of their business obligations - not to do harm.

MR SIMSON: Perhaps you may also argue it's because they've got access to, say, a public good in terms of broadcast spectrum and these sorts of things? They've got a licence. They've got a broadcast licence.

MS BIGGINS: That may be so. No business can go around doing harm and get away with it, I would have thought.

MR SIMSON: In this case they have a broadcast licence, don't they?

MS BIGGINS: They do.

MR SIMSON: And the number of licences is limited.

MS BIGGINS: Well, that's right. I mean, that has been a traditional argument that says you hold a privileged position so you have to observe codes and practices. I would put it to you that any broadcaster - even if we opened the spectrum right up - has a responsibility not to do harm, whether you've got a privileged access to a licence or not. What we're saying is they're not taking notice of the evidence.

MR SIMSON: What about the new media, such as the Internet, Ms Biggins? Have you got a view on that in terms of the extent to which this regulatory hand should reach?

MS JUPE: Yes, we have a policy on what we call cyber-safety - in fact an ongoing project in this whole area. We have made representations to the Senate select committee inquiry and kept track of how the debate over the regulations has been going. We support the government's current attempt to regulate this area. We see it as a reasonable attempt to tackle what is obviously a very difficult area. Without getting too distracted, if you like, by the issues about the technological ways and means of regulating or not regulating, we still go back to the point that the government has stated over and over again: that it's just not good enough to do nothing.

Our own research and community feedback is showing that parents are extremely concerned about the impact of online services on children but they're very confused and worried also because they're being implored on a daily basis by the mass media to get the technology into their homes, because otherwise they're being told that they would be neglectful parents if they didn't, that their children's education would suffer and they wouldn't be giving their children the best chance of getting employment somewhere down the track. That may well be the case but the problem is that that whole way of looking at things is scaring parents off getting the technology before they're well-informed about ensuring how they can make sure that it's not going to be as harmful to their children as it might be beneficial.

We support the use of online services in the family home as long as, just with any other media, the parents are well supported in the amount of information they get about it. It's very similar to what has been happening with commercial TV and our outlook is the same, is that in a co-regulated environment parents need as much support as they can possibly get and it just doesn't work the way it's designed to if they're left to their own devices to cope with the impact.

We talk about community education campaigns and information campaigns and they of course are a great idea but so far certainly the industry sections in both instances have put very little resource into this and the government says it is going to but hasn't actually applied it yet, that we can see, and as Barbara said earlier, even though there's a feeling that Australian families are rushing towards getting the

technology, it's not actually occurring at the rate that people are assuming it is. To say that within five years' time every child in every home will have their own computer is probably counterproductive to a safe and sensible way of tackling the issue between now and when that new technology is freely available.

MS BIGGINS: One of our concerns is that, as Toni said, there's a lot of recommendations about the need for community education and in particular parent education in this field. We've yet to see anybody put any funding up for that to occur. Again, it's a situation where self-regulation or a deregulated environment will absolutely not work. Consumers will be totally disadvantaged unless there is money put in to assisting the community to understand the Internet technology, its benefits and its pitfalls.

PROF SNAPE: Yes, funding is a problem in many areas of course and I was going to ask you about one of them. You speak in your submission about content regulation being a most effective means of meeting children's needs in free-to-air broadcasting and we can well understand the problems with advertising and don't need convincing on that, but have you explored sponsorship as distinct from advertising? We were talking about this this morning too with the Children's Television Foundation as to whether they had, and mentioned there that, for example, the Children's Hospital in Melbourne, there's quite a large sponsorship of some things by McDonald's in that and, sure, McDonald's get a benefit from it but it is a sponsorship rather than having it being thrust at you all the time. Have you investigated sponsorship for children's television production or what would be your attitude to that, the idea being like the sponsorship that you see on SBS television. At the beginning or the ending of a show you get simply an announcement that this program was sponsored by Barbie Doll.

MS BIGGINS: I would have to say that on commercial television as it's presently structured, if programs were sponsored and there was not 15 minutes of advertising in every hour of children's programs, that would have to be an advantage because what we're seeing presently is not only children's programs being chopped up constantly by advertisements but that within programs which are not C-classified - the children's cartoon shows, early morning, for example - we see what we call advertising by stealth. In fact, it's one of the things that was reflected in the FACTS code and we've had to argue very strongly against host selling where the compere actually mixed up a glass of Nestle's Quik or something similar and said what a good drink it was. That was all just counted as program content, not advertising content. They have now stopped doing that; they've moved to "sponsored within program segments" which now don't count as commercials but really they are promoting prizes for competitions as advertisements.

More than that, we're getting whole 30-minute cartoons which are basically 30-minute advertisements for the toy tie-in program. So anything that got children's cartoons away from being toy-related, because they often simply reinforce the message of violence within the cartoon, might well be welcomed.

PROF SNAPE: If we've got as an objective the promotion of good children's programs, what we would all agree is good children's programs, the question is what's the best way of developing that and particularly if it's Australian content that we're looking for in them, you don't see that subsidies would be an appropriate way to go, even to the extent of paying the channels to put them on?

MS BIGGINS: Who would do the paying?

PROF SNAPE: The government, the taxpayer - you and me.

MS BIGGINS: That's a novel idea.

MS JUPE: I don't mind my taxes being spent on that.

MR BIGGINS: No, neither do I. I mean, certainly the commercial stations have always had to be dragged screaming and kicking, via regulation, to produce any sort of quality material for children. You only have to look at the quality and standard of children's programs which are not C-classified or P-classified to see the sort of standard of material that we would get if that regulation weren't in place. We'd have wall-to-wall American toy-subsidised cartoons. Children's story-telling would be impoverished greatly because that's the chief criticism of that sort of material; they have no stories of worth to tell our kids. We believe the C and the P quotas have really helped develop an Australian children's television production industry that has been the envy of overseas countries. I have travelled extensively and given papers at conferences where people have said, "I wish we had something like that here," and America is one of them. The biggest mass market economy in the world can't still cater properly for its children.

PROF SNAPE: We are required by our terms of reference to be considering alternative means to meeting the government's and community objectives. So in throwing this sort of idea around we are trying to think of alternative means. People generally in their submissions have been endorsing the content regulations. We are sort of asking are there other ways of tackling this. Another way might be perhaps - and again it is just thinking in that context that we are required to think in - of having quotas for children content along the C and P lines that we have, but making those quotas transferable between stations. So that if one of the stations decided that they were going to focus on children rather more, other stations could be paying them to take their children's quota. Do you have any reaction to that?

MS BIGGINS: Sounds like putting children's television in a ghetto to me.

PROF SNAPE: You must have been reading this morning's press, because that is - - -

MS BIGGINS: No, I haven't.

PROF SNAPE: That is exactly the same - - -

MS BIGGINS: That argument has been advanced before. In our view, children browse across all channels. Their parents can't often dictate which channel they are going to watch and we believe that it should be part of the public service obligation of the television channels, for all of them to show children's material. It would be preferable if they didn't all show them at the same time so that children did have a greater choice. The problem with perhaps making one channel a children's channel says that you can't cater as a range of channels can do for all different age groups, because you are not just talking about one child audience.

You are talking about pre-schoolers, you are talking about six to eight-year-olds, eight to 12-year-olds, 12 to 15-year-olds who are all at different developmental stages, and material, to be really quality material, needs to be geared to their age and stage of development. One channel can only have material on it of one age group at a time. So that is not really going to meet the needs of the child audience. Besides, children's programming should have the same sort of diversity that adults are available to have. Children's programs are not just one sort of program. They should be 20 different sorts of programs for about four or five different age groups.

It seems to me that the present system of requiring all channels to provide children's programming provides the best opportunity for that diversity to be addressed if there is a mind to do so. I am happy to see taxpayer's funds - just going back to your earlier question - put in subsidising quality programs on all channels, provided that there might be a substitute for advertising within those programs, but not if the channels are going to be allowed to take subsidising and advertising as well. They should be obliged to provide quality programs now.

PROF SNAPE: I suppose the advantage of having a children's television channel might be that it doesn't all occur at the one time. I mean, the problem is that if it is all occurring at, say, between 5 and 6 o'clock for different age groups and you have only one television set in the house, then there is only one channel can be watched and only one age group that is catered for, whereas if it is a different time spread over the one channel you can cater for them all.

MS BIGGINS: At any one time there can only be one age group a channel on the children's channel. On three commercial channels and the ABC and any other free-to-air channel that might come into existence, you could theoretically have four or five different age groups catered for. It is a matter of choice.

PROF SNAPE: So long as you have four or five different sets.

MS BIGGINS: We might point out that the commercial television stations are not all obliged to put on their programs at the same time. The Broadcasting Tribunal that it was several years ago, actually set up a children's time band so that the network could program anywhere between about 3.30 and 8 o'clock with their children's materials and what do they do, they all line up against each other in the same half an hour.

MS JUPE: Having one so-called children's channel and nothing for children on the other channels for the bulk of the day, if not all of the day, I'm sure would give families the impression that somebody is dictating to them what their children may or may not want to watch at any one point in time. Of course, while we talk about problems with the content of some programs and the heavy advertising content within some programs on free-to-air, at least parents can feel that they can exercise some control over the content of the program that their children can watch at any point in time by having that choice. If you take away the choice, I think they would be justified in increasing the criticism that some form of censorship is going on.

PROF SNAPE: That point is well-expressed, as your points are in general, and I think that Mr Simson is through with his questioning and I think I have got to the end of mine. Is there any other point that you wish to make?

MS BIGGINS: I guess the only other point that we would want to reinforce is the problem with the complaints system. It was well-addressed by the previous submittee. Our experiences have been much the same. The complaints system is too slow, too hard and the wait is often not worth it. We have waited up to 18 months in some instances to have complaints resolved. In a child's lifetime that is much too long. There must be a quicker way to resolve complaints.

PROF SNAPE: We have heard that from many sources, and thank you for that. Thanks very much for your submission and the discussion. As this is now concluding our day's hearing, we would ask whether there is anyone present here or present in Adelaide in the studio there who would wish to say anything. If not, then I will say thank you very much and adjourn the hearings until tomorrow morning where we will be back in Melbourne, and first up is the Australian Press Council. So thank you very much.

MS BIGGINS: Thank you for the opportunity.

AT 5.24 PM THE INQUIRY WAS ADJOURNED UNTIL
WEDNESDAY, 9 JUNE 1999

INDEX

	<u>Page</u>
KISS FM: TIM BYRNE	694-706
AUSTRALIAN CHILDREN'S TELEVISION FOUNDATION: PATRICIA EDGAR JENNY BUCKLAND	707-722
SOUTHERN CROSS BROADCASTING: TONY BELL EDDIE CHIA	723-739
COMMUNICATIONS LAW CENTRE: JOCK GIVEN	740-765
WIN TELEVISION NETWORK PTY LTD: JOHN RUSHTON DAVID STURGISS	766-775
CADENCE FM 99.3: CHRIS DALY	776-783
FESTIVAL OF LIGHT: DAVID PHILLIPS ROSLYN PHILLIPS DAVID D'LIMA	784-792
YOUNG MEDIA AUSTRALIA: BARBARA BIGGINS TONI JUPE	793-804